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Towards Global Justice: Sovereignty in an Interdependent World

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Simona Ţuţuianu
Institute for Political Studies of Defence and Military History
Defence Studies Directorate
Bucharest
Romania

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The time of absolute sovereignty … has passed; its theory was never matched by reality.

Boutros Boutros-Ghali
An Agenda for Peace
(New York: United Nations, 1992), para 17

The diplomacy generated by the Arab Spring replaces Westphalian principles of equilibrium with a generalized doctrine of humanitarian intervention.

Henry Kissinger
Syrian intervention risks upsetting global order
Washington Post, 2 June 2012

Foreword

This is an important book, which comes at a crucial time in the realignment of international relations, as states of the world begin to make common cause against external threats like terrorism and climate change, while accepting their own vulnerability to international monitoring and even armed intervention to ensure that they treat their own peoples with a modicum of dignity. Students brought up to believe in the traditional principles of Westphalian sovereignty seemingly embodied in Article 2(4) of the UN Charter, now find it difficult to account for a world in which Milošević and Mladić can be put on trial, where Charles Taylor goes to jail for many years, and where the UN and regional bodies encourage—by sanctions, indictments, and even armed intervention—a popular revolt against a long-lasting Libyan regime. This is not the world of independent nation-states, with political and military leaders bedecked with legal privileges and immunities. It is a world where "sovereignty"—classically the power of national entities to treat their own people as rulers wish and freely to follow their own national interests—is no longer an accurate account of how the world works, let alone of how it will work in the very near future. This book offers a credible theory of post-Westphalian sovereignty, based on interdependence rather than independence.

The author does not abandon the classical theory, but rather shows how it can and must be revised and reconfigured in a model that will explain, for example, the ground-breaking Security Council Resolutions 1970 (to refer the situation in Libya to the ICC prosecutor) and 1973 (that NATO should take "all necessary measures" to protect the civilian population from a regime that ruled the country for forty years). Academics—because they do not much live in the real world—have been slow to appreciate what was in truth a millennial shift from expediency to justice in international affairs. The belief in human rights is not "*The Last Utopia*" as Samuel Moyn would have it, but rather a system for reordering relationships between states and actively enforcing minimum standards of fair treatment. Conflict resolution, too, is no longer a matter merely of allowing expendable dictators to leave the bloody stage with amnesties in their back pocket and Swiss bank accounts intact—as the Mladić arrest has shown, they can run, but they cannot hide forever. Throughout the Arab world young people are organizing on

Facebook and posting photos and films on You Tube when tyrants counterattack them—they understand that this will constitute evidence which may one day bring those responsible for atrocities to international justice. John Locke's argument for the right to revolt when rulers break their compact by oppressing the people is on its way to becoming a part of international law through the "responsibility to protect" principle that this book so astutely analyses. Its particular strength comes from the author's experience of how regional security arrangements work, and her ability to show how the imperatives of NATO, EU, and UN membership variously impose duties on nation-state members that prevent them pursuing their own national interest at the expense of the global or regional interests of state communities.

This is a ground-breaking work which expounds a theory of interdependent sovereignties which is coherent and capable of accurately describing the limits on the nation-state in the twenty-first century. The author is a theoretician who has left her armchair to participate as an army officer in regional security arrangements and in observing the workings of justice in the Hague and has returned to academe to make sense of them—producing this bold template for understanding the limits of political power in a globalized world. International relations is not a subject that can be divided into historical or legal or philosophical or political perspectives—it can only be understood scientifically by examining how all these subjects cohere. The strength of this book is its multidisciplinary approach which leads to a new theory of how human rights will be better protected in a better world.

London, June 2012

Geoffrey Robertson QC
Doughty Street Chambers

Foreword

A review of the crucial questions of our times—which is the new world order? what kind of power distribution is expected in the near future? what about China's position and role in the changing global power equation? and so on—reveals a fundamental need for assessment to be thoroughly undertaken. Namely, whether we still find ourselves in the Westphalian systemic paradigm, or whether we have already entered a new paradigm, be it post-Westphalian, post-modern, or otherwise named.

Practically, an ongoing debate within the academic community that has as its subject the configuration of the new global security architecture, or the future structure and functionality of the world system in the twenty-first century is unfolding into this direction of analysis. Does the Westphalian paradigm remain valid when we face the prevalence of the "zero-sum game"—to quote Gideon Rachman's *Zero-Sum Future*—or will it become obsolete in a kind of progressive "win–win world", free of hegemonic wars that were previously unavoidable?

The extraordinary significance of a correct answer concerning the direction of the systemic evolution is reflected in Simona Ţuţuianu's book, in an area of research that has been (and still is) explored by numerous and well-known international relations analysts. On Google, one can find at least five million entries which refer to various (and not only academic) papers connected to the present challenges to the Westphalian system. The most recent controversy which highlighted the undermining of the Westphalian paradigm concerns the doctrine of preemption about which Henry Kissinger stated after the events of 9/11: "At bottom, it is a debate between the traditional notion of sovereignty of the nation-state as set forth in the Treaty of Westphalia in 1648 and the adaptation required by both modern technology and the nature of the terrorist threat" (see H. Kissinger in *Preemption and The End of Westphalia*). This debate stresses major challenges to the structural transformation of national and international security threatened by stealth attacks.

More important than anything, is the fact that this bold demarche comes from a unique scientific space—that of Eastern Europe—projecting in the international scientific world a point of view focused on the vast theme of interdependent old

and new sovereignties, everything based on a rich and diverse bibliography. The author comes from this complex region in terms of security developments that conditions different perceptions on national sovereignties (there are a lot of new nation-states here) being well familiarized with the scientific standards in the field and having the wisdom to use the necessary and appropriate leverage to identify a coherent answer to the aforementioned question. At least two aspects are very important.

First, the Westphalian system—that of uncontained supremacy of the national sovereignty—has faced major defiance in the post-Cold War era which radically transformed it. Whether we speak about the international courts in the Hague and a new codification of international law by "overcoming" the principle of national sovereignty, or about the "Responsibility to Protect" doctrine (the case of Libya and maybe that of Syria, in the future), these developments clearly show that we are entering a new systemic paradigm different to the traditional Westphalian one.

Secondly, if this hypothesis is to be verified, an interpretative grid based on the *win–win game* scenario is activating, suggesting the preeminence of the logic of international cooperation at the expense of traditional rivalries, which ensures the optimization of global systemic management. In my capacity as Co-chairman of the Regional Stability within the Greater Black Sea Area Working Group of the Partnership for Peace Consortium of Defense Academies and Security Studies Institutes (RSGBSA WG), I have explored the virtues of this interpretative grid's applicability during the implementation process of relevant regional scientific projects aimed to develop ideas for practical cooperative activities among the littoral states and interested international actors. Achievements are notable, thanks to a strong network of experts to which the author currently belongs and, whether it is supporting development of democratic defense institutions, promoting defense education enhancement to prepare future leaders, or conducting research in support of regional stability, the current work of the RSGBSA WG has a direct line back to the above-mentioned scenario.

These are two starting points for reflection which are very thoroughly presented by the author, assisting us to move forward in finding workable answers to the delicate question: *What next after Westphalia?*

Bucharest, June 2012 Prof. Mihail E. Ionescu

Preface: A Personal Note

Is the Westphalian logic of national sovereignty old-fashioned? In this book, I aim to examine its demise by way of explaining the limits of political power in a globalized world, without the utopian idealism found in many academic treatments of international law. I believe that obituaries of the classical theory of nation-state have been written too soon: the demise of the Westphalian concept has been premature and a "responsible sovereignty"—incorporating the developing international law of crimes against humanity—is a better way to account for the extent to which nations today accept (or at least pay lip service to accepting) the imperative of complying with human rights norms. It is also a better way to hold them to their humanitarian promises.

Political theory has not caught up with the developments that over the past decade have surprised and even astounded Westphalian traditionalists as they hear the daily news: General Pinochet arrested in London; Milošević on trial; Charles Taylor sentenced to lengthy imprisonment; indictments from an International Criminal Court (ICC) against Colonel Gaddafi and charges against the former Ivorian president Laurent Gbagbo; President Ben Ali of Tunisia convicted in absentia and President Mubarak of Egypt convicted in person. The question has now become: can heads of state keep their heads? The "Arab Spring" which not long ago would have been a few local insurgencies crushed by state violence, now garners international support, with the events in the region widely viewed as popular campaigns against tyranny. Domestic laws in many parts of the world are trumped by International Court rulings or over-ruled when they conflict with international treaties, while even national security policies must take into consideration regional security arrangements, international actions against terrorism, multilateral actions against piracy, international efforts to combat global warming, and multilateral efforts to stop human trafficking and other transnational crimes. No longer can a state act exclusively, on the advice of Machiavelli or Dr. Kissinger, in what its government conceives to be its national interests: there are global conventions and constraints to be considered.

Once upon a not-very-long time ago, students of political theory and international affairs were taught the three verities of the nation state: territorial

sovereignty, formal equality between states, and the principle of nonintervention in international affairs. Today, this teaching is obsolete: sovereignty, even for the most powerful of states, is not absolute. Leviathan has changed, and cannot rule without looking over its shoulder.

The book examines how independence has become interdependence across a range of state functions. Yet does this mean that traditional Westphalian concepts of sovereignty should be abandoned in constructing a new theory of world governance for the twenty-first century? Not at all—the emerging pattern invites reconfiguration in a new model, which can be called the pattern of interdependence-based sovereignty. This model serves to explain contemporary events that puzzle traditional theorists, such as the war over Kosovo and the indictment of Bashir. The revival of the Nuremberg principle and its validation in Security Council Resolution 1970 (referral of Libya to the International Criminal Court) and the precedent-making UNSC Resolution 1973 approving NATO intervention in Libya and use of "all necessary means" to protect civilians. We are witnessing the emergence of a new action philosophy which is restructuring the post-Cold War system of international relations, notwithstanding traditional opposition from China and opportunistic dissent from Russia. Security Council Resolution 1970 and 1973 were, after all, unanimous, and although there has, at time of writing, been no agreement over what to do about Syria, there is at least an agreement that something should be done, even if it is only sending UN peace observers to a place where there is no peace to observe.

The book explains why and how power is drained from the centre of nation-states: a multiplication of international treaties, conventions and regulatory networks, international and regional peace-keeping operations and, especially, regional cooperation arrangements; terrorism after 9/11 and a very important external factor—the hegemony of the US, especially in terms of military force. These factors have contributed to questioning the classical theory of the nation-state and have led to the emergence of an international community which promotes government by rules for the common good—albeit a system which at this early stage is far from perfect. We are witnessing, in a sense, the "twilight of Westphalia" in the emergence—in modern law, in revisionist history, and in international affairs—of a new global generalization based on human rights. Ironically, the 1948 Universal Declaration on the subject, regarded in its time as no more than a set of nonbinding promises by states to do their best, has now crystallized into a set of standards that may in certain circumstances actually be enforceable.

The theory of interdependent sovereignties is developed as a paradigm that appropriately describes governance by states in today's world. The very fact that "sovereignty" remains a part of that description means that the Westphalian idea has not been abandoned: the state remains an essential construct, but one with its freedom progressively limited by interrelational constraints and by the overarching demand for universal human rights. There is neatness and even an idealism in the standard academic approaches in international law: their descriptions do not always conform to the way that law works (or does not work) in the real world. I attempt to illustrate it by examining the proceedings in the Milošević case.

I conduct a microanalysis of this new internationally-responsible sovereignty at work in the European Union, as well as in the context of regional mechanisms that encourage it, such as the Regional Stability within the Greater Black Sea Area Working Group of the PfP Consortium of Defense Academies and Security Studies Institutes.

The conclusions of the book draw together the above developments in a new theory of "inter-dependent sovereignties"—by which nation-states are free to govern their people to the extent, but only to the extent that they accord rights to life and liberty which can be monitored and ultimately enforced by external actors and adjudicators. In their foreign relationships, this sovereignty endows states with the freedom to follow their national interests but again subject to international or regional arrangements for collective security, not only to make common cause against pariah states and terrorism but also against natural threats such as climate change and pestilence. In this way, a new theory of post-Westphalian sovereignty is postulated which accounts for the above-mentioned developments and will hopefully provide a road map to a better world.

I thank Geoffrey Robertson QC who guided me through the labyrinth of human rights issues, and to Mihail E. Ionescu, director of the Romanian Institute of Political Studies of Defense and Military History, for sharing his rich range of expertise and knowledge of international relations. The Institute and its researchers deserve recognition for lightening my load and providing valuable collegial support. I am much indebted to my publisher at T.M.C. Asser Press, Philip van Tongeren, and to my editor Marjolijn Bastiaans. My thanks also to Lionel Nichols who helped me with the English translation. Last but not least, with gratitude to my family whose love and support always sustains me.

Bucharest, July 2012

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Abbreviations

BSDC	Black Sea Defence College
BSUF	Black Sea University Foundation
CIA	Central Intelligence Agency
CIS	Commonwealth of Independent States
CSCE	Commission on Security and Cooperation in Europe
DCAF	Geneva Centre for the Democratic Control of Armed Forces
DoD	United States Department of Defence
EU	European Union
EUCOM	U.S. European Command
GBSA	Greater Black Sea Area
GWOT	Global War on Terrorism
ICC	International Criminal Court
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal Tribunal for the Former Yugoslavia
IPAP	Individual Partnership Action Plan
IPSDMH	Institute for Political Studies of Defence and Military History
ISAF	International Security Assistance Force
KLA	Kosovo Liberation Army
MAD	Mutually assured destruction doctrine
MCT	Mobile Contact Teams
MENA	Middle East and North Africa
NATO	North Atlantic Treaty Organization
NIISP	National Institute for International Security Problems from Ukraine
NISA	NATO International School of Azerbaijan
NSC	The White House National Security Council
OECD	Organisation for Economic Co-operation and Development
OSCE	Organization for Security and Cooperation in Europe
PfPC	Partnership for Peace Consortium of Defence Academies and Security Studies Institutes
PMSC	Political-Military Steering Committee of Partnership for Peace

RSGBSA WG	Regional Stability within the Greater Black Sea Area Working Group of the PfP Consortium of Defence Academies and Security Studies Institutes
SAC	Senior Advisory Council of the PfP Consortium
SCMCH	Initiative of South Caucasus and Moldova Clearing House
UN	United Nations
UNSC	UN Security Council
US	United States
WEU	Western European Union

Chapter 1
Sovereignty Over the Years

Abstract Theories of sovereignty, from Jean Bodin to John Rawls, are explained and the problem of positivism, namely principles that do not play out in real life, explored. A description of "functionalism" as an attempt to explain what works in international relations is given. Why does "sovereign equality" fail to explain a world in which some states have more sovereign prerogatives than others? The UN Charter enshrines Westphalian sovereignty but provides no room for moral judgements other than by Security Council's use of Chapter VII powers. However, treaties and imperative norms of customary international law provide constraints on sovereign absolutism. Amoral realism theories, deriving from Realpolitik fail to account for new notions of state responsibility in an independent and globalized world. There is now a greater dependence on liberal institutions and regional arrangements for collective security, and a need to provide for a new theory of how sovereignty is limited in the world. Constructivism emerged in the 1990s as a moderate branch of a bigger family of critical currents, which shows that the social identities of individuals and states are more important than the material structure of the international system. A constructivist analysis assists the understanding of the evolution of sovereignty by applying the mechanism of socialization of norms in the field of human rights and humanitarian intervention. According to the constructivist logic, sovereignty is no longer an untouchable, sacred reality, but an imperfect social construction.

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1.1 The Fate of Sovereignty: A Word of Caution in an Interdependent World?

Sovereignty may be regarded as both a simple and a complex issue. On the one hand, it seems very simple—the indefeasible right of each sovereign to exercise power, influence, and action over its own territory and to establish relations with the other states of the world, on an equal footing and according to the unanimity principle. On the other hand, it may be regarded as being very complicated since the states are not absolutely independent entities, but interdependent, coexisting together on the planet, and hence the politics and strategies of one state are largely conditioned by the politics and strategies of others, as well as by their synergetic or divergent effects on the international scale.

This is the reason why theories of sovereignty, although within the sphere of a quite rigid determinism, become more and more nuanced and interesting, striving for dynamism and complexity. Some theories start from the premise that the international system based on states is very precise and almost closed (therefore lacking the perspective of self-development) and dynamic in the sense of a non-linear and unpredictable evolution which generates a continuous and uncontrollable propensity to conflicts. Certainly, the theories concerning sovereignty are nuanced and numerous, some of them proving the immutability and inflexibility of the state and the rule of law, others looking for new forms of organizing the world, than based on a system of sovereign states, or promoting the principles of a world governance.

The unmistakable, and, in general, unanimously accepted reference, especially on the European continent, is the Westphalia moment. The Peace of Westphalia in 1648 marks the starting moment of placing the state at the world's center, which implies respecting it and its frontiers and setting up the principle of equality among the sovereign states.

The events following the Peace of Westphalia showed that sovereignty and the principle of equality (absolutely necessary to exercise and respect national sovereignty), are not sufficient for managing the world's crises and conflicts and for ensuring the security of both the states and their citizens. On the contrary, the principles of sovereignty and equality among states increased uncertainty and distrust. This has given rise to an excess of documents and bureaucratic relations that cannot justify the huge gap between the rich and the poor, the existence of the failed states, state aggressiveness, wars, and the general deterioration of international peace and security.

The emergence of international agencies and organizations has led to significant changes in the pattern of decision making in the world politics. This of course, raises a series of questions: Is there such a thing as "world politics"? Who is a part of it? Who benefits from it? Is politics the outcome of the international organizations that tend to act as a super-state? How is politics manifested on the international stage? What is, or, more precisely, what may be the role of the states in its elaboration? Nowadays, international organizations are controlled by their Member States. The decisions they make are ratified by the parliaments of the Member States and become compulsory for them only after they adhered to those norms and the national parliament approved them. The principle according to which international law has priority over domestic laws is strictly limited to situations where the state consents to such an arrangement through its membership of the respective international organization. For instance, European Union law is not binding upon central Asian states, but the UN Charter is mandatory for all Member States.

At the same time, new forms of multilateral and multinational policy have been instituted and implemented in the form of international governmental organizations, international non-governmental organizations, and a variety of trans-national pressure groups. One can draw the conclusion that interdependency has increased and that this has led to an increase in bilateral, regional, and international agreements. Moreover, on every country's territory there are influences from other countries in the form of economic, cultural, and information networks. In addition, the number of the representatives of one country in another country is continuously increasing.

The new European society of states is supported by a new conception of international law also known and referred to as the Westphalia model. The term "Peace of Westphalia" denotes a series of peace treaties which ended the Thirty Years' War which lasted from 1618 to 1648. The model defined the system of international relations that operated between 1648 and 1945, although some analysts argue that it remains in operation today.

The Westphalia model should be considered as the description of a normative trajectory in international law, which was not completely articulated until the end of the eighteenth century and the beginning of the nineteenth century, when territorial sovereignty, the formal equity between countries, non-intervention with internal affairs, and state consent for international legal obligation became essential principles of international society. This pattern describes the development of a world order consisting of sovereign territorial states, an order in which there is no supreme authority. Within this pattern, the states (which are and must be effectively sovereign) solve their own misunderstandings and, if necessary, are able to resort to the use of force. They engage in diplomatic relations, but cooperation is minimal due to the fact that each country seeks to promote its national interest above all others. Likewise, this pattern is based on the fact that states accept the logic of the efficiency principle, a principle according to which, in the end, force creates laws at international level.

The Westphalian pattern of sovereignty can briefly be presented as follows:

1. The world consists of—and is divided into—sovereign territorial states that recognize no superior authority.
2. The legal processes, as well as dispute resolution mechanisms and legal enforcement are the right of individual states.
3. International law is oriented toward the establishment of some minimal set of coexistence rules, which are ratified and accepted by the states; the establishment of some long-lasting relations between people and states serves a purpose only to the extent to which it allows for the achievement of the state's objectives.
4. Responsibility for the illegitimate actions that occur within state borders is a "private issue" concerning only the involved states.
5. Before the law, all the states are regarded as equal: the legal regulations do not take into account the power asymmetries.
6. Misunderstandings among countries are very often solved by the use of force; the principle of effective power is dominant. There is no constraint to stop the use of force; the international legal standards offer a minimum protection.
7. Decreasing the number of impediments affecting the freedom of state represents a "collective priority".
8. Individual human beings are not subject to international law, nor can they access international law to obtain remedies against states.

This new state order, while it offered a framework for the expansion of the state system, simultaneously supported every state's right to autonomous and independent actions. The states were conceived as "separate and distinct political orders", without any common authority to shape or limit their activities. From this point of view, the world is made up of distinct political powers following their own interests, with the support of diplomatic initiatives organizing their coercive power.

These principles devolve upon an ontological idealism which does not exclude a "Brownian movement" of the entities (particles) which exist (from the point of view of conflicts and in the same time for cooperation purposes) within the international system. However, if one were to view the Westphalia system as one in which each state is a system and all the states, as a whole, do not actually generate a system (taking into consideration the identification rules and the systems' structure) but merely coexist (the states' interests, that represent the basis for their policies, being neither harmonious nor complementary, but only interrelated), then the architecture of international relations is mainly random and unpredictable.

Given these conditions, it is understandable that the basic rules of relations among states have as a starting point uncertainty or insecurity defined on a set of uncertainties, suspicions, and lack of trust, but having a tendency toward dynamic constructions, which facilitates increased certainty and trust. The treaties, agreements, conventions, and other international documents, as well as the organizations and bodies created along the way, were not conceived as, and do not represent, super-state instruments, but are merely products of a world built upon competition, suspicions, and even chaos. We therefore cannot draw the conclusion

that state ontology is dangerous, counterproductive, and obsolescent, but that this kind of reality is as it is, and the ideal patterns of *de jure* equality are not supported by the international realities.

The same type of relationship exists between the Westphalian model and the real world, as it is for example between mechanical determinism and dynamic and complex determinism. That is why the objective in this book is to commence and develop an analysis of the realities and limits of a model which has generated and legitimized the modern national state, the tendencies to overcome this pattern, and the emergence of a new model which is not based on independent trends, but on interdependencies. Countries are continually forced to create international bodies which, by their will (or, more accurately, the will of the states) will be increasingly forced to accept and obey the rules and regulations issued and accepted by themselves, in order to ensure their security and protection, as well as the security and protection of their own people.

The starting point for research is to clear up the current paradoxes of the current theories on sovereignty, to identify the ontological and epistemological coordinates of the current realities for the Westphalian pattern, and to develop a new pattern based on the dynamic of international relations which would better respond to contemporary realities. It is necessary to identify a new type of sovereignty different from the Westphalian or post-Westphalian one, or at least to recognize an adaptation of the concept and the ways it is put into practice by the new realities in the dynamic of international relations. A possible pattern for sovereignty in the modern age, in the process of globalization, might be called *a pattern of sovereignty based on interdependencies.* This is supported by the following five considerations:

1. An analysis of the Westphalian logic, as it is reflected in the main historical theories of sovereignty throughout the years and the effects it generates on the dynamic of international relations;
2. Identification of the main security-related risks and threats from the perspective of the dynamic of the sovereignty concept in the contemporary age;
3. An analysis of the impact of international criminal law and the international bodies created under its aegis—The International Criminal Court and the international criminal tribunals—on sovereignty;
4. Understanding the role of the epistemic communities in the development of the cooperative security within the Greater Black Sea Region and, implicitly in enforcing the national sovereignty;
5. Identifying and analyzing the current understandings of state sovereignty and noticing the consonant, resonant, and different elements, and, if possible, a denominator of these elements to explore new elements of this concept required in the globalization era.

The sovereignty principle is one of the basic principles of the international relations, and the international legal bodies are complementary to those of national jurisdictions and work effectively for the benefit of national states. The authority of these bodies is guaranteed by lawful states which have created these bodies and became part of them, simply because they need them. The new conditions emphasize

the interrelations, the states being forced to enhance their cooperation and solidarity to balance their interests in the disfavor of isolation and lack of trust, and to undertake measures to punish, through a common effort, the criminal actions overlapping their authorities. Generally speaking, countries after regime change face difficulties in judging their former leaders for committing some crimes (although the leaders' impunity should not be an obstacle for bringing them to justice, especially for crimes against humanity), but the other countries together with the consent of the one in cause can and must do it. In other words, that means respecting the principle *E pluribus unum*.

Questions relating to the Westphalian model of sovereignty have been considered in numerous papers. But the questions that are important for states, governments, the international community, the scientific world, and the legal world have not yet been completely answered due to the fact that, after the Cold War and the subsequent creation of a geopolitical landscape, these have become multiplied and more complex in nature.

The book analyzes the realities of this concept, by underlining the common elements and the impact points of the different perspectives of the national sovereignty architecture, and by describing the current and future national sovereignty pattern in the context of globalization called the model of *sovereignty based on interdependencies*.

Making use of some international relations theories, such as institutionalism and constructivism, allows us to evaluate the dynamic of the interaction between state actors, of the circulation (socializing) of norms and ideas, associated to reshaping sovereignty in an increasingly more interdependent world. It should be acknowledged from the outset that the sovereignty concept is not an essential feature of international relations, like the physical power of the states, but a set of ideas, norms, and beliefs whose validity is based on the notion of legitimacy and legal order. It is therefore important to use the constructivist and institutional analysis grids during such an endeavor.

New relationships, new determinations, and new challenges of the security environment do not challenge the national sovereignty concept, but on the contrary, make it stronger and more responsible, imposing its adaptation to the new global conditions. They also modernize the concept, taking it out of conflicts and from the perspective of some chaotic and unpredictable evolutions.

Understanding of the concept of national sovereignty requires a theoretical foundation based on historical theories of the state and sovereignty. This commences in the Middle Ages and continues up to present times and requires reference to the main theories of international relations as part of a multidiscipline approach—the only one capable of fully explaining such a complex phenomena.

There are numerous definitions covering the sovereignty concept, most of them including notions such as: the supreme, absolute, and uncontrollable power by which any independent state is governed; supreme political authority; supreme will; the international independence of a state, combined with the right and power of regulating its internal affairs without foreign dictation; the self-sufficient source of political power; the power to do everything in a state without accountability—to

make laws, to execute and to apply them, to make war or peace, to form treaties of alliance or of commerce with foreign nations.[1]

From an etymological point of view, the term "sovereignty" dates back to the middle of the fourteenth century in the old French and English (influenced by the Normans) in the form of the etymon *sovereynete*, having the meaning of *pre-eminence*, or *authority/law* at the end of the same century. In 1715, it was attested with the sense of *existence as an independent state*.[2] In the sixteenth century, the famous French thinker Jean Bodin gave it the Latin form of "suverenitas".[3]

Thus, the concept of sovereignty refers to the authority over the legislative process and over the territory. It is not only a juridical concept but a philosophical and sociological one due to the complexity of its connotations and determinations.

1.2 Dominant Schools of Thinking

There are many historical schools (trends) dedicated to national sovereignty, starting with the Middle Ages and continuing to the present. Among the theorists of sovereignty, living before or in the time of the Peace of Westphalia, one might mention Niccolo Machiavelli,[4] Jean Bodin,[5] Hugo Grotius,[6] Thomas Hobbes,[7] John Locke, J. J. Rousseau,[8] Friedrich Hegel and others.

The Roman jurists of the Antiquity distinguished between the *summum imperium* (supreme authority) and *merum imperium* (illegitimate authority). The saying "quod principi placet legis vigorem habet" (what is convenient to the prince becomes law) suggested, actually, the personalization of the power.

During the Italian Renaissance, Machiavelli emphasized the fight for survival between the state-cities, stating that the prince should have complete power over his subjects and complete freedom in dealing with the neighbor states. The prince also had the right to give up ethical, moral, and religious rules in order to ensure the success of the entity that he was leading.[9]

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[1] See the classical definitions of sovereignty: http://www.hawaii-nation.org/sovereignty.html, accessed on 5 October 2010.

[2] On line Etimology Dictionary, http://www.etymonline.com/index.php?term=sovereignty, accessed on 5 October 2010.

[3] Bodin 1986b.

[4] Machiavelli 1950.

[5] Bodin 1986a, Grotius 1984.

[6] Grotius 1984.

[7] Hobbes 1660, Pogson Smith 1909.

[8] Rousseau 1964.

[9] Machiavelli 1950.

For Jean Bodin, sovereignty represents "an ultimate and perpetual power",[10] not just an attribute, but the core substance of the Republic[11] which cannot exist in the absence of sovereignty, regarded as a shape of its absolute and ultimate power. Sovereignty is described as a perpetual, supreme, and indivisible power. Within this context, the state transcends the traditional defining frameworks, being overcome in its most important attributes by the person of the monarch. In other words, sovereignty, as the final defining attribute of the state cannot exist in the absence of an ultimate perpetual indivisible power and of a clear distinction between the state and its leaders. The state does not benefit from the attribute of sovereignty unless it has the capacity to assume and enforce it. According to such an approach, sovereignty transcends the material world and the human force, gaining both natural and divine legitimacy. Under these circumstances the sovereign power represents an expression of the representative legitimacy of the divine power, and constitutes itself as an ultimate regulating foundation for the state internal affairs.

Half a century later, during the time of the Thirty Years War, the Dutch thinker Hugo Grotius tackled the problem of sovereignty to give it a new dimension, closer to the material world. In his view, however, exerting sovereignty suffers from two major limitations. On the one hand, the governors who deal with state sovereignty may be held responsible for unjustly exercising it (unjust war and its consequences)[12]; on the other hand, the states exercising their sovereignty are subject to the nations' laws which regulate and give coherence to the whole international scene. In other words, the natural law and the sovereignty may become conflicting, so the latter, breaking the norms, may be limited in what concerns the international relations.

Finally, with the contribution of Thomas Hobbes, state sovereignty passes from the level of the natural or the transcendental order to that of the social contract (pact), and fully enters the domain of the international relations.[13]Asserting the natural individual tendency for concluding a social agreement that comes from the natural basic need of peace and security, Hobbes theorizes the voluntary consensus of the individual and members of the society, as an ultimate explanatory and founding resource of political legitimacy. Through this process, the governing pact is devolved and state sovereignty is validated by the acceptance and support of members of society. Eager to receive protection from the state, individuals give their assent to cede a part of their natural rights (especially the right to use force against their aggressors) to the sovereign that acquires an absolute power. One of the consequences of sovereignty cession from the individual to the state (Leviathan) is the disappearance of the internal anarchy and its relocation to the international scene. States created in this way arrive at inherent conflicting relationships, lacking an arbitrator above all. Hobbes considers that a

[10] Bodin 1986a, pp. 11–26.

[11] Ideal form of aggregation of the state institution, Ibidem.

[12] Haggenmacher 1983.

[13] Manent 2000.

social contract cannot be possible in a world of sovereign states. Due to his ideas, similar to Machiavelli but with a deeper philosophical bent, Hobbes can be considered an outstanding forerunner of the twentieth century realistic tradition in international relations.

Expressing specific group interests quantified accordingly, this perspective on state sovereignty can be translated in the international relations system by a state of anarchy and lack of regulations, because nothing can transcend and encroach upon state sovereignty.[14]

In the same tradition of the social contract theory, John Locke proposes a liberal model of the state according to which individual groups create a state with the role of an impartial arbiter to protect the lives, properties, and liberties of its subjects. The sovereign is legitimate when it contributes to realizing the "common goal" and if it respects the natural right of the citizens.[15]

With the Westphalian Peace, sovereignty imposed itself as a determining reality of the way in which the state entity is structured and interacts, both internally, with its subjects—citizens of the state—and externally, within interstate relations. Its dimensions and validity remain in direct relationship with the power of state entities to which it is associated. Although founded on natural right and divine legitimacy, sovereignty became dissociated from the monarch and associated with the state institution, signaling a fundamental change that was put into international practice as a result of the French Revolution.

Jean Jacques Rousseau is the theorist responsible for the shift from the initial conception on state sovereignty with the interpretations introduced in equation by John Locke, Montesquieu and Kant,[16] and the associated practical change that was later brought about by the French Revolution. According to Rousseau, sovereignty results from the social contract, the foundation of all governance, state organization, expression, and all ultimate attributes that characterize the nation-state. The people's sovereignty is indivisible and inalienable, as it is based on the "general will". Within this context, the state and its sovereignty suffer a substance transformation, from the transcendental principles of the divine or natural right to that of the people's will. In this context, the outcome of both a contractual relationship and of a pact of will, the state is functional and completely structured on one condition: that its subjects' rights[17] should be respected. Rousseau's contemporary, the English philosopher David Hume, although considering the notion of social contract to be a fiction, insists on the fact that any governance should be founded on the preliminary consent of the governed people.

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[14] Vayssiere 2007.

[15] Locke 1988, p. 137.

[16] On the evolution of the theoretical approaches on sovereignty of the mentioned authors, see Badie 1999, pp. 23–30.

[17] For a recent detailed analysis of the theory of social contract concerning the state and sovereignty in relation to the nation, see Foisneau 2007.

The exponent of the historical German school, Friedrich Hegel, asserts that the state is the supreme embodiment of the peoples' spirit, its sovereignty being ultimate. He is the preacher of the "Peoples' rights" doctrine (Volkerrecht). Hegel wrote: "The external political right derives from the relation between the independent states; what is in this rapport in itself and for itself acquires an imperative form since its reality relies on distinct sovereign wills. … The states are not private persons, but completely independent totalities, and thus, their relation is different from moral and private law relations… The people as state, represents the spirit in its substance rationality and in its immediate reality, that is why it represents the absolute power on the earth; consequently, a state is in a sovereign interdependence relation with other states".[18]

It becomes increasingly necessary to ask the following question: is Hegel's finding, from that period when the notion of sovereignty received a very consistent definition and a thorough juridical grounding based on the natural law, still available? In other words, are the principles of the philosophy of right formulated by the philosopher still topical?

The modern day international system does not accept supreme authority and can therefore be considered "anarchic". At least, this is its major attribute in the classical philosophy inspired by Hobbes. But it must be added that it builds institutions in order to help the states in exerting their sovereignty in external relations, in particular, to support the sovereignty principle on the functions and roles of those institutions (which are rather interstates entities, even though they seem supra-state ones). With their states' endorsement, the institutions should do what the states are not able to do.

The sovereign state is, and will for some time, be its own master. There is nothing above it. The international system is not superior to the state; it is only a *modus vivendi* of the states. It is a community of states. But, to go on existing, under the new extremely restrictive and menacing circumstances, the states have instituted principles that they are bound to respect. One of these principles is that of sovereignty. In contemporary international law, it is enhanced through the elaboration of a set of normative documents that do not give the states absolute power (this concept is disputable and doubtful), nor absolute powers of self-determination, but create responsibility toward other sovereign states, toward its own citizens and the human rights, formulated and accepted by states. It seems that such an assertion, once indisputable concerning the relation between the states, becomes obsolete, and, in a way, inopportune. More and more theorists express their doubts over categorical statements and assertions that traditional notions and concepts should be adjusted to accommodate the new realities, determinations, and configurations of international relations. Is there a common denominator of the theories and doctrines on the sovereignty issue?

[18] Hegel 1969, p. 373.

More recently, John Rawls outlines a new philosophical vision, trying to reconcile the citizen's need for freedom with the need for equality. He proposes a new form of social contract based on the idea of an original position in which every individual is called to decide on the justice principles from behind a "veil of ignorance". This veil does not allow the people to know their own positions and interests, in order to prevent the fact of being influenced or the alteration of the idea of justice in equality. Thus, it leads to a perspective on sovereignty founded on equality and on the same opportunity being provided to everyone to attain leadership positions.[19]

Generally speaking, the great changes in the way to conceive sovereignty and the state system were done through the so-called "revolutions"—rupture moments which allowed the passage from the polycentric world with dispersed authority from the Middle Ages to post-Westphalian world of the states which concentrate sovereignty in unique decision centers.[20] The European Westphalian model was also gradually applied to the other continents, through colonization, decolonization, and independence. Effectively, an importation of state and, implicitly, an importation of the notion of sovereignty have taken place.[21] Is it possible that the revolution of ideas have been more important than the political and social revolutions?[22] To know and understand the world of ideas and theories does not mean, certainly, to neglect the material factors that have shaped the state system and the types of sovereignty in their historical evolution.

1.2.1 Juridical Paradigms Regarding the Sovereignty Principle

The interpretation of the sovereignty concept lies on the ideas of two schools of thinking: the natural law concept and the positive law concept. It is known that natural law theories (*jus naturalis)* played an important role in developing jurisprudence, especially in western European states. Starting from the idea that there are certain "laws" that, in spite of being unwritten and immutable, have been encoded in the human nature, from which emerge rights and obligations impossible to ignore, the western jurists borrowed the ancient Hellenic and Roman heritage and grafted it onto the trunk of the Christianity (see the works of Thomas Aquinas, and then, of Suarez, Grotius,[23] Pufendorf,[24] etc.). We have already explained the impact of Hobbes' and Locke's ideas about the social contract

[19] Rawls 1971, p. 303.

[20] Ruggie 1986, p. 141.

[21] Badie 1992.

[22] One of the authors who emphasizes the idea of "revolution of ideas" in shifting the paradigm of sovereignty is Daniel Philpott, Philpott 2001, pp. 3–4.

[23] Grotius 1738.

[24] Pufendorf 1717.

derived from the natural law theory. The French Revolution in 1789 was fuelled by these ideas of natural law developed during the Age of Enlightenment, and the new sovereignty concept acquired its acknowledged juridical form.

The other tradition, or "positive" law sought to separate the legal sphere from ideas like morality and equity and to explain how the laws were born and what their significance is. Austin and Kelsen are the most well-known representatives of this tradition. Kelsen, for example, strove to identify the "fundamental norm"—*Grundnorm.*[25]

Sovereignty in international law is considered a principle on which international relations are based and which ensures stability and mutual respect for these kinds of relationships. It is certainly a very old principle, in some analysts' view a Post-Westphalian one, dating back to 364 years, and in others' opinion being even older, that emerged when the state's authority over the legislative process and the obligatory character of the law were instituted. From the notion of absolute sovereignty, specific to the French royalty in the seventeenth and eighteenth centuries, following the French Revolution the notion of people's sovereignty appeared. International law recognized the importance of sovereignty to the interstate system as a coherent ensemble. Thus, in April 1949, in the Corfu Channel Case, the International Court of Justice stated that: *le respect de la souveraineté territoriale est l'une des bases essentielles des rapports internationaux".*[26]

One of the strongest traditions in political theory that was highly influential in the juridical theory was Realism. Hans J. Morgenthau, specialist in international law and founder of this important school of International Relations, shows that the tendency of condemning the sovereignty principle is due to the perception of the conditioned relation between the principle and the weakness of a decentralized system of international law. This tendency is more frequent than a serious effort to understand the sovereignty's nature and function in the modern states system.[27] Morgenthau considers that there were only few theorists who made efforts to explain the content of the concept, the rest manifesting a great confusion relative to the meaning of the term and what is or is not compatible with the sovereignty of a certain nation.[28] The great variety of theories and conceptions on sovereignty implies a common denominator: *ignoratio elenchi,* which means that ignoring the question leads automatically to the confusion of the principle with the means of understanding and applying it.

It is well known that, during the 1940s, Morgenthau strongly attacked juridical positivism in the name of functionalism, claiming that positivism had degenerated, being reduced to a narrow way of thinking like a medieval scholastic theory.

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[25] *Positive Law Theory*, http://www.hku.hk/philodep/courses/law/Positive%20Law%20hnd.htm, accessed on 6 October 2010.

[26] Dauvillier 1974, pp. 153–154.

[27] Morgenthau 2007, p. 333.

[28] Ibidem.

The rupture with the real world was obvious and the functionalism was to readjust the international law to the pragmatic world of international relations.[29]

This modern view on sovereignty is very old, according to Morgenthau's opinion. It appeared at the end of the sixteenth century. It is about the act of justifying in juridical terms, the appearance of a centralized power which exerted authority by imposing law enforcement on a certain territory. In other words, sovereignty was closely related to the application of the law within a territory.

There was a concentration of power in the hands of a monarch that had under his control more than a system, this power surpassing the other existent powers within that territory. The sovereignty over a territory had already been a political fact until the end of the Thirty Years War when the Westphalian Peace was concluded. It marked the recognition of local territorial leaders over the universal authority of the emperor or of the pope. The French king's supreme authority was exercised over the French territory, the one of the English king over the English territory and the Spanish king's authority over the Spanish territory.

The sovereignty doctrine raised these political facts to the level of juridical theory, claiming for legality and legitimacy. From then on, the monarch had complete powers over his territory, not only from a political point of view, but even from the legal perspective. He would create laws available for his territory, while at the same time placing himself above the law. In other words, the law was compulsory only for his subjects, not for himself, because he could not have been in the position of his subjects. Certainly, his powers were not unlimited since he was constrained by the divine law expressed through his conscience and through the human reason as natural right. There was a kind of liberty in conceiving his responsibility—*Est modus in rebus, sunt certi denique fines.*

The sovereignty doctrine provided a strong political weapon to be used by the national democratic state. This political weapon has not remained unchanged. Like today, the sovereignty doctrine was subject to attacks, reinterpretations and revisions, especially in the field of international law.

A very complex situation has arisen, being generated by an apparent logical incompatibility between two issues related to the very essence of the modern international law. The first one refers to the fact that international law imposes legal constraints to nations, and the second refers to the fact that nations are sovereign, namely they are supreme authorities in creating and applying the laws, but, as with medieval kings, they are not themselves subject to the legal constraints.[30] Morgenthau states on that "Sovereignty is not compatible with a strong and effective international system because it is centralized, but is not incompatible with a decentralized international legal order".[31] In other words, international law is not yet able to take over sovereignty from nations and to become sovereign. Nevertheless, the law in itself, as such, cannot be sovereign, on this purpose a sovereign

[29] Morgenthau 1940, p. 260.

[30] Morgenthau 1967, p. 333.

[31] Ibidem.

international institution should be created, such as the world state or the world government. The international institutions that have been created—the United Nations included—cannot take over this role because they have been produced by the states and created as their instruments for the management of the relations between states. The tendency of these organizations to take over sovereignty from the state or, at least, a part of it, is neither realistic nor possible.

Nowadays, decentralizing the international law system consists, on the one hand, in the fact that its rules are obligatory, in principle, only for the nations (states) that have agreed to obey them (in a voluntary way) and, on the other hand, in that these rules are vague, ambiguous, fragmented by all sorts of clauses, so that the nations have the freedom to decide whether or not to comply with them. There are a few rules of international law not based on the nations' consent. Some of them represent the logical precondition for the existence of a legal system (the rules for interpretation and those stipulating penalties) and the logical precondition for the existence of a multiple state system (rules that restrict the jurisdiction of the states). These are compulsory rules for all the states, representing an *jus necessarium* for the modern state system. Their coercion force is not to affect states' sovereignty, but make it possible and even enforce it by instituting the principle of mutual respect, in the way in which, for instance, property makes liberty possible and enhances it.

According to this logic, each nation is the highest authority in creating valid laws on its territory, if it respects this set of rules ensuring the prerequisites for the issued laws not to affect the other nations and the international state system. In other words, there is nothing else above the nation; the international state system is made up of nations and international law has as its objective to protect the nations and their relationships.

The sovereignty of nations, in applying the law is similar to that of the juridical domain, namely the final decision is the prerogative of the respective nation. Even when the nations take part in international missions, every decision taken for the multinational force is and should be validated and ratified by the national parliaments, even if such a process, difficult and unnecessary in some people's opinion, may make the accomplishment of the mission even more difficult.

The nation's characteristic of being "impenetrable" is granted by the fact that on a given territory, only a single nation (in the sense of population inhabiting that territory and having a state organization) may be sovereign. No other state has the right to intervene on that territory without the consent of the nation which owns it.[32] Consequently, all the actions taken by other states against a state that does comply with the imposed rules, are done from outside the territory in the form of pressures, diplomatic actions, sanctions, blockade, embargo, etc. The intervention made on the territory of other state, without its agreement and, even worse, without a UN mandate, is considered to be war against that state; therefore it represents the violation of Article 51 from the UN Charter. The complete decentralization of the

[32] It is of course the classic principle of non-interference in the internal affairs of another state, enshrined in the Peace of Westphalia and the UN Charter.

legislative and executive functions is the manifestation of sovereignty. Synonymous with the sovereignty principle are other three principles of international law: independence, equality, and unanimity (consensus).[33]

1.2.2 Equality in Sovereignty: Reality or Fiction?

The state may pass and enforce any kind of laws and it is free to create any military institution corresponding to the goals and objectives of its policy. Certainly, not everything is permitted, for the state must act in conformity with the international legislation, with the treaties and the agreements concluded by that country. *Independence* is a principle that is necessary to the nation, to all the nations, and, connected with it, the respect for the other countries' independence has the same value. These two principles constitute, actually, a single principle, that could be stated as *the principle of independence and respect for the independence of the nations.* In international law, there is no limitation relative to the foreign policies of nations. However, one has to mention the existence of the positive duty imposed to all the nations not to interfere in other nations' affairs.

Equality constitutes a particular aspect of the sovereignty. It emerges from the fact that every nation has supreme authority over its territory. As a result, no other nation is allowed to intervene on that territory or has the right to impose other laws over that nation—unless that nation has agreed on specific rules. But all the regulations that have been adopted will not have the effect of restricting sovereignty; on the contrary, they will protect and adjust it to the new demands of the international realities.[34]

Nations are sovereign. They should not be subject to other powers which could impose laws on them and act directly on their territory. International law applies to superior, not subordinate entities. Nations are not subordinated to international law and vice versa. Consequently, they find themselves in a position of equality.

This *de jure* equality is not however *de facto.* This *de facto* does not result from the sovereignty observance; it comes from its violation. Even though, according to the sovereignty principle, Somalia is equal to the United States, the difference is enormous because of their difference in potential. Somalia is, practically speaking, a failed state, while the American state is a striving, powerful, and flourishing one.[35]

Under these circumstances a question has to be raised: are the principles and rules of international law still conforming to the realities of the states' relations and to their dynamics? Are the two principles, sovereignty and equality, responsible for generating enormous differences between the nations, so that, at one end,

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[33] Higgins 2002, pp. 143–160.

[34] Sinclair, 2002, pp. 57–76.

[35] Krasner 2004b, pp. 85–120.

one can see the world of the rich that make the rules of the game, and at the opposite end, the poor and very poor world subject to discrimination and condemned to poverty and malnutrition?

The answer might be, of course, negative. Neither the equality between states nor the sovereign right over the territory have generated such huge discrepancies, but rather the states' geographical position, access to resources and technologies, economic and financial capacities, and the diligence and the intelligence as "collective" attributes of the nations, etc. Is power—the basic notion in social and political sciences—able to influence, in a decisive way, the law? Do geographical and psychosocial factors tend to anoint the legal sphere's autonomy?[36]

If this is the case, how do we explain the observance of the principles of sovereignty, equality, independence, and consensus when dealing with wars, state interference in the affairs of another, colonization, economical, and financial domination?

We believe that it is no exaggeration to state that application of the sovereignty principle was determined by the appearance of human communities which exercised their exclusive authority on their territory and way of living, in relation to other communities with which they develop relationships, obtaining mutual recognition. This principle also determines the status attributed to migratory populations, concerning acceptance of law authority and way of living. The right to freedom of movement and of residence, stipulated in the Universal Declaration of Human Rights in 1948,[37] is restricted by the sovereign right of titular nation, namely, that states have the right to accept or reject imigrants on their territory.

The sovereignty principle, although it is a very old one, was not always obeyed (and nor is it today), but each state has tried to defend this right with all the means at its disposal, because otherwise it could not have survived.

This principle became a genuine one in international law when the nations decided to institute it as a legal norm. As a rule, this happened after long wars, when mankind suffered from great fears and heavy losses.

The Westphalian Peace, the League of Nations, and the United Nations Organization have been constituted after wars in order to impose the sovereignty principle on all the nations. To what extent this principle has been respected is to be discussed. But nations became aware of this principle and agreed to respect it.

According to Article 2 of the UN Charter, "the Organization is based on the principle of the sovereign equality of all its members". The equality principle generates one of the fundamental rules of the international right, namely *unanimity*.

All nations are equal, irrespective of their size, population, or power. This rule gives the right to every nation to decide whether to assume a rule, or an obligation.

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[36] Franck 2006, pp. 88–106.

[37] Article 13: "Everyone has the right to freedom of movement and residence within the borders of each state. Everyone has the right to leave any country, including their own, and to return to his country" and Article 14: "Everyone has the right to seek and to enjoy in other countries asylum from persecution"; http://www.un.org/en/documents/udhr/index.shtml, accessed on 06.10.2010.

No powerful nation can force a weaker nation to assume an undesirable rule. If this principle is not respected, the right of the most powerful would rule and so, the big powerful countries would make the law. The treaty establishing a Constitution for Europe was not adopted due to the fact that some nations were not willing to assume this project.

Such a thing happened, with the Treaty of Lisbon when, at the beginning, Ireland voted against, but, in the end, this country was persuaded to vote in favor of it. Actually, in such cases, it is about the right of veto because the opposition of one nation determined the failure of the project and of the decision making.

That does not mean that the rule of unanimity would not be valid. It works within the North Atlantic Alliance and European Union as well as, in general, with the majority of international and regional organizations which obey the sovereignty principle.

The rule of unanimity is not the same as *the right of veto.* The unanimity rule frees the respective nation from the obligation of assuming a law, whereas the right of veto ends the entire process. The rule of unanimity derives from the sovereignty principle. A state cannot be forced to obey a rule if it is not willing to. The right of veto stops any decisional process: without the respective state's agreement no decision can be taken.

The veto right is more than the sovereignty principle. It is not about deciding whether to uphold a rule, it is about preventing the process from continuing and preventing the application of that rule. It deprives other nations of that rule which, in the absence of this veto, they might have desired to apply, and demonstrates that none of the states accept the coercion of a decision made by majority but felt as harmful for its own interests. However, sovereignty does not mean lack of legal coercion.[38] It is not the quantity of obligations assumed by the nation that affects their sovereignty, but their quality. In other words, the legal constraints should not affect the quality, held by the nation, of being supreme authority in the promulgation and application of laws. If only a single legal stipulation affected the nation's authority of elaborating and applying the laws, then the sovereignty of the country would be effectively destroyed.

The relationship between issues that are subject to international law and those that are not is fluid.[39] Sovereignty does not permit states to ignore their international law obligations. When Iran announces that it reserves the right to build nuclear facilities in spite of having signed the Treaty on the Non-Proliferation of Nuclear Weapons (adopted in 1970), the permanent members of UN Security Council may make use of sanctions because sovereignty does not constitute an excuse for the infringement of the law. In exchange, Israel refuses to sign the non-proliferation treaty and that is the reason for which it may escape any form of sanctions! Neither India nor Pakistan has signed the treaty.

[38] Morgenthau 1967, p. 336.

[39] Ibidem.

Nations are neither above nor beneath international law, but they are in relationship with it. The relationship as such is fluid, in the sense that it is based on agreements and norms required to be observed, but they do not affect the nation's sovereignty and the authority over its territory or in the process of law elaboration and application. As we have already mentioned, the fact that a nation has signed an international treaty of non-proliferation of WMD which it does not respect, is not a matter of sovereignty, but a matter of the country's position concerning that treaty. Non-observance seems, apparently, not to affect the sovereignty, but, actually, it has consequences such as measures and sanctions from the part of the other signatories.[40]

The countries which took part in wars were obliged to respect several constraints in the matter of military capacities, war debts, etc., but they did not lose their sovereignty.[41] After the First World War, Germany, Austria, Hungary, and Bulgaria were forced, as defeated countries, to accept constraints imposed by the conquerors through the peace treaty. That happened without affecting the countries' sovereignty because, on its own territory each of them preserved its freedom to pass and enforce laws, to organize administration, etc.[42] Certainly, the countries could not be pleased with the outcomes of the peace settlement, but that had nothing to do with their sovereignty, but rather with those countries' position in international relations system, their borders, and a changed *modus vivendi* by war. That is why they claimed the treaties' revision—they are still trying to obtain that—but this attempt is determined by reasons other than sovereignty, showing the attitude of those countries toward the imposed settlements. That is also another cause for the changes and tensions accumulated and produced between the two world wars, which generated, in the end, The Second World War. At the same time, Romania, Poland, and Czechoslovakia, countries enjoying advantages after the First World War, were imposed with obligations concerning the treatment of minorities which was only an effect of the war and not a sovereignty affectation.

Sovereignty does not mean complete technological, economical, political, and military independence. Nations live in close dependence on one another, and this does not affect their sovereignty, but only their economical, technological, political, and military situation. The reality of such dependencies or interdependencies can make nations strong or vulnerable, rich or poor, important or less important in certain regards, facts that do not affect their sovereignty. The economic, political, technological, or military inequality may create complex, difficult situations with the potential to impede the nation in passing and enforcing the necessary law, but, from the legal point of view, the sovereignty principle is not violated.

Sovereignty represents the supreme legal authority of a nation to elaborate, promulgate, and apply the law on its territory and no other nation or authority could deprive it from this right. A nation loses its authority when it is placed under

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[40] Mozgovaya 2010.

[41] Ikenberry 2001, p. 38.

[42] Ibidem, 134.

another nation's authority. Practically, this should never happen. However, a nation may choose the alternative to cede the authority to another nation, under special circumstances, interests, or complex realities. In this case, even if the government of the authority ceding nation still produces and applies laws, it has above the government of the nation which got the authority and which becomes supreme authority, taking in control the sovereignty ceding nation's government.

The second case seems even more serious, the government of the nation which is giving up the authority loses its right to promulgate and apply laws, with this passing to the nation receiving the authority. In this way, the impenetrability principle of the sovereign territory is no longer valid because the respective nation is no longer sovereign. The federal government of the United States is the supreme authority over the American territory. There is no other authority to compete with this political reality created through the victory of the Union over the Confederation in the Civil War. But this reality is not an immutable one. If on the American territory, political and economic organizations powerful enough to issue necessary laws available for them would be created and developed, then the authority of the federal government might be reduced little by little, in the way that happened to the Holly Roman Empire, at the end of the Middle Ages. Territorial states diminished and, in the end, replaced the imperial authority with one of their own.

It is also hard to say that the existence of "jus cogens" norms (imperative norms) which are enforced upon the states without being explicitly approved by them and which they cannot choose to ignore, would produce a violation of the sovereignty principle. For instance, an "illicit" treaty[43] which violates an imperative norm such as prohibition of genocide, racism, wars of aggression, even if it theoretically reflects the sovereign will of several states, in reality it may not transcend the hierarchy of the international law norms in which *jus cogens* represents a key element. Therefore, the imperative norms seem to directly constrain sovereignty, and the states cannot conclude any type of treaties but those which do not violate these norms. Similarly, according to the Vienna Convention on the Law of Treaties (1969), states cannot sign a settlement which breaches the right of a third state without the latter's consent![44] Several historical examples illustrate the political issues devolving from the exercise of sovereignty. Before gaining their independence in 1947, the states which belonged to India were under the protectorate of Great Britain. The judges from the two countries decided, in this respect, that the governments of the Indian states, although in control of their territories, should have been under the total control of Great Britain. So they were not sovereign.

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[43] Wright 1917, 566. The main historical landmark in defining *jus cogens* is an article written in 1937 by the German jurist Alfred von Verdross, Verdross 1937.

[44] Convention defines jus cogens norm as "accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character"—Vienna Convention on the Law of Treaties, Article 53.

Cuba was in a similar situation. It had to fulfill a series of conditions which affected its sovereignty. According to the Platt Amendment included in the Havana Treaty (1901) concluded between Cuba and the US, Cuba was not allowed to join any international treaty that could affect its independence, to pass the control over its territory or of a part of it to any foreign power. It was also not permitted to create public debts which could not be paid from its own revenues. It had to provide towns with sanitation services to prevent epidemics from spreading, to sell or to rent the United States the lands necessary for supplying the ships and military bases with coal. Those stipulations restricted Cuba's sovereignty, but they did not replace the Cuban government with the American one. So, practically they did not limit Cuba's sovereignty, but imposed restrictions and certain conditions. However, there is a stipulation in this treaty, in Article 3, according to which "the Government of Cuba consents that the United States may exercise the right to intervene for the preservation of Cuban independence, the maintenance of a government adequate for the protection of life, property, and individual liberty…", which was equivalent to the right of controlling the Cuban government and of replacing it. Obviously, the US made use of this right and its military forces occupied the Cuba's territory, taking over its sovereignty since 1906 till 1909. The provisions of Article 3 were to be expelled later, through the US—Cuban Agreements and Treaty of 1934 which re-established again the sovereignty of Cuba.

The issue of sovereignty is neither very simple, nor very complex. Nonetheless, one can witness that a vicious circle is created from which an escape is possible only through a new paradigm, a new revolution equivalent with the complete change of the world relations, namely of a lasting *modus vivendi.* States are sovereign, and their sovereignty cannot be broken. In absence of very precise regulations, which could ensure *ipso facto* the harmonization of all the principle's dimensions, its modernization and actualization according to the security environment, to the international relations, to the new realities based on the network requirements, the antinomy between the tendency to build a real international system with identities and elements (states) interconnected in an ensemble of structure meant to subordinate them to the new entity (system), becomes more pregnant. This raises the question: is the world becoming a crowded and overlapping system of structures, in which the states are turning into subsystems, therefore ready to accept a hierarchy and to be demoted in rank? Who will govern the system then? Will specific leadership structures be created? What will they be? Will the world become a meta-system, a mega-system, namely a system of systems, in which sovereignty will belong to the new integrated structure?

These are questions people start asking, because, in the process of globalization the interdependencies are increasing and the competences of the states are being surpassed and become impediments to a future evolution.

1.3 Perspectives of the Theory of International Relations

Understanding the concept of national sovereignty first requires the development of a theoretical foundation based upon the main international relations theories, a type of approach complementary with the perspective on the historical evolution of the concept.

International relations theory developed in Europe and the US after the First World War, but its roots can be retraced in older periods: Antiquity, Renaissance, Enlightenment, and in the diplomatic theories specific to the nineteenth century.

One can distinguish the predominant classical diplomatic tradition of the balance of power—the so-called Realpolitik School[45]—and the first great scientific and axiological trend was that of the "Wilsonian idealism" (also known as liberal internationalism). According to this doctrine, there is the possibility of a harmonious coexistence of states and of surpassing the anarchical state by means of the observance of international law and ethical and moral norms. The "idealist" authors, especially the Anglo-Saxon ones,[46] consider that human beings are good by their nature, endowed with moral principles and universal ideals, and furthermore, that wars can be avoided by means of education. It is not the people to be blamed for the military conflicts, but their irresponsible governors along with traditional policies based on secret alliances and economical mercantilism. A republican/democratic government ruled by responsible leaders, a transparent diplomacy, the rule of law, and a new type of inter-states institutional mechanisms, are the ingredients of a long-lasting or, even, ever-lasting peace.

Before the First World War, Norman Angell stated that interstate wars were becoming more and more unlikely due to the increasing level of interdependence of the world states' economies, so that, from such a conflagration, nobody could benefit.[47] Globalization of the markets and the appearance of the international organizations constituted consistent factors for pacification. Once the League of Nations appeared, it was believed that, through collective security and

[45] German Formula of the doctrine of political realism, which requires a sober assessment of enemy forces but also of its own forces, eliminating feelings, illusions and ideological prejudices in elaborating the foreign policy strategy. The term "Realpolitik" was coined in 1853 by the German writer Ludwig von Rochau and then often used by Chancellor Otto von Bismarck to describe the foreign policy enfolded on the needs, opportunities and available resources. In the German sense, Realpolitik describes the harmonization of foreign policy's goals with the limited resources a state has, opposing the expansionist tendencies of the great powers with imperial vocation. In the US, the term appears in a peak moment of East–West ideological conflict and produces a true reversal in Western political thinking. Henry Kissinger uses it to characterize the strategy adopted by US President R. Nixon to get out of the war against Vietnamese communists without compromising the beginning of normalization of the relations with the USSR and the proximity to China.

[46] In the UK, especially the followers of the Fabian thinking and the radical liberals gathered in the NGO titled *Union for Democratic Control,* firstly propagated these ideas; also in the US, the democrat president W. Wilson, in his now-famous "Fourteen Points".

[47] Angell 1912.

institutionalization of the collaboration at the political elites' level, a united family of the party-nations would be created. The British analyst Alfred Zimmern shared the same opinion.[48] Peace was considered the "natural" state of the human collectivities' relations and, in the Marxist vision of Kantian type, the laws of nature and morality operated to permanently avoid wars. Surpassing the ominous event called war was to be achieved by means of the power of human reason and through the progress of the human condition.[49] Such exacerbated optimism characterizing the first modern generation of liberal internationalists was founded on Kantianism, on the idea of human condition progress, reflected in structural reshaping of the international relations and also based on the creation of institutional structures that could make the classical war impossible.

For the Wilsonians, collective security was going to be the main mechanism for pacifying the international order, one superior to the classical alliances specific to the post-Westphalian epoch. Security became in this way a collective asset, all the involved parts sharing the same interest to oppose to aggressors and to discourage revisionist tendencies. This security format was primarily based on the interpretation of the revisionist intentions, and not on the actors' level of power. Unlike the alliances, there was no well-defined aggressor, but an abstract mechanism based on solidarity and discouragement, reducing to obsolete the classical concept of "balance of power", to be thrown into the garbage bin of history.[50]

Within the interpretation of this first paradigm, sovereignty remains an asset of participating states, without yielding or sharing, with an essential detail: before the First World War, the right to declare war, including conquering another territory, was a sovereign right at the state leaders' disposal. If the war started by Germany's Kaiser Wilhelm II was blameworthy and the idea of creating an international criminal tribunal for judging the war crimes committed by the Germans was so popular, that was the consequence of the "barbarian" cruelty on the battle fields causing a huge number of death and irrecoverable mutilated persons.

However, the Covenant of the League of Nations and the Kellogg-Briand Pact of 1928 proposed to massively reduce the acceptance of interstate wars and to eliminate acts of aggression. In this way the states, which were supposed to be rational, had to cede a sovereign right in exchange for extra national security. They were considered to possess the intuition that security was a common asset that was worth paying a price for. Taking into account that sovereignty is an indivisible construction, may a part of it be ceded? As follows, is there a partial sovereignty or a shared sovereignty? Is it possible to mistake sovereignty—which means authority on the elaboration, promulgation, and application process of the law on a given territory—for international norms, namely for the obligations accepted and assumed by the states within the international relations? The war of aggression was, consequently, forbidden. In exchange, the defensive war still remained a

[48] Zimmern 1936.

[49] Burchill et al 2005 p. 58.

[50] Brown and Ainley 2005, pp. 22–25.

sovereign right of the states, exerted either individually, or collectively. Actually, the League of Nations did not entirely exclude the war between its member states; it only reduced the number of circumstances in which war was permissible and imposed the development of certain procedures of negotiation between the involved parties. Not even the famous Convention for the Definition of Aggression in 1933, although signed, among others, by the USSR, succeeded in eliminating the war of conquest.[51]

As a reaction to the excesses and naiveties of the idealist-liberal theory, after 1918, the realist trend strongly expressed its vision based on the classical notions of power, security, and national interest. Authors such as Hans Morgenthau and Edward Carr drew on the intellectual heritage of classics like Thucydides, Machiavelli, or Hobbes, trying to offer scientific substantiation to the traditional Realpolitik of the nineteenth century.

The realists reject the possibility of achieving a state of harmony and of an eternal peace between nations, invoking the leaders' desire for power accumulation in the name of national interest. The states can be differentiated not only through the level of power but also through their position on the status quo versus revisionism axis. Consequently, in Carr's opinion, in order to maintain the world order and to avoid devastating wars, the revisionist powers should be offered a certain level of satisfaction or strong alliances should be formed as to counterbalance them.[52]

International relations tend to become a place of repetition and stagnation, because the anarchy caused by conflicts cannot be surpassed. The anarchic environment, based on the absence of an overarching national "government" generate a lack of trust among its state actors, each trying to ensure its survival and its desire for hegemony, through the accumulation of power. This desideratum can be achieved either on an internal level (increasing the national property, extending the army forces, improving the human capital, demographic policies, etc.), or at external level, through alliances. Morgenthau considers that the battle for power is part of the human nature, because the political man is an individual characterized by the need of domination (the will to power).[53]

It is obvious that, in such a perspective, the states are entirely sovereign; they have the right to decide peace or war as they are pressured by the imperatives of the anarchical structure of the international relations system. The realists make a clear distinction between the internal and external politics of the states: if the first submits itself to the "laws" of the social contract, meaning that the individuals give up rights to use force and violence in favor of their state (thing that guarantees a hierarchical social structure), the latter is based on the existence of sovereign and equal entities living in a continuous war danger.[54] Whereas the internal politics is

[51] http://www.iilj.org/courses/documents/ConventionontheDefinitionofAggression.pdf

[52] Carr 1946.

[53] Morgenthau 1967.

[54] See Aron 1962.

called *low politics,* the international one is called *high politics* and is considered the very essence of the state survival.[55]

The realists reject the necessity of making appeals to morality and ethics in international relationships, labeling them distortions in evaluating the security environment. In the realm of international law, these have a secondary role to that of power. Sovereignty is not only based on norms and shared values, but also on the recognition centered on the balance of power. Sovereign states taking part in alliances implicitly accept their equality, whereas the actors with imperialist vocation, by assimilating other entities, actually cancel their sovereignty. The impossibility of creating a universal empire has its origin in the mechanism of the balance of power, which guarantees the survival of the majority of the states within the system.

In the 1970s, on the background Cold War détente and the acceleration of the economical globalization, institutional neoliberalism (liberal institutionalism) emerged. According to authors like Robert Keohane and Joseph S. Nye, heirs of Kant's and Rousseau's philosophy but also open to the logic of interdependence between states, the normal state of the international relationships is characterized by peace and harmony.[56] Through economical interdependence (commerce, trade of goods, peoples' movement) and through the intensification of political contacts, the states succeed to increase the level of the mutual trust, learning the lesson of cooperation.

If for the neorealists the mechanism of interstate cooperation had a limited use caused by the possible risk to consolidate a future adversary, the neoliberals consider that the logic of cooperation generates common benefits for all the participants. With the globalization of the world economy, the international institutions, especially the multilateral ones, generate a need for increasing cooperation and unprecedented closeness of states. In the matter of sovereignty, through the participation in the globalization mechanisms and through the acceptance of the interdependence logic, the states become aware of having lost a few of its attributes (the situation of the transnational societies and of the circulating capitals), and, through cooperation, portions of sovereignty are put together in distinct domains. In general, cooperation is easier in the technical domains than in the security field. However, under special circumstances, the states can transform the anarchy logic and succeed in perceiving one another as trustful partners and in sharing and exercise the security in common. That happens with the so-called "security communities".[57]

Hedley Bull, the brilliant representative of the English school of international relations, remarks that the liberalism doctrine generated a rather "insipid" sovereignty, which cannot survive in the imperialist era since it evolves strictly

[55] The terms are used by Morgenthau in Morgenthau 1967.

[56] Keohane and Nye 2001.

[57] Deutsch 1957; also, Adler and Barnett 1998.

conditioned in the process of searching for a world government or other similar forms.[58]

A major challenge for classical realism was posed by the foreign policy analysis movement in the 1960s and the 1970s. Authors like Graham Allison, Robert Jervis and Irving Janis demonstrated that state may not be compared with a billiard ball, as Arnold Wolfers had proposed.[59] A state could not be considered a monolithic unity any longer, but rather a bureaucratic conglomerate, with the supreme decision-maker being far from a completely rational and omniscient human being. Quite the contrary, he is submitted to the phenomena of decisional pathology and prisoner of his own psycho-cognitive mechanisms or of the groups of counselors and experts who "filtrate" his reality.

At the end of the 1970s, as a reaction to the optimism showed by adepts of the institutional liberalism, the classic realist movement was updated under the name of neorealism. The founder, Kenneth Waltz, instituted a "materialist" theory concerning the impact of anarchy on the international system, which exceeded the psycho-cognitive aspects of the individual and the analysis at the level of state entity.[60] They practically borrowed from the realists the notion of the balance of power and added a new structural dimension—the analogy with microeconomy. Whereas human individuals work to specialize themselves in distinct professions, states have to accomplish the same essential functions (defence against outside risks, inside order) as they cannot rely on anybody else for their own protection (self-help principle). Waltz considered that the international system of states had not been altered during the time in a significant manner, the only accepted modifications being those of polarity. The survival of the states is ensured, on a regular basis, through balancing and alignment, with a tendency of all the states to imitate the successful pattern of the most powerful and the most prosperous states.

The conduct of the states is determined by the pressure of the structures, in other words, by the type of international system; and that is why in the realist paradigm the personality of the decision maker plays a relative modest role.[61] The reciprocal fear and the uncertainty in an anarchic environment, generate the mechanism of security dilemma.[62] Subsequently, neorealism has divided itself into

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[58] Bickerton et al. 2007.

[59] Allisson 1971; Jervis 1976; Janis 1991.

[60] Waltz 1979.

[61] In the volume published in the 1950, which was actually his doctoral thesis, "Man, the State and War", Waltz acknowledged the importance of the factors situated at the level of the decision-makers and those specific to the political regime; however, he gradually came to provide defining explanatory power to the systemic (structural) level. In this way, he delimited himself from the theory of foreign policy that relies heavily on the decision-maker's personality and the characteristics of the domestic policy. See Waltz 2001.

[62] The concept was launched by John Herz in the 1950s and, in short, emphasizes the ephemeral and risky nature of security measures. The more one state pursues arms race (or build alliances) to protect itself from possible dangers from the outside, the more rival states will feel threatened and initiate a reaction process, encouraging this way a race of security countermeasures. See Herz 1964.

two branches: "offensive" and "defensive". In the former vision, the states are maximizers of power, among them, only the actor having a hegemonic place in the system will rejoice of absolute security.[63] In the latter vision, states are not necessarily willing to maximize their power, but their security, being supporters of the status quo. The structural realism becomes synonymous with the defensive one and postulates a prudent, nonaggressive, and conservative behavior.

In the defensive vision, the state gives up offensive wars, except perhaps the preemptive ones (wars of necessity). In the offensive approach, war is regarded as an instrument of sovereignty. The *self-help* notion suggests that the imperative of self-defence is directly connected to the exercise of sovereignty, without any obligation of support from other sovereign entities.

Since at the end of the 1980s, scholars understood that both neorealism and neoliberalism had in common a series of assumptions—the systemic anarchy, the model of the rational actor, etc. The so-called critical schools reacted by bringing into discussion the whole theoretical edifice of the classicism. The dispute between paradigms, a constant of the international relations theory from the very beginning, resulted in the great "bifurcation" between rationalism (representing the neo-synthesis between neorealism and neoliberalism) and reflectivism.[64]

Under the aegis of reflectivism (term imposed by Robert O. Keohane in 1988), the critical theory strongly disputes the relevance of the consecrated analytical elements—state, national interest, power, security, showing that they resulted from a hegemonic discourse of the establishment, being therefore in the service of the state apparatus. The critical theories intend to detach from the positivist matrix specific to policy-oriented studies and to mark the researcher's emancipation from the guardianship of the politics.[65] To this critical movement, belong both the neoMarxist branch and also feminism, the ecology movement, postmodernism, and constructivism. Without many details about each of the branches, we are going to refer especially to the constructivist analysis, as we consider it of special relevance to our approach.

At the end of the 1980s, the theory of the international relations borrowed from the sphere of social sciences the analysis in a constructivist key, as a reaction to the epistemological and ontological assumptions of neorealism and neoliberalism. The last ones were regrouped under the common label of rationalism, because they insisted on the theory of the rational actor and on the existence of anarchy as an objective and immutable fact, whereas the constructivism intended to highlight the formation of the identities and of dominant ideas within the human collectivities through sociological interaction and intersubjective sense. The constructivists, especially Alexander Wendt, showed that the social identities of individuals and states are more important than the material structure of the international system.

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[63] Mearsheimer 2001.

[64] Cioculescu 2007, p. 248.

[65] According to the Keohane's view, the Critical School, postmodernism, and radical versions of constructivism paradigm subsume to the reflectivity paradigm.

So as to understand their way of acting, the interpretation of their interests and visions, must begin from norms, values, and principles, and not from the logic of power and benefits. In the opinion of constructivists, the agents (in this case the decision-makers) continuously interact with one another and with the system structures, shaping themselves reciprocally. A socialization of norms and values is taking place, which leads to reshaping the identities, with major implications in the security domain, too.

Wendt asserts that the systemic anarchy should not be understood as being already a given immutable material which generates conflicts, but as a social structure ready to be remolded: "*anarchy is what states make of it*".[66] According to the dominant ideas and to the perceptions, there are, in his opinion, three types of "cultures of anarchy"—Hobbesian, Lockean, and Kantian.[67] The first and second are founded on norms and competition values in which the states perceive one another as rivals. In the Hobbesian model, there is the risk of annulment of sovereignty through military conquest, while in the Lockean one, sovereignty is guaranteed (no state may be conquered and annihilated as an independent entity), although it may be altered by the action of power. The Kantian pattern represents the overrunning of the state of anarchy and the birth of a trustful and friendship relation. The normative structures succeed in shaping the decision-makers' mentality, taking them out of the bad logic of wary anarchy. In the ideal cases, sharing extended portions of sovereignty—*pooled sovereignty*—(in the case of EU for example) shows a state of normality.

The use of the constructivist grid helps us to understand the relativity of sovereignty by applying the mechanism of norms socialization in the field of the human rights and of humanitarian intervention. Even if some state leaders consider that the observation of these norms may prove dangerous for their national interest, they still conform themselves to those rules, even if for reasons of opportunism. Afterward, in some cases, partial or thorough norms socialization may be taking place, which practically leads to redefining their strategic identity.

We assist at an unprecedented affirmation, in the sphere of the international relations, of the concepts concerning the human rights and human security, quantified in texts of international law through the Helsinki Final Act and the creation of the Commission on Security and Cooperation in Europe.

The year 1989 and the major events associated with it, mark the end of the Cold War epoch and represent the reference point for the junction which occurs in the mode of structuring and functioning of the international relations system. The result of this joining is an international security system and an international relations system which are not structuring themselves anymore according to the Westphalian paradigm and in which the sacrosanct principles that define it become relative.

The key concept of the Westphalian system—national sovereignty—becomes more relative, more precisely, it becomes more adaptable, transforming itself into a variable function with multiple determinatives, one of the fundamental factors

[66] Wendt 1992, pp. 391–425.

[67] See also Wendt 1999, pp. 246–312.

being that of human rights observance. What is lost at the level of the state actors in the realm of authority and visibility passes to the other components of the international relations system (inter-governmental organizations, NGOs, and transnational economic societies).

An interesting vision is that upheld by the well-known analyst Robert Cooper, Javier Solana's counselor on international relations. In his work "The Breaking of Nations: Order and Chaos in the Twenty-First Century", Cooper argues that Europe has passed from the modern world to the postmodern one, in which the amorality of Machiavelli's theories on states' governance was replaced with the moral conscience applied to international relations.[68]

According to the realist paradigm, the action of the states cannot be appreciated in moral terms and Westphalian sovereignty could not be questioned. The doctrine of the right to intervene emerges as a counterbalance, and, according to this, the sovereignty of the state should be subordinated to a principle of extreme emergency: the need of a minimum protection of human rights. The debate about the humanitarian intervention reached its climax with the NATO's actions in Kosovo (1999), but its normative echoes are more amplified in the context of the event on 11 September 2001.

A representative of the contemporary "flexible" realism, open to the phenomenon of globalization and interdependence, the analyst Stephen Krasner, insists in his works on the topic of sovereignty that the most common causes of modification of the Wesphalian concept of sovereignty are external intervention on the basis of human rights and international stability.[69]

Constructivism, in our opinion, is an extremely useful theory in order to investigate the perceptions of national sovereignty, taking into account that the concept is continuously reshaping itself through norms and collective values circulation, within a context marked by fluidity in international evolutions and by the systemic evolutions accelerated by the globalization phenomenon. The application of the constructivist grid in the sovereignty analysis allows escaping the framework of the legal approaches which are rigid and difficult to alter, entering in the sociologic domain of interaction between actors (states, populations) and structures (organization of the international system). The exclusive use of the neorealist and neoliberal grids would have led to us permanently remaining in the material element of the sovereignty (territories, borders, population), providing a static and unidimensional vision of state sovereignty phenomenon.

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[68] Cooper 2007.

[69] Martin Griffiths captures Krasner in the bound of Realism due to his concern in conflicts for power in the international arena as well as in global political economy, or the formation of international regimes but also in reference to the notion of sovereignty. However, Krasner acknowledges the complex economic interdependence in the security calculations of states. See Griffiths 2003. See also, the reference works of Stephen Krasner—Krasner 2004a, Krasner 2001 and Krasner 1999.

1.4 Post-Westphalian Dynamics

There is a feeling of discomfort not only with the ones that are explicitly supporting the elimination of the sovereign states' system, but also in the declarations of some sovereign states' officials. There is a feeling of guilt or embarrassment for the way in which state sovereignty works under the new circumstances of the process tending to globalization and escaping this kind of sovereignty. As if the world would expect the world government to be enthroned.

The former League of Nations and the present-day United Nations Organization may no longer be seen as diplomatic instruments in the tradition of Europe's vanity; on the contrary, they begin to be considered by some people, a first step toward a world state. The military alliances become regional security systems, although the armies remain national ones.

The sovereign state was challenged, under different aspects, throughout the twentieth century, but each time in a different context. Even though the sovereign state remains the main entity of the political organization throughout the time, and its functions keep on developing, the sovereignty of the absolute type becomes a concept which is no longer adequate to the present-day realities, even more, conflicting with them. In the new context, we deal with a sort of damaged sovereignty.

A distinction should be made between sovereignty throughout different periods of history and the one of today. Given the present-day circumstances, we have to deal with new challenges to this concept. Some people consider that it has to be modified; others consider that it should be entirely rebuilt. It is very clear now that the sovereignty concept operated with so far needs to be rethought. But not for the sake of being reconsidered, it should happen because new realities confront it and because sovereignty should face them. If it cannot respond promptly to the new challenges, or it does not offer solutions for decreasing the vulnerabilities to the new types of pressure, challenges, dangers and threats, to the new risks that are the result of them, then it should be either replaced, either changed, modernized, or transformed.

But a question is raised: If sovereignty is an outdated concept, then what is the political and/or judicial formula capable of replacing it? And from here, another question becomes as pertinent as the previous one: What is politics without sovereignty? Security, international law, European integration, etc.—domains specific to the world politics—how would they be approached if the sovereignty notion is expelled? They would become themselves meaningless notions, as they have been built by taking into account the division of the world into sovereign states.

Changing the notion of sovereignty is in accordance with the capacity of providing a new and superior form of politics. We should understand what type of sovereignty is required by the new politics and, in what measure this is shaping the new formula of politics, in relation to the new modern society.

Sovereignty, as supreme political power, was always opposed to the private law. This distinction is self-imposed. The Westphalian sovereignty defined by

Krasner as the exclusion of external actors in internal affairs is challenged by the process of internationalization.

Internationalization tends to free social relations from territorial constraints. In other words, territoriality ceases to remain an essential condition of the social relations which are turning into internationalized relations. Sovereignty was always limitated and restricted. Or, given the new globalization conditions, it becomes a brake on the informational, economical, social, and even cultural relations. The only reason for maintaining this concept in its actual form would be security. But, in the new context, even security exceeds the strict competence of the sovereign states for a very simple reason, because no state in the world can ensure security by itself, not even the US. This is particularly true for military security, but is also the case in relation to economic security, information security, and cultural security.

The concept of security is a very complex one. But it may not be built or reconstructed without taking into account all past, present and future determinations of security, particularly those referring to the sovereignty. The Westphalian dimension of the concept of sovereignty is connected to the Peace of Westphalia in 1648, which is considered to be the foundations of the modern state. But, one can see, more and more, the idea that an institution that is 364-years-old is outdated and, as a consequence, redundant. The Westphalian system generated the notion of sovereignty and all the relations that followed consequently had at their foundations the observance of this concept.

The idea of sovereignty is even older than the sovereign state. The sovereign constitutional state, the nation-state, emerged following the French Revolution in 1789. Tom Paine shows that political authority was founded on individuals' extremism in civil society, rather than on the whimsical will of the warmongering sovereigns. Therefore, the idea of sovereignty is the result of the people's will, and not of the absolutist conception provided by the Westphalian concept.

The second perspective is connected to the role of globalization. Sovereignty is related to a certain configuration of social relations and, if such a configuration changes, it is normal for the concept of sovereignty to change. We have to deal here with an alteration of the concept. Sovereignty is a political and judicial concept, which cannot be reduced either to material or to economical factors. Political power is an effect of the property and of the control of material and financial resources. Political power is the product of a relation between individuals and it results from their association (obviously on the basis of common interests) in order to act together. Actually, the impulse of the action and its reason are represented by interest. Political autonomy is nourished by the idea of sovereignty, which itself compounds the public power through the united will of all the citizens.

But sovereignty is not just public power; it provides the states with legitimacy, power, and historical effectiveness. Hegel makes the distinction between the modern value and the courage of the medieval knight or of the thief; he shows that the modern value makes the violence and the courage impersonal. Making an allusion to the British colonialist conquests in India, Hegel writes that the real value of civilized nations consists in their spirit of sacrifice in the service of the

state, in the sense that the individual counts only together with others. It is not only about the personal courage, but about merging in what is universal that becomes an important factor.[70]

In capitalist society, we witness a real association of contracting individuals, sovereignty being a form of collective activity for a national or public purpose. In societies made up of contracting association of formally free and equal individuals that have personal interests, one notices their coagulation around the guaranteed contracts that generate or regenerate the state. But in reality, things are not like that. Even if the state seems to be a means by which free and equal individuals can make contact, such relationships are the product of social groups (family, collectivity) and of some institutions which deals with their education and training for a private and a collective life. The political dimension presumes the creation of an administrative authority other than that already present in society and which is capable of exerting absolute political power.

The question to be raised is: Who makes wars? States or people? In principle, warfare reflects the interests of security of the people and the state only administrates it and ensures the chances of success. But political autonomy is still sovereign. States make wars, not from vanity, but for certain interests, especially that of winning power. State power provides nations with prosperity, and therefore its subjects benefit. The economical dimension and the informational dimension are important, but unable to surpass the political dimension which still defines sovereignty. And state sovereignty—at least that of the members of the European Union as well as that of modern liberal democracies—is untouchable.

The European Union and the North Atlantic Alliance are associations of sovereign states. The states decided to institute an International Criminal Tribunal for the former Yugoslavia, one for Rwanda and the International Criminal Court and other institutions which do not work against states but for their benefit, on certain agreed principles.

The international institutions are not meant to diminish the sovereignty of states, but only the deviations from those principles that ensure the functioning of the community and the observance of the human rights—for instance war crimes and crimes against the humanity, with the objective of helping the state to ensure and safeguard the rule of law. That is also determined by the present international context that demands that excessive authority and dictatorship should be considered crimes against the state and severe infringements of the philosophy and the physiognomy of the modern state. These newly created institutions might not use the same approach for all states and actions that constitute war crimes or infringements of international law, and this is another problem that needs to be solved.

The debates regarding sovereignty, especially those on the demise of sovereignty, or those about compromised or damaged sovereignty, show citizens' lack of faith in public authorities and the decline of the political decision-making factor.

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[70] F. Hegel 1975, p. 138.

In our opinion, the political domain is not declining, but the sovereignty in which is contained and which it guarantees must be rethought and reconfigured. Another demand is the adaptation of this concept to the new economical, technological, and informational realities and even to the determinations of the cultural order, which require insistently escaping from the exaggerated political constraints from the epoch of nations.

Considering that the pressures on the sovereignty domain are numerous and wide, and some people predict its demise, we should think that globalization of information, economy, and communications, and especially of transport infrastructures, energy and cyberspace, imposes a world governance or interstate and overstate formulas to prepare and create such support. The Lisbon Treaty develops such a vision, but does it discreetly and prudently, in European observant and coherent terms.

The idea of sovereignty is also linked to that of responsibility. A sovereign state is not the owner of supreme truth and absolute justice. It is not *ultima ratio mundi* and cannot do whatever the sovereign or the governor wishes, without any accountability for their actions.

"Pathologies" of the juridical system may be identified even in democratic states: on the one hand, theoretically, a citizen may become victim of severe judicial errors. On the other hand, the laws, instead of reflecting the general interest, may express group interests, imposing themselves coercively upon the effective majority.

In order to correct the deviations, there must be an authority to sanction the breaches of general principles of internal and international law adopted by the respective state. The norm of international law is transformed into responsibility, according to the reality of the conditions and international relations. The international organizations provide a framework in which the sovereign state's community ensures and that all laws and regulations are obeyed and assumed by all member states. It is not about world governance in the sense in which this concept is used. It is the only suitable formula for this level of international relations' configuration that could ensure the observance of the assumed norms.

The international mechanisms having this goal are still marked by the measures taken after the Second World War, (permanent members of the UNSC are the winners in the war) and the modifications produced after the conclusion of the Cold War are not significant, even though the problems are different.

The problems are to be discussed. The war started by the US against Iraq under the pretext of possessing weapons of mass destruction, is not at all justified. It was not the problem of the Iraqi state's sovereignty to be discussed here—otherwise recognized by the international community, and members of UN, but the manner in which the action was taken against those who use the sovereignty principle to establish a cruel and terrorist dictatorship against its own people.

Can the UN redefine and implement this new understanding of sovereignty? Are the states ready to accept theories related to shared sovereignty, sovereignty dissemination, opposing the concept of sovereignty to that of human rights' observance? Is sovereignty restricted concerning the assurance of the conditions

necessary for respecting human rights, such that the states which do not obey them be penalized? Have the sanctions applied by international organizations (the UN Security Council) had a negative impact on sovereignty, or, as the realists suggest, including the modern ones, it is only a matter of a norms' observance, to which that state agreed?

1.5 Role and Jurisdiction of International Institutions

A fierce debate appeared in the 1970s between neorealists and once institutional neoliberals. If the former consider that states retain the power and authority on the international scene and that the organizations are simply tools created by states to meet their objectives, the institutionalists believe, in turn, that these organizations gain an autonomous existence and, in some aspects, can even constrain the freedom of action of the states. Realists consider that states acquire "relative gains" through cooperation, whereas the liberals refer to "absolute gains".[71]

Realists say that international institutions do not significantly affect the chances of international stability. Institutionalists argue otherwise. Realists claim that institutions are a result of the global distribution of power and cannot decisively influence either this distribution or state behavior, especially the behavior of the great powers. Institutionalists argue that, on the contrary, international institutions can change their behavior. They are independent variables that can deter the warlike tendencies of states. Each theory argues, however differently, the way these institutions might influence the state behavior. In this respect, John J. Mearsheimer raises four methodological questions[72]:

1. What are the institutions?
2. How do they act to maintain peace? More specifically, what is the causal logic of each theory?
3. Are these different types of logics explaining how institutions work convincing?
4. Are these theories supported by evidences?

There is no clear definition of international institutions, or the definitions are so general that they can mean almost anything you want. One possible definition, also agreed by Mearsheimer, would be that institutions are a set of rules stipulating the modalities by which countries should cooperate and compete with one another.

Institutions prescribe rules, the rules are negotiated and expressed in international agreements and are reflected in organizations having their own staff and budget. Some theorists argue that those rules should become the standards of behavior defined as rights and obligations. These rules do not compel states, and the institutions do not represent a form of global governance. The states are the

[71] Dîrdală 2006, pp. 148–149.

[72] Mearsheimer 1994/1995, pp. 5–49.

ones who decide the rules that they are responsible for and whether they comply or not. For some institutionalists, the rules, understood as fundamental beliefs about the standards on appropriate behavior of states, represent the foundation on which specific rules are built.

Collective security and critical theory question the realist belief that states behave in a selfish way. From their point of view, more altruistic attitudes would be necessary. The reality is that states do not necessarily behave selfishly, but according to their interests and act to develop rules to enhance cooperation between states.

1.5.1 The Realistic Vision

Realism has a pretty bleak picture of world politics and international relations. Morgenthau, for example, argues that states are aspiring to power, while Waltz argues in his theory that states only want to survive, and therefore, their tendency is to maximize their security. In both cases states pay great attention to their security problems. Of course, states are aware of the reality of their environment, along with the pressures, challenges, dangers, and actual threats that concern them, their vulnerabilities, and therefore the risks they take or ignore.

According to the realists' conception, the international arena is a brutal one, where states are behaving like enemies, or as partners in a fight where each seeks to win, by knockout, if possible. The struggle for power is the basic rule. Each state does its best to be strong, to have an important role and to ensure its own security. The international environment is not one of war, though it could be said that we may have to deal with varying forms of an ongoing war, but merely one of a relentless competition in all its forms, from the battle for markets, resources, and information technology, to the competition for security.

The attitude of states may be offensive or defensive, but even the latter is an active and constructive one. But conflict is possible any time. Therefore, if we had to sum up years of peace and war after the Second World War, we would conclude that prior to the 60 years of peace (1945–2006) there has been 747 years of crisis, armed conflicts, and wars.[73] In other words, for every year of peace, there have been in turn 12 years of crises, conflicts, and wars.

The pessimistic conception of the realists results out five assumptions regarding the international system:

1. The anarchic nature of the international system, which need not be understood as chaotic and messy, but as a landscape where states are independent, sovereign, and their behavior is not ordered or directed;
2. States possess certain offensive military capacity that provides the means to attack and even to destroy each other;

[73] Mureşan and Văduva 2007, pp. 394–399.

3. States can never be truly sure of the intentions of other states (no state can guarantee that another one will not use its offensive military capabilities against it);
4. Survival is the motivator of state behavior, and in this respect, states must be sovereign and maintain their sovereignty;
5. States deliberate strategically on how they can best survive in the international system, but can often deceive potential adversaries, as states conceal their offensive conduct.

Those cases result in three main patterns of behavior:

1. States of the international system fear each other, and their level of fear, no matter how many assurances of cooperation and treaties are concluded, can never be disregarded. The political competition between states is much more dangerous than the market competition, since it could lead to war, even if all international documents and the UN Charter prohibit wars of aggression, and, in its absence (because it is prohibited), the war of defence would not have any sense.
2. Each state of the international system seeks to ensure its own survival. The other states, in the logic of realism, can be (and are) considered dangerous and in some cases even a threat, since there is no supreme authority to control and impose upon them a certain type of behavior. And even if such an authority existed, it would practically have nothing to say in the present circumstances, without the guarantees of the great powers and the other states. The European Union and NATO are not sovereign entities, but organizations of sovereign states which mutually ensure security and defence through their foundation of treaties, policies and strategic concepts. Each state acts, however, according to its interests, even if it takes part in the management of crises and conflicts, common security, and collective defence.
3. States of the international system seek to maximize their power position relative to other countries, the military power being the best way to ensure survival in a dangerous world. Theories such as those of super saturation with military means, of mutual destruction, of weapons development so that they make war impossible, do not stand up to a realistic analysis. Although they have been used for a long time and seem very convincing to pacifists, no state has ever given up to its military power or to alliances or coalition systems that would enhance its power. Cooperation, from the realistic point of view, is at the same time promoted and restricted by two inhibiting factors: relative gains and concern about cheating. This also explains why alliances, regional cooperation organizations, etc. are established.

Institutions are, in the view of realists, an effect of power distribution, i.e., the instruments of states' power. Dominant states create, support and maintain these institutions to maintain or even increase their power. Being elements of power distribution and, finally, of its expression, the institutions reflect the balance of power which is the independent variable explaining the war. Institutions are not independent variables, but only intermediate variables.

NATO is a convincing example in terms of realist thinking regarding the institutions. NATO was established as an instrument of power of the Western world, initially to achieve an efficient counter defence against the Soviet threat, later to offer offensive support during the Cold War.

Soviet offensive was not only military, but rather more ideological. But the military and ideological component of the response and, concomitantly, of the strategic initiative—because the initiative in the confrontation between the two sides belonged to the West—generated a combined offensive action taken by political, economical, informational, humanitarian (human rights) means and supported by an appropriate military dimension.

The North Atlantic Alliance was, in fact, an American instrument used during the Cold War against the Soviet Union. After the war, realists argued that NATO will disappear or be reconfigured. NATO's strategic concepts have confirmed the second foresight of the realists. NATO is turning into a security and defence organization and even tends to step out the provisions of the Washington Treaty, which, however, is no longer valid, even if, in the bosom of the Alliance, two trends have been created—one to preserve the spirit of Washington which is the collective defence of its members against any dangers and threats and the other one to extend the tasks of the Alliance and NATO's globalization.

1.5.2 The Institutionalist Vision

There are three institutionalist theories: liberal institutionalism, collective security, and critical theory.

The liberal institutionalism theory is the least ambitious. It refers mainly to the fact that a better economic cooperation between states would reduce the danger of war. It considers that cheating is the main obstacle to international cooperation and the institutions are designed to remove it, to build trust between states, but not in a shallow way, by simple discussions, but by creating rules that compel states. It does not follow that such rules which may be welcomed, affect the sovereignty of states, but that states must respect some rules that would reduce tensions between themselves and prevent conflict and even war.

Collective security is directly related to the issue of how to prevent the war. Theory shows that force plays an important role in world politics—even if such politics would not be based on force or threat of force—, and states must protect themselves against eventual aggressors, as arise from Article 51 of the UN Charter. But even Article 51 entitles the Security Council, particularly the five permanent members—China, France, UK, Russia, and the United States—" *to take at any time such action as it deems necessary in order to maintain or restore international peace and security*".[74]

[74] UN Charter, Article 51.

Three nonrealistic rules show that the threat of conflict can be greatly reduced if:

(a) States reject the idea of using force to change the status quo;
(b) States do not behave according to their narrow interests, to deal with countries that violate the norm and threatens with war or even triggers the war;
(c) States have confidence that other states will also abandon the use of force.

These rules have a substantial degree of utopia, because it is difficult to assume that states, especially the major powers, will give up the power they have and their interests for the sake of peace. For now, these norms are valid, somehow, in the relations between nuclear powers, not for the rest of the world and especially not when Article 51 is resorted to in order to solve a conflict which is not directly in their interest, but may threaten security of a region or an important strategic area.

Critical theory aims at the significant transformation of the nature of international politics in order to establish a good cooperation and a genuine peace. This theory states that the ideas as well as the discourse—the way we think and talk about international politics—are the driving forces of states' actions. It categorically rejects the realist claim that state behavior is determined by the outside world. This theory considers that ideas decisively shape the world. The way of revolutionizing international politics is radically changing the way individuals think and talk about world politics.

Critical theory has a reflexive deconstructing attitude toward classics in international relations. It has no solutions, but hopes, as Richard Ashley expresses, that breaking the realism that dominated and still dominates the world of international relations, might unravel the flaws of the former and in this way some practical solutions might result.[75] But this theory does not provide solutions, especially in terms of sovereignty. Its merit is that it notices rigidity, the nearly closed system of authoritative judgments (required), but not outside the scope of an analysis that considers states as particles which move erratically in the international environment.

Liberal institutionalism, even if it is right about cheating in economic relations, ignores the other major barrier, namely considerations about the relative gains. The states operate with absolute gains, meaning that each one is worried about how its opponent's strategy will affect its gains, but not how much one of the sides earns against the other. Liberal institutionalists claim that their theory is valid in the economic field and not in the military one, but the military force counts significantly in economic relations, as the economic field significantly matters in creating and maintaining the military power. Therefore, the relative gains are important both for the economic field as well as for the military one. There are other theories that are concerned with the relative gains.

For example, *the strategic trade theory* provides an economic argument in the sense that countries need to support its companies to gain a competitive advantage over the rival countries, which is the best way to ensure national economic

[75] Ashley 2009, pp. 225–286.

prosperity. Liberal institutionalists argue, in turn, that if states do not cheat in economic relations, then it does not make sense to talk about relative gains. Even if cheating would be eliminated, states will still be concerned about relative gains, as income differences can be transferred into military benefits used for deterrence, coercion, and even aggression. Although the relative gains should not have had relevance for countries of the Organization for Economic Cooperation and Development (OECD), and in the Western countries, such relative gains mattered very much in their relations.

There are three major studies in this regard. Stephen Krasner has studied the efforts for cooperation of different sectors of the global communications industry. The states were not concerned at all about cheating, but about the relative gains. This finding led him to conclude that liberal Institutionalism is not relevant to global communications.[76] Joseph Grieco has studied US efforts and those of the European Community to implement, under the auspices of GATT, agreements on nontariff barriers to trade. He noted that it was not the legal concerns of fraud that led to success, but the interest of gains' distribution.[77] Finally, Michael Mastanduno reveals that the relative gains issue was an important factor in shaping the US policy toward Japan in the case of FSX fighter aircraft, satellites, and television of high resolution.[78] Concerns for relative gains are not incompatible with cooperation, but they are an obstacle to it and, therefore, they must be taken into account when developing a theory of cooperation between states.

Collective security theory contains two major errors which are related to the important component of trust. The theory of collective security does not provide an acceptable explanation of how states are exceeding their ancestral fears and come to trust one another. Realism claims that they have fears, as they operate in an anarchic international structure, with numerous unpredictable and even chaotic developments. Moreover, advocates of collective security support drastic reduction of armaments, but recognize that countries need to maintain a sufficient offensive capability in order to defend themselves in case of aggression.

No state can be completely sure of the intention of the others, no matter the given number of security guarantees. And this is not because some states would be aggressive and others not, but because, in an international structure of sovereign states—each with policies and strategies according to its own interests—, the states' attitudes vary according to the dynamic of the reality, the pressure systems, challenges, dangers and threats, vulnerabilities, and the level of risk. One or more states could reject the theory of collective security, behaving aggressively.

Collective security requires extremely complex conditions, such as:

1. States must clearly distinguish between the aggressor and the victim, in order to be able to function, this being very difficult, since, especially in times of crisis, such identification is difficult (it is still not known exactly which of the great

[76] Krasner 1991.

[77] Grieco 1990.

[78] Mastanduno 1991, pp. 73–113.

powers is to be blamed for triggering the First World War and probably things are not as clear as they seem at the moment regarding the outbreak of World War II either).
2. Theory says that any kind of aggression is a bad thing. But there are examples that, at least from a certain perspective, show that aggression does not seem to be such a bad thing (predominantly offensive states have lots of examples and arguments in support of aggression as a positive thing).
3. There are countries that find themselves in friendly relations because of historical and ideological reasons. It is difficult to assume, for example, that the US would ever use force against Great Britain or Israel, even if those countries would be considered to be the aggressors. On the contrary, the US supported Great Britain in the Falklands War (Malvinas), and Israel's disproportionate response in Gaza has not produced a reaction of condemnation or rejection by the US.
4. There are traditional rivalries between some states which complicate efforts regarding collective security.
5. Even if states agree to jointly resist an aggression, it is difficult to determine the contributions. There are still serious discussions between the US and Europe regarding the contribution to the North Atlantic Alliance's efforts to implement its strategic concept.
6. The insurance of a rapid response to aggression, within the collective security, is difficult. We cannot predict exactly the groupings of states and coalitions in the event of a conflict. We have seen that the United States needed more than 6 months to form the coalition that liberated Kuwait from Saddam Hussein's occupation.
7. It is possible that states will be reluctant to join a collective security effort, because the system turns any local conflict into an international one. The solution is to isolate the area, as it was done in case of the wars in former Yugoslavia's space. Or, collective security involves the extension, even if it pursues area isolation and conflict settlement.
8. The idea that states should automatically respond to aggression affects the sovereignty of states and therefore is difficult to be accepted. The current experience shows that countries which actually participate with forces in crisis and conflict management act and react differently in accepting the solutions proposed by the international headquarters. Decisions taken by the international bodies or institutions responsible for conflicts management must have the endorsement of national parliaments, and this procedure hampers the action itself.
9. There are contradictions in terms of positions and attitudes on the use of force. They raise questions about the availability of states to help one another in any conditions.

As previously shown, these conditions are expressed in categorical terms, as if the position of states in issues relating to international relations, their effective participation in crisis and conflict management, their integration into the European

Union and NATO and in international or regional organizations would be a rigid one, based on national interest, without taking into account the dynamics of the interests of others, including such common interests that are related to the geographical environment, environmental protection, characteristics of the international security environment, human rights, life protection, etc.

Constructivism is based on a critique of the dominant international relations theory (neorealism) and its basic thesis is the idea that anarchy and self-help institutions are not caused by the third level (system or structure of international relations), but by levels one and two (politician and state) because the institutions (synthesis of identities and interests) are a dependent variable of practice and interactions of international relations' subjects (usually states), the independent variable.

Thus, anarchy and self-help are not immutable, but depend on how actors perceive themselves and others which, in turn, depend on how the actors interact. Anarchy and self-help may exist or not, depending on these factors.

All theories, including the constructivist ones, share the reality of states and their relations, subject of analysis leading to the most interesting conclusions on the concept of sovereignty and beyond. Samuel Barkin, examining the constructivist epistemology and the classical realist theory, states that, in reality, they are compatible, even if some constructivists think they are incompatible.[79]

Constructivists believe that their method or their purpose is the social construction of international politics. Both constructivist epistemologies, one which recognizes an empirical fact and another which believes that there is not a true reality revealed through empirical study, are known as "neoclassical" constructivism and "postmodern" constructivism.

Constructivism brings three charges to realism:

(1) that it focuses only on material capabilities;
(2) that it has a materialist conception of human nature;
(3) that it is empiricist.

However, nothing else is put in their place, but rather considers that a new construction is needed in the international relations, based on the actual contribution of the actors.

All these theories, beginning with the realistic ones, which believe that the international system of states is anarchic, where each state takes care of its own interests and the international relations of any kind start from this reality (conflictual in its essence), continuing with the institutionalist theories, which believe that international institutions may influence the states and the constructivist ones, which bring to the fore the role of actors have, however, several common features:

- notify changes over time within the supporting foundations that generate determinations in international relations, but detach by their interpreting and evaluating;

[79] Barkin 2003, pp. 325–342.

- have a critical attitude toward the existing pattern and generally do not provide solutions for changing it, but only some suggestions to influence the behavior of states and other actors;
- notice the conflictual character of the world, but oscillate between a predominantly pessimistic attitude and a too optimistic one;
- institutionalists continue to believe that institutions play an important role in changing the attitude of states in international relations while neorealists and realists argue that states will continue to have a selfish attitude, based on interests, on the struggle for power or for survival;
- the analysis they take are profound, addressing to the society, international relations, sovereignty, and other derived principles (equality, unanimity).

The listed theories simply present the tension between the immediate reality of international relations, which has its own developments—often independent of what states want in fact—and the principle of state sovereignty that does not support any deviations from it and neither any radical reconstruction. This conflict, which seems antinomic, has no immediate solutions or short time perspectives to be resolved.

Chapter 2
Redefining Sovereignty: From Post-Cold War to Post-Westphalia

Abstract This chapter sketches the historical evolution of the concept of national sovereignty. It traces in particular the emergence of non-state actors in the international system as full members of a community for systemic management that had been previously open only to states and international organizations. The emergence of unconventional threats, such as terrorism, has required a substantial rethinking of the international agenda and of the security risks that threaten the national and international systems. There have been attempts to implement some universal principles relating to human rights standards. This chapter's conclusion points to a need to re-think the nation-state and its functions. The Cold War witnessed the first attempts to surpass Westphalian constraints, in the context of nuclear weapons and certain human rights which came to the fore toward the end of the communist bloc. The processes of regional integration that sublimate the classical political order based on nation-states are also a modality to surpass these constraints. The post-Cold War security environment is characterized by fluidity and unpredictibility. The optimism associated with the end of the Cold War led to the vision of a moral and legal international order, with no military violence involved but states eventually resorted to armed force in various situations vaguely described as "self-defense".

Contents

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2.1 Early Challenges to the Westphalian Order

Is the Westphalian logic of national sovereignty an old-fashioned one? Have new important and urgent elements emerged, which re-shape the concept of sovereignty on coordinates other than those agreed 364 years ago? What are, in fact, the main coordinates of the post-Westphalian sovereignty and how do they relate to the present? This is not, of course, the first time when such trenchant questions are raised. But answers are not as clear because sovereignty is not a simple concept but a dynamic construction that remains fundamental to the existence of states, the international system based on these states (to the extent that we can speak of the system) and, consequently, international relations.

In the history of international relations, one can hardly identify a less cited historic event, less associated with certain meanings, concepts, and future contextual developments, as the Thirty Years War and the peace that ended it—the Peace of Westphalia in 1648. The bloody conflagration that marked the history of the European continent of unparalleled destructions in the world history until World War II, the Thirty Years War was the culmination of a religious-based confrontation that tore Europe apart, a conflict that has its origins in the Reformation and extended long after the Peace of Westphalia.[1]

The non-acceptance of difference, change, and plurality were the major triggers of this armed confrontation.[2] In this context, the Peace of Westphalia introduces the idea of multipolarity in a pyramidal international system, with defined structures and hierarchy according to the principle of divine legitimacy and religious unity. The fundamental significance and importance of the Peace of Westphalia in international relations' history is that of equality between religions and states, regardless of the place and role they held in the system.

Beyond the specific significance of a historical event, developments recorded in the international relations system are procedural, having their origins long before the event in question and exceeding in terms of consequences its exact date. The origin of this international re-codification process of interstate relations can be identified as being the Augsburg Peace (1555),[3] when the *cuius regio eius religio* principle was inserted in the practice of international relations—a principle that entitled the rulers to decide the religion of their main subjects and issue regulations of religion identity between rulers and ruled.[4] Its consequences and changes of practice and concept extend until today.

This is the historical context in which the concept of sovereignty enters the international practice and in which the concept in question is linked to the state. In theory, the concept of sovereignty pre-dates this moment.

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[1] Parker 1997, p. 192.

[2] Ibidem, pp. 16–17. See also Pages 1970, p. 37.

[3] Blaney 2000, p. 35.

[4] Oţetea 1968, p. 256 and next.

As stated in the previous chapter, the classical image of the state and sovereignty in international relations was changed by the French Revolution by moving the holder of sovereignty from the monarch to the people. In an international environment in which reason and state interests had already entered the current practice, the French Revolution introduced the nation as the ultimate and fundamental principle. Under these circumstances, the state is an expression of national will—will and support that sustain and legitimize its main attributes, including sovereignty.[5] The operation of this state body is governed and structured by its obligation to protect and promote the rights of its citizens. The result is a fundamental conceptual change of the state. The nation was conceived as a free community of language, culture, civilization, and interest that gave the state a coherent territorial configuration and a centralized organization; conceived state authority as being based on national will; and introduced powers, rights, and freedoms of citizens as regulators and insurers of the good governance principle. Placing the nation at the core of the organization of a state, the French Revolution provides the foundation for the modern image of the nation-state and national sovereignty.

A direct consequence of the systemic disturbance caused by the French Revolution and by the later revolutions, the Vienna Congress (1815) is the event that shaped the international relations system into its modern form, with only very minor changes made up until the First World War.[6]

Named by the victorious powers of the French empire, the Congress aimed at reorganizing the system of international relations and the containment of the French Revolution's consequences. The central principles that have governed the action of representatives of major powers were those of preventing the recurrence of an imbalance such as the one induced in the system by France and maintaining the balance between continental powers.[7] The result was a robust international system, centered on the idea of a balance of forces and a concert of powers, which would maintain the European map almost unchanged for a century. Guarantees of the functioning of this system were provided by two alliances—the Quadruple Alliance (the United Kingdom, Austria, Prussia and Russia) and the Holy Alliance.

The first structure was originally meant to create a guarantee against a revival of the French aggression. It became, with the admission of France, a true governing body of European affairs and, consequently, of the whole system, given the dominant position held by the European continent in the system of international relations. The last of the meetings of these powers meant to regulate the balance of power is the Congress of Berlin in 1878.

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[5] Furet 1985. See also Badie 1999, p. 93.

[6] Schroeder 1994, pp. 575–582.

[7] The literature available on the Congress of Vienna and its consequences is truly impressive. See, in this respect, two recent works of historiographical production: Schroeder 1994, pp. 517–575; Gildea 2003, pp. 57–66.

The second alliance is represented by the attempt of victorious forces in the Napoleonic wars to overcome the two dangers that threatened the national and international political order—liberalism and nationalism. Its declared role, in accordance with the ideas promoted by its initiator, Czar Alexander I, was to conserve the existing status quo, to preserve the monarchical legitimacy and fight against revolution. It was the first time in modern European history when an alliance was based not on a particular interest, but on an idea shared by the signatories.[8]

Finally, one last idea implemented by the decisions adopted in the Congress of Vienna is the principle of neutral states. Recognition and regulation of Belgian and Swiss neutrality are concrete expressions of this development.

With the Congress of Vienna operating rules and principles of international relations system established by the Peace of Westphalia became basic fundamental rules of the international relations system. In this context, the fundamental actor of the international scene became the state with its defining attributes—independence, integrity, and sovereignty. The principle of equality between state actors became a norm, and the old claims for supremacy based on hierarchical orders that transcend state sovereignty were fully abolished. Also, states were given the right to use force in their foreign policy as a legitimate element in promoting national interests without constraints exercised by a supranational forum. Only states were permitted to enter into treaties, or to create or integrate international organizations.

The time period between the Congress of Vienna and the First World War is a classical one in terms of the functioning of the international relations system and state sovereignty. From the standpoint of our subject of interest, national sovereignty, and its developments that became known in history, we can say that the time period in question has several significant developments. First, the logic of balance of power and of the concert of powers, by the institution of international conferences (the Congress of Paris in 1856 and Congress of Berlin in 1878) intervened in the absolute exercise of state sovereignty.[9] Regulating the conflicts between powers was not an exclusive affair between the countries involved in a conflict, but a European affair for the entire concert of powers dominating the international relations system. At the same time, during this period, in the name of stability and balance, the Holy Alliance legitimated intervention aimed at maintaining a political order that had been considered acceptable (Russia's intervention in support of the Habsburg monarchy in the spring of 1849 is illustrative in this

[8] Kissinger 1998, pp. 55–56. According to him, the Holy Alliance is an original result of the Congress of Vienna, because it introduced a "brake" in the major powers' interaction, namely the moral dimension.

[9] For the conferences of Paris and Berlin, see Bernstein 1992.

respect).[10] Intervention was considered acceptable also to protect the interests and rights to free exercise of religion.

The case of Christians in the Ottoman Empire and the long series of diplomatic interventions and wars justified by the disrespect of their fundamental human rights are one example.[11] In addition, the conditioning of the international recognition and acceptance as a full rights member of the international community of states like Romania, subject to complying on one hand, to some determinations on national interests of some Member States of the hegemonic concert of powers, and also, on the other hand, to satisfy some requirements on how the rights of citizens of the state in question were to be regulated.

In conclusion, we can say that although this period is that of the classical conception and exercise of the state sovereignty, in practice this exercise is limited and uneven, its conception and pursuit being subject to a Brezhnev doctrine *avant la lettre* that conditions the admission and operation of the states and the free exercise of their sovereignty to the observance of a minimum of external and internal operating rules and to the compliance of a behavior considered to be acceptable by the states dominating the international relations system.

The system itself functioned until the late nineteenth century when the concert of powers that had ensured consistency and robustness of the system broke apart because of disputes and conflicts with multiple causes.

The Franco-Prussian War, the deteriorating oriental issue, the competition for power and for providing extra-European colonies, etc., contributed to the polarization of the international system into politico-military alliances with opposing interests. The First World War brought substantive changes in the existing political order, by the "proliferation" of sovereignty and power centers (implosion of the Russian, the Austro-Hungarian, the German and the Ottoman empires) and alliances' interventions on the territory of certain states (the case of the Franco-British intervention in Russia during the Civil War).

The First World War and its consequences in the international relations produced substantive changes concerning the concept of sovereignty, both in practice and in its conceptual framework. The Industrial age, which changed the nature of war and enhanced globalization, increased the prospect of a conflict becoming a global war. The consequences of this mutation are reflected internally by rethinking and restructuring the relationships between state and citizens, by imposing a definitive idea of nation-state.

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[10] Involving compliance with the principle of monarchical legitimacy and defence of the rule of law, the intervention is not only justified but imperative. For a discussion on the implications of the principles that led to the creation of the Holy Alliance and their impact on the exercise of national sovereignty, see Badie 1999, pp. 90–93.

[11] Duroselle 1967.

In this context, the need to change the nature of the international relations system and of the instruments governing its operation led to the idea of creating a permanent supranational institution[12]—a forum for interaction and regulation of the international relations system. In the same context, we witness what will be called in historiography "the Spring of Nations",[13] the empires from the past disappearing under the impact of national liberation movements and economic and social consequences of the World War.

Relevant documents that contribute to changing sovereignty in practice as well as theory include, on the one hand, the Wilsonian "14 points" and, on the other hand, the Peace Treaty of Versailles.

It is difficult to point to a document with a greater impact on public opinion and action of the international players than the speech given by the U.S. President Woodrow Wilson before the Congress on January 8, 1918.[14] Presenting the U.S. view on the conditions of peace and on the functioning of the post-war system of international relations, the Wilsonian Fourteen Points were quickly adopted, quoted, raised, and processed in a real political program of national liberation movements and not only. The German peace demand was in fact an acceptance of the Wilsonian Fourteen Points,[15] and the document was extensively quoted and relied upon during peace talks, with a direct impact on the shape and content of the peace treaties. The impact of this document may be explained by its provisions and the consequences resulting from them. The most important is the proclamation of the right of self-determination. Others that were later added to the regulatory principles of the future system of international relations include transparency in foreign policy and interstate relations, or the creation of a permanent supranational institution for managing international relations system and preventing the recurrence of the traumatic experience of the World War.

The conceptual and practical impact that the Wilsonian Fourteen Points had on the sovereignty was decisive, resulting in the current concept of sovereignty and the inextricable relationship which is created between the state, nation and sovereignty. At the same time, the idea of self-determination, together with the uncertainties and the indeterminacy associated to the invoked concepts, opened a Pandora's Box[16] in international relations, whose consequences extended until today.[17]

The other important idea of the Wilsonian document, that of creating a moderating body for management of international relations was later to be found in the

[12] It is not about a supranational institution, but an international institution—an institution of nations which is required to prevent the recurrence of a world war disaster.

[13] Santamaria 1996.

[14] Goldstein 2002, pp. 101–106.

[15] Halperin 1971, pp. 107–112.

[16] According to Michael Burns, Burns 1996, p. 42, quoting Secretary of State Robert Lansing speaking about the impact of the document on the international relations system.

[17] Conflicts in the former Yugoslavia whose last chapter is the crisis in Kosovo—all developments in this space and its fragmentation are an example to support this assertion.

peace treaty with Germany signed at Versailles, by the victorious powers on June 28, 1919. Beyond the terms of the peace treaty itself, an entire section of this document was dedicated to the rights of minorities and the status of the League of Nations. Similar sections were included in the peace treaties signed with all other defeated nations.

Designed to solve many problems raised by the new reconfiguration of borders, especially in Eastern Europe, the minority rights section was the first attempt to regulate some key issues that later dominated the international political environment and domestic politics of states until the present day.[18] Those questions are still valid, and the answers unclear. What is the boundary that separates a nation from a national minority? What are the limits in which to exercise their right to claim self-determination and creation of a sovereign national state? What are the limits in which the state may exercise sovereignty over its citizens and under what conditions the identity of the state, its borders, and nation can be ensured? These are just a few examples of plausible questions.

The first attempt to answer these questions and to protect the members of various ethnic and religious minority communities in the new nation-states emerged on the ruins of empires were the provisions concerning the protection of national minorities rights included in the peace treaties signed with the defeated powers of the First World War. These provisions introduced a new variable in terms of domestic relations—that of minority rights conceived as collective rights. And this remains until today a hot issue and a point of conflict in the system. Its impact on the national sovereignty issue is one of substance, introducing an important limitation on its exercise.

Designed as a supranational body for managing international relations and the international security environment, the League of Nations was a bold attempt to lay out the functioning of international relations on new, innovative basis. The main provisions of the founder pact provided the preservation of the territorial status quo, the obligation to resolve conflicts and intrastate disputes by peaceful means, the possibility to change interstate borders through peaceful means, and collective punitive measures against states that would have contravened this code of conduct and international assumed obligations.[19] Beyond these initial provisions, the League of Nations developed an intense activity in the field of international law codification and mediation of international treaties and conventions governing the functioning of international relations system. Among the most notorious were the Kelogg-Briand Pact[20] and the Disarmament Conference.[21] However, under the auspices of the League, an ample process to clarify rules

[18] Steven Wheatley 2005.

[19] Knipping and Dietl 1997, p. 560 and next.

[20] Also known as the Paris Pact, the document signed on 27 August 1928 established the waiver by its signatories to promote war as an instrument of national policy. Colombos 1928, pp. 87–101. The pact has been applied in advance by a protocol signed between the Soviet Union and neighboring states in Moscow in 1929. Iacobescu 1988, pp. 212–220.

[21] Campus 1975, pp. 56–57.

governing the conduct of the war was pursued, an effort due to the impact that the horrors of World War I had on international public opinion and the implications of technology trends and their military technology had on the nature of military conflict and its consequences for the civilian population. Finally, the last of the essential contributions to shape the international relations system and its operation in the field of international relations was the introduction of the concept of collective security, a concept and system that were designed to overcome shortcomings of the "concert of power" that had dominated international relations of the nineteenth century and of the politics of military-political blocs that led to World War I.

Overall reform with significant implications on the international relations system, the League suffered from serious shortcomings that ultimately seriously affected its operation and made irrelevant the international covenant it was based on. The first of these was that of lack of unity of the victorious powers in its adoption and support. The most notable is the conduct of the United States, with their refusal to ratify the peace treaty system and opening the isolationist policy that presented a serious sabotage of the League's authority.[22] Then, we should note the initial exclusion and late admission of the great powers defeated to the establishment and operation of the League of Nations.[23] There was also the lack of any credible coercive means available to the League of Nations to enforce its decisions, especially in case of armed aggression against member states (the case of Abyssinia is illustrative, the Spanish civil war, also). Poorly framed and governed by the international bodies for its management, the international relations system rapidly polarized in opposing political and military blocs which undermined the system of Versailles and its instruments, among which the most important was that of the collective security.

The end of the interwar period notes the failure of the Versailles system and its crisis management tools—the League of Nations and collective security.

Under these conditions, the balance is one that, far from detracting from sovereignty, finds an increasing trend to codification and instrumentalization of national sovereignty. In the inter-war context described by the peace treaty system, sovereignty is closely linked to nation which necessarily involves the creation of a state as its beneficiary. The right to self-determination provides this, in principle, but the conceptual uncertainties and indeterminacy to the reality to which they address make them one of the biggest breeding ground of conflicts in the international relations system, especially in relation with a notorious added component—the rights of minorities.

Also, the idea of creating a supranational body to manage and regulate interstate relations, the initiatives regarding containment and settlement on the use of force or threat to use force, those regarding the increase of interstate confidence and systemic stability, collective security, together ensure a positive

[22] Steiner 2005, p. 45 and next.

[23] 1926 (Germany) and 1934 (USSR).

balance of the epoch. From this perspective, the picture that emerges is one of national sovereignty regulated in its exercise by rules and norms of conduct indicating acceptable behaviors.

Designed as the ultimate form to structure the nation and in close connection with its territorial, cultural, and linguistic limits, the state, with its defining attributes—independence, territorial integrity and national sovereignty—remains the exclusive actor of the international relations system.

Another essential component in completion of conceptual picture and of national sovereignty's way of conception is the institution of territories under mandate. A minimum acceptable level of compliance with the international norm and a capacity of self-governance are necessary for accession to independence and full exercise of national sovereignty within a given state body. Beyond the racist or imperialist connotations that we can associate with this concept and with the institution itself, it remains to be noted that the idea of sovereignty is regulated and circumscribed by a series of indicators intended to allow a good functioning of the state body.

The failure of the inter-war League of Nations experience is recorded in the early years of the First World War when its last act was to exclude the Soviet Union for aggression. The reasons that can be invoked are many.[24] Essentially, however, in determination of the Versailles system failure we believe that it was its initiators' inability to provide powerful means in order to support and impose it. These methods, however, could not have been super-state, since there were no authorities situated above the states, but interstate ones; they have all the necessary means to promote, validate, support, and impose, by consensus, some decisions aimed at conflict management and conflict prevention. Such a system, if it had been created would not have affected the sovereignty of states, but it would have only created and imposed rules for exercising it safely. After the First World War, despite Wilson's Fourteen Points, the states were not prepared for such a construction in international relations. And the great powers were prepared even less, especially those who lost the war.

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Having as a conventional triggering point the 1st of September 1939, the World War II recorded, as we have already noted, the failure of the Versailles system. The commencement of armed hostilities was the last act of a whole series of crises that undermined the international relations system. From the Rhineland crisis to Anschluss, from the German rearmament to the annexation of cadet region, from Locarno to Munich, the pressure of revisionist powers gathered in a bloc of common political and military interests was irresistible, and the response of the Western powers guaranteeing the Versailles system to repeated violations of the peace treaties provisions, beyond diplomatic protests and press statements, was

[24] Calvocoressi 1989; Gilbert and Gott 1966; for this issue, seen from the Romanian perspective, Moisiuc 1991.

almost inexistent. The peace myth obtained by slaughtering the territorial integrity of Czechoslovakia that animated the British Prime Minister Neville Chamberlain proved to be as illusory as the guarantees based on collective security offered by the League of Nations.

The impact that World War II had on the concept of national sovereignty and on the international relations system lies in the shape and intensity of the conflict, in its ideological dimension, and in the consequences pushed to the extreme of the political options dominating the conflicting parties. Anti-Semitism, as the defining feature of European fascist regimes, Japanese militarism, and especially the size of the repression and the violation of any rules of the war, and genocide, also play a crucial role in structuring the image of national sovereignty and the post-war system of international relations. The image of the post-war world was that of a system of international relations which is framed and regulated much above the interwar elements of the previous League of Nations.[25] Within this international system, states continued to retain their character of primordial actors, generating legitimacy for created or integrated international bodies and for the whole system. But an increasing tendency of codification and regulation in the field of normative international law regarding the states and their international actions is evident and very important, in terms of internal affairs. The Universal Declaration of Human Rights adopted in December 1948 in Paris,[26] the Atlantic Charter, the newly established United Nations (1945, San Francisco), served to frame the exercise of national sovereignty with the stated purpose of avoiding repetition of the abuse experience operated by the states of the Axis coalition in the years preceding and during World War II. Moreover, the emergence of the idea of universal jurisdiction for crimes against humanity, war crimes, and genocide, as well as the creation of the institution of international tribunals should be noted.[27]

In this context, transforming factors of the national sovereignty concept in the post-war years are asserted—non-governmental organizations with international influence and the human rights issues. We believe that these national or international non-governmental organizations and human rights issues will not influence substantially the change of the sovereignty concept, but they will impose certain rules of conduct to be respected by all states. Non-governmental organizations will release the governments from the aura of an obsolete and inefficient absolutism,

[25] During the war, there was organized a series of international conferences intended to the coordination of the Allies' action in the war, but also to shape the defining frameworks of the post-war international relations system. The most important, from the point of view of the consequences for the political map and the post-war shape of the international relations systems, are the Atlantic Conference (1941), Teheran (1943), Moscow (1944), Yalta (1944) and Potsdam (1945). For a large presentation of these conferences, see Loghin 1989.

[26] For the context and manner in which the Universal Declaration of the Human Rights was adopted, see Waltz 2002, pp. 437–448.

[27] On the international trials for war crimes at the end of the Second World War and the international jurisdiction applicable to war crimes, crimes against humanity and genocide as well as their consequent evolution see Meron 1995.

but generator of tensions and conflicts, and will force them to adopt a new morality in international relations, less arbitrary and less proactive. This does not diminish the sovereignty of nations, but it simply defends the individual and the community against state's abuses. But the state remains sovereign.

2.1.1 The Post-War System of International Relations

The post-war international relations system is characterized by political, military, economic, and ideological rivalry of the two great powers dominating the United Nations coalition which won the World War II—the United States and the Soviet Union. Maintaining the logic of equilibrium and balance of power (dominant in the earlier period of the international relations system), the situation created within the first post-war years which actually dominated the entire period was that of a bipolar security environment and international relations system.[28] The end result was one of the greatest periods of peace in the international system, by peace meaning the absence of a conventional military confrontation between the great powers.

During this period, the system of international relations went through several significant stages of organization and reorganization around the relations between the two poles competing for supremacy. Depending on the way of ensuring the military balance between the two dominant poles of the system, this competition goes through phases like that of "massive retaliation", "gradual escalation" and that of the "balance of terror".[29]

The post-war system of international relations had several characteristic features resulting from the particular way of ensuring a balance of power and the logic of action that dominated it. The main feature, which gave its name, was the polarization into two opposing political-military blocs. The great powers dominating the system had the ability to support materially, scientifically, and humanly, the arms race, especially in the nuclear domain. Consequently, international relations reinforced and reorganized around these two great powers that developed specific doctrine for theorizing the way of functioning and structured the relations between members of blocs which they dominated—the Brezhnev and the Sonnenfeldt doctrines.[30]

Another defining feature of international relations system was that of the apparent sense voiding of the Clausewitzian classical postulate that transformed the war in a continuation of the foreign politics of states with other means, because a confrontation between the hegemonic powers would have meant the destruction

[28] Quétel 2008, pp. 23–24.

[29] The names of the US nuclear weapons doctrines. For the detailed subject see Ryavec 1989. Calvocoressi 2000.

[30] Quetel 2008, pp. 57–68.

of human civilization. This effect of human civilization destruction was only an assumed final effect. It did not mean that war could not be a continuation of politics by violent military means, but that the effect would be disastrous for all belligerents. Because of this alleged effect, the world would have had to stop wars and military confrontations. But this did not happen. The major powers continued to improve their nuclear arsenals (even if they limited them), new weapon systems appeared and the military resources continued to be used as policy instruments, and not only as force policy ones. However, it appears that nuclear weapons were not necessarily produced to be used, but to discourage the opponent to trigger an armed conflict.[31] The glacis at the central level of the system is not seen in the absence of any armed confrontation, but rather the contrary. The Cold War was characterized by a multitude of armed confrontations, but these wars were peripheral and the intervention and confrontation between hegemonic powers was done by and against third parties (*proxy wars*).[32]

There were still controversies among historians on the Cold War division of the "guilt" for its out breaking. On the one hand, the supporters of the traditional school of thoughts believed that the USSR bore the main responsibility, by its aggressive behavior, which generated the U.S. defensive response. On the other hand, the revisionist vision insists on giving responsibility to U.S which wanted to impose its institutional preferences to the countries recently emerging from war (a good example was the Marshall Plan, and the obsession to reintroduce Western Germany into the defence architecture of the free Europe). In addition, there was also a post-revisionist vision which argued that both players had equal share of blame.[33] A remarkable voice was that of the "dean" of studies devoted to the Cold War, John Lewis Gaddis, who considered that starting the war between East and West was mainly the result of Stalin's deliberate and systematic policy to spread communism in the world, and not the legitimate defensive response of a key player as the USSR that won the war was extremely weak materially and humanly. In supporting this hypothesis, the moment of April 1945 is often invoked, when in a discussion with the Yugoslav delegation that included the famous Milovan Djilas, Stalin said: "This war is not as in the past. Whoever occupies a territory imposes his own social system as far as his army can reach".[34] In Gaddis' terms: "Would there have been a Cold War without Stalin? Perhaps. Nobody in history is indispensable. But Stalin had certain characteristics that set him off from all others in authority at the time the Cold War began. He alone pursued personal security by depriving everyone else of it: no Western leader relied on terror to the extent that he did. He alone had transformed his country into an extension of himself: no Western leader could have succeeded at such a feat, and none attempted it. He alone saw war and revolution as

[31] On the issue of the nuclear equilibrium and the stages that this equilibrium went through during the Cold War, from doctrinary and material points of view see Gaddis et al. 1999.

[32] Calvocoressi 1989, pp. 25–30.

[33] Nye 2005, pp. 107–110.

[34] Djilas 1980, p. 437.

acceptable means with which to pursue ultimate ends: no Western leader associated violence with progress to the extent that he did. (…)Did Stalin therefore seek a Cold War? The question is a little like asking: "does a fish seek water?" Suspicion, distrust, and an abiding cynicism were not only his preferred but his necessary environment; he could not function apart from it."[35]

There are other views according to which the Soviet officials would not have had a long-term strategy for Central and Eastern Europe communization, all resulting from conjuncture reactions and counterreactions.[36]

An important feature of the post-war international system was that of the collapse of colonial empires and the formation, under the doctrine of self-determination of new states in Africa and Asia. Dominating the first two decades of the Cold War, the process was at the origin of the emergence of the non-alignment movement, bringing together countries not directly linked to the political-military blocs dominating the international relations system. Constituted under the *uti possidetis* doctrine, the new states emerged on the international scene are within the territorial limits of the former colonies that do not respect the ethnic, linguistic, and local civilization configuration. Two inherent problems resulting from this reality (ethnic conflicts, territorial disputes, etc.), inherent weaknesses of the administrative, and authority infrastructure of the new states were to be added, the causes being various, from lack of trained staff to support it to corruption. The result was the outbreak of endemic conflicts and confrontations that were perpetuated throughout the period.[37]

Another feature of the period was the institutionalization and jurisdiction of human rights issues. Going through two major phases of development (1945–1966, "norm emergence" and 1965–1989, "norm cascade") this process of institutionalization of human rights in international relations became a decisive factor in restructuring concepts such as national sovereignty or national security.[38] In parallel to this line of evolution and related to it, we were witness to the emergence and establishment as actors with influence and weight in international relations system of international bodies which do not derive their legitimacy from the support of states (NGOs).[39]

Created at the end of World War II, the UN integrated the will of the United Nations coalition powers to create a coherent and stable post-war international system, equipped with bodies and mechanisms capable of ensuring the systemic management and to avoid repeating the experience of the interwar League of Nations. Its main decision-making bodies were the Security Council and the General Assembly. Particularly significant were the institutions of the UN High

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[35] Gaddis 1998, pp. 1–25.

[36] Leffler 1996, p. 122.

[37] N'Dimina-Mougala 2007, pp. 121–131.

[38] According to Koenig 2007, pp. 673–694.

[39] For the manner in which they constitute and the mechanisms by which these NGOs impose themselves, see two studies on one of the most known and influential non-governmental organisms in the field of human rights—Amnesty International: Thakur 1994 and Buchanan 2002, pp. 575–597.

Commissioner for Refugees and UN agencies with responsibilities in humanitarian aid and peacekeeping.[40]

Through its constitutive Charter, the UN was invested with the quality of sole depositary of the right to use armed force in the international relations system. In addition to regulated frameworks, the use of military force was justified and accepted only in the case of rejecting an external aggression against the concerned state. However, as a consequence of past experience of the League of Nations and in direct connection with the quality of depositary of the right to use the armed force in the systemic level, the UN had the political and military tools necessary to impose its decisions and ensure its attributes. A whole jurisprudence emerged, related to the interstate armed conflicts in the field of peacekeeping.[41]

The regional organization was becoming visible, in the reference period, as a defining element of overcoming the Westphalian type systemic constraints. The EU organization with currency, foreign and common security and defence policy, represented from an institutional perspective a positive and eloquent example of the dilution of the Westphalian system's anarchic nature.[42]

Sovereignty gained the cumulative sense of competences which states delegated to international bodies, thus undermining traditional political order based on nation-state, the latter having its ability to act in a broader political framework.

During the Cold War, national sovereignty was reviewed and reconsidered, with an important impact on how it was designed both practically and theoretically. The logic of bloc policy, international law and regional integration processes limit and frame national sovereignty which, although remains the defining attribute of the states, may be exercised, both externally and, an important fact, internally, only to certain limits determined by generally acceptable rules of behavior. It does not follow that there was no national sovereignty, but that it was exercised within limits agreed and managed by the UN. In the equation defining the emerging security environment, besides the ideological or political limitations imposed by the logic of the bipolar world order,[43] those required by the issue of fundamental human rights and regional integration processes arise.

Subject to a comprehensive process of coding in international relations in the post-war period, human rights and fundamental freedoms became some of the decisive factors in the reassessment of the national sovereignty in the international relations system. The compliance of human rights abuses and their violations

[40] International Migration Review, Special Issue *UNCHR at 50. Past, Present and Future of Refugee Assistance*, vol. 35, no. 1, 2001.

[41] Siekmann 1985.

[42] Ionescu 2005, p. 17.

[43] The case of Brejnev doctrine that connects the free exercise of national sovereignty of member states of the socialist *gulag* to the obeisance of the marxist-leninist doctrinary orthodoxy. For the analysis of this doctrine and its implications in the field of relations within the socialist *gulag* see Meissner 1970.

became, especially after the creation of the OSCE,[44] a legitimate topic of discussion and legal intervention of the international community in the internal affairs of states.

Therefore, the nation-state and its defining attributes were experiencing a substance evolution during the post-war period. The exercise of national sovereignty and the accession to it were both regulated and restricted by factors specific to the configuration of the international relations system and the hegemonic power relations of the Cold War period, but also by some systemic developments.

In the case of the latter, the human rights issues experienced, at this time, a spectacular evolution from the declarative aspect to the international law norm and functional condition in relation to the sovereign nation-state part of the international relations system.

Integrated in the national and international practice of states, the issue proved decisive in determining the political and ideological collapse of the communist bloc and the end of the Cold War.

2.1.2 End of the Cold War

The collapse of totalitarian political regimes in Eastern Europe and the whole communist system in 1989 was the result of gradual accumulation of key factors, among which the human rights issue, played a leading role.[45] This ranking does not mean other causes (economic, political, social) were not relevant, but the human rights issue played an important role in rebalancing and restructuring the security environment and the system of international relations since the end of the Cold War.

In the context described by these processes that dominated the end of the twentieth century and the beginning of the next, the issue of human rights transcended sovereignty and state actions, as to insert with full dominance in international relations.[46] In other words, this temporal threshold recorded the exceeding of the period opened by the French revolution when human rights, although subject to international regulation, had the state as the ultimate guarantor. Announced by the Universal Declaration of Human Rights in 1948, the reassessment and the imposing of this issue on the international stage was a gradual one. The turning point for this issue and its association with the free exercise of state sovereignty occurred on the occasion of the Conference for Security and Cooperation in Europe in Helsinki. The process of institutionalization that follows this moment has a dual nature. On the one hand, particularly in Western Europe,

[44] Brett 1996, pp. 668–693.

[45] In support of this assertion there are numerous studies. Among them, we quote one of the analyses on the role and place that the issue of human rights' obeisance had in shaping, structuring and founding of the contestatary and vindictive movement in the East-European communist states, belonging to Molnar 1990.

[46] Koenig 2007.

the human rights issues and their compliance became an increasingly important factor in designing and building the national security strategy of the states. This process progressed to designing human rights and their observance as a defining and discriminatory component in assessing the stability and viability of a political regime, and enforcing these rights by other states as one of the remedies in ensuring a coherent and stable security regional, and international environment.[47] On the other hand, human rights issue and their compliance became one of the destabilizing factors of the communist regimes in Eastern Europe. Together with economic, social, and political factors, human rights played a decisive role in the collapse of Eastern European totalitarian political system.

The contradictory developments that the system of international relations and international security environment met in the post-Cold War years brought the issue of human rights and sovereignty into the heart of the debate on the future of the international community and the new world order. The crisis associated with the developments that we invoke; reactivation of security risks kept under control until then, or even considered to be outdated; inter- and intra-state armed conflicts that evolved in the ex-communist space and beyond; the problems associated with the transition from a totalitarian regime and a planned economy to a democratic political regime and a market economy; the phenomenon of "weak/failed" states; the dissolution of authority, etc., all these developments sparked a whole debate on the future of the international relations system and on the place and role of the states in its new configuration in the post-Cold War years. The international community's tools and resources for managing the security environment and regulating the system of international relations have evolved themselves under the pressure of these developments; the most important changes being made in the field of crisis management—here we consider new concepts and action tools at the level of the community and international security organizations, such as "peace enforcement"[48] or "humanitarian intervention".[49]

The image that resulted from these developments was that of a relativized national sovereignty. The state, being an instrument of lawful exercise of sovereignty by the nation, saw its actions as regulated and restricted. Moreover, the very place and role that the state had in the system of international relations were conditioned and surrounded by those obligations, particularly regarding the compliance with human rights. The logical consequence of this line of evolution and this conception of national sovereignty justified intervention in the internal affairs of states in order to ensure the compliance with specific international rules. Intervention to impose and enforce universal regulations such as human rights became a function and an objective to achieve in an effort to ensure national

[47] On this veritable "diplomacy of human rights", see Badie 2002.

[48] For a presentation of the conceptual evolution of the intervention mechanisms at the disposal of the international community in the post-Cold War period, from a practical point of view, see Lebovic 2004, pp. 910–936.

[49] For a debate on this issue from the human rights perspective, see Duke 1994, pp. 25–48.

security threatened by instability and crisis posed by the states that did not comply with these regulations.

2.2 International Security in the Post-Cold War Years

Looking back, two decades after the fall of Berlin Wall, images and events that have followed represent a substantial transformation in the structure and evolution of the security environment and the international relations system. One of the most used words in connection with the events that marked the history of mankind in 1989 is *revolution*.[50]

In developing the analysis of mutations experienced by sovereignty and by its modern depositary—the nation-state—it is necessary to analyze the interdependence between the changes in coverage and the conceptual content of the national sovereignty. In this context, we follow the evolution of the system of international relations in the post-Cold War period and its determinants, namely, the existing security risks and threats to nation-state security.

The fundamental premise is that of a direct interdependence between the different meanings of national sovereignty and the evolution of the system of international relations and the security risks and threats associated with it. Depending on the perceptions and theoretical and practical developments made in the analysis and quantification of the evolutions of international relations system and associated security environment, we have as a result a range of specific risks and threats that are identified as active in the given context. The performance of states, the main actors of the system to respond to identified threats in the security context in question, represents the extent to which we may consider that they continue to hold the leading position in the international relations system, or that they are about to lose it. Hence, in relation to direct determination, we can say that this measure of performance of states in the international political scene is also the measure with which the evolution and content of sovereignty concept are quantified. In other words, to understand and explain the variety of meanings and interpretations known by the concept of sovereignty, it is imperative to associate these variations with those met by the security environment and international relations system, as well as those recorded in the security risks and threats domain.

[50] About the year 1989 and the events that marked European history and that of the world, about the fall of the Communist regimes and the disintegration of the Soviet political-military bloc, an important literature exists whose survey and review may constitute the subject of a large analysis demarche. The dimension and consequences of the transformations, in regard to what had been the bipolar political-military order of the Cold War, justified from the very beginning the utilization of the conceptual term of revolution. Ash 1990; Banac 1992; Dahrendorf 1997; Kenney 2002.

Far from covering the subject, we call on the main trends of opinion and theoretical debates that have marked the field of security studied in the last two decades in an attempt to outline the structure of these significant developments.

The rhythm of changes and the radicalism that marked the early years of the last decade of the twentieth century have made their mark in a significant manner on both the practice and the theoretical analysis of international relations and security studies. The main dominant of the new emerging security environment in this period of time was fluidity and unpredictability, characteristics attributed compared with an earlier period, that of the Cold War, to which, often, we witness a reporting as a period of lost coherence and stability.[51]

The collapse of communist regimes in Eastern Europe and the USSR, Yugoslavia's dissolution, the inter-ethnic and inter-state conflicts associated with this devolution processes, the major difficulties faced by the ex-communist states in the societal reconstruction started after the change of political and ideological regime (reconstruction aimed at building a market economy and a democratic political system and at re-imposing the values of state),[52] have contributed to the creation of a confusing picture of the emerging security environment and system of international relations. We add to these developments the related events associated with increased cross-border economic crime covering various fields of interest, from smuggling and arms trafficking, uncontrolled migration flows (especially waves of refugees that reached Western Europe from the direction of crisis or armed conflict areas), economic and political instability, etc.[53]

Also, beyond the deep and highly visible changes recorded in Eastern Europe, at the level of former strategic glacis of the political and military blocs of the Cold War, transformations in military-political strategic importance as well as reconsiderations of priorities in the economic and political action of all major actors of the international scene induce a realignment and a reconsideration of proportions in the operation of regional sub-systems and of individual states. Some of the defining characteristics of the new security environment and international relations system were enhanced; others developed as a result of these mutations. The phenomenon of

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[51] One of the first attempts to analyze this phenomenon, as well as to evaluate the coherence and validity of this perception in relation to the new security environment emerging during the post-Cold War period, belongs to Kegley and Raymond 1992, pp. 573–585. For a reiteration of the discussion at a higher level, a decade after the events, see Wohlforth 1999, pp. 5–41. The conclusions of the quoted authors indicate the existence of a reality contrary to the perceived one, the determining factors of such a perception being situated at the level of relative predictability and particularly simple conditions of an analysis/estimate of the security environment in the Cold War period, particularity deriving from the specific conditions of its structuring and evolution.

[52] For an analysis of significant evolutions of the security environment and system of international relations during the Cold War and later, analysis having as a central interest point the European continent see Judt 2008.

[53] One of the first undertakings envisaging the analysis of this evolution of the post-Cold War security environment, at the level of the European continent, belongs to the Institute for Security Studies (at that time operating under the aegis of the Western Europe Union). We can quote, from the *Chaillot Papers* series, edited by this institute, Mahncke 1993, and Gnesotto 1993.

weak states, the emergence and development of genuine non-law area characterized by non-action of the accepted international rules at the systemic level, are realities of the new international security environment in the direct lineage relationship with the above mentioned developments, with profound consequences in terms of induced systemic instability and insecurity.[54]

To these defining characteristics of the security environment of the period we add the problems resulting from the need of transformation and relocation in purpose, tasks and means of action, of international institutions required to regulate and mediate the functioning of international relations (UN, OSCE) or holding roles of first rank within the system (NATO, EU).

At a second level of analysis, we find that beyond the evolutionary-systemic unpredictability mentioned above that leaves its mark on successive transformations known by the security environment and international relations system in the first decade of post-Cold War period, there can be raised a few major lines of their evolution.

The first one is a major reconsideration of objectives and actionable ways to be recorded in the main components of the system of international relations—a gradual reconsideration upon time and determinations. We should emphasize, in this context, the remarkable development of the crucial the issue of human rights.[55] In line with this evolutionary line and responding to the endemic conflict that marks the time in question, a new vision on peace keeping and humanitarian intervention is developing.[56]

Related to these generic developments, there are institutional transformation processes redefining the relations between the main actors in international relations system.

In the UN case, the reference point of this process is *An Agenda for Peace* in 1992—a programmatic real manifesto of the institutional transformation process of the World Organization. The main coordinates of this transformation include changing the content and purpose of one of the most important functions of UN—that of peacekeeping, a function that develops in this period from the simple intervention with the parties' consent to active involvement for mediating and resolving the conflict situation, to the actual dimension of imposing the peace. That is, from a conceptual system and purely reactive implementation tools towards developing pre-emptive concepts and structures.[57] We note, however, the

[54] For the debate on the phenomenon of weak states and the consequences that the proliferation of the phenomenon entails on the security environment and on the stability and coherence of the international relations system emerging during the post-Cold War period, see Sorensen 2007; Ehrenreich Brooks 2005, pp. 1159–1196.

[55] The importance that the issue of human rights' obeisance receives in the context of the post-Cold War security environment is huge, alike to the actional dimension developed in tight relation with it. For a debate on the issue see Duke 1994, pp. 25–48; Kofi Abiew 1998, pp. 61–90.

[56] For the problem of instrumentalization of humanitarian intervention as a war pretext see Goodman 2006, pp. 107–141.

[57] Badie 2004, pp. 191–215; Lebovic 2004, pp. 910–936.

enforcing of another UN practice which was later consecrated, that of the delegation of duties and responsibilities, in individual cases, from the UN (holder of the legal monopoly right to use force in the international system) toward third parties interested and involved in crisis management processes in given cases.[58] An example is that of NATO's involvement, under the UN mandate, in the crisis management process and peace enforcement in Bosnia and Herzegovina.

This first area of analysis, however, reveals an evolving inadequacy of the UN to the new security context, inadequacy which is obvious in crisis situations such as those associated to NATO's intervention in Kosovo (1999) or, after 2001, anti-Iraqi military actions undertaken by the international antiterrorist military coalition.

NATO is another international security organization, whose post-Cold War evolution is illustrative for the dynamic known by the security environment and international relations system. The substance dislocations occurring in the international security environment have forced NATO to rethink of the purpose, means, and working structures.[59] The process in question took place, in general, during the last decade of the twentieth century, but has continued up to today. We can describe NATO in the early decade of the twentieth century, as a political and military alliance with a limited perception on the security environment and its associated risks and threats. Still containing Cold War language, the strategic concept adopted in 1991 captures this NATO photogram evolving in functional structures and logics designed to counter specific military threats coming from clearly delineated areas and directions. In this context, the survival of the most successful political-military alliance in history seemed to be a matter of months under the dissolution of its main enemies—the Warsaw Pact and the USSR—in 1991.

Adapting the Alliance to new political, military and security realities, included a notable effort of military and strategic conceptual resize, a process backed by unprecedented openness to cooperation and collaboration on all fronts. Beyond the creation of institutions for collaboration and partnership with countries from outside the alliance (North-Atlantic Cooperation Council—1991, Partnership for Peace—1994, etc.) NATO genuinely reinvented the range of policy objectives and missions in line with the new data of the international security environment.[60] Reactive at the beginning, it became, with the operations in Kosovo (1999), more pro-active, a transformation marked within the strategic concept adopted at the anniversary summit in Washington.

In parallel with these processes, the North Atlantic Alliance proceeded to an expansion and openness to new members. Started in 1995 with the publication of the study on NATO enlargement, the process has already included three widening

[58] For an analysis of the way in which this practice has developed from NATO's perspective and the undertaking by the Alliance of certain peacekeeping or peace enforcing missions under UN mandate, see Shimizu and Sandler 2002, pp. 651–668.

[59] For a survey of the evolutionary transformations of NATO, see d'Aboville 2008, pp. 91–104.

[60] Schake 1998, pp. 379–407.

major waves including, with the exception of some of the Yugoslav successor states, the whole Eastern European area.[61]

The year 2001 and the invocation of Article 5 of the Treaty by the member states in connection with the terrorist attacks against the United States, mark the passage of the North-Atlantic Alliance into a new era, that of global interests and action.[62] The presence of NATO troops in Afghanistan, the humanitarian operations in Pakistan or the U.S. (in combating the consequences of Hurricane Katrina) represent just some of the actions scoring this transformation, still in progress, and highlights the transition operated in the security concept and means of action of the Alliance towards a global approach on the international security.

The evolutionary processes recorded at two other bodies with responsibilities in the security field, major actors of the post-Cold War international relations system, namely the EU and the OSCE, complete the field of interest of our analysis. Following a similar path of reconfiguration and operational restructuring of objectives, missions and means of action, the two international organizations have registered conflicting developments in terms of results and methods. On the one hand, the EU has developed a process of institutional reform and enlargement of its operational structures, crowned by encouraging results. Despite the avatars that the configuration process of its foreign security and defense policy registered at the beginning of the new millennium, together with the ratification of the Lisbon Treaty and strengthening the integrative processes of the newly admitted in the post-Cold War years, the EU promises to be a competitive actor in the contemporary security market.[63] Having already carried out missions in the areas of conflict in the former Yugoslavia, the developments of *soft-security* in communitarian actions in crisis management and post-conflict situations are solid arguments in favor of such interpretations that transform EU in both a competition and complementary actor to NATO, in managing the contemporary security environment.[64]

On the other hand, OSCE, despite a better positioning and encouraging perspective, failed to meet expectations regarding its ability to adapt and respond to new challenges of the post-Cold War security environment and international relations. Mainly involved in conflict management in ex-Soviet space, the OSCE has failed to overcome operational frameworks of the Cold War within which it has actually appeared. Unable to obtain a substantial contribution from members for functional and coherent operation in the range of undertaken tasks, the OSCE found itself confronted with an inconvenient situation of a coverage for perpetuating the presence of Russian troops, or its re-imposing in the regions from which

[61] Jacoby 2004.

[62] Hofmann 2008, pp. 105–118.

[63] McAllister 2010, p. 15 and following.

[64] Kupchan 2009, pp. 73–85.

it had been previously obliged to withdraw (we consider here OSCE management of the frozen conflicts in the ex-Soviet space).[65]

When asked what is and what will be the post-Cold War order, the answers are diverging, covering a wide range of options, from the "triumph of the liberalism and the end of history",[66] to "emerging multi-polarity",[67] "clash of civilizations",[68] "Jihad versus McWorld"[69] or "the next anarchy".[70] A natural need to quantify and analyze the developments in the post-Cold War security environment and international relations system, the views raised above are also an expression of confusion and structural failure of achieving a consensual view among the under debate.[71]

Depending on the period of time in which it develops, and the stage in the evolution of the system of international relations and of the security environment associated with it, one or another explanatory grid can prevail. In this context, the optimism associated with the end of the Cold War period and the early years of the following epoch, the main trends of ideas within academic debate are those which analyze in terms of systemic anarchy or multi-polarity, the present and future structure of the international relations system, as well as the main acting vectors that manifest inside.[72] Beyond the horizon of the years 1991–1992, in the context of dissolution of the USSR and the re-establishment on the international agenda of conventional intra and inter-state conflicts, we witness a prevalence of the explicative option that insists on the systemic multi-polarity as an ordering reason of the emerging international relations system, an option that works in conjunction with that of globalization. The dissolution in question is considered to be induced by the emergence of new non-state actors within the international relations system, an emergence coupled with what appeared to be a growing inability of adequacy of the national state to the challenges of the new security environment and its associated determinatives.[73]

Enlargement processes of NATO and the EU in the former Soviet security *hinterland*, the active involvement of these international organizations in managing the international security environment, together with other international organizations with traditional competencies in the field such as the UN and OSCE, the transition operated in the international community practice from peacekeeping

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[65] An illustrative point of view for this issue and for the way that Russian federation managed to instrumentalize OSCE for promoting its own foreign policy and security interests: Mackinlay and Cross 2003.

[66] Fukuyama 1994.

[67] Waltz 1993, pp. 44–79.

[68] Huntington 2007.

[69] Barber 1995.

[70] Kaplan 2000.

[71] For a discussion on these theoretical visions, see Sorensen 2006, pp. 343–363.

[72] Kegley and Raymond 1992.

[73] Krasner 1995, pp. 115–151.

and conflict mediation to peace enforcement and direct involvement in finding negotiated solutions to the ongoing crisis situations, all these lead, at the end of the twentieth century, to the prevalence of another conceptual-explicative image on the international relations system. Developed in direct connection with the intervention in Kosovo (1999) and, especially, with the events associated with the terrorist attacks against the United States in September 2001, this conceptual-explicative image on the international relations system requires its structuring in an unipolar manner, under the domination of a hegemonic power represented by the United States.[74] This vision on the international relations system is justified, first, in correlation with the changes occurring in American foreign policy action after the terrorist attacks in September 2001. Favoring unilateralism and coalitions of the willing, and introducing the idea of pre-emptive action[75] in the national strategy, the American administration has provided plenty of arguments for this line of conceptual and analytical debate on the nature and future evolution of the international relations system.[76]

This vision is not, of course, a prevalent one; it coexists with a variety of explanatory approaches that offer different understandings of the analytical and conceptual development, from multi-polarity and systemic anarchy to combinations of them. In this context, the conceptual image of the post-Cold War international relations system promoted by Barry Buzan and Ole Waever in 2003 deserves to be revealed. It proposes a reconsideration of the analysis for defining the international relations system and its classification. In short, the system of international relations of the last two decades is presented as an aggregate of regional assemblies that transforms the unipolar domination from the general system level into a functional multi-polarity at a sub-system level.[77]

2.3 Toward an Extended Version of the Security Agenda

At the end of the Cold War years, the picture of security risks associated with the security environment and international relations system had more than encouraging signs of development. The main security threat of the post-war period, the risk of a nuclear war induced by the nuclear arms proliferation and the arms race,

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[74] Ikenberry 1998–1999, pp. 43–78.

[75] In relation to the pre-emptive action doctrine a whole specialty literature has been developed that might constitute the subject of a standalone analysis undertaking. See Reisman and Armstrong 2006, pp. 525–550.

[76] On the issue relating to the preemptive action doctrine and the exceptionalism induced within the domestic and foreign policy of western states by the vision on terrorism, as a main risk factor in the post September 2001 years, see Camus 2006, pp. 9–24. Mythen and Walklate 2008, pp. 221–242.

[77] Buzan and Waever 2003.

was about to be removed from the probable sphere to the potential sphere.[78] Under these conditions and changes of substance amid the communist bloc, the optimism over international security seemed to be more than justified. With the relaxation and the decrease in virulence of the military factor in the range of security threats, there is a clear trend towards widening the concerns for other categories of threats and security risks, such as the environmental ones,[79] a trend that is conjugated with introducing in the theoretical debate and practical actions of some concepts such as individual or societal security. The overall picture is that of an enlargement of the area of interest in the risk and security threats analysis, resulting in an open process of transformation and restructuring of the way to define security itself.

The analysis of Barry Buzan[80] on national and international security, analysis which is contemporary with the period under discussion, is illustrative for the new analytical and practical agenda which is required in the debate on security and associated risk factors. Going beyond the traditional preponderance of the balance of force and the military threats to national security, the security concept and the perception of the associated risks becomes a global one, practically including all the possible fields of interest—military, political, economic, societal, ecological.

Beyond this first instance, the risk factors with high potentiality and an obvious manifestation within the systemic functional plan increase in an explosive way, as the determinant elements of the new international relations system are constituted. The risk factors and the conflict areas considered benign after a latent existence of more than half a century are strongly reaffirmed within the context of the collapse of the communist political regimes and the dissolution of USSR and Yugoslavia. The intra- and inter-state conflicts in the former Yugoslavia and the separatist movements and the inter-state wars in the former Soviet Union led to the outbreak of conflicts in the European and Euro-Atlantic security area which raised the regional security issue.[81] To these, we may add the security risks and threats associated with vulnerabilities induced within the former communist states, and not only, by the transition processes and societal reform.[82]

The picture is also completed by the instability hotbeds and the institutional dissolution which occur in many Third World states or developing countries, directly included up to that moment or in the sphere of influence of the opposing political and military blocs of the Cold War.

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[78] Bilgin 2003, pp. 203–222.

[79] For a discussion on the evolution of environmental factors in the dynamics of security risks and threats in the immediate period after the end of the Cold War, see Levy 1995, pp. 35–62.

[80] Buzan 2007.

[81] Koehler and Zurcher 2003.

[82] For an analysis on the issue of post-communist transition and the associated risks, see Holmes 2004.

Abandoned and facing serious problems of internal institutions and societal cohesion, these states create a new issue, particularly virulent in terms of insecurity and instability—the one of the "weak" or "failed" states.[83]

In this context, responding to the complex evolutionary data of the security environment and the international relations system, an inventory of active risk factors included, for the first decade of the post-Cold War period, two major categories of threats—conventional and non-conventional.

Within the conventional risk factors, the analyses within the period include military conflicts with an insistence on those resulting from the state dissolution, the re-emergence of nationalism, affirmation of different separatist and centrifugal movements in the context of the weakness of the state institutions and structures, and even inter-state confrontations within open armed conflicts.[84] We add to these factors those stemming from the consequences of the transition and societal transformation experienced by the former communist states, risks covering a variety of situations and vulnerabilities associated with these processes, ranging from the decline in the standard of living and the economic crisis to the weakening of the state institutions' authority based on the inconsistencies associated with social, political, economic, and legislative reform.[85]

This list of factors is completed by religious or civilization factors.[86]

The category of non-conventional or "new" security threats includes: organized crime and transnationalization of this phenomenon; illicit trafficking of drugs, weapons, nuclear substances or chemical and biological armament; illegal migration; contraband; electronic crime; money laundering etc.[87]

The picture of these risk factors is complemented by threats and risks on the border separating the two categories above. Environmental risks, pollution, risk factors related to the emergence of new pandemics or the global expansion of those already identified, risks related to human activity and its results, fall into this third category, depending on the analysis grids used by various authors in their studies devoted to issues under discussion.[88]

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[83] Berger 2006, pp. 5–25.

[84] Haerpfer et al. 1999, pp. 989–1011.

[85] For an analysis on East-European post-communist transition and the associated vulnerabilities and risks, see Colas 2003.

[86] One of the most famous undertakings having at its core the issue of security risks in this category belongs to Huntington 2003.

[87] The specialty literature of the last two decades on this subject is an extremely vast one. We shall limit ourselves to quoting here a classical study applying this grid of reading and analysis of the European security belonging to Politi 1997, and a work extending this grid to the entire system of post-Cold War international relations by Robert Mandel, Mandel 1999.

[88] One of the works cataloging these risk factors under the label of new risk factors is the work of Elke Krahman, Krahman 2005.

The range of security risks cannot be complete without mentioning terrorism and its evolution to a universal security threat.[89] As for the security threats mentioned above, the classification of terrorism in one of the two typical categories mentioned initially varies, depending both on the criteria under discussion as well as on the time axis.

Once we pass this initial phase consisting in assessing and identifying the active or potential security risks and threats in the context of the emergence of the new security environment and post-Cold War system of international relations, an observation that is required is the evolution of the analysis grid and the hierarchy of the risk factors on two levels—national and international. Dependencies, interdependencies, and connections grow. One can only survive in a context, in solidarity and connection.

There are several major inflection points in reading the chart of security risks and threats. These are, within the two decades which separate us from the end of the Cold War, the period 1991–1992, intervention of NATO in Kosovo (1999) and the terrorist attacks against the United States of America (11 September 2001).

The first of these inflection points, the period 1991–1992, marks the separation of the so-called "classical" grid of reading the threats and security risks belonging to the Cold War era.[90] We take into consideration the transition from a state institution-centered vision and limited to areas such as the military or economic ones to a global vision on security and associated risk factors. The decisive factor in imposing this vision was the final separation from the Cold War era brought by the dissolution of the USSR and the politico-military bloc under its control. The associated conflict situations, the emergence of new security risks, the reactivation of ones considered as belonging to the past framed and determined the evolutionary process in question.

The second inflection point (Kosovo 1999) represents the triumphant imposition on the international scene of one of the major changes in the actionable philosophy governing the functioning of the international relations system—prevalence of the imperative of respecting human rights over national sovereignty. In particular, the fact that the deficit in providing respect for human rights in a given region or state can be interpreted as a security threat at a regional or international level, imposing the intervention on their behalf.

Finally, a dramatic reversal of hierarchy in the interpretative grid of the security risks was induced by the terrorist attacks against the U.S. in September 2001. The mutations that we find at the level of the international relations system both at the theoretical and practical levels are found within the risk analysis, in a disproportionate development from an analytical point of view and from the point of

[89] For an analysis on terrorism and the evolution of its role in the contemporary security balance, see Enders and Sandler 1999, pp. 147–167.

[90] To exemplify these interpretative grids we shall refer to the NATO Strategic Concept adopted in 1991 with the occasion of the Alliance's Summit in Rome, as well as to two studies by the Institute for Security Studies of the Western Europe Union of 1993: Mahncke 1993; Gnesotto 1993.

view of the importance they hold within the national and international security balance.[91]

At the end of this brief review of developments within the security environment and international relations system in the years following the end of the Cold War, of the reading grid of the inventory and security risks and threats hierarchy manifested in the international scene and the associated security balance, we can assert that the main systemic characteristics are evolutionary fluidity and unpredictability.

Beyond these general conclusions, the one that emerges is that of direct interdependence between the developments registered by the international relations system and the risk factors that are associated with these evolutionary stages, as well as between the analytical and conceptual grid used in interpreting these developments and the hierarchical preponderance of one or other of the risk factors and security threats manifested in the security environment and the international relations system.

As a fundamental attribute of the state, sovereignty shares these developments within a relationship of direct determination and the interpretation the analysts give to this phenomenon is directly dependent on the way one perceives and interprets the relationship between the state and the main evolutionary trends at international level. In this context, for an adept of globalization as an explicative principle of the developments within the international relations system within the post-Cold War period, and given the developments that a universal issue registers within the epoch (such as human rights), the relevance of sovereignty, and even of the state actor is decreasing, depending on developments such as humanitarian intervention and assertion of different non-state bodies as subjects with full rights within the international relations system.

The emergence of terrorism as a major risk factor in international relations leads to the analytical and conceptual reinterpretation of the evolutions in question, re-imposing the state sovereignty on a new analysis level in the security context established in the Western World faced with the recrudescence of this particular risk factor.

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In the years following the end of the Cold War, in the context of a substantial transformation of the security environment and international relations system, there were a number of developments likely to attract the interest of both those directly involved in the operation and management of the system as well as those specialized in its analysis and explanation. Among the most important changes that occurred, we can identify: the emergence of non-state actors within the international relations system; the emergence and affirmation of non-conventional security risks; the imposition of universal principles to regulate the international relations system, and its members' acceptable behavior.

[91] Enders and Sandler 1999; Mythen and Walklate 2008; Camus 2006.

The implications of these changes have created an image of the international relations system which is about to undergo more than a re-arrangement of relations and rules of the game at an internal level. The consequences of these developments lead, and the specialty literature accurately reflects this conceptual line, to the idea of a real revolution within the system that is focused on the dimensional rethinking of one of the system's component considered immutable: the nation-state and its attributes—the territorial integrity, independence, and national sovereignty. Moreover, the multiplication of the actor-members of the system, as well as the evolution of the risks and threats to national security and international security environment question the role and place of the state—nation within the international system.

While at the level of international practice one can easily notice that the decision makers face real problems in managing the international relations system, at the level of specialized analysis, the developments in question cause a debate that even two decades after its opening, is far from being complete. The next section aims to create an inventory of the main debate lines present within the contemporary academic world regarding the main *vectors of remodeling the state and international relations system.*

2.3.1 Non-State Actors in World Politics

Throughout history, the actors within the international system, were, in turn, human communities, the Greek city-states, ancient empires, atomized territorial structures and Middle Ages towns, pre-state formations specific to the Renaissance, and, finally, the nation-state. The attributes of the latter are currently affected by the joint action of different factors and processes which some authors claim could lead to the end of the state and transition to a universal citizenship of the individual.[92]

The socio-economic development led to strengthening of the nation-state as the main actor within the international system, as well as to the diversification of the typology of the dominant actors in the international arena. Currently, the actors within the international system are state actors—nation-states and international governmental organizations, as well as non-state actors—international non-governmental organizations (NGOs), transnational corporations, network actors—mafia-type and terrorist groups acting on a global scale.

The multiplication of actors, in general, is the logical consequence of the substance loss registered by the nation-state, through delegation of sovereignty to international and regional organizations and its concentration at the level of other actors, especially transnational corporations. The range of arguments is diverse, starting from the multiplication of the authority and power centers, reduction of

[92] Buzan et al. 1998.

states' capacity to control national economies as a result of globalization and interdependence, the inability to fully control the information and ideas due to technological and scientific revolution, and finishing with states' increased dependence on foreign natural resources.

This view is counterbalanced by the belief in the state's potential to preserve the dominant position within the international system, based on the monopoly on the legitimate use of force in order to control the internal disturbances or to respond to international crises. Obviously, only the "strong" states in the sense used by followers of the Copenhagen School, i.e., those in which societal cohesion, economic base, and administrative capacity of the institutions are at high levels, manage to ensure this monopoly, while weak states or the failed ones involuntary transfer it to sub-state or transnational groups.

The American political scientist James Rosenau in his work "*Turbulence in world politics*" classifies the actors on the world stage into sovereignty-bound (State) actors and sovereignty-free (non-state) actors.[93] The state sovereignty principle is controversial and experts frequently discuss limited or assisted sovereignty. Intergovernmental institutions such as the EU, UN, NATO adopt new regulations imposed by the new socio-economic and security realities that are generated by the overall involvement of the non-state actors. The rules are imposed on nation-states which, consequently, lose their sovereignty, while being marginalized by the influences of non-state actors and globalization.

The geostrategic and geopolitical coordinates underwent substantial changes, the bipolar world making room to a fragmented universe within which antagonisms of all categories manifest. In the above mentioned work, Rosenau defines the impact of globalization by the structural transformation of the international system, from a model centered on interstate relations to a multi-centered one in the sense of distributing the authority and power relations on several levels. Rosenau points out that the globalization process involves simultaneity and inter-causality of contradictory processes—integration versus fragmentation, centralization versus decentralization and regionalization. These biases are generating inherent tensions within the contemporary security environment. The main non-state actors of the international system (UN, NATO or the EU) have recorded progresses and failures in carrying out their missions, depending on the economic and institutional interests and capacities of the state actors. The international intergovernmental organizations have a derivative-type legal personality, not a primary one as the states do, because they result from the will of the member states. More recently, they have been in the process of reformation and adaptation to the new requirements of the post-Cold War era.

[93] Rosenau 1990.

Later, we will focus on the international organizations, the ethnic minorities and the terrorist organizations, phenomena that the geographical communities and nation-states are forced to coexist with, complicating the meaning of contemporary sovereignty.[94]

Beginning with the last decade of the twentieth century, non-governmental organizations have substantially proliferated the international relations system. A new category of transnational actors emerged on the scene of international relations that included *Freedom House* in the USA and *Médecins sans Frontières* in France, as well as international non-governmental organizations such as *Amnesty International*, *Greenpeace,* or *Human Rights Watch.* The motivations that have led to the development of this trend are political-diplomatic (NGO representation to the UN), academic (debates on the concept of global civil society), and technical (the Internet and the communications systems that favor the rapid dissemination of the information).

If the number of inter-state NGOs amounts to millions, the trans-national variant is also increasing, the goals being well defined since these entities are clearly specialized (for example human rights, minority rights, medical assistance, refugees, environmental protection, etc.). The majority aims to indirectly influence the decisions of the state actors or international organizations, by means of demonstrations, media pressure, recruitment of political leaders and opinion formers. Examples of successful involvement in global issues of public importance are those related to the conclusion of the Anti-Personnel Mine Ban Treaty and the Kyoto Protocol.[95]

There is also some concern regarding the fictitious NGOs or better said, false NGOs, funded by totalitarian regimes[96] or by groups having illegal interests, being established as elements of logistics support, recruitment of members, fund raising for organized crime, or terrorist organizations.[97]

Against a background of an unfavorable economic environment and the proliferation of international and cross-border crime, most often, among the determinant conflict factors we include the existence of mutual territorial claims both from states, as well as from different non-state actors, ethnic and religious cleavages, leaders' purposes and ambitions, or the access of the state and non-state

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[94] There are, of course, other important non-state actors such as the transnational religious groups, the transnational economic societies, trans-border organized crime groups, etc. See Strange 1996.

[95] See Nye 2009.

[96] Since the NGOs are associations created without the involvement of governments, it is clear that those established behind the scene by elements of the political power are not really what they claim to be.

[97] In the specialized literature, there is a difference between legal non-state actors and the illegal ones (terrorists, organized crime, and so on) is made. A highly raised question, for which no clear answer is given yet, is whether we can name such a group with criminal intentions as a "criminal ONG". Through its way of formation and interests which it defends, the group has the majority of the elements of an ONG. See Derek Lutterbeck, "The New Security Agenda. Transnational Organized Crime and International Security", GCSP, http://se2.dcaf.ch/…/ev_geneva_051030114_lutterbeck.ppt.

actors to military equipment. An important issue remains the peoples' right to self-determination as stipulated in the UN Charter and invoked by the compact ethnic groups engaged in the struggle for autonomy.

The example of Kosovo, together with the current realities of the areas in the southern and the northern Caucasus characterized by a complex system of ethnic stratification (in Abkhazia and South Ossetia), is more than relevant, on the background of the struggle for political and economic independence of the states, which generate tensions. The current system of international law does not allow the secession to ethnic minorities; it only allows cultural rights, because ethno-religious minority cannot be equated with a nation; only the latter can establish a new state by decolonization, in territories separated by seas and oceans from the former colonial metropolises.

Another type of non-state actor that is becoming increasingly important is transnational terrorism. The number of terrorist organizations and the target countries is continuously growing, and the violence of the used techniques became rife.[98] The terrorists and other armed groups have perfected a sophisticated way of exploiting the so-called "grey areas" where governments have little authority, where there are large quantities of arms, poor populations, corruption is widespread, and the state principles are almost non-existent (West Africa, Afghanistan, Sudan, Pakistan). Weak or even failed states become real *safe havens* for terrorist groups and organized crime. There are enough cases in which the two types of groups cooperate quite well, for example, those who sell drugs for funding terrorism. For Al-Qaeda and other terrorist organizations, the "grey areas" are real heavens to finance their activities, believing that the Western intelligence services do not have the capacity, resources or interest to track their actions in such regions.[99]

On the background of the trends manifested at the level of the state and international organizations to address the causes of terrorism proliferation and its support components (trafficking, organized crime, *safe havens*), unfortunately, prevention of different terrorist actions remains a goal. The state's means of action cannot be adapted to the dynamics of the terrorist strategies.[100]

Finally, it is important to refer to the impact of the transnational corporations on the new world order. The transnational corporation is an economic phenomenon in full dynamics representing the modern form of the multinational company, enriched with a wide range of markets and diversified strategies to conquer them. It is an economic entity consisting of a parent company and its subsidiaries in several countries, characterized by the internationalization of production, based on an international "pool" of human, material and financial resources, and promoting on a global scale a certain set of values.

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[98] Corum 2007.

[99] Butiri and Roşu 2010.

[100] Hersh 2006.

As the main agent of the contemporary economic globalization, the multinational corporations have become an economic force which is superior to many nation-states. They can create very high pressures on the states, through their financial means and the client-type inter-human network; they may corrupt politicians, and even collaborate in order to remove a hostile government (as in the famous case of Salvador Allende), and most often they lobby to change the pricing policies and to impose customs barriers to competing products.

The regional and international institutions, non-state actors (especially transnational corporations and non-governmental organizations) and even local governments use different instruments of globalization in order to reduce the monopoly power of the nation-state. A part of the power is transferred to the international stage, another part to the local level, and the rest is used by NGOs and corporations to influence national policies.

With regard to non-state actors, the dialog referring to international institutions and political, military, or economic alliances has become an integral part of the security culture. The themes refer both to the influences of the changes within the security environment on alliances and their members, as well as to the evolution scenarios of the existing alliances or to create new forms of partnerships and international cooperation. The extent of the debates was particularly determined by the military interventions in Afghanistan and the second war in the Gulf which have reinforced the view according to which there is a strong transatlantic split, with different views on the use of force still existing. The establishment of a coalition led by the US, entering into a phase of waiting for the European Security and Defence Policy, the difficulties in adopting the European Constitution are aspects that bring up the issue concerning the end of the classical alliances.

All these trends take place in conditions of globalization, a very dynamic process characterized by the increase of the interdependences between nation-states, due to the expansion and deepening of the transnational linkages into broad and diverse spheres of the economic, political, social, and cultural life. We should not eliminate the military dimension from the definition of globalization. In recent times it has particularly manifested through the fight against terrorism. For these reasons, the security of a particular area, whether it is South-East Europe or the Middle East, is inseparable from global security. Although they represent traditional forms of fighting against risks and threats to international security coming from the outside, the military alliances are still needed to eliminate the factors and sources of insecurity which are globalizing, but they seem not to be sufficient. There are required new formats of cooperation within the security community, along with traditional alliances.

Considering the fact that the transnational threats are in a continuous increase and diversification, the states question the Westphalia regulations which clearly distinguish between what is internal and what is international, finding themselves in the situation to expand their conceptions on security and defence. The new non-classical asymmetric threats to security cannot be annihilated by initiating large armed conflicts, as it is necessary to initiate international cooperation measures within the field of intelligence, in congruence with facility protection services

carried out by the private sector. The unitary approach of the new security challenges and the containment of international terrorism could lead to a return to traditional realities of the inter-state order. The evolution of new world order beyond the Westphalian system is a long-term reality which may even take centuries, since the traditional definitions of power in purely military terms are no longer valid, and the changes that occur in a world of global communications and transnational relations are practically unpredictable.

2.3.2 *Pre-Emption and Prevention: A Fatal Dichotomy?*

The Bush Doctrine, having its origins in the national security strategy of the United States of America of 2002, continues to produce multiple controversies, while the states' inherent right to individual or collective defence in case of an attack, stipulated in Article 51 of the United Nations Charter, takes the valences of a presumptive right to unilateral preventive and offensive military action. The new philosophy of the US foreign policy emphasizes the increasingly slight distinction between *pre-emption and prevention*. In practice one can hardly notice a strategic or moral difference between the two terms. A fundamental debate on the subject should not omit the humanitarian crises and the attempts to breach the states' sovereignty.

The Kosovo episode, for example, showed that there may be circumstances to safeguard the legitimacy of a military action for the sake and benefit of mankind, from this perspective, the implicit moral logic representing a genuine basis for analysis and reflection. And yet, at present, the arbitrary application of international regulations leads to debates and tendency to universalize the argumentation of the states' sovereignty according to the precedent model of Kosovo, convenient to different secessionist regions.

First, the security strategy of the European Union[101]—"A secure Europe in a better world"—identifies risks and threats similar to those within Bush doctrine,[102] namely terrorism, proliferation of weapons of mass destruction, regional conflicts, failed states, and organized crime.

Going through the two documents, we will find, in addition to similar concepts referring to asymmetric security risks and threats, the response instrument of *pre-emption*, which involves reconsidering the dichotomy between EU soft power–US hard power.[103] In fact, the concept used in the final version of the EU strategy is that of *preventive engagement* introduced mainly as a result of the insistence of

[101] *A Secure Europe in a Better World. European Security Strategy*, Brussels, 12 December 2003, http://www.consilium.europa.eu/uedocs/cmsUpload/78367.pdf.

[102] Colloquial name for the National Security Strategy of the United States promoted by the George W. Bush administration.

[103] By the concepts of "soft" and "hard" power, it is intended both the explanation of the complex approach of international relations as well as the understanding of the domestic politics.

German diplomacy. It should be mentioned, however, that the original version of the Solana Strategy, validated by the European Council of Thessaloniki in June 2003, uses the phrase ***pre-emptive engagement***.[104]

Errors of interpretation abound, as there is not an official document to provide a rigorous definition of "preventive engagement"; its military connotations significantly differ from the diplomatic ones.

It is well known that the European Union is based more on international institutions than on its own military capacity to act, emphasizing international law and ethics. However, the management of asymmetric risks and threats binds the European Union to transit from *soft* to *hard power*.

Legality and legitimacy of pre-emption is a controversial subject, to which the *security dilemma* is added—a mechanism generated by the uncertainty regarding the offensive/defensive intentions of the actors which guide themselves by this doctrine. And the pre-emption-prevention dichotomy is the very core in order to clarify the dilemma.

In the specialized literature, the most popular option is the one of acceptability of pre-emption and vehement denial of prevention.[105] If the justification of both types of military actions is based on self-defence, the substance argumentation presents distinct approaches. In short, a pre-emptive attack is carried out in order to try to reject an imminent offensive, or to gain a strategic advantage in an inevitable war, while the argumentation of the preventive war is based on a so-called prevention of a possible attack, when there is no military provocation. The attempts to separate the two concepts often relate to the strategic context and not to the purely conceptual one (academic).

Starting from the value of precedent of the *Caroline* Affair (1837), it is considered that the imminence of the aggression justifies an anticipative action, respectively, the pre-emption. It is about attacking and sinking the steamship *SS Caroline* by the British army in the waters of the United States (Niagara Falls area) because it was supplying money, food and weapons to the anti-British rebellious movement led by William Lyon Mackenzie. The negotiation of the Anglo-American bilateral treaty Webster—Ashburton (1843) established the *anticipatory self-defence* principle.[106]

A similar action carried out by the Israeli army which bombed the increments of the Iraqi nuclear plant on the outskirts of Baghdad in June 1981 represents a manifestation which is against international law. A number of eight Israeli F-16 fighter planes backed by six F-15 planes bombed the Iraqi reactor *Tammuz 1/Osirak* (French manufacturing) on the 7th of June 1981—*Operation Opera*.[107] It should be pointed

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[104] The assertion "Pre-emptive engagement can avoid more serious problems in the future…" will be replaced in the final text of the EU Security Strategy with "Preventive engagement can avoid more serious problems in the future…"—see Yost 2003.

[105] Duncan 2003; Shah 2007; Schmitt 2003.

[106] See correspondence between the American State Secretary Dan Webster and Lord Ashburton [Enclosure 1-Extract from note of April 24, 1841] in Miller 1934.

[107] Grinspan 2006; Ford 2004.

out that there are authors who consider this action to be a pre-emptive one, instead of preventive. This is a proof of the uncertainty caused by the inappropriate definition and use of the two concepts.

Referring to the post September 11, 2001 international practice, we notice that the American interventions in Afghanistan and Iraq are at the boundary between pre-emption and prevention.

In the case of Afghanistan before 2001, sovereignty was rather fictitious (legal) instead of *de facto*. The intervention of the coalition troops was to support a recognized government against an insurgency movement, aiming to prevent the recurrence of terrorist attacks. This is the reason why it had the characteristics of a pre-emptive and punitive action.

The situation in Iraq differs from the perspective of the analysis of the state sovereignty, since the state was centralized, dictatorial and without institutionalized internal opposition. The attack against Iraq is classified within the typology of preventive actions, if we take into consideration the fact that there is no clear evidence to motivate the intervention of the antiterrorist coalition. On the contrary, from the point of view of the U.S., there are undeniable elements of pre-emption, the threat caused by Iraq being seen as a short-term tangible one.

Both actions can be regarded as typical for the Cold War, respectively, intervention to change the political regime hostile to the U.S. interests.

In the case of the war between Russia and Georgia in August 2008, there are numerous interpretations regarding the responsibility of initiating the hostilities; it is practically impossible to hold responsible a single party. Commission constituted by the EU with the purpose to elucidate the causes of conflict, led by the Swiss diplomat Heidi Tagliavini, divides responsibility between the two parties[108]: Georgia initiated the conflict in an aggressive and reckless way the cycle of hostilities, while the Russian Federation breached at least two fundamental rules of international law—the prohibition on the use of force and the prohibition on providing weapons to different rebellious groups located in other states.[109]

The Georgian intervention aimed for territorial reunification in the name of state integrity and sovereignty. On the other hand, Russia invoked what later would be called *Medvedev Doctrine*—the so-called right of Russia to intervene, including by military means, to defend its own citizens in vulnerable situations in neighboring countries. In other words, Russia invoked a humanitarian disaster situation, similar to that which was raised in Kosovo.

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[108] The three volumes of the European Commission report on the causes of the Russian-Georgian war are available online since the 30th of September 2009: www.ceiig.ch/Report.html.

[109] See the provisions of Article 2, para 4 of the UN Charter, later developed through the adoption of more General Assembly Resolutions (e.g.: Resolution 3314 of 14th of December 1974 with the definition of aggression annexed to it). According to international law norms, states do not have the right to resort to armed force with an aggressive purpose, this being an imperative *erga omnes* norm of *jus cogens* type considered as being superior to the sovereign capacity of states to make their own justice.

It is clear that Russia claimed a sovereignty doctrine of quasi-imperial type, which includes the neighborhoods, affected populations that often benefited from Russian citizenship despite the will of the states they belonged to (with reference to the scandal of Russian passports granted to citizens from South Ossetia and Abkhazia).

The Russian aggressive doctrine and practice have generated from Georgia the temptation of a pre-emptive action to eliminate the harmful effects of the actions ordered by Moscow. From the Russian perspective, keeping South Ossetia and Abkhazia in its own sphere of influence, is an organic and predictable element of the famous *near neighbourhood* policy.[110] The Russian intervention was mainly defensive and punitive. The two visions (Russian and Georgian) on sovereignty and security seem to be incompatible, of zero-sum game type.

According to Ronald Asmus, former assistant to the Secretary of State Madeleine Albright during Bill Clinton's administration, the EU report is relevant to the extent to which it shows that the Russian–Georgian war is a failure of the European security system set up after the fall of the Iron Curtain, aimed at prohibiting the influence of spheres, to prevent predatory behavior of the large states and to guarantee the safety of the smaller states. The analysis believes that the object of dispute has not been overcome and that the peacekeeping mechanisms deployed in the region (EU observers) are still inadequate. Moreover, the rapid defeat of Georgia revived Russia's aspiration to the title of "superpower" after two decades of continuous decline.[111]

Anti-missile Shield: from collective defence and peaceful and defensive purposes to the green light for pre-emptive nuclear attacks

We would like to draw attention to the new orientation of the military and nuclear policy of the Russian Federation, generated by the installation of the anti-missile shield and NATO's approach to its borders. On 5th February 2010, former President Dmitry Medvedev approved the new military doctrine of the Russian Federation, according to which pre-emptive attacks against states considered to be threatening Russia's security by means of nuclear or conventional weapons are authorized.[112]

A detailed analysis of the content of the document indicates that, despite the doctrine extending the threshold of using nuclear weapons and allowing pre-emptive and even preventive attacks, the final version of the text is reasonable.[113] The Russian Federation reserves the right to use nuclear weapons only in *response* to an attack against it or its allies, with nuclear weapons or other weapons of mass destruction, or in response to an assault with conventional weapons that could

[110] The strategists at Moscow use the phrases "close proximity" or "near neighbourhood" meaning a part of Russia's sphere of influence wished to be maintained in the new world order.

[111] Asmus 2009. More details on the Russian-Georgian war are contained in the work of the same author Asmus 2010.

[112] The text of the new doctrine of the Kremlin administration is available online: http://news.kremlin.ru/ref_notes/461.

[113] See the analysis of Sokov 2010.

threaten state security. Consequently, since the military arsenal is to be used against an aggressor, the attack against the Russian state is deductible, the military reactive actions being implicitly limited to pre-emption and thus eliminating prevention. We must admit however that the situation in the field, during crisis, can radically change the declarative equation. It is clear that Moscow still relies upon its nuclear arsenal, while the conventional army is poorly equipped and upgraded. A positive aspect of the new version of the military doctrine is that the documents do not provide the use of nuclear weapons in regional conflicts, especially since this issue had been seriously discussed within the Russian political-military circles.[114]

It is difficult to predict the countermeasures that Russia might take in response to the implementation of some elements of the U.S. antimissile shield in Romania. The interpretation, according to which Romania is threatened to become the target of pre-emptive missile attacks launched by Russia, is far-fetched, given the political realities that lead logically to the exclusion of the offensive purpose of the American project and the stability benefits from the perspective of the democratic development of our country. And yet, the fact that pre-emption becomes more and more obvious within the military strategies of the major international actors, the absence of clear criteria for legitimizing the interventions leads to the desuetude of its exceptional character.

The practice and custom have not created the law. Ambiguous boundaries between pre-emption and prevention will no longer be relevant in the scenario of a nuclear attack and its disastrous outcomes. Its up to history to decide whether this hypothesis should be checked in order to clarify once and for all what is an imminent attack and what can legitimately be considered as an act of self-defence in international relations.

The preliminary version of Romania's national security strategy, released in late February 2006, contained the phrase *pre-emptive action*, but eventually it was excluded from the final text, being considered an unclear formulation from the point of view of concept and terminology, as the term "pre-emptive" is not a Romanian neologism.

In May 2010, the Obama Administration launched a new U.S. national security strategy which restricts the concept of pre-emptive war of former President Bush. The document, available on the White House website,[115] is the echo of the appetency for the use of the phrase "smart power"[116] in the U.S. election race and makes official the intention of President Barack Obama to insist on multilateral diplomacy rather than on military force.

In conclusion, the philosophy of preventive/pre-emptive actions, although controversial, suggests the need to conceptualize again classical sovereignty

[114] According to the interview granted in October 2009 by Nikolai Patrushev, chief of the Security Council of the Russian Federation; see Sokov 2010.

[115] http://www.whitehouse.gov/sites/default/files/rss_viewer/national_security_strategy.pdf

[116] See Nye 2006.

defined according to the Westphalia coordinates, designing a strategic vision molded on the structural constants of the new strategic environment (weapons of mass destruction, terrorism, weak and failed states). Beyond the notional dispute, what is relevant is the use of pre-emption and prevention, specifically the practice of legality, legitimacy and effectiveness of intervention. Today, the maintenance of international security requires states to prevent crises by acting, sometimes anticipatory, and not just reacting in the aftermath of the events.

2.3.3 Traditional Alliances Versus Coalitions of the Willing

The attention paid to alliances over time derives from the complexity of the phenomenon itself, as they are the most common and conventional means of defence of the state in an anarchic society.

Defining the alliances led to a series of disputes between various authors and analysts in International Relations. In general, the alliance is defined as a promise of mutual military assistance between two or more sovereign states,[117] in other words a formal or informal agreement that provides the security/defence cooperation between two or more states. Without exhausting the descriptive analysis tools, we retain the definition proposed by Glenn Snyder, who considers an alliance as a formal association of states which provides the use of military force or preventing this use, in specified conditions and against some countries which are not part of the alliance.[118]

Alliances, especially military ones, are usually the result of the conclusion of a treaty containing specific terms of engagement, an aspect that clearly differentiates them from collective security organizations, which despite the formal character, do not specify in their constitutive act the obligation to intervene of all participants in case of an aggression and, often, their actual contributions. The fundamental difference between an alliance and a collective security pact is that the treaty of alliance is motivated by the presence of a common enemy (rival), well identified by the states that accomplice, while collective security concerns the potential opponents of the status quo and requires the solidarity of the whole group against military threats from some states which are not members.

Alliances can be defensive or offensive, but collective security pacts are strictly defensive. Also, alliances may be informal, tacit, even secret, while the security pact should be institutionalized. The UN-NATO parallel is relevant in this context, NATO being a classic example of an alliance with fundamental military purposes trying to maximize security, and the UN being the main global collective security organization. However, NATO is also considered a collective defence pact among

[117] Wolfers 1968, p. 268.

[118] Snyder 1997, p. 36.

its members. All NATO's official statements reaffirm the need to strengthen the collective defence and security.[119]

The mutuality and political character, shown at least at a secondary level, are the defining characteristics of an alliance defined on its classic coordinates.

The theorization of the policy of alliances has three central pillars: the balance of power (classical realism)[120]; the balance of threats, developed by Stephen Walt in *The Origins of Alliances*[121]; and the balance of interests promoted by Randall Schweller in his paper entitled *Deadly Imbalances.*[122] Each model focuses on the element considered pivotal in the process of creating the alliance, along with other defining factors such as the relative powers of the states or the compatibility degree of their interests.

The typology is extremely broad. In the specialized literature we find a lot of classifications, according to the character of the alliance (formal vs. informal), directions in which the allies assume their commitments (unilateral, bilateral or multilateral), the power of the states (symmetric and asymmetric), purpose (offensive or defensive), duration (permanent or ad hoc), the moment of establishment (during peace or war time), etc.[123]

The evolution of alliances over time is fascinating, intimately linked to the balance of power as a multi-polar system. Alliances are forged and dissolved for similar reasons. In general, states have ceased allying due to considerations related to their national security. The change of ideology and political system is a crucial motivation in the process.

For example, the alliance system created by Bismarck, resisted for a long time due to the stability of the emerged balance of power system and an appropriate management of occasional crises and conflicts. The successive leaders proved unable to keep conflicts away from Germany (as Bismarck had done by encouraging French colonial adventures on the African continent), so that the system of alliances could not be saved. The German policymakers before 1914 allowed alliances to decline and tensions to increase. The Kaiser allowed Russia to form an alliance with France and, later with Britain, which led to the transformation of a fluid and multi-polar system of alliances, into two blocs of alliances with dangerous consequences for the European security.[124]

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[119] Anastasios Valvis, "NATO: From collective defence to collective security. And the debate goes on." http://www.worldsecuritynetwork.com/special/anastasios14153.pdf.

[120] Hans Morgenthau is a representative of this approach. See Morgenthau 1967.

[121] Walt 1990.

[122] Schweller 1998.

[123] Snyder 1991, p. 130.

[124] Nye 2009, pp. 71–72.

In order to define alliances we need to make an appeal to theory. A theory is "a system of interconnected abstract ideas that resizes and organizes the knowledge about the social world",[125] and explains from a certain point of view the way world works.

There is a clear opposition between the realist and institutional theory about the role of international organizations on the world scene and, implicitly, that of alliances.

Realists argue that institutions play a marginal role, as they rather reflect the manner in which the power is internationally divided; they are a projection of the decisions taken by the most important state actors. Institutionalists argue that organizations can influence the behavior of the state actors and reduce the propensity for states to go to war. According to realists, states use institutions to act globally. The states set up and take part in institutions in order to maintain or increase their power.

Mearsheimer considers that institutions have little influence over state actors and their ability to ensure peace is reduced.[126]

According to the realist vision, states are in a constant state of competition and the break out of conflict is always possible. The anarchical system of states does not mean disorder, but competition for security and power. States cannot trust the intentions of others countries, they act rationally to preserve their sovereignty, but because the information they possess is inaccurate, they may make mistakes. Thus, states may have a defensive attitude, but the structure of the international system and the fact that they intend to survive determine them to adopt an offensive position.[127] According to realists, there is no higher authority able to protect states from dangers.[128] Each state aspires to posses the most feared military power because in this way they ensure their survival in an international system fraught with danger. Cooperation in a realistic world is even less possible if the countries think of the benefit of others, as they will no longer have absolute gains, but relative ones. Also, cooperation is inhibited by states' fear of being cheated. All realists argue that institutions are created by the most influential states in order to maintain or increase their power, and the logic of balance of power determines the states to cooperate with each other, forming alliances in order to face common enemies.[129] Unlike the collective security pact, the members of an alliance are obliged to intervene if one of the signatory states of the treaty is attacked by a "designated" enemy, by providing military support. Collective security refers to a hypothetical enemy.

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[125] Galtung 1970, p. 37.

[126] See Morgenthau 2007, p. 582.

[127] Ibidem, p. 585.

[128] Ibidem, p. 586.

[129] Ibidem, p. 588.

Also, alliances distinguish themselves from collective defence organizations, as within the scope of the latter, the states share a common set of values, while the alliance states generally have only common interests.

Compared to realists, liberal institutionalists defend human nature as being positive, the international policy development, its progress rather than the cyclical chain. All liberals support the development of international organizations as a means of strengthening global peace. Peace derives not from the logic of the balance of power, but from the observance of the law or of the principles promoted by international organizations. International liberalism emerged mainly as a reaction to the disasters of World War I.

The theory of collective security is an institutional theory which supports the renouncement of force as a means of preserving the status quo. If an actor of the international scene infringes the peace, he will have to cope with collective action of the other states that will interfere in order to punish him and restore peace. What the theory does not explain is the manner in which states overcome their fears when cooperating. Realists point to the distrust in others' intentions, precisely because states have offensive military capabilities.[130] In fact, offensive realists consider weapons to be ambivalent and the difference between "offensive versus defensive weapons" to be a very relative one. In one form or another, collective security accepts the existence of war, distrusts in others' intentions, and suggests for states to defend themselves when there is a potential aggressor.

Within the post September 11, 2001 security environment, one must carefully analyze the actions of NATO, as well as one of the most successful stories about the global war against terrorism—the "coalition of the willing". This coalition has acquired historic significance, being the most powerful coalition ever built up.

The Afghanistan and Iraq tests are the cornerstones of the Alliance's transformation and the obstacles explain drawing the attention of the international community by the coalitions of states phenomenon (generically called coalitions of the willing) able to perform stabilization and post-conflict management tasks. The George W. Bush administration preferred coalitions of willing since they provided flexibility, reduced time for training and decision making and reduced opposition from other countries against U.S. plans. Let us remember that France, Germany, Belgium, and Turkey opposed the U.S. plans to attack Iraq in 2003, although they are members of NATO.

President Barack Obama has a different view from that of his predecessors, by recognizing America's inability to cope and to manage alone the security challenges of this century. In his speeches, Obama insists on the need to strengthen old alliances and establish new partnerships, stronger international institutions and standards.

There are experts in strategic studies who have noticed a strong tendency towards the "end" of alliances worldwide. Despite its overwhelming military advantage (effect of the Revolution in Military Affairs), the U.S. realized that

[130] Ibidem, p. 595.

they cannot dispense with allies (partners) in order to carry out highly complex tasks such as those in Iraq or Afghanistan. The decline of alliances at global level could be beneficial because it would decrease the possibility to form potentially wary rival alliances. Once formed, flexible and short-term coalitions will have to fight against new unconventional risks, manage asymmetrical conflicts which involve fighting terrorists, insurgencies (the so-called "fourth generation warfare") and post-conflict consolidation of some failed states.[131]

The new National Security Strategy of the United States in May 2010 suggests entirely this approach, arguing that alliances are force multipliers, and through multinational cooperation and coordination, the impact of U.S. actions is always higher.[132] But current realities indicate a real impasse in the implementation of these stated intentions.

After World War I, the alliances formed by the United States were designed to counter the expansion of Eurasia's superpower in Western Europe, the Middle East and East Asia. All dealt with a real threat due to which states agreed to pool their security efforts, depending of course on the specific geographical areas of responsibility. Washington was the center of this system of regional alliances. Geographical limitations (for NATO) represented a weakness of the United States pledge to stop the expansion of pro-Soviet regimes in Asia and Africa.

Since the end of the Cold War, politicians in Washington have tried, with limited success, to transform Cold War alliances in the post-Cold War partnerships capable and willing to share the burden of global security missions. New members of NATO and aspiring ones have found that their direct involvement in supporting U.S. operations in Iraq or Afghanistan will be considered, in the long term, as an investment for the continuation of the U.S. interest in their own security.

NATO continues to operate with the concept of "out of area" missions and the new strategic concept seeks to preserve this status quo. In part, it achieves this by connecting global missions to defending vital Euro-Atlantic interests. The current U.S. security strategy retains the same semantic connotations stating that NATO should be able to address "the full range of twenty-first century challenges, while serving as a foundation of European security".[133]

Unfortunately, in the past this approach has not led to a fair European commitment. For example, the troop contributions for the International Security Assistance Force (ISAF) in Afghanistan indicate major differences, the United States being by far the largest contributor with more than 60 %.

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[131] Menon 2003.

[132] See Section III *Advancing our Interests—Ensure Strong Alliances;* http://www.whitehouse.gov/sites/default/files/rss_viewer/national_security_strategy.pdf.

[133] Section III *Advancing our Interests—Ensure Strong Alliances*, ["*We are committed to ensuring that NATO is able to address the full range of 21st century challenges, while serving as a foundation of European security.*"].

In these circumstances, NATO can continue to serve as a viable compromise solution, but it is unlikely that the Alliance will ever cover the role wanted by Washington. However, as long as NATO continues to be regarded as the favorite U.S. alliance (alliance of choice), the establishment of a new global security-oriented organization is more difficult.

According to the American psycho-sociologist Amitai Etzioni, founder of the communitarian movement,[134] the parameters of such new global security authority should include aspects such as: commitment and interest of states to define global security, their desire to contribute proportionally, based on the size of the state and its economic potential and, last but not least, a simplified decision-making system for rapid deployment of troops.[135]

Amitai Etzioni presents the formation of international communities by taking into account the role of power and argues that "a new community is formed when a nation stronger than another potential member from the system guides the process of unification".[136]

Currently, however, there are no signs of interest regarding the articulation of a new security treaty. Emerging powers such as India and Brazil could be interested in playing a global role, even being prepared to actively contribute, but not if the current international order is seen as being contrary to their national interests. Moreover, the United States is reluctant in sharing the decision-making process with other countries, especially after the military experience during the war in Kosovo, as well as after the frictions regarding the engagement rules between different allied forces in Afghanistan.

Ironically, given the stigma the democrats brought to the concept of "coalitions of the willing" promoted by the Bush administration, the way ahead may be just the development of this concept as a way to build up discreet partnerships with certain countries, taking into account the criteria clearly defined from a geographical and strategical point of view.

The likelihood of Brazil, France, India, and Nigeria meeting under the umbrella of a global NATO is virtually nill. But there is also the scenario of establishing some dedicated official organizations—designed, for instance, to combat the piracy in the Western Indian Ocean, instead of using an ad hoc coalition. These actions would have the advantage of enhanced working relationships and greater interoperability, without the involvement of participating members following the model of the famous Article V of the North Atlantic Treaty.

However, Washington's policy still aims at a single organization willing and able to assume responsibility for the full range of security challenges. And, although President Obama calls for external support in overcoming the new global security challenges, his optimistic expectations contrast, disproportionately, with an offer increasingly lower.

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[134] Etzioni 1995.

[135] Etzioni 2004.

[136] Etzioni 1969, p. 348.

Therefore, NATO is considered the most successful and most powerful political-military alliance in history, but this happens in an era in which the alliances phenomenon is clearly declining. Nuclear weapons, regional or global ambitions of Russia, China, India, asymmetrical economic relations, political and military tensions between states, the proliferation of transnational non-state actors, globalization, transnational effects of global warming, pollution, pandemics, etc.—all these phenomena call into question the sovereignty of states and their actual effectiveness. On this background, it is likely that alliances become an increasingly rare phenomenon and even more marginal, especially since America, as already stated, clearly prefers coalitions of the willing, these informal alignments that do not involve so many costs, restrictions, and responsibilities to allies. Dominant alliance patterns have changed considerably in the years after the Cold War.

NATO remains an important actor on the scene, managing to successfully implement new types of missions (peacekeeping, post-conflict reconstruction, humanitarian intervention, counterterrorism operations, natural disaster prevention and management, etc.), but its role as a military alliance is seriously put into question since the interventions of the U.S. and their allies in Afghanistan and Iraq. U.S. preference for coalitions of the willing is easily explainable in terms of bureaucratic obstacles that have delayed the intervention—sine qua non consensus in the North Atlantic Council and the risk of rejecting votes from some European countries, without taking into account the gap between the European and American forces in terms of military equipment.

But it is clear that, despite the extraordinary military advantage enjoyed by the Unites States (effect of the Revolution in Military Affairs), they still need allies (partners) to manage difficult situations, and the US foreign and security policy guidelines clearly point to this conclusion.

The end of alliances has an optimistic interpretation too. If the U.S. does not need permanent allies, but only ad hoc partners bound by values, visions, common interests, and historical affinities, then the world could be more peaceful and more relaxed, because it will decrease the likelihood of rival alliances and extreme exacerbation of the security stakes. The established coalitions will have to fight against new unconventional risks and manage asymmetric conflicts. And yet, it has not excluded the possibility according to which, when the power of America is significantly reduced, moving toward multi-polarity, it will seek again firm and symmetrical political and military alliances to counter the rivals.

Given the above, the legitimate question one may ask is whether the statistical decrease in the number of global alliances and the tendency to prefer coalitions of the willing corresponds to the Westphalian system of sovereignty or the post-Westphalian one. Political-military alliances are, of course, a preferred formula for states to maximize their power and security, fitting perfectly into the Westphalian pattern—preserving the sovereignty as decisional autonomy, the defence of the nation and territory.

The current coalitions of the willing, more flexible and less durable forms of association between states, has purposes restricted by the interests of the hegemonic actor who promotes them and who does not want to be bound by specific rigid constraints of alliances.

When it comes to changing a political regime (the case of Iraq in 2003) or for humanitarian purposes, and the interventions do not aim clear political, economic, and strategic gains, but rather the triumph of principles and rules, we can say that we deal with the post-Westphalian logic; to be mentioned however that it is possible to identify certain strategic interests even behind the stated generous goals. In 2002–2003, the statement of former U.S. Secretary of Defence, Donald Rumsfeld, according to which Europe would be divided into an "old" and a "new" part in relation to the UN system to legitimize the military intervention in case of aggression, caused many conflicting debates.[137] On the one hand, the Westphalian sovereignty supporters are consistent to literally interpreting the UN Charter, while the "Bush Doctrine" supporters in the U.S. and "New Europe" consider that the classical interpretation is obsolete, and new non-traditional asymmetric threats require rapid intervention by a simplified agreement between the concerned states. In other words, the effectiveness of a coalition of the willing will prevail over the UN legality.

If we consider that the restrictions imposed by the UN Charter on Member States regarding the use of force (restrictions voluntarily accepted by states in the common benefit) is a post-Westphalian evolution, the current tendency to elude UN restrictions in the fight against asymmetric actors (implicitly against the states that support and shelter them) could be seen as a setback to the Westphalian era before the League of Nations.

The future does not seem predictable when it comes to alliances and state coalitions, so foreign policy and security decision makers must be able to operate the strategic planning, having at their disposal a wider range of alternative scenarios. When seeking to enforce policies that support certain values, such as the defence of liberal regimes or responsibility to protect, to act through international institutions and alliances must be a priority for the United States and other states. But a common position and a consensus are needed. The success will result from the ability to act through alliances and institutions, while ensuring that these organizations remain effective. The United States is now in a position to demand more from its allies and alliances, while sustaining a plea to reform and strengthen the existing institutions.

[137] Levy et al. 2005, p. 31.

2.3.4 The Sovereignty of Failed States

In the 1990s, followers of the Copenhagen School promoted the broadening of the research agenda in the field of security by including themes regarding non-state actors or of psycho-sociological type items such as: identity, beliefs and values.[138]

Countries classified as "weak" and "failing" have gained primary strategic relevance in the context of the international system successor to the bipolar world. The events of 11 September 2001 have reinforced a new reality according to which, socio-political and identity cohesion, as well as the ability of governments to effectively control the territory and to impose the population to comply with the laws, become obsolete features of the nation-state in its modern Westphalian meaning.

The last security strategy of the United States of America, published in 2010, states that national security interests are still threatened by the so-called "failing states".[139] Similarly, the European Union's Security Strategy identifies the failing state as the primary threat to the international community's security, together with international terrorism, proliferation of weapons of mass destruction, regional conflicts, and organized crime.

It is alarming that the number of these states is increasing, bringing them to control developments within their own national territory and threaten international peace and security, especially because of their potential operational base for international terrorist networks.

The export of instability in neighboring regions inevitably occurs through these endemic vectors, promoters of regional conflicts and international terrorist networks, hence the prevalent notion of *globalization of insecurity*.

The essential focus of the responsible international community has migrated gradually from areas where power was concentrated to areas characterized by a power vacuum. External interventions are often a clue to state bankruptcy, but the hypothesis of creating the premises of such a bankruptcy is not excluded either. The fact is that a failed state is generally subject to the limitation of its sovereignty,

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[138] The representatives of the Copenhagen School—Barry Buzan, Ole Waever, and Jaap de Wilde—are adepts of the enlargement of the sphere for defining security. In response to the accusations brought by traditionalists, who stated that this new model is incoherent, the representatives of the School offer a constructivist operational method, that implies, on one hand the incorporation of traditionalist principles and, on the other hand, the elimination of the artificial frontier between security and economy and the proposal of some new modes of studying the inter-relations of the domains of social life. Security is defined depending on the perception of threat to the existence of a reference object that is strongly valorised. It is part of a vast assemblage that may include: non-state actors, abstract principles and even nature itself. Also, the source of the threat can be identified in aggressive states, negative social tendencies or in cultural diversity. As a consequence, within the conception of the Copenhagen School, threats can manifest in a variety of political contexts or domains of life: political, economical, military, cultural, demographic, ecological, etc. See Weaver et al. 1993.

[139] See "*The Strategic Environment—The World as it is";* http://www.whitehouse.gov/sites/default/files/rss_viewer/national_security_strategy.pdf.

by economic, political, or military sanctions including the presence of foreign military forces on its national territory.

World renowned institutions have identified the number of these states, depending on certain economic, social, political and military parameters. The World Bank has identified about 30 low-income countries, the UK Department for International Development 46 fragile states, and the CIA nominates 20 failed states. Also, using 12 economic, social, military and political indicators, the Fund for Peace, an independent research organization, and Foreign Policy drew up a list of 60 countries vulnerable to violent internal conflicts.[140] The figures show the disorder characteristic to the twenty-first Century and demonstrate that the problem posed by weak and failed states is much worse; about two billion people live in insecure states, countries with a high degree of vulnerability to the emergence of an extended civil conflict.

In the post-Cold War years, many Western countries have shown a willingness to actively intervene in order to stop internal conflicts in other states, civil wars, hunger, and the proliferation of weapons of mass destruction or terrorism. Humanitarian interventions, although controversial from a strategic and geopolitical point of view, are a crucial reality of the contemporary security environment. Insured protectorates, even temporarily, by the West, as the early colonialism model, find their echo in the hope of normalizing the critical situation that the weak states face.[141] This humanitarian intervention has been reinforced, despite numerous legal and ethical obstacles. We refer primarily to the legality of the use of force, especially when a sovereign state is concerned, but also the morality of fighting violence with violence.

World public opinion now see the Kosovo and South Ossetia episodes in the mirror, as examples of changing the Helsinki territorial status quo, even though the parallelism is exacerbated—NATO did not instigate separatism, nor provoked Serbia through actions performed at border, compared with Moscow's conduct in South Ossetia with Georgia.

Statehood's destiny is put to the test by the generalization of humanitarian intervention practices and related abuses. Legal and moral arguments lose their consistency on the "hard" force background, which does nothing else but to change the rules of the Westphalian game—sovereignty and non-interference in internal affairs of states.

A pessimistic scenario of evolution might be the proliferation of microstates which are nonviable from security and economic points of view, doubled by a greater intervention effort from the West.

The export of democracy and rule of law in countries from Africa or Asia through humanitarian reconstruction efforts supported by the West often leads to aggravation of ethnic tensions. Nation-state building networks did not produce

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[140] Petrescu 2008.

[141] In the specialized literature the phrase "neo-trusteeship" is used to designate these protectorates of the West: see Fearon and Laitin 2004, pp. 5–43.

miraculous changes, the division between theory and practice being conclusive for the setbacks in the state's attempt to preserve its borders and diverse ethno-religious identities of different populations. And the worst forms of conflict that burden the destiny of weak states are the ethnic ones, Slobodan Milošević being an example for the use of ethnic myths in the process of legitimating political power.

In light of humanitarian disasters from starvation to systematic policies of genocide and ethnic cleansing, the doctrine of the sovereign state based on Westphalian coordinates tends to erode. The "out-of-law" states continue to evade international control, avoiding showing that they are no imminent threat to global security. Lack of cooperation inevitably leads to concerted repressive actions by some states or coalitions of states to avoid crises that may threaten the entire international community, through their "spill over" effect.

At present, sovereignty is directly linked to the concept of responsibility, involving a series of obligations for the entire international community and defining a new principle of international relations' management, aimed at ensuring a security and welfare standard that is socially equitable.

International consensus on humanitarian intervention is met when two main criteria coexist: first, development or anticipation of a massive loss of human beings, as a result of deliberate state politics, state negligence, inability to act or state failure; and second, development or anticipation of systematic politics concerning ethnic cleansing through murder, terror, rape, or forced expulsion.[142]

The inability of the failing states to turn their nominal sovereignty into effective governance requires the involvement of international community through coercive means, so that the political control and regional stabilization are restored. It is desirable for the interfered measures to have anticipatory and preventive features, a philosophy based on the dynamic and uncontrollable nature of the new non-traditional asymmetric threats. "Preventive engagement"[143] under the EU Security Strategy can be considered a genuine review of the classical "self defence" concept, in the context of new security circumstances where defense is equivalent to the involvement in "out of area" international crisis management. State failing is spread by the negligence of international community, the case of West Africa being more than eloquent in this regard.

As a consequence, we have a new emerging principle in the system, namely the responsibility to prevent, aimed directly at the states lying outside the international normative framework and defying the rules of public international law. It is a collective responsibility with the international community itself as its subject—**"***a collective duty to prevent nations without internal checks on their power from acquiring or using WMD*".[144]

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[142] Evans and Sahnoun 2002, p. 103.

[143] European Security Strategy, 12 December 2003, http://europa-en-un.org/articles/en/article-3085-en.htm.

[144] Feinstein and Slaughter 2004, p. 26.

Reinventing sovereignty focuses on the coordinates of the idea of responsibility—responsibility to protect, doubled by the responsibility to prevent—both involving imputable commitments to the international community. Reconsidering classical sovereignty based on Westphalian values defines the actual policy making aimed at managing the current international system. To know and discover the appropriate policy-making capable of facing these developments and threats represents the major question that concerns the entire international community confronted with major security threats of no precedent in the world history.

It is obvious that the actual security challenges (endemic instability defining states such as the Balkans, Africa or Middle East) cannot be managed effectively without strategic partnerships with solid institutional basis. The general trend is to advocate an integration doctrine to support the creation of multilateral formats of cooperation focussed on the immediate threat of the failing states, the proliferation of weapons of mass destruction and international terrorism. The main pillar of this doctrine is to articulate a legal international framework able to define strict and clear rules, even core principles, as an attempt to regulate and rule for the mutual benefit of international society's members.

To respond effectively to the strategic environment after September, 11, 2001, international society should develop functional skills to interfere in the failed areas, aiming at dealing with severe insecurity conditions and, more importantly, at setting up "rule of law" temporary mechanisms able to control and manage these anarchic areas.

Tracing some efficient strategies of *institution building* is considered to be essential in building an international community capable of complex enforcement actions. To increase the potential of crisis management implies a planned effort of institutional engineering using soft power and hard power so as to create a balanced arrangement cored on *burden sharing* between actors capable to acting to stabilize the security environment.

Sovereignty is no longer a sanctuary; it is increasingly weak due to the need to responde to security threats. Both the U.S. and worldwide response to terrorism confirm this thesis. The Afghanistan's Taliban government, which supported Al-Qaeda, was removed from power. Similarly, the U.S. preventive war against Iraq—a country that ignored the UN and that was considered to possess weapons of mass destruction—proved that sovereignty no longer offers absolute protection. Reducing or even eliminating sovereignty becomes possible when a government is unable to meet its citizens' basic needs, even consciously. The states intervene not only because of their own ethical scruples and principles, but also because failed states and genocides lead to massive destabilizing waves of refugees and create new opportunities for terrorists.

While NATO's intervention in Kosovo to stop ethnic cleansing and genocide is an eloquent example of certain states choosing to "violate" the sovereignty of another state (Serbia), the genocide in Rwanda or Sudan demonstrate the cost of upholding the inviolability of sovereignty.[145]

Stephen Krasner's thesis according to which traditional sovereignty, defined as the mixture between international legal sovereignty (where states do recognize each other) and Westphalian sovereignty (states do not violate other states' territory and do not involve in other states' internal affairs), would stop functioning is becoming increasingly significant. And all of this happens because in many countries, the central authority is collapsing, as weapons of mass destruction have become more easily available, as there are non-governed areas (Pakistani-Afghan border or that of Brazil, Paraguay and Argentina), or furthermore, some governments operate inefficiently and tend to violate human rights.

The range of solutions adopted for solving the problems related to the weakening of traditional sovereignty and for the weak and failed states include multiple measures: political and economic support; the change by force of dangerous political regimes; reform of international institutions, etc. It is relevant to the strong relationship between sovereignty, autonomy and intervention, being reducible to the reformation of the international Westphalian system based on sovereign nation-states.

2.4 Conclusions

The break-up point marked by the years 1989–1991, the collapse of communist regimes and the post-world war order are reflected by the initiation of a huge debate about the emergence of a new political, economic, legal, and military structure inside a security environment system and international relations in full reorganization process.

The new political and military realities, the emergence of some security risks, and threats considered to be obsolete, the emergence of other new ones, the inexorable march of globalization with its peak point in the information revolution, problems such as terrorism or the observance of human rights, all led to an urgent need for information, conceptualization, and prediction. Trying to meet these challenges, the academic community has developed a series of concepts covering guidance and vision on the international relations system and its components, with prime focus on the nation-state and its avatars faced in the post-Cold War period.

[145] From a post-Westphalian perspective, the bombing of Yugoslavia (of Serbia) does not represent a violation of sovereignty but an aerial attack to impose a certain behavior, as it happens in any war. But no one interfered within the internal affairs of Serbia, no one took over the attributes of Serbian state leadership, even though, in the end, this intervention led to the detachment of the Kosovo province from Serbia. To impose behavior is one thing and the deprivation of a state from its own sovereignty is a totally different thing.

One of the concepts focuses on globalization and its significant impact. Nation-state is considered to be an outdated reality, relevant only in the old Westphalian logic of structuring the international relations' system and its functioning. The opposite direction sees the nation-state as an immutable reality of the international relations system. Its followers frame the current developments of the nation-state, including those registered at the systemic level, within the classic lines of analysis regarding the balance of power, emergence and action aimed at satisfying the national interests of the system's constituent actors. Such an approach deplores the abuses committed in the system by the U.S. hegemonic power and theorizes on the state and its defining attributes.

Many interpretations and analyses are placed within these two directions. Recent developments in the Black Sea area, the military and political action of the Russian Federation directed against Georgia, the speech used by Moscow aimed to substantiate and justify this action, and also resultant events relied on short- and medium-term regional and international security, represent a final and relevant step in a long evolutionary process lasting more than a century and suggests a new action philosophy structuring the international relations system. Thus, the nation-state with its fundamental attributes—sovereignty, territorial integrity, and political independence—starts to lose its relevance in favor of different components of the system such as non-governmental organizations with a domestic, regional, or international orientation. The process is an accumulative one in the last two decades, including a gradual evolution throughout the twentieth century and the beginning of the next. It is far from completing the current security system and the international relations' system, still placing itself in a transitional phase.

In fact, we witness a change of content that the nation-state deals on conceptual and action levels, as direct result of altering its fundamental attributes. These mutations, the result of a long evolutionary process, can be found both at the intra-state level (relationship of state with its subjects) and at the inter-state level (relations between states and relations between states and other actors of the international system). In this context, the nation-state's defining attributes and the position it holds in the international relations system, are becoming relative. The constituted liabilities are translated into a gain for other components of the international relations' system. The origins of these evolutions are reflected in the reinterpretation of the key concepts that structure institutions and international relations. This reinterpretation is induced by the strong assertion of ideas, concepts and issues such as those described in this section of the book: globalization and recrudescence of some classical or non-conventional risks and threats, among which terrorism has a central place; weak and failed states; humanitarian intervention or human rights issues; the emergence of transnational actors (sovereignty-free actors); the phenomenon of alliances and coalitions of the willing.

However, beyond these visible developments, a less alarming state of affairs is to be postulated. In this sense, the phenomena in question exist, but it is based on a far more nuanced explanation. Their resultant is not automatically leading to the end of the nation-state and the transgression to a universal citizenship of the individual, as a result of the process of globalization.

The wars, interventions, forcing states to respect certain rules that they themselves have joined or which are absolutely necessary to coexist on the planet, the punishment of serious criminal offences such as genocide, crimes against humanity etc., do not diminish the principle of sovereignty, but require only a certain type of behavior seen by all the other states (including by the concerned state with the intervention), as absolutely necessary as part of the effective exercise of their sovereignty in new conditions and within new interdependencies.

The collapse of the communist regimes and of the entire political system established in the post-war strategic glacis of the Soviet Union in 1989 and its latter dissolution in 1991 marks the end of the Cold War.

At the end of this historical excursion seeking to observe the developments in the sovereignty concept and its relationship with the state and the nation, we can assert that this transformation is a conditioned one, and in close interdependence with the evolutions registered by the international relations system and also with the development of the entire human society.

A concept with multiple meanings, sovereignty evolves together with society and in close connection with its operational needs. The coding and conceptualization process follows directly the functioning of the state inside the international relations' system and the associated changes occurred in time. In this context, the "crisis" of sovereignty or its "dissolution" in the post-Cold War years does not represent an abandonment or obsolescence of the concept, but a readjustment to the new context and content induced by the transformations inside the international relations system and the international security environment. Far from losing its relevance, the sovereign state remains a constitutive actor of the international relations system. What have changed lately are the frameworks and the content of all concepts in question, in close connection with the need to adapt themselves to the new international social and political realities.

Chapter 3
Individual Accountability for Human Rights Abuses: Milošević and Beyond

Abstract This chapter adds a practical dimension, by examining the trial of Slobodan Milošević, chosen for its importance as a test case for putting a head of state on trial and to show the relationship between international jurisdiction and national sovereignty. It serves to illuminate post-Westphalian elements in international criminal law which do not truly impinge upon national sovereignty, although some nationalists perceive them as doing so. International criminal courts do not violate state sovereignty, but rather enable it to be exercised in an interdependent manner, particularly appropriate for political and military leaders after regime change. An important principle has been injected into international relations, namely *No one is above the law*. Sovereignty cannot be absolute and impunity (effective immunity from prosecution) can no longer be relied upon. The Westphalian model of sovereignty requires a new conceptualization which involves imputing to the sovereign states certain moral obligations both to the citizens and to the international community. The latter, in turn, has a moral duty to protect the lives of citizens of states which are so failed that they cannot give any protection to those lives. Thus, the notion of responsibility for the welfare of citizens becomes a characteristic of sovereignty. Although international justice made enormous progress when the Rome Statute entered into force (2002), thereby creating the first permanent international criminal court (ICC), there are still serious challenges to its jurisdiction which cannot in practice be exercised in the face of a Security Council's veto by one of the "big five" powers.

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S. Ţuţuianu, *Towards Global Justice: Sovereignty in an Interdependent World*, DOI: 10.1007/978-90-6704-891-0_3,

3.1 Role of International Criminal Institutions

The international system based on states—certainly, in the measure in which we can speak about an integrally open international system in the sense of an ensemble of integrated elements and structures that works in an coherent and unitary way, and realizes a change of substance, energy, and information with the environment—accepts with difficulty other elements and structures than those relating the sovereignty, independence, and territorial integrity of the lawful states. The political, economical, cultural, informational, and even military evolutions do not succeed to impose elements to be accepted by all states and to redefine or to recondition their sovereignty. In addition, some of the measures absolutely necessary for sanctioning genocide, war crimes, crimes of terrorism, and crimes against humanity may be beneficial for the consolidation and actualization of the principle of sovereignty. In the context of the twentieth century, considered as one of the bloodiest in world history, there were many cases in which leaders of several states with authoritarian regimes have committed genocide against their citizens invoking the classical vision of sovereignty based on the external non-interference in a country's affairs. Obviously, those episodes shocked world public opinion and led to the idea of the necessity to create some international criminal tribunals to judge those responsible, in the name of the whole international community.

The crimes committed by individuals, on the territories of other states or against individuals of other states, are usually solved through different forms of international cooperation which are institutionalized within international treaties, agreements, and conventions (extradition, juridical assistance, commissions, etc.). The other crimes which are actually the most serious and gravest infringements of international law (genocide, war crimes, crimes of terrorism, and crimes against humanity) cannot be sanctioned by national tribunals, since such abominable crimes are often commanded or even committed by the governments of some states.

For centuries, it was inconceivable that, for judging and punishing crimes against peace, the violations of the international arrangements and crimes against humanity, including genocide, the responsible States would give their consent directly or indirectly for the executors of their own orders to be brought to justice.

Under these circumstances, in the nineteenth century, emerged the idea of creating an international tribunal with the competence, agreed by the states, to judge the crimes committed through the violation of international law norms. The jurist Gustave Moynier drafted, in 1872, the first proposal for a permanent international court, even though most international law experts of the time saw his proposal as ineffective, ambiguous, and unenforceable.[1]

[1] Hall 1998, pp. 57–74.

However, much of Moynier's ideas found their way into the 1998 Rome Statute, thus showing their impact on the current state of humanitarian law.

There are old rare examples of judging individuals accused of atrocities on the battlefield. In 1474, a panel of 27 judges under the patronage of the Emperor of the Holy Roman German Empire judged Peter von Hagenbach for crimes against civilians committed during fights. He was found guilty and beheaded.[2] It is considered the first jurisprudential example in the case of military responsibility of the commanders to respect the customs of war and to avoid killing civilians.

After the First World War, Articles 227–230 from the Treaty of Versailles stipulated that Germany would hand over emperor Wilhelm II to be judged by a special tribunal composed of five judges from the victor countries (US, Great Britain, France, Italy, and Japan). They also stipulated the pursuit and judgment on the territory of Germany and of the Allied and Associated Powers of the individuals accused of acts contrary to the laws and customs of war. These individuals were to be judged by representatives of the military tribunals from the associated countries.[3]

Wilhelm II took refuge in the Netherlands which refused to extradite him because the acts for which he was accused were not stipulated in Dutch legislation or in the extradition treaties ratified by the Netherlands up to that date. Neither the German Government handed out to the Allied Powers the individuals that committed war crimes or violations of the war law and customs. And thus, the proposal of creating an international criminal tribunal in the defeated camp could not work. Through the Treaty of Sèvres (1920) Turkey was obliged to hand over the people found guilty of killing thousands of innocent Armenians in 1915. Therefore, one may observe the tendency to move the responsibility from states to the individual decision makers.[4] Even if the two initiatives failed, they prepared the conditions for the establishment of such international tribunals.

Between 1920 and 1930s, International Law Association, the Institute for International Law and the International Association of Penal Law supported different projects concerning an international criminal tribunal. In 1920, a consultative group of jurists from the League of Nations wrote and supported a project concerning the foundation of a High Court of International Justice.[5] But in the League of Nations' Assembly, the project was considered premature and was therefore rejected. One of the contributors to that project was the Romanian jurist Vespasian V. Pella, the president of the International Association of Penal Law.[6]

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[2] Greppi 1999, pp. 531–553.

[3] Barnett 2008.

[4] Patrick Hassan Morlai, "Evidence in International Criminal Trials: Lessons and contributions from the Special Court for Sierra Leone", http://works.bepress.com/cgi/viewcontent.cgi?article=1000&context=patrick_hassan_morlai.

[5] Cîndea 2008, p. 132.

[6] Pella 1964.

After the Second World War, international military tribunals were constituted in Nuremberg and Tokyo to judge those responsible for starting the war, and later on there were established the International Criminal Tribunal for the former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR) which both are still acting.

At meetings in Teheran (1943), Yalta (1945), and Potsdam (1945), the three great powers during the war (the United States, the Soviet Union, and the United Kingdom) agreed on the punishments to be given to those responsible for committing war crimes and crimes against humanity during the Second World War. France also received a place in the tribunals. The London Charter issued on 8 August 1945 constituted the legal basis for the Nuremberg Tribunal. The document limited the trial to the punishment of the main war criminals from the European states of the Axis. About 200 German individuals were judged in Nuremberg for war crimes and others 1,600 were judged through traditional modalities of military justice. The jurisdiction of the tribunals was defined by the German Instrument of Surrender. According to this document, the political authority for Germany had been transferred to the Allied Control Council which, having sovereign power over Germany, could decide the penalties for breaking the international legislation and the war laws. Since its competence was limited to violation of the laws of war, the Nuremberg Tribunal did not have jurisdiction over the crimes committed before 1 September 1939, when the war began. The limitation of the judgment and punishment to the individuals of the Axis caused accusations of a so-called "victor's justice".

After the Second World War, the Americans prohibited all Japanese military and nationalist organizations, from which about 600 persons were arrested. As in Nuremberg, an inter-allied tribunal was created in Tokyo under the name of the *International Military Tribunal for the Far East* (IMTFE). The tribunal was composed of 11 judges representing the winning forces in the Second War World: US, USSR, Great Britain, France, China, the Netherlands, Canada, Australia, New Zealand, India, and Philippines. The activity of IMTFE took place during the period 3 May and 12 November 1948. The Tribunal convicted 28 individuals and sentenced seven of them to death. There are accusations concerning that fact there the only accused were Japanese, representing a defeated power, and also that other grave violations of the war law occurred in the Pacific were ignored. Two examples were brought into attention: the bombardment of Hiroshima and Nagasaki and the invasion of Manchuria and of other Japanese territories by the Soviet Union. But Emperor Hirohito, the supreme commander of the Japanese Armed Forces, benefited from immunity and even gained a central position in the new regime. Certain major crimes committed by the Japanese, such as attacks with biological and chemical weapons, were omitted deliberately and kept in secret since the Americans were interested in those types of weapons. War crimes committed by the Japanese are still a controversial problem of world history. Generally speaking, the term refers to the events during the assertion of the Japanese imperialism (end of the nineteenth century-mid of the twentieth century).

Condemning the Second World War crimes was not enough to prevent the commencement of other conflicts, for instance, in the Balkans, on the background of the disappearance of the former Yugoslavia through the rebellion of the composing nationalities. The UN engaged itself in managing the conflict and to keep it in the limits of the existent war regulations; therefore, the Security Council adopted numerous resolutions. It used all the means, especially the systems and procedures of elaborating resolutions, which are obligatory for all member states such as those regarding the observance of the rules of humanitarian law. It affirmed many times that the participating parties in the conflict are individually responsible for the violation of international humanitarian law and the Geneva Conventions of 1949. The General Secretary was asked to constitute an impartial Commission of Experts, in charge of examining received information and making conclusions on grave violations in the former Yugoslavia. We refer to the resolution 808 (1993) from 22 February 1993 in which Security Council decided "that an international tribunal shall be established for the prosecution of persons responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia since 1991".[7] Through resolution 827 (1993), the Security Council approved the Report of the Secretary General regarding the creation of an international tribunal, including its statute. It was decided "to establish an international tribunal for the sole purpose of prosecuting persons responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia between 1 January 1991 and a date to be determined by the Security Council upon the restoration of peace and to this end to adopt the Statute of the International Tribunal".[8]

In brief, the tribunal should have:

- Instituted an international jurisdiction (through establishment, its composition, and competence);
- Constituted a universal jurisdiction, because the crimes to be judged shocked the entire international community;
- Provided with high impartiality guarantees in respecting the right to self defence by taking into consideration, in a proper way, the victims;
- Avoided the constitution of a new international bureaucracy, without connection to reality, otherwise the effects of discouraging by its intervention would have been lost.

In the elaboration of the Report and the proposals relating the establishment of the Tribunal, including its Statute, the General Secretary took into account the suggestions of the member states, the different organizations and international

[7] Security Council Resolution 808, http://www.nato.int/ifor/un/u930222a.htm, accessed on 8 December 2011.

[8] Security Council Resolution 827, http://www.cfr.org/international-criminal-courts-and-tribunals/un-security-council-resolution-827-icty/p25977.

conferences (CSCE), the International Committee of the Red Cross, and other non-governmental organizations.

The Great Lakes Region in the Sub-Saharan Africa proved to be another problematic area facing violent identity (tribal) conflicts sharing many elements in common with Yugoslavia. Genocide took place in Rwanda as a result of conflict escalation between the Hutu and Tutsi ethnicities. The International Criminal Tribunal for Rwanda was established by the UNSC on 8 November 1994 through resolution 955, after the bloody events during the period of time between 6 April and 19 July 1994 (100 days in which 800,000 people from Tutsi ethnics were massacred, according to official data). The tribunal located at Arusha (Tanzania) gathered 11 judges elected by the General Assembly of UN for a 4 years mandate. It is worth mentioning that the statute of the tribunal stipulates the impossibility of electing two judges from the same sate. There is a common appeal chamber for both ICTY and ICTR allowing a unity of jurisdiction. Moreover, the two tribunals had the same chief-prosecutor. The ICTR guided its activities in accordance with certain definite goals: contribution to the process of national reconciliation; maintaining peace in the region; judging the persons responsible for genocide committed in Rwanda and the neighboring states between 1 January and 31 December 1994.

After the establishment of the international criminal tribunals for Rwanda and the former Yugoslavia a new trend emerged, between the "new" international criminal law and the "traditional" one. The new criminal law concerns the three international crimes: genocide, crimes against humanity, and war crimes. By comparison, the traditional international criminal law deals with crimes that concern extraditions or other forms of cooperation. In the moment when the tribunal for the former Yugoslavia was being established, international criminal law was rather immature, as one used to consider uncertain the decisive and positive impact of international ah hoc tribunals.

The creation of an ad hoc tribunal as a subsidiary organ is in a certain way unique due to its pure judicial character. That influences its relations with the parent organism, meaning the Security Council. Its legality in a greater measure depends on the power of the latter, than on its essence. Consequently, we could conclude that this legality depends totally on the goal of the member states of the Security Council. There were permanently critical voices toward the creation of the ad hoc international criminal tribunals, accusing them of supporting the policy of the great powers and offering an alibi for prolonging the time before an international criminal court could come into operation.

It is obvious that international law has to evolve and to adjust itself to the social requirements, whenever it is applicable to the events of real life. In principle, this is the traditional way to develop customary law which permits an ulterior encoding. In the same time, it is desirable that the new theories concerning the responsibility for having committed war crimes or against humanity should be well grounded without a character of retroactivity. The verdicts of these tribunals may be considered a stepping stone toward the future development of law.

In future, individual responsibility for international crimes will be part of the every plan for reconstruction in a post-conflict society. The ad hoc tribunals provided the legal basis for this process. Moreover, as international institutions, they prove that if the international community acts jointly, the concerted effort makes the difference. Thus, the practice of the tribunals represents a new horizon of international humanitarian law and of international criminal law. It is a new important stage in implementation and application of the criminal responsibility for serious violations of the norms of international humanitarian law. However, these institutions do not represent permanent legal institutions owning the competence to judge the most serious crimes of genocide, war crimes, and crimes against humanity.

The International Criminal Court (ICC) was founded on 1 July 2002, with the signing of the Rome Statute. The Court may act only as complementary to the national jurisdictions as stipulated in Article 17. It intervenes whenever the state cannot carry on its investigation and prosecution procedures, so that it is not situated above the national jurisdictions. That is why the states cannot be obliged to defer all the criminals to the Court. In comparison, the ICTY and ICTR being both under the authority of the UNSC produce effects of compulsoriness on the UN member states concerning the deferral of the indictees and all the other requirements formulated by those institutions.

In Article 5 (1) there are mentioned the crimes under the jurisdiction of the Court, as follows: "The jurisdiction of the Court shall be limited to the most serious crimes of concern to the international community as a whole. The Court has jurisdiction in accordance with this Statute with respect to the following crimes: (a) The crime of genocide; (b) Crimes against humanity; (c) War crimes; (d) The crime of aggression".

Interestingly, the second paragraph of Article 5 directly refers to the crime of aggression as follows: "The Court shall exercise jurisdiction over the crime of aggression once a provision is adopted in accordance with Articles 121 and 123 defining the crime and setting out the conditions under which the Court shall exercise jurisdiction with respect to this crime. Such a provision shall be consistent with the relevant provisions of the Charter of the United Nations".

Article 8 details and defines war crimes.

Article 12 concerns the exercise of jurisdiction. It involves States which are Parties to the Rome Statute or have accepted the jurisdiction of the Court for the mentioned crimes committed on the national territory or on board a vessel or aircraft, the States of registration of that vessel or aircraft. The jurisdiction applies also to the State of which the person accused of the crime is a national. This means that, based on the Court's procedures and in accordance with the provisions concerning the way in which national jurisdiction cannot be applied, any foreign citizen suspected of crimes under the Statute and being on the territory of a State which assumes the Statute may be referred to the Court, even if its own country has not signed and has not ratified the Statute. The United States, for reasons easy to be understood (participation with military forces in crisis and conflict management operations in other countries), may not agree with such a provision.

This was the reason why the US have concluded an agreement in 2002 with Romania and other countries by which American soldiers from the territories of these countries which have ratified and signed the Statute, cannot be handed to the Court.

Furthermore, on the basis of Article 27, the Statute shall apply equally to all persons without any distinction based on official capacity. In particular, official capacity such as a Head of State or Government, a member of a government or parliament, an elected representative or a government official shall in no case exempt a person from criminal responsibility under the Statute, nor shall it, in and of itself, constitute a ground for reduction of sentence. Immunities or special procedural rules which may attach to the official capacity of a person, whether under national or international law, shall not bar the Court from exercising its jurisdiction over such a person.

From 31 May to 11 June 2010 the ICC's work was assessed during the Rome Statute Review Conference in Kampala, the capital of Uganda.[9] The event was the first of this kind since the entry into force of the Rome Statute on the 1 July 2002, which stipulates that after 7 years upon the entry into force, there will be held a Review Conference, within which the proposals for amending the Statute will be analyzed. General debates were focussed on the appropriate framework for presenting the national commitments in the fight against impunity, and the efforts toward achieving the closest cooperation with the Court, and promoting ICC universality.

The most important topic of the discussion was over the definition of the crime of aggression. So far, the ICC has jurisdiction over war crimes, crimes against humanity, and genocide. The crime of aggression, meaning the penalization of a breach of the UN Charter through an armed attack, was also included in the Rome Statute, but the ICC's jurisdiction for the crime was pending a clear definition. A definition was reached at the Kampala Conference. The compromise reached in Kampala allows state parties to decide whether the court may act on the crime of aggression. It can only do so, where either the UN Security Council refers a matter to the ICC or the alleged aggressor and victim states are parties to the ICC treaty though. How this will play out in practice remains to be seen in the future.

Since the ICC jurisdiction for the crime of aggression will come into force in 2017 at the earliest, we will probably have to wait for a while to see the results. A positive result of the conference was that the UN Security Council was not chosen as the only trigger for the crime of aggression, a step that would have further politicized the court. Europe and Latin America have been two of the main blocks securing that the ICC remains an independent institution governed by legal decisions and not by political calculations.

[9] The event was attended by senior officials of States Parties to the Rome Statute, representatives of countries that have an observer status (US and Russian Federation) and of non-governmental organizations which are active in the field of international criminal justice. Secretary of State Bogdan Aurescu led the Romanian delegation at the ICC Review Conference held in Kampala.

The International Criminal Court is the only permanent international criminal court with universal jurisdiction, which operates on the principle of complementarity to the national criminal jurisdictions. ICC became operational with the entry into force of the Rome Statute on the 1 July 2002, and so far, 121 states are parties to the Statute.

The Court is seized of seven situations, of which the situation in Côte d'Ivoire has recently got the Pre-Trial Chamber's authorization for the opening of an investigation. The situations in Uganda, the Democratic Republic of the Congo, and the Central African Republic were referred by the States in question, and the situations in Darfur, Sudan, and the Libyan Arab Jamahiriya were referred by the UN Security Council. In each case, the Prosecutor decided that there was a reasonable basis for the opening of investigations. The investigation into the situation in Kenya was authorized by Pre-Trial Chamber III following a request from the Prosecutor.

Romania signed the ICC Rome Statute on the 7 July 1999 and ratified it by Law no. 111 from 28 March 2002.

Romania has actively participated in preparatory meetings of the ICC Review Conference, contributing to the discussion by promoting, together with Bosnia Herzegovina and New Zealand, of a proposal concerning the definition of the crime of aggression and the conditions for exercising the ICC jurisdiction over this crime. According to the Statute, the crime of aggression is part of the ICC material competence, so that for exercising this competence it was necessary to adopt within the Review Conference, of an amendment regarding the definition of the crime of aggression and specific terms for exercising the competence. Romania was also co-author, together with Belgium and 17 other states, of a proposal concerning the criminalization of the use of biological and chemical weapons in the armed conflict of a non-international character. These proposals illustrate the importance that our country attaches to the issue of the ICC Statute.

3.1.1 Crimes Against Humanity

Crimes against humanity are defined as particularly odious offenses in that they constitute a serious attack on human dignity or grave humiliation or a degradation of one or more human beings. They are not isolated or sporadic events, but are part either of a government policy (although the perpetrators need not identify themselves with this policy) or of a wide practice of atrocities tolerated or condoned by a government or a de facto authority. Murder, extermination, torture, rape, political, racial, or religious persecution and other inhumane acts reach the threshold of crimes against humanity only if they are part of a widespread or systematic practice. Isolated inhumane acts of this nature may constitute grave infringements of human rights, or depending on the circumstances, war crimes, but may fall short of falling into the category of crimes under discussion.

In the aftermath of the Second World War, The London Charter of the International Military Tribunal was the decree that set down the laws and procedures by which the post-World War II Nuremberg trials were to be conducted. The drafters of this document were faced with the problem of how to respond to the Holocaust and grave crimes committed by the Nazi regime. A traditional understanding of war crimes gave no provision for crimes committed by a power on its own citizens. Therefore, Article 6 of the Charter was drafted to include not only traditional war crimes and crimes against peace, but in para 6.c, Crimes Against Humanity were defined as: "murder, extermination, enslavement, deportation and other inhumane acts committed against any civilian population, before or during the war, or persecutions on political, racial or religious grounds, in execution of or in connection with any crime within the jurisdiction of the Tribunal, whether or not in violation of the domestic law of the country where perpetrated".

The United Nations have been primarily responsible for the prosecution of crimes against humanity since it was created in 1948. The ICC was organized by the Rome Statute and the UN has delegated several crimes against humanity cases to the ICC. Because these cases were referred to the ICC by the UN, the ICC has broad authority and jurisdiction for these cases. The ICC acting without a UN referral lacks the broad jurisdiction to prosecute crimes against humanity, and cannot prosecute many cases, particularly if they occur outside of ICC-member nations. The 2005 UN referral to the ICC of Darfur resulted in an indictment of Sudanese President Omar al-Bashir for genocide, crimes against humanity, and war crimes in 2008. The most recent UN referral concerns the situation in the Libyan Arab Jamahiriya, where ongoing cases, *The Prosecutor v. Saif Al-Islam Gaddafi and Abdullah Al-Senussi* are delayed because Libya wants to try the defendants itself. On 27 June 2011, Pre-Trial Chamber I issued warrants of arrest against three suspects (the name of the former dictator Muammar Gaddafi was also on the list) for crimes against humanity allegedly committed since 15 February 2011.

As regards the Court's progress in handling these crimes against humanity cases, it should be noted that the Court does not have the power to arrest these persons. That is the responsibility of States and other actors. Without arrests, there can be no trials.

The Rome Statute provides for the ICC to have jurisdiction over genocide, crimes against humanity, and war crimes. The definition of what is a "crime against humanity" for ICC proceedings has been significantly broadened from its original legal definition or that used by the UN, and Article 7 of the treaty stated that crime against humanity means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack[10]: murder; extermination; enslavement; deportation or forcible transfer of population; imprisonment or other severe deprivation of

[10] The Rome Status of the ICC, http://www.icc-cpi.int/NR/rdonlyres/EA9AEFF7-5752-4F84-BE940A655EB30E16/0/Rome_Statute_English.pdf, accessed on 10.10.2010. For more details see also Mateuţ 2001, p. 30.

physical liberty in violation of fundamental rules of international law; torture; rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity; persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender, or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court; enforced disappearance of persons; the crime of apartheid; other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.

Crimes against humanity may be committed both in peacetime and in wartime.

The crime of genocide is widely regarded as the most serious crime against humanity. Most recent international documents treat them distinctly from other crimes against humanity, as a sign of special attention attached to it by the international community.

In 1943, Raphael Lemkin proposed the repression of terminal acts directed against ethnic communities, religious, or social, suggesting for these actions the use of the term *genocide*.[11] The doctrinal proposal materialized as incrimination in the London Charter of the Nuremberg Tribunal, the Statute of the International Criminal Tribunal for the former Yugoslavia, the Statute of the International Criminal Tribunal for Rwanda and the Rome Statute of the International Criminal Court.

Note that the Nuremberg Tribunal did not rule any conviction for the crime of genocide, but this was mentioned in the final verdicts.[12]

Hence, the acts of genocide were related to the state of war, the acts of genocide committed in time of peace not having a clearly defined legal basis to be suppressed. Effective incrimination of genocide was made by the Convention on the Prevention and Punishment of the Crime of Genocide, adopted by UN General Assembly on 26 November 1968.[13] According to Article 1 of the Convention, the crime of genocide was described as an international crime, without relevance for the time when it was committed, either during peace or war. Under Article 2 of the Convention, genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial, or religious group, as such: killing members of the group; causing serious bodily or mental harm to members of the group; deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; imposing measures intended to prevent births within the group; forcibly transferring children of the

[11] Lemkin 2004.

[12] Creţu 1996, p. 227.

[13] The term "genocide" was the creation of the Polish jurist Raphael Lemkin in 1943 from "genos" (family, race in Greek language) and "cide" (latin "occidere" that means to kill). He used the concept in his book *Axis Rule in Occupied Europe: Laws of Occupation—Analysis of Government—Proposals for Redress from 1944*. See "*Information on Genocide Convention*", http://www.preventgenocide.org/law/convention/, accessed on October 12, 2010.

group to another group.[14] The Convention criminalizes not only genocide as an international crime, but also the following acts: conspiracy to commit genocide; direct, and public incitement to commit genocide; attempt to commit genocide; and complicity in genocide.

This distinction concerning the purpose of genocide and crime against humanity reappears when one analyzes their respective characteristics, i.e., their *actus reus* and *mens rea*. Concerning the *actus reus*, there is an obvious proximity. Thus, a murder or a slaughter can be the objective element of a genocide, of a crime against humanity, and actually also of a war crime. Yet, the two crimes do not have exactly the same *actus reus* requirement; they "are 'reciprocally special', in that they form overlapping circles which nevertheless intersect only tangentially". For example, enslavement can constitute a crime against humanity, but it cannot constitute a genocide. Similarly, the objective element of a crime against humanity must be committed *against civilians*, whereas no such limitation exists for genocide; therefore, there may be genocide when there is no crime against humanity. As for their respective *mens rea*, crime against humanity and genocide completely differs, as a consequence of their respective purposes. Actually, the real difference between crime against humanity and genocide is the very particular intent which gives the crime of genocide all its specificity. A crime against humanity is constituted when the perpetrator knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack directed against a civilian population. In contrast, the subjective element of genocide focuses only on the intent, and requires a special intent to *destroy*, in whole or in part, a national, ethnical, racial, or religious group. This demanding condition is absent from the definition of crimes against humanity, even in the case of persecution. The crime against humanity of persecution also requires an attack against a protected group, but this group is defined much broader and include political, cultural, and gender groups. Moreover, if there is any requirement for genocide that the conduct took place in the context of a manifest pattern of similar conduct directed against that group or was conduct that could itself effect such destruction, the knowledge by the perpetrator of this context is not required. Then, concerning their subjective element, both crimes form two circles that do not intersect. None of the two crimes include the other. It might happen, however, that the subjective element of both crime against humanity and genocide is fulfilled at the same time. Such circumstance raises the thorny issue of cumulative convictions. If both crimes are autonomous as distinguished on the basis of their *mens rea*, one single act could constitute at the same time a crime against humanity and a genocide.

The draft Code of Crimes against the Peace and Security of Mankind regulates the crime of genocide under Article 17 as follows[15]: A crime of genocide means

[14] Article 2 of the Convention on the Prevention and Punishment of the Crime of Genocide; http://www2.ohchr.org/english/law/genocide.htm.

[15] Article 15 of the Draft Code of Crimes against the Peace and Security of Mankind: http://untreaty.un.org/ilc/texts/instruments/english/draft%20articles/7_4_1996.pdf

any of the following acts committed with intent to destroy, in whole or in part, a national, ethnic, racial, or religious group, as such: killing members of the group; causing serious bodily or mental harm to members of the group; deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; imposing measures intended to prevent births within the group; forcibly transferring children of the group to another group.

In 1965, the international community forbade apartheid—a variety of genocide—by the adoption of the International Convention on the Elimination of All Forms of Racial Discrimination. However, any reference to apartheid—the extreme form of manifestation of racism and racial discrimination—bears the stamp of the official policy promoted since 1948, by the South African Government, which consisted of practicing racial segregation and discrimination.[16]

The definition of *racial discrimination* belongs to the above-mentioned Convention which states in its Article 1 that this term "shall mean any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life".[17]

States which have signed this Convention condemn racial discrimination and undertake to pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms and promoting understanding among all races. To this end, each State Party undertakes to engage in no act or practice of racial discrimination against persons, groups of persons or institutions and to ensure that all public authorities and public institutions, national and local, shall act in conformity with this obligation.

In compliance with the fundamental obligations laid down in Article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, color, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights: the right to equal treatment before the tribunals and all other organs administering justice; the right to security of person and protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual group or institution; political rights, in particular the right to participate in elections-to vote and to stand for election-on the basis of universal and equal suffrage, to take part in the government as well as in the conduct of public affairs at any level and to have equal access to public service; and other civil rights.

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[16] Cloşcă and Suceavă 1995, p. 101.

[17] Article 1 of the *International Convention on the Elimination of All Forms of Racial Discrimination*, adopted and opened for signature and ratification by General Assembly resolution 2106 (XX) of 21 December 1965; http://www2.ohchr.org/english/law/cerd.htm.

Apartheid was declared a crime against humanity also by the International Convention on the Suppression and Punishment of the Crime of Apartheid.

We should retain the definition provided by the Draft Code of Crimes against the Peace and Security of Mankind, whose text was adopted by the International Law Commission at its 48th session in 1996, and submitted to the General Assembly as a part of the Commission's report covering the work of that session: "A crime against humanity means any of the following acts, when committed in a systematic manner or on a large scale and instigated or directed by a Government or by any organization or group: murder; extermination; torture; enslavement; persecution on political, racial, religious or ethnic grounds; institutionalized discrimination on racial, ethnic or religious grounds involving the violation of fundamental human rights and freedoms and resulting in seriously disadvantaging a part of the population; arbitrary deportation or forcible transfer of population; arbitrary imprisonment; forced disappearance of persons; rape, enforced prostitution and other forms of sexual abuse; other inhumane acts which severely damage physical or mental integrity, health or human dignity, such as mutilation and severe bodily harm".[18]

Committing crimes against humanity is not subordinated to the condition of the acts committed in wartime or in connection with war crimes or crimes against peace, which means that the current draft code gives autonomy to this category of crimes.

An example of a crime against humanity is the conflict in Darfur, Sudan, which began in 2003 and was first declared as genocide by the US Secretary of State Colin Powell on September 9, 2003.[19] In fact, in January 2005, a commission of inquiry authorized by the UN Security Council Resolution 1564 issued a report, stating that the Government of Sudan has not pursued a policy of genocide. However, the committee warned that the gravity of crimes is not to be ignored, the committed crimes against humanity and war crimes being as serious and disturbing. In April 2007, the International Criminal Court judges issued arrest warrants against the former State Minister, Ahmad Harun and a leader of the militia, Ali Kushayb for crimes against humanity and war crimes.[20] On 14 April 2008, prosecutors filed 10 charges against the Sudanese President Omar al-Bashir, five of crimes against humanity, three for genocide and two for murder.[21]

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[18] Article 18 of the Draft Code of Crimes against the Peace and Security of Mankind; http://untreaty.un.org/ilc/texts/instruments/english/draft%20articles/7_4_1996.pdf.

[19] "Powell calls Sudan killings genocide", September, 9, 2004, http://articles.cnn.com/2004-0909/world/sudan.powell_1_larger-monitoring-force-darfur-arab-janjaweed?_s = PM:WORLD.

[20] See the official website of the ICC—http://www.icc-cpi.int/Menus/ICC/Situations+and+Cases/, accessed on 10.10.2010.

[21] The official website of the ICC.

On 4 March 2009, it was issued the arrest warrant for Sudan's president for war crimes and crimes against humanity.[22]

3.1.2 The International Criminal Court and the Immunity Question

In most of the European constitutions, immunity is provided to heads of state or government, government and parliament members, elected representatives, or to state agencies. The Rome Statute of the International Criminal Court does not refer to a special immunity for persons who possessed legislative, executive functions, or any other official capacity when committing crimes. In Article 27 (1), it is stated that "the Statute shall apply equally to all persons without any distinction based on official capacity". In particular, official capacity as a Head of State or Government, a member of a government or parliament, an elected representative or a government official shall in no case exempt a person from criminal responsibility under this Statute, nor shall it, in and of itself, constitute a ground for reduction of sentence. Immunities or special procedural rules which may attach to the official capacity of a person, whether under national or international law, shall not bar the Court from exercising its jurisdiction over such a person".[23]

It is an important provision, which forbids the political leaders from benefitting from a special situation, since by law no person may be outside its provisions and effects. Invoking the principle of sovereignty in order to exonerate high officials guilty of committing crimes from the effects of law is not acceptable anymore. According to the ICC Statute, the political leaders cannot claim immunity so as to avoid criminal liability before the ICC or before their national courts when committing a crime within the ICC jurisdiction.

The provisions of the Rome Statute may be interpreted as contrary to the provisions of the constitutions of some European states that grant immunity to these officials, during their mandate.[24] But it is difficult to assume that, in those countries, officials who commit crimes can be absolved of criminal responsibility.

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[22] Gerard Prunier, "Darfur: The ambiguous genocide", http://books.google.com/books?id=2CV1upnEMmoC&dq=genocide+in+darfur+sudan&printsec=frontcover&source=in&hl=en&ei=H1rrS8ilEcSssAb0mLCEDw&sa=X&oi=book_result&ct=result&resnum=12&ved=0CE0Q6AEwCw.

[23] The Rome Status of the ICC, http://www.icc-cpi.int/NR/rdonlyres/EA9AEFF7-5752-4F84-BE940A655EB30E16/0/Rome_Statute_English.pdf, accessed at 10.10.2010.

[24] From the viewpoint of the relationship between domestic and international law, in the situation of concurrence within the norms' enforcement, there are states that accept the "monist" system and states that claim the "dual" one. The first affirms that international law automatically takes precedence over the domestic one, while the dualism accepts that both legal systems have an equal status, representing separate systems of law with distinct springs and subjects.

The direction in which all European countries evolve consists in the observance of legal norms, under which any person who commits the crime, no matter who and what functions they have, cannot place themselves outside the law. The custom according to which the sovereign represents the supreme authority—without being bound by the promulgated laws—is not only outdated, but defies the evolution of the rule of law and its rationale.

People who exercise their official authority in a destructive and arbitrary manner, damaging human beings and their rights, whatever their function is, cannot avoid liability before the law. The state cannot allow itself to be represented and led by people who prejudice citizens, and the status and relations with other countries.

Therefore, the values promoted by the ICC show a new paradigm of the relations between states and between states and their citizens. These are values which protect and promote sovereignty and not vice versa. Sovereignty does not mean irresponsibility, avoiding the effects of international law accepted by states, arbitrary, and unlimited authority. Even if the principle of sovereignty is linked to that of supreme authority, its capacity to establish the supreme authority does not mean going beyond the law. The supremacy of authority over the national territory, the law and the citizens, is a conditioning, constructive, flexible-type, sensitive to international determinations, and inter-determinations.

Of course, there are interests that have to be protected. Immunity of the officials does not mean taking them outside the law, but protecting them against the excesses and effects that would prevent them from exercising their mandate in a fair and unrestricted manner. In this respect, immunity has a political connotation rather than a legal one. Immunity protects the function, the attribute, and not the individual. Or in any case, it does not exonerate the dignitary from the effect of the law when that individual commits an offense.

It is true, because of this provision of the ICC Statute, not all the states have ratified this statute, especially the large countries, which assume an important role in managing crises and conflicts and in optimizing the international security environment. We believe that every state will find the best ways to align with this principle, either by modifying and/or adjusting their internal legislation, namely the Constitution, or by defining very precisely what the immunity is and which is and which can be its role in exercising the mandate and its role in philosophy and physiognomy of sovereignty.

After all, the provisions of the ICC statute do not affect the sovereignty of the states, but require some new and necessary elements in exercising it. Limitation of dictatorial attitudes, of the possibility of avoiding the law, manifestation of unconstructive or even destructive actions, by different officials who commit crimes whose trial and punishment fall within ICC jurisdiction is, undoubtedly, beneficial to sovereignty, since they contribute to the protection of the state and of its citizens against the officials' abuse.

Examining, for each case, the interests to be protected, states will certainly identify a common term to settle possible incompatibilities between their constitutional dispositions and the provisions of the statute. The statute does not oblige the states parties to suppress any form of immunity enjoyed by their representatives. It only imposes the introduction of an exception to this general rule.

States have multiple possibilities to align with the provisions of the ICC Statute which they created. For example, France and Luxembourg have opted to introduce in the Constitution a disposition to address all the unconstitutionality concerns: "The Republic may recognize the jurisdiction of the ICC under the conditions stipulated in the Treaty signed on 18 July 1998" (France),[25] and "the Constitutional provisions are not an obstacle to approving the Statue of ICC (…) and to executing the obligations arising from the provisions of the mentioned statute" (Luxembourg).[26] This solution allows the avoidance to include exceptions to the constitutional articles which may be in conflict with different provisions of the ICC Statute. Of course, the states are not expected to clap their hands and to amend their constitutions overnight. Changing a Constitution is a burdensome, complex, and very sensitive process.

There is also the possibility of interpreting existing constitutional provisions, a formula that avoids constitutional amendment. After all, the provisions of a Constitution are valid on the territory of that state and for its citizens, and do not relate to the ICC Statute, except where the Constitution makes explicit reference to the fact that immunity of the national dignitaries extends to situations when they are in the view of institutions of international law. However, such a provision would be legal only if the country adhering to the ICC negotiates such a provision for its officials. We doubt, however, that such a thing would be possible. However, some states are very interested in concluding agreements with other partner countries, through which their citizens, temporarily residing on the partner states' territories, cannot be extradited to the international courts.

The mechanism of interpreting the Constitution in this way (its provisions are valid within the national territory), which allows the possibility of applying the provisions of the ICC Statute to national officials when they commit actions that fall under ICC jurisdiction, requires a double level of criminal responsibility both nationally and internationally, which seems very fair.

The states may invoke the implicit existence of an exception to the immunities provided in their constitutions. Thus, if the Court requires a State to extradite a person who has an official capacity and has immunity, the constitutional provisions could be interpreted as allowing the extradition. This is because the Court's main mandate is to fight against immunity in cases where serious crimes affecting the international community are committed. Consequently, a head of state or

[25] Constitution de la Cinquième République, http://www.solon.org/Constitutions/France/French/cons58.html, accessed on 10 October 2010.

[26] Constitution du Luxembourg, http://www.legilux.public.lu/leg/textescoordonnes/recueils/constitution_droits_de_lhomme/CONST1.pdf, accessed on 10 October 2010.

government who commits any of these offenses would violate fundamental principles found in his country's constitution. Therefore, any leader might be handed to the Court, regardless of the protection which the national constitution would guarantee under normal circumstances.

Of course, such a provision produces emotions and pressures among those who aspire to positions of high office, and among the heads of state and government. These emotions and pressures are not justified, if each of them exercises the mandate correctly and does not commit acts that would fall under the ICC jurisdiction.

In fact, removing the immunity of different state leaders has already become a practice within public international law. In deciding on the immunity of General Pinochet, three of the five Lords of the House of Lords in Great Britain confirmed the evolution in this sense of international law. They delivered speeches holding that Senator Pinochet was not entitled to immunity.[27]

Constitutions of many states provide that the generally accepted principles of international law are an integral part of their internal law. Thus, the Italian Constitution provides that the impunities granted by internal public law do not contradict with the provisions of the Rome Statute. In Articles 10 and 11 of the Constitution, it is emphasized that the Italian legal order complies with generally recognized international law dispositions and that Italy consents, subject to reciprocity, to the limitations of sovereignty necessary for an order that ensures peace and justice among nations.[28] Article 9 of the Austrian Constitution reaches approximately the same result.

Within other constitutions, and especially in recent constitutions of the Central and Eastern European countries, international instruments relating to human rights defeated the contrary constitutional provisions; this aspect could greatly facilitate the ratification of the Rome Statute.

Constitutions of different states require a special procedure of ratification of international treaties, whose dispositions might be in conflict with different constitutional provisions. For example, according to Article 91 (3) of the Dutch Constitution, an international treaty that contains different provisions which might be in conflict with the Constitution may be ratified by a majority vote of two-thirds of the parliamentarians of the two chambers.[29]

The Statute also concerns the surrender of persons to the Court. In Article 89 (1) it is stated: "The Court may transmit a request for the arrest and surrender of a person, together with the material supporting the request outlined in Article 91, to any State on the territory of which that person may be found and shall request the cooperation of that State in the arrest and surrender of such a person. States Parties

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[27] *Judgement in Re-Pinochet*, House of Lords, 1998–1999, http://www.publications.parliament.uk/pa/ld199899/ldjudgmt/jd990115/pino01.htm, accessed on 11.10.2010.

[28] The Constitution of the Italian Republic, http://www.concourt.am/armenian/legal_resources/world_constitutions/constit/italy/italy–e.htm, accessed on 11.10.2010.

[29] The Constitution of the Netherlands, Helpline Law, http://www.helplinelaw.com/law/netherlands/.constitution/constitution01.php

shall, in accordance with the provisions of this Part and the procedure under their national law, comply with requests for arrest and surrender".[30]

This procedure (which does not take into account the nationality of the individual) may appear as being contrary to the principle established by many constitutions, according to which it is prohibited to extradite or expel a citizen.

To clarify this issue and to facilitate the process of ratification of the Statute, a distinction is made between surrender and extradition. Therefore, "surrender" means the delivering of a person by a State to the Court, and "extradition" means the delivering of a person by one State to another as provided by treaty, convention, or national legislation.[31]

Such a distinction is a recognition of the special jurisdiction of the Court (which cannot be considered a foreign jurisdiction), allowing states to exceed the restrictions in the internal law on extradition and to fully and effectively cooperate with the International Criminal Court.

The International Criminal Court is not equivalent to a national court. But it can not and should not be regarded as foreign, likewise the UN that cannot be considered and treated as foreign, because it is a product of the states and a condition becoming more necessary for a *modus vivendi* in the twenty-first century.

Italy considered that there is no constitutional prohibition, since the extradition operates only in the relations between states, and this state relationship was absent in the report from the state and the ICC. The same interpretation was also given by Norway.

The states whose constitutions expressly state the extradition ban, which does not recognize the value of the distinction made by the Statute or want to avoid any legal confusion might amend their constitution.

"Thus, in the German Basic Law (Article 16, para 2) it is stated that no German citizen may be extradited abroad. The Polish Constitution of 2 April 1997 provides in Article 55 that it is prohibited to extradite a Polish citizen, and the Brazilian Constitution of 5 October 1988, Article 5 stipulates that no Brazilian will be extradited, except naturalized Brazilians in the case they have committed common law crimes before naturalization or been proved of involvement in the case of illicit trafficking with narcotic or similar drugs".[32]

Germany and the Czech Republic have already developed law projects on amending the Constitution. Germany proposed an addition to Article 16 (2) of the Basic Law that no German may be extradited to a foreign country. An exception to this provision may be held under an extradition agreement concluded with a European Union member country or with an international tribunal. The Czech Republic is planning the introduction of Article 112 (c) which states that the Czech

[30] The Rome Status of the ICC, http://www.icc-cpi.int/NR/rdonlyres/EA9AEFF7-5752-4F84-BE94-0A655EB30E16/0/Rome_Statute_English.pdf, accessed on 10.10.2010.

[31] Rome Statute of the ICC, Article 102.

[32] The Constitution of Brasil, 1988, http://www.servat.unibe.ch/icl/br00000_.html sau http://www. v-brazil.com/government/laws/constitution.html. The Constitution of Poland, 1997, http://www.sejm.gov.pl/prawo/konst/angielski/kon1.htm.

Republic must deliver their citizens as well as foreign citizens accused by the International Criminal Court.

Another constitutional question may be raised by the sentences given by the ICC. According to Article 77 of the Statute, the Court may impose one of the following penalties: imprisonment for a specified number of years, which may not exceed a maximum of 30 years; or a term of life imprisonment when justified by the extreme gravity of the crime and the individual circumstances of the convicted person. This could be contrary to the constitutional provisions on the prohibition of penalty to life imprisonment or for a period of 30 years (the cases of Brazilian and Portuguese constitutions).

These provisions and many others in the ICC Statute and the disparities between the provisions of the Constitution and those of the Statute are not likely to affect sovereignty. Nobody can take the rights and prerogatives of the lawful state. It is simply the adaptation of domestic legislation to the new requirements of international relations, respect for human rights and freedoms and punishment of the crimes relating to these laws.

The International Criminal Court is intended to be one of the architects of the struggle against the regime of impunity, against violations of humanitarian law and human rights. It is one way of materialization of the will of states to create a system to support them more effectively in compliance with the legal norms and punish abuses that come from those who have impunity. This is because law is compulsory for all and nobody is above law.

ICC is expected to play a stronger role in the codification of international law by acting beyond the geographic boundaries of the ad hoc tribunals, in this way answering practically to the criticism that the international community has unfairly focused excessively on certain areas of conflict, ignoring others.[33]

There are a couple of possible scenarios relating the future of the ICC. Hopefully the Court will become stronger, passing some of these early tests and difficulties, expanding the number of states parties, thus having much broader jurisdiction, and becoming a truly effective court. Of course, one can see an alternative scenario where things go in another direction. However, the ad hoc tribunals' experience is encouraging. In 1997, there were only a couple detainees in ICTY custody, and no hope for additional indictees arriving. The world's attention seemed to have shifted away, and the ICTY looked in bad shape. Many advocated for winding up the tribunal and closing it down. Over the next 10 years, the situation completely turned around. Thus, it is difficult to make predictions, but based on the experience of the ICTY and ICTR and the general course of the international justice movement, we believe there are some causes for optimism.

To understand the notable progress within the international criminal law field, the comparison between the ICTY statute when the tribunal began its work and the now very broad Rome Statute is necessary. At its very beginning, the ICTY statute consisted of merely 20 articles. Concerning the states which have not ratified the

[33] See Ratner and Abrams 2001, p. 220.

Rome Statute of the ICC, we admit that they represent a challenge to the international procedure and law, but at the same time we must be optimistic believing that it is only a question of time and all these states, sooner or later will sign the Statute.

Building upon the history of Nuremberg and the ICTY and ICTR, the ICC is dealing with complex humanitarian law issues in a way that could not even have been contemplated more than 50 years ago. International criminal law has grown in leaps and bounds in the last decade. Trials may be slow and costly, but the mere fact that they are occurring is a milestone.

The success of the ICC needs to be judged long-term instead of by short-term actions. It is a body that is slowly but surely showing that it can work, together with national and regional courts, to create a powerful role for international criminal law. While the concept of balance of power is not clearly articulated in contemporary international instruments, the legal equality of sovereign states is one of the founding principles of the UN Charter. The ICC framework endorses both of these ideals. In that sense, the ICC is not a departure from the traditional Westphalian order, but is an affirmation of some of its neglected principles.

3.1.3 Role of the International Criminal Tribunal for the Former Yugoslavia in Redefining National Sovereignty

Beginning with the nineteenth century, international criminal law has developed and imposed norms agreed by two or more states, whereby they have agreed to pursue and punish certain acts considered crimes committed in the territories under their jurisdiction or in the areas located outside the jurisdiction of any state (open seas), like piracy, the transport of slaves, the trafficking of women and children, drug trafficking, and others. It is important to note that these rules and regulations did not apply within the territories of states which did not agree to adhere to these norms.

In the twentieth century, such rules have been expanded. They included acts of genocide, acts of terrorism against civil aviation and maritime shipping, and against internationally protected persons. This is what was actually called international criminal law.

One of the great paradoxes of the twentieth century is that while most laws and regulations concerning codification and definition of war crimes, crimes against humanity and genocide have been developed, it was this century that witnessed a brutality unprecedented in world history. Humanity shuddered at these cruelties—not only the two extremely bloody world wars and the Cold War, but also over 700 local or regional crises and conflicts[34]—and therefore, it has taken the right

[34] Dufour 2002, pp. 12–19.

measures, obviously with the consent of all UN member states, so that such situations do not happen again.

The results were not as expected, but it led to the creation of a framework within states, through international organizations, to monitor risks and threats to their security and prevent and punish war crimes, genocide, and other extremely serious situation in which violence produces victims and insecurity.

One such example is the bloody wars in former Yugoslavia space which reminded the international community about the Balkans, genocide, and ethnic cleansing terms and engraved in the collective mentality names such as Srebrenica, which will henceforth be equivalent to a massacre hard to imagine, especially given that it occurred under the eyes of the UN troops located in that area. Of course, Srebrenica is not the only place where atrocities occurred. Almost all over the space in which fighting took place, there have been unimaginable atrocities. Europe has been powerless in front of this situation and the settlement by violence of the tensions in the area, through the prompt intervention of the United States and NATO, produced damage that could have been avoided if Europe would have found the necessary means to prevent escalation of the conflict in due time.

The establishment of ICTY, as an international criminal law institution, brought elements of originality in the field, taking into account the obvious differences in relation to other criminal courts established throughout history. The ICTY has faced and is still facing very complex realities, and its experience has influenced to a large extent, the process of establishing a permanent court of international criminal justice. According to some, such a tribunal affects the sovereignty of states and does not completely respond to a reality in which causes are extremely sensitive and the effects extremely serious. However, unlike the Nuremberg Tribunal, which was a tribunal of the victors, the ICTY is a truly international court which does not have the same measurement units for all those involved in the Yugoslav disaster. But generally, the ICTY is considered a novelty in international law that responds to some requirements of the conflicts typology of the twentieth and twenty-first centuries. The ICTY is not a product of a war between great powers, like its predecessor in Nuremberg, but a court established by a Security Council resolution, and acting under Articles 39–42 of the UN Charter.

Famous international lawyer Geoffrey Robertson argues that Nuremberg was a precedent that the United Nations ignored until the ethnic cleansing policy of the Bosnian Serbs. In his opinion, The "ICTY was established by UN SC as if to stop the world laughing at its impotence, as a substitute for effective military action to stop the war".[35] However, it marked the first time since Nuremberg that an international court had assumed jurisdiction over the masters of war crimes, toward the close of a century in which 160 million human beings were killed in war.

The ICTY is therefore not a court of the victors to punish the defeated, considered guilty of genocide and war crimes, but a UN instrument to punish

[35] Robertson 1999, p. 221.

crimes committed by the warring parties. True, this court does not consider the punishment of NATO or American forces that destroyed the bridges over the Danube or seriously polluted the river and bombed economic targets on the territory of Serbia, which means that, when such tribunals are established, all the facts that constitute war crimes or crimes against humanity, and not just some of them should be taken into account.

Moreover, the Security Council's permanent members are the states which won the Second World War, and the decision to create such a tribunal does not belong to all the UN member states, but to the UN Security Council.

Of course, we do not question the appropriateness and necessity of the ICTY, but on the contrary, we believe that such a tribunal is an international criminal law mechanism that is absolutely necessary and effective, despite some inherent limitations. The ICTY is not a punitive or discriminatory action through which the winners punish the losers, but a concrete measure taken by the UN empowered with the authority and legal, legitimate, and logistics means to implement it, based on the support offered by the international community to safeguard peace and security.

Jurisdiction of the Security Council to create such an institution has been challenged not only in jurisprudence but also in the ICTY's practice. For instance, regarding the claims in Duško Tadić case, The Court of Appeals ruled that the argument that the Security Council, as a body without judicial powers, cannot establish a subsidiary body with such competence is not valid, this allegation arising from a fundamental misunderstanding of the UN Charter.[36] The ICTY establishment by the Council does not mean that the latter has delegated part of its functions or the exercise of some of its prerogatives, or that it would have usurped for itself judicial powers and duties far from its concern under the Charter. The Security Council established the Tribunal as an instrument through which it exercises one of its main attributes, namely the restoration of peace and security on the territory of the former Yugoslavia.

Unequivocally, rejecting this ground of appeal, the Tribunal finally resolved the legality of its establishment. But it does not follow that there is no controversy and doubts about the legitimacy of the decision establishing the ICTY, even if such an instrument is not absolutely necessary to restore peace (because a court has no such powers) but to penalize those who did not respect international law and committed war crimes. An international criminal court should be a unanimous expression of the will of the sovereign and equal member states of the UN, to create such legal instruments which investigate the causes within their competence and punish war crimes, acts of terrorism, genocide, apartheid, and other similar acts.

It is interesting to point out what systems of law have influenced the ICTY procedure. The Statute of the Tribunal has incorporated mainly procedural tools

[36] Enzo Cannizzaro, "Interconnecting International Jurisdictions: A Contribution from genocide Decision of the ICJ", in *European Journal of Legal Studies,* no.1, http://www.ejls.eu/1/5UK.pdf.

specific to the common-law systems of Anglo–Saxon countries.[37] Participants in developing rules of procedure have opted for a common-law model based on the principle of contradiction between the two parties in a process triggered by the known impeachment proceedings. The main reason for choosing this system was undoubtedly the obvious superiority in terms of effectiveness and efficiency. Differences between the two great legal systems currently used in the world can be found mainly in the way of presentation of proofs and evidence, the responsibilities of judges, as well as in the role played by the parties within the procedure.

In the common-law system, the prosecution, as part of the process, is absolutely equal with the defence. The common-law impeachment procedure is based on the conduct of a dispute—a fight between two equal opponents carried out before a judge. The judge remains an arbitrator in the conflict between the parties. He must be persuaded and when convinced by evidence and arguments of the parties, then he takes a decision.

The civil-law inquisitorial procedure is structured on an action with an elevated degree of formality. While in the former system, the opponents are absolute rulers of choice of procedural means and how to support the case, in the second system, the represented authority of state has the main tasks and initiatives.

The inquisitorial procedure gives the judge the role to lead discussions, to discover the truth. The debates are not left to the discretion of the parties, they are independent of their clumsiness or cunning and they are directed by the judge. If in the adversarial procedure, the central person is the party of its lawyer who chooses the battlefield and the weapons of the struggle, in the inquisitorial procedure, the central person is the judge who not only settled the dispute, but, first, will build the solution, through his intervention in the debate. This system was inspired by the idea that justice is a public service, whose role is merely to settle a conflict between individuals, but also to restore legality and rule of law in society. It is considered as a method of equalizing opportunities for the parties, because through the mediation of the judge, any disparity in the parties' choice of lawyer is corrected. By contrast, the judge cannot be chosen by the parties under this scheme, because he or she must be independent and impartial.

Despite the contradiction, equality, power of initiative of the parties specified in common-law system were accepted, even pushed to the limit of accepting bargain solutions—the famous institution of the "plea bargain". At the same time, it introduced an obligation for judges to find and establish the truth, the typical goal of civil-law procedures, beyond and regardless of any agreement the parties would have reached. The statute suggests the provision of an autonomous role for the victims and of some procedural rights existing only in the civil law procedure, trying at the same time to retain a bipolar type of dispute between two parties only. It implicitly provides the obligation of the prosecutor to investigate and present the incriminating circumstances as well as exculpatory evidence, while at the same

[37] *Le Tribunal Penal pour l'ex-Yougoslavie*, http://perspective.usherbrooke.ca/bilan/servlet/BMDictionnaire?iddictionnaire=1416.

time it shows clearly that each party must prepare and submit its own case without taking into account the actions of others.

The ICTY Statute has manifested its intention to comply with modern principles of criminal proceedings, recognized by all national democratic systems. Thus, Article 18 (*Investigation and preparation of indictment*) and Article 19 (*Review of the indictment*) set the main guidelines of the prosecutor's activity in the pre-trial activity. Thus, Article 18 states that[38]:

1. The Prosecutor shall initiate investigations *ex-officio* or on the basis of information obtained from any source, particularly from Governments, United Nations organs, intergovernmental and non-governmental organisations. The Prosecutor shall assess the information received or obtained and decide whether there is sufficient basis to proceed.
2. The Prosecutor shall have the power to question suspects, victims and witnesses, to collect evidence and to conduct on-site investigations. In carrying out these tasks, the Prosecutor may, as appropriate, seek the assistance of the State authorities concerned.
3. If questioned, the suspect shall be entitled to be assisted by counsel of his own choice, including the right to have legal assistance assigned to him without payment by him in any such case if he does not have sufficient means to pay for it, as well as to necessary translation into and from a language he speaks and understands.
4. Upon a determination that a *prima facie* case exists, the Prosecutor shall prepare an indictment containing a concise statement of the facts and the crime or crimes with which the accused is charged under the Statute. The indictment shall be transmitted to a judge of the Trial Chamber.

The discretionary principle is easily deduced, as well as the autonomy with regard to assistance from national authorities. The act of indictment is the form in which the prosecutor presents his case, but the court may review it by a proceeding under Article 19 of the Statute:

1. The judge of the Trial Chamber to whom the indictment has been transmitted shall review it. If satisfied that a *prima facie* case has been established by the Prosecutor, he shall confirm the indictment. If not so satisfied, the indictment shall be dismissed.
2. Upon confirmation of an indictment, the judge may, at the request of the Prosecutor, issue such orders and warrants for the arrest, detention, surrender or transfer of persons, and any other orders as may be required for the conduct of the trial.[39]

Confirmation of the indictment by the court reflects the modern assumption of the control exercised by the judge over the prosecutor's activity. Thus, decisions involving a restriction of fundamental human rights must be taken by a judge.

We must mention two serious difficulties in practice of the ICTY, related to the proper application of its material jurisdiction.

The first was generated by the incomplete formulation of the crimes' constituent content, as provided in the Statute, or other regulations. As stated in the

[38] ICTY Statute. http://www.icls.de/dokumente/icty_statut.pdf. Accessed on 10 July 2012.

[39] Ibidem.

Appeals Chamber's decision in the case of Dusko Tadić, the rules of international criminal law are still in an incipient phase of definition and crystallization and do not provide yet enough specific elements to determine each crime separately. They do not describe in detail a particular category of facts, but rather concern disparate ways of committing them. In addition, a series of prohibited acts which are diverse in nature and seriousness is dealt in a comprehensive manner.[40]

The second difficult problem arising in the practice of the tribunal is about the actions which, through the very method in which they were committed, meet the legal content of several crimes provided separately. In this case, the court tried to find some principles of settlement which avoid erroneous legal constructions.

The crimes referred in Articles 4 and 5 may appear as *lex specialis* to war crimes or violations of the Geneva Conventions, because they require meeting certain statutory conditions which are not provided in Articles 2 and 3. It is obvious that in these cases, the special rule must prevail. This problem can occur in other circumstances, however. For example, if the defendant pleads guilty for acts characterized in the prosecutor's indictment as war crimes but also crimes against humanity. It can also occur where several persons are indicted for committing the same crime, but the subjective element required for qualifying the crime as a crime against humanity—the awareness of a widespread attack against the civilian population—can be found only for one of the defendants and not for the others. In this situation, only that one defendant may be convicted of crimes against humanity and others for war crimes only. But the problem here concerns the imposed sentence and the court will have to explain why for the same facts the defendants will receive different penalties.

When it comes to the rights of the accused, ICTY Statute contains a more developed and modern provision. Thus, the provisions of Article 21, establish the ground rules which will be developed and detailed by the rules of procedure and the court's practice. This article states that:

1. All persons shall be equal before the International Tribunal.
2. In the determination of charges against him, the accused shall be entitled to a fair and public hearing, subject to Article 22 of the Statute.
3. The accused shall be presumed innocent until proved guilty according to the provisions of the present Statute.
4. In the determination of any charge against the accused pursuant to the present Statute, the accused shall be entitled to the following minimum guarantees, in full equality:
   (a) to be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;
   (b) to have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;
   (c) to be tried without undue delay;

[40] On Duško Tadić Case, see: http://www.icty.org/x/cases/tadic/cis/en/cis_tadic_en.pdf, on 12.10.2010.

(d) to be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;
(e) to examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
(f) to have the free assistance of an interpreter if he cannot understand or speak the language used in the International Tribunal;
(g) not to be compelled to testify against himself or to confess guilt.[41]

Another new factor is the provision of a "trial without undue delay", a principle which is unfortunately difficult to observe. Despite efforts made by the Court to shorten the proceedings, this issue is far from being resolved, very few cases being finalized, although the trials had started in 1994.

Other items of interest regarding the ICTY activity refer to its jurisdiction which covers the territory of the former Yugoslavia since 1991, and persons committing or ordering to be committed grave breaches of the Geneva Conventions of 12 August 1949, namely the following acts against persons or property protected under the provisions of the relevant Geneva Convention: willful killing; torture, or inhuman treatment, including biological experiments; willfully causing great suffering or serious injury to body or health; extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly; compelling a prisoner of war or a civilian to serve in the forces of a hostile power; willfully depriving a prisoner of war or a civilian of the rights of fair and regular trial; unlawful deportation or transfer or unlawful confinement of a civilian; taking civilians as hostages.

Genocide is clearly stated in Article 4: genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial, or religious group, as such: killing members of the group; causing serious bodily or mental harm to members of the group; deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; imposing measures intended to prevent births within the group; forcibly transferring children of the group to another group.

Individual criminal responsibility is stated in Article 7: A person who planned, instigated, ordered, committed, or otherwise aided and abetted in the planning, preparation or execution of a crime referred to in Articles 2–5 of the Tribunal Statute, shall be individually responsible for the crime. Very relevant, the official position of any accused person, whether as Head of State or Government or as a responsible government official, shall not relieve such person of criminal responsibility nor mitigate punishment.

[41] *Updated Status of the ICTY, 2009,* http://www.icty.org/x/file/Legal%20Library/Statute/statute_sept09_en.pdf.

In Article 10, it is stated that no person shall be tried before a national court for acts constituting serious violations of international humanitarian law under the Statute, for which he or she has already been tried by the International Tribunal (*non-bis-in-idem*).

Even if the ICTY would have some drawbacks, such as the length of the process or seemingly mild punishments for the crimes, it is, nevertheless, a success for international law. The legacy of the ICTY relates firstly to what it has done within the region—in the countries of the former Yugoslavia, and secondly the contribution it has made at a global level to procedural and substantive international criminal law.

As far as the region is concerned, the most important aspect of the tribunal's legacy is national ownership of the justice system relating to war crimes trials. Through the capacity-building efforts of the tribunal and the example the tribunal has set in its trials, responsible people in the region should be in a position to continue their work in their national systems and to that end, contribute to the end of impunity. As far as the world is concerned, the global legacy of the ICTY consists of very significant innovations made by the tribunal at the procedural level in devising measures for expediting war crimes trials without prejudicing the rights of the accused. At the substantive level, every country will benefit from the surplus of law built by the tribunal in the wide range of trials covering war crimes, crimes against humanity, and genocide. The advances made by the tribunal at both the procedural and the substantive level far outweigh the achievements of Nuremburg and Tokyo.

The most important achievement of the ICTY is that it has shown that it is possible to try persons even at the very highest level for breaches of international humanitarian law and to that end it has struck a nail in the coffin of impunity.

3.2 The Case of Slobodan Milošević

In the internal law of States, head of state immunity is traditionally provided for criminal acts committed while in office and in the course of official activities. By the end of the Cold War, no international court had ever punished a head of state. The tribunal established by the winners after the First World War was superfluous, since the Netherlands did not hand over the Kaiser and Germany did not make available to the Tribunal any of the accused. The Nuremberg tribunal failed to accuse Hitler as he committed suicide. The conviction of heads of states by national courts has occurred, usually as a result of coup d'état, revolutions or other ways of taking power. These convictions relate more to the struggle for power rather than an act of genuine justice. The establishment of the two international military tribunals (Nuremberg and Tokyo) was actually decided by the winners.

The case of Slobodan Milošević is the first trial conducted in an international criminal court, established by the UN Security Council decision, in which the belligerents were treated equally. Of course, as already stressed, this court was

compromised in that it was also created by the victors, but this claim has only a very small coverage. The ICTY is an effective and impartial international tribunal. The states need such courts, because those who lead them have to realize they cannot do what they want and they cannot be above the law.

This brings a novelty in international relations, both in terms of the principle of sovereignty and the way in which it is exercised, meaning that such a principle cannot be relied upon by those who commit or order the commission of war crimes, crimes against humanity, and genocide. The principle of sovereignty is complemented by the principle of accountability. Sovereignty should become a responsible sovereignty.

A fundamental book in our view, relating both to the facts on the ground and the trial of Slobodan Milošević, is "Judgement Day. The trial of Slobodan Milošević", written and edited by Chris Stephen. This gave us an explanatory picture presented with exemplary accuracy of the circumstances of the events that led to Milošević's arrest and the drama centered on the battle between Milošević and his accusers. Stephen also demonstrates the remarkable change in US attitude, a state which had more than any other a decisive contribution in creating the UN war crimes court. However, in the post-11 September 2001 years, the US proved to be the most vocal critic of the ICC.

It is worthwhile pointing out a paragraph in the epilogue: "*This is not to say that the war crimes process, or the ICC, should be given a blank cheque. War crimes courts have very real structural failings, not least the lack of a truly independent body to watch over them, given that they are answerable to no electorate and their trials have no juries. But these are problems with the machine, not reasons to reject that machine. In a few short years, and in the face of extraordinary difficulties, the Hague Tribunal and its sister for Rwanda have shown that the war crimes process can work and that a world leader, in this case Slobodan Milošević, can be snatched from his country and put on trial. The process works. What is still unclear is weather the world has the political will to back it*".[42]

One of the most controversial, highly publicized and interesting trials in relatively recent history of international criminal law, is that of Slobodan Milošević, President of Yugoslavia, and after dissolution of the South Slavic space, of Serbia. Because everything that happened in this area of the former Yugoslavia was surprising, extremely violent, and somewhat paradoxical. And everything is connected, in one form or another, to the name of the leader in Belgrade.

Before 1990, Yugoslavia was one of the major non-aligned countries. It did not fit perfectly into the Communist design developed and promoted by Moscow. It had a special relationship with the West (hundreds of thousands of Yugoslavs were working in Western countries), had access to Western technology and even

[42] Stephen (2004), p. 224.

provided most freedoms and rights to its citizens compared with the other communist countries in the region.[43]

And yet, in the Yugoslav space a secession war broke out, together with an ethnic war, with a bitterness unprecedented in Europe, except of course the two world wars. The realities modified by the communist regime and the beliefs of ordinary people entered into an irreconcilable conflict. Yugoslav Federation's internal borders became front lines.

In these circumstances, Slobodan Milošević, an intelligent and very well-prepared man, became a kind of savior of Serbia and, in his view and some of his followers, a founder of Greater Serbia. In a very short time, the Federation disappeared and Slovenia, Croatia, Macedonia, Bosnia, and Herzegovina reappeared, along with what remained of the Federation—Yugoslavia, now composed only of Serbia, and Montenegro. The battle for the Bosnian space began, a space divided into three, of which a large part was ruled by the Republic of Srpska, as a result of unprecedented violence. To stop the atrocities committed against civilians in this area, NATO intervened, bombing military bases of Ratko Mladić and practically stopping the war. Meanwhile, UN and EU efforts to stop the violence and to facilitate a solution through negotiation, including through the Dayton Peace Agreement, did not have the desired effect. Subsequently, it broke away from Yugoslavia and Montenegro.

Kosovo, with a population of 2 million inhabitants, mostly Albanians, intensified actions to break apart from Serbia, including through the creation and use of an army—the Kosovo Liberation Army (KLA). The events which followed occurred in the name of the province of Kosovo, which unilaterally declared its independence.

The leader in Belgrade led from the shadows much of the actions of the Serbs, the paramilitary "spontaneous" groups. He did not succeed in any of the confrontations, but the effects were disastrous—houses riddled by bullets, people killed without mercy, mass graves, and violence against civilians. These brought him before a tribunal which was established precisely to judge those who committed war crimes, crimes against humanity, and acts of genocide.

Milošević was indicted on 27 May 1999 for war crimes and crimes against humanity committed in Kosovo. After the demonstrations and strikes that followed the October 2000 presidential elections, he admitted defeat and resigned. A year later, Milošević was extradited to The Hague, but died after 5 years in prison.

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[43] In fact, Yugoslavia was neither like the East and the West, nor like the rest. It had its special way to exist which was not convenient nor to the East nor to the West. After 1964, Romania has somehow embraced this *modus vivendi* in this area of strategic split between East and West. This is why the relations between the two countries have witnessed an unprecedented development, reflected, among other things, in the implementation of the two hydroelectric and navigation facilities "Iron Gates I" and "Iron Gates II". After 1989 the situation changed radically. In fact, violence in the area din not begin in Yugoslavia, but in Romania. In December 1989, Romania was on the brink of a civil war, namely, a paradoxical form of it, because in our country there were no conditions and no reasons for a warfare of the kind in the Yugoslav space.

In court, Slobodan Milošević showed again the strong character and personality of a man considered by the prosecutor to be a war criminal. The leader from Belgrade rejected all the evidences in this regard or, in any case did not recognize them.

Judith Armatta, an American jurist who attended the trial on behalf of the Coalition for International Justice (non-governmental organization based in Washington) believes that up to a point, Milošević considered the tribunal's proceedings a game. While his adversaries attempted to win by presenting facts and playing by the rules, Milošević cheated. He used his allotted time for irrelevancies, counting on the court to extend his time in the hope that he would ultimately address relevant issues. The court most often obliged. At the time of his death, the required time to respond to the Croatia and Bosnia cases had not been extended, even though the court's records indicate that it would have positively responded to the petition. Milošević was counting on it. The ICTY investigation of Milošević's death concluded that Milošević manipulated his medications throughout the trial to gain more time out of court. Armatta believes that the major mistake of the court consisted of the "charade of self-representation",[44] despite Milošević's refusal to recognize the legitimacy of the trial and his statement that he intended to use the trial to attack his adversaries.

The decision to hand over Milošević produced notable political reaction. Yugoslav President Koštunica issued a press statement stating that he was unaware of this demarche. He went further, saying in one interview after the transfer, that this is a hasty and humiliating decision. Serbian Prime Minister Zoran Đinđić chose to offer the public opinion economic motivations, presenting Milošević as a barrier to a better future for the citizens of Serbia. Thus, his arrest was the price to be paid for Serbia's re-entry into international community, rather than the result of the gravity of charges against Milošević.[45]

Robin Cook, the UK Foreign Secretary at the time said that the Yugoslav judiciary system should have priority in managing the case, and only in a subsequent phase should Milošević be transferred to The Hague. On the contrary, the EU high official Javier Solana praised the Serbian Government's position, refusing to exert any pressure on Dindic.

Although the Serbian judicial system was far from able of handling such a high-profile case, it is likely that Milošević would have been found guilty of abuse of power if he had been tried in Belgrade. Given that, the vast majority of the Serbian population experienced poor living conditions, a national trial would have made Milošević a perfect scapegoat for the woes of the country, including international isolation, corruption, high inflation, or organized crime. How that hypothetical scenario would have affected the possibility of a war crimes trial at The Hague is a matter of speculation, but it is hard to believe that the Serbian or the Yugoslav

[44] Armatta 2010, p. 441.

[45] Lutz and Reiger 2009, p. 182; see Robertson 1999, p. 343.

Governments would have entertained the idea of delivering him to The Hague once he was behind bars.

Yet, had Milošević remained in Serbia, he would certainly have faced trial for his role in the assassination of his opponent in the 2000 presidential elections, Ivan Stambolić.[46] In short, a domestic trial would have had another important effect that the trial in The Hague failed to achieve: it would have deeply compromised him in the eyes of ordinary Serbs and, in all probability would have put an end to his political legacy in Serbia.

Milošević's trial began on 12 February 2002. Chief Prosecutor Carla Del Ponte explained the basic motivation of the trial in her first intervention: "*Your Honours, the Chamber will now begin the trial of this man for the wrongs he is said to have done to the people of his own country and to his neighbours*".[47] The prosecutor told the court that her goal was to demonstrate that the wars in Yugoslavia were not the result of inter-ethnic tension, as many assumed, but the result of cold calculations on the part of Slobodan Milošević.

Carla Del Ponte described the defendant, in her first statements as an excellent tactician but mediocre strategist. Later, the tactical excellence became apparent.[48] Non-cooperation with the court led to numerous concessions including having an *amicus curiae* team and an unprecedented opportunity to make an opening statement in the trial, which had a major political impact, allowing Milošević to regain at least temporarily, some heroic status in Serbia.

During the trial, Milošević presented his own version of the recent history of Yugoslavia, continuously discrediting the trial. He presented himself as the great defender of the Serb nation and as the personification of the persecuted Serb people. In the process, he helped further reinforce anti-tribunal attitudes in Serbia. The polls taken during the first year of the trial showed that some 70 % of Serb citizens did not trust the tribunal to render justice.[49]

Inevitably, the Milošević trial was perceived, at least symbolically, as about prosecuting a regime and an ideology. The attempt by ICTY prosecutors to isolate the trial from its political context undermined the historical mission of the court, and caused many of its intended beneficiaries—victims of Milošević's campaigns in Croatia, Bosnia and Herzegovina and Kosovo—to lose confidence in it.[50]

Among the main features of Slobodan Milošević's behavior during the trial, we should notice that:

- He did not recognize the authenticity and purpose of the Tribunal, for much the same reasons as Nicolae Ceauşescu derided the panel of judges who sentenced him to death in Târgovişte in December 1989;

[46] Although Serbian prosecutors indicted Milošević in 2003, the instrumentalization of the case has not occurred since Milošević was already in The Hague.

[47] Carla Del Ponte cited by Chris Stephen in *Judgement Day,* 179.

[48] Robertson 1999, p. 344.

[49] Lutz and Reiger 2009, p. 185.

[50] Ibidem, 176.

- He denied the charges against him;
- He accused, in turn, the US for its bombing of Yugoslavia;
- All the Serbian army and police actions that have caused numerous deaths and injuries among civilians were explained as actions of war against the KLA terrorists or against the adversary forces;
- He chose to defend himself, which hindered the process;

The conduct of Milošević's trial has been heavily criticized for two reasons:

- the merger of the Croatian and Bosnian indictments with the Kosovo indictment (allegations in this case being in more advanced stage when the trial started, which is why they had prevailed in the development of the trial, despite the chronological order of events) gave Milošević the opportunity to focus the crucial early moments of public attention on the more politicized circumstances of NATO's bombing, namely the lack of UN backing for the action;
- extensive delays due to poor health of the accused; since he chose self defence and was granted this right by the courts, there were numerous procedural interruptions motivated by the need to prepare his defence and remedy his health.

Shortly before his death, overwhelming evidence proving his guilt appeared, forcing the Serbs to finally realize that their leader was truly guilty: the use of mercenary battalions, a documentary presented by Radio Television of Serbia (RTS) which shows clearly that Serb forces led by Ratko Mladić committed horrible crimes against thousands of Muslim civilians (more than 7,000 Muslim men from Srebrenica killed in July 1995); human bodies found in Drina river, etc.

What happened in the Yugoslav space is extremely serious and very complicated, and the assembly of evidence and testimony required a tremendous court effort. With time, other elements will come out that will make the whole truth known. Because a court of this kind typically aims to prove the guilt of alleged facts and not the overall problems of the conflict's causes, conduct, scenarios and objectives of the parties, the size and strategic effects, and so on.

As head of state after 1989, Milošević was the one who lit the flame of ethnic violence resulting in the bloodiest conflict in Europe since the Second World War. Yugoslavia is the great Western failure of the 1990s. It was only after the Srebrenica massacre and the killing of 7,000 people, the US took the problem seriously into consideration and forced an ineffective Europe to stop this bloody war.

For a long time, Americans believed that war in the Balkans was the consequence of accumulated hatred over centuries and of an exacerbated nationalism, rather than a result of Milošević's autocratic ambitions. But only after NATO intervened firmly and the Milošević regime collapsed did hostilities cease. The tragedy of the Balkans is that it took so long for the West to generate the nerve to stop Milošević.[51] The war criminal died in prison before getting his sentence.

[51] See "Balkan Ghost. No one now disputes that stopping Slobodan Milošević was the right thing to do", in *Wall Street Journal*, 13 March 2006, http://geek-usa.mu.nu/archives/2006_03.php .

We conclude this section with two statements that emphasize the sad episode in the history of international criminal law designated by Milošević's death.

Wesley Clark who was supreme allied commander of NATO during the 1999 Kosovo campaign and a Democratic candidate for the US presidency in 2004 said for the Wall Street Journal: "Slobodan Milošević's death in The Hague is a real tragedy for the international community. But most of all it will be a tragedy for the Serbs themselves. It will likely be another step in a series of historic Serb failures, martyrdom and isolation, all of which Milošević himself grandly evoked to gain and maintain his power. I knew him as a nationalist leader and wartime adversary. Along with the other Americans on Richard Holbrooke's 1995 Balkan peace talks mission, I spent countless hours with Yugoslav President Slobodan Milošević. As NATO's then supreme allied commander, I haggled with Milošević about war criminals and the Dayton Peace Agreement implementation in 1997, delivered NATO's warnings and threat in 1998, implored his cooperation in heading off renewed conflict, and then, when all else failed, I led the NATO military campaign which forced him to end ethnic cleansing and remove his troops and police from Kosovo. In 2003, I faced him again when I testified for the prosecution in his war crimes trial at The Hague. While his death at The Hague ends his interminable trial, nothing is resolved. His death only compounds many of the difficult issues still facing the international community, Europe and Serbia itself".[52]

ICTY Chief Prosecutor Carla Del Ponte deplored Milošević's death, saying that it had "deprived victims of justice". Concerning its causes, she concluded that suicide could not be ruled out and declined to comment on speculation that Milošević may have been poisoned. In an interview with the Rome newspaper, *La Repubblica*, Del Ponte stated: "I am furious… In an instant everything was lost… the death of Miloševićs represents for me a total defeat". She also said that the death of former Yugoslav President Slobodan Milošević makes it all the more urgent that other war crimes indictees be brought before the UN's war crimes tribunal.

There are different views on the trial, including on the death of Slobodan Milošević. Some argue that he committed suicide, others that he was killed. Even if it was said, at one point that Milošević took the ICTY tribunal as a hostage, the ICTY has continued the trial hearing witnesses and examining evidence. Unfortunately, Milošević's death occurred when the case was very close to its completion.

The most important achievement is that the ICTY has the largest archive on the dissolution of former Yugoslavia and the ethnic cleansing, which sooner or later will be used in a compelling historical narrative, if not universally accepted.

Despite all the criticism, the Milošević trial proves the necessity and usefulness of the international criminal courts. Ironically, as Geoffrey Robertson stressed,

[52] Wesley Clark, "Milošević: A Petty Hitler" in *The Wall Street Journal*; http://www.pressonline.com.mk/default-en.asp?ItemID=0F612326626DC044BDD83927746928F7.

"*a man who refused at first to recognize the Court may do more than anyone else to endow it with legitimacy*".[53]

3.3 A New Old Paradigm for International Relations: No One is Above the Law

The trials at the ICTY, ICTR (International Criminal Tribunal for Rwanda), and the Special Court for Sierra Leone have been largely seen to be fair and to have been conducted in accordance with applicable international and domestic standards of law. This is the same outcome that we need to see at the ICC which has only returned one verdict after 10 years of operation. In March 2012, the Congolese rebel leader Thomas Lubanga was found guilty of using child soldiers in the Democratic Republic of Congo. This at least was a practical beginning after the Court had been given a high profile role by the Security Council the previous year when the Gaddafi regime was referred to its prosecutors, and after the indictment of Sudan's Bashir had been widely defied by African states.

An important issue that always haunts these international courts is that they do not have coercive powers; they do not have police forces or ways to effect arrests and garner evidence. This is a big factor that works against them. We should take the long view and assess these tribunals over time. There are many comments that Bashir will not be coming to The Hague. On the other hand, if we think back to Milošević, we heard the same concerns. Moreover, the experience "on the run" of General Mladić is not attractive for those who defy justice. He had to lie low for 17 years during which his daughter committed suicide and he dared not attend family funerals and weddings. No military officer wants to be put in the position of a coward, nor does he want the dishonor of appearing for years in the dock at The Hague. This is why the threat of an indictment can act as an incentive for senior military officers to defect from a regime that is committing crimes against humanity. There were such defections after the indictments of both Milošević and Gaddafi.

Now, at the ICTY the former Serb leader Radovan Karadžić stands trial, the former commander of Bosnian Serb forces, General Ratko Mladić, faces charges of war crimes at Srebrenica and Sarajevo, Milošević stood trial but died mid-trial before he could present his defense, the former President of the Republic of Srpska, Biljana Plavšić pleaded guilty and cooperated with the prosecution and so received a light sentence of 9 year imprisonment. Also, the former Prime Minister of Rwanda Jean Kambanda pleaded guilty for genocide and was condemned by the ICTR to life imprisonment. After 44 months of often tense courtroom action, the war crimes trial of Charles Taylor has ended. The former Liberian president was

[53] Robertson 1999, p. 345.

convicted on 11 counts of aiding and abetting war crimes and crimes against humanity. He was sentenced to 50 years' imprisonment.

The Taylor's verdict was greeted with some satisfaction in Liberia, the country which he had ruled, and in Sierra Leone, the country whose rebellion he had encouraged and funded in order to obtain "blood diamonds" in return. The case was an important step forward for international justice, because it marked the conviction after a fully contested trial of a powerful African head of state who had been feared and even respected during his time in power. He had, moreover, been indicted whilst he was still head of state and many thought that he would never come to trial. But Nigeria surrendered him at the request of the new government in Liberia. Unlike other defendants who refused to participate or simply abused the Court, Taylor hired a top QC (a leading barrister) and carefully challenged and largely destroyed the prosecution case. The Court rejected the most serious charges that Taylor had ordered the atrocities in Sierra Leone or had been in a joint enterprise with the brutal rebel forces. He had only been guilty of aiding and abetting the crimes, because he had known about them from the media and from reading diplomatic reports and had funded the rebels, nonetheless. Many lawyers think that the Appeals Chamber should overturn some of the verdicts that Taylor was guilty of aiding and abetting crimes, but require a "specific intent" such as rape or terrorism, but other crimes such as pillage and recruiting child soldiers can obviously be aided and abetted by funding the armies which notoriously commit them.

Thus, the verdict in Taylor's case is likely to be used as a deterrent to state leaders in Africa and elsewhere who fund war lords or send armies to obtain treasures in other countries. Even so, there were many problems with Taylor's trial. The prosecution had to pay most of its witnesses and there is always a suspicion that payment will lead them to invent or exaggerate. The trial took far too long and went on for three and a half years. The Court took 13 months to deliberate its judgment. It was held in The Hague for security reasons and not in Sierra Leone where it mattered most to the people. It received worldwide publicity because of the evidence from Naomi Campbell and actress Mia Farrow, although the evidence they gave was irrelevant to the verdict. The additional judge whose job was to listen to the evidence but only to intervene if one of the other judges died or was forced to resign, spoke out after the verdict was publicly delivered and claimed that in his opinion Taylor was not guilty. This was a serious breach of the rules and caused understandable embarrassment. However, despite all these problems, the trial was a comparative success, especially since most of the court's work was within Sierra Leone itself, convicting eight of the main perpetrators of the atrocities.

Laurent Gbagbo, the ex-president of Ivory Coast, has now become the first former head of state to stand trial before the ICC. The ICC has previously tried and failed to bring the might of international law down on Sudan's president, Omar al-Bashir, and Libya's late leader Muammar Gaddafi. The latter would have been unrivaled as legal theatre, but it was Gbagbo who faced the dishonor of becoming the first former head of state to stand trial at the world's premier war crimes court.

These examples prove the effectiveness of international criminal law institutions. When it comes to war crimes, crimes against humanity, genocide, terrorism, torture, and other grave crimes, no one can be immune. No one is above the law.

A renowned precedent in history is represented by the 1649 trial of England's king Charles I. Its relevance to today's legal proceedings involving modern day tyrants such as those listed above is evident. The symbolism of this trial is obvious: The King, the divine majesty, had bowed, powerless before the majesty of human law. "Be ye ever so high, the law is above you" had been an empty aphorism for those who had tried to bring the Stuart kings to the bar or the battlefield. This defining historical moment gave it meaning.[54]

The trial produced a niche toward ending the impunity it guaranteed to sovereigns—a message, filtered through the philosophy of Locke and Montesquieu, which provided inspiration for the French Revolution and the War of American Independence. We can see it now as the precursor of a much more recent development which began at Nuremberg, namely the use of criminal law to punish heads of state and political and military leaders for war crimes and crimes against humanity.

We may see lots of similarities with more recent trials. For instance, Saddam Hussein after his capture addressed the court with the same challenge to the legal authority of the court that Charles I threw at his judges. Slobodan Milošević at The Hague at first refused to enter a plea. General Pinochet and Charles Taylor continued to assert the law's immunity for heads of state. Taylor instructed lawyers to challenge the indictment whilst he was in hiding in Nigeria, and the Court delivered an important decision on the lack of immunity of heads of states before UN war crimes courts.

International justice has been opposed by those who argue that it violates state sovereignty, perfectly true, in terms described by Judith Armatta in one of the last reference books on the trial of Slobodan Milošević. International justice, says the author, comes into play when a sovereign so abuses his power over his citizens as to offend our sense of what it means to be human.[55] International justice declares that no sovereign should have that right. By his criminal acts the sovereign forfeits his power.

While many victims of war put their hopes in the current work of international criminal institutions, they have often been disappointed by the light sentences given to those who have committed war crimes, genocide and crimes against humanity, and by the slowness of the proceedings. This demonstrates the need for a focused and concerted effort in developing these institutions and the creative energy must be directed into creating a workable, though imperfect, international justice system.[56]

States will understand, finally, that these institutions are absolutely necessary to strengthen their authority, to address serious cases which are beyond their

[54] Robertson 2005, 2006.

[55] Armatta 2010, p. 9.

[56] Ibidem, p. 446.

competence, to harmonize international relations and to observe international law. And this reinforces sovereignty.

International justice mechanisms can be sustainable only insofar as they are promoted by national states. And if the state asks for international support for its own efforts, the global community can offer significant assistance at relatively low cost. Loans of law enforcement officials, experts, and legal advisors, represent an immediate and tangible contribution to the state's efforts.[57] Cooperation is the key word, its benefits being more than invaluable. To give an example, the ICTY's work with local courts and national authorities helped speed up the accession of the countries of former Yugoslavia to the EU.

Although the ICTY and national courts have concurrent jurisdiction over serious violations of international humanitarian law committed in the former Yugoslavia, the ICTY can claim primacy and may take over national investigations and proceedings at any stage if this proves to be in the interest of international justice. It can also refer its cases to competent national authorities in the former Yugoslavia. The ICTY decisively depends on the cooperation with nation states. Having no police forces, the help volunteered by nation states is fundamental and is not always forthcoming. A number of African states have refused to arrest the indicted Bashir, treating him as though he had diplomatic immunity when he visits. Sometimes, it takes a change in government before a fallen national leader is delivered, as in the case of Serbia when handed over Milošević. Nigeria handed over Charles Taylor but only after an express request from the new government in his former state, Liberia.

There is a massive dispute over whether new governments should have sovereignty to try members of the old regimes. In the case of Libya, there was an ongoing dispute as to whether it should put on trial in Libya the ICC indictees Saif Gaddafi, son of the former Libyan leader, and Abdullah al-Senussi, Gaddafi's former head of Libyan intelligence, or whether they should be delivered to The Hague. Many human rights NGOs say that they cannot be tried fairly in Libya, because it has no effective court system and will likely execute the two men, but the Libyans are insistent that they have the right to prosecute.

Strengthening the nexus between international criminal justice and national capacity to combat impunity is at stake. Building states' capacities to combat impunity at the national level is realized with tremendous UN support. Of great relevance are the lessons learned from *ad hoc* and hybrid tribunals, and how to align knowledge and initiatives from international criminal justice with efforts to strengthen domestic prosecutions and capacities. The experiences of, among others, the ICTY have contributed to the development of the ICC and the principle of complementarity.

To deal with war crimes, special courts have been set up in Serbia, Croatia, and Bosnia. The core problem with these trials is that they appear to proceed in a sort of local moral and political limbo. Each community concerned likes to see a

[57] Ratner and Abrams 2001, p. 343.

conviction of someone from another community who brutalized their fellow ethnic cousins. The harsh reality is that every community in the former Yugoslavia sees itself as a victim. Nevertheless, difficult trials seem to achieve real higher status in achieving justice since a growing number of war crimes victims do get the deserved satisfaction of seeing war crimes perpetrators being sent to prison.

The conclusion is that all great crimes do deserve great punishment. But delivering that punishment in an effective way is far from easy.

Speaking from an international law perspective, which is not quite the same as a political or foreign diplomatic perspective, the Westphalian conception of sovereignty was that the state would be immune, it would have impunity, and there would be no criminal liability for its leaders, because they were acting in the name of the state.

So what we find now after the Cold War is that the proliferation of failed states and weak states has lead without a deliberate intention for that result to a weakening of state rights.

The rights of the state were once immune, they were total, the right of the state to do what it liked to the people, the right of the state to act in such ways was appealed really at Versailles, when there was a failure to punish the Kaiser for causing the First World War, to put him on trial; so that, today we find that international law is slowly limiting the power of the state and of its leaders to deal with their own people or to deal with other states, but there is an exception to this namely the most powerful states are still reluctant to be shackled by international law.

One could say that the dilution of the sovereignty of the nation state is far more apparent in the case of weak or middle ranking states, than it is, for example, in the case of the great powers which declined to sign the treaties that gives the international community some power over them. So, it might almost be said that the decline or delusion of the sovereignty of the smaller nation states is a way in which peace and good governance—the objects of the United Nations—are being promoted by major states.

Another important phenomenon consists of the development of regional organization where states are happier to abandon aspects of their sovereignty, not to the United Nations, whom they distrust, but to a regional organization, who they do trust. We see this in Europe very much with the European Court of Human Rights and all European countries prepared to give up a little of their sovereignty to that court. The same happens in Latin America, where the Inter–American Commission was created, or in Africa, where a court was established—*The African Court on Human and Peoples' Rights*—from which very much is expected. It seems much easier for the Africans to accept the jurisdiction of a court consisting of African judges, than the ICC jurisdiction where judges from all over the world work.

The extradition measure of the former African leader, Charles Taylor, with the value of precedent on the African continent, has been commented by an official of the Special Court for Sierra Leone, in the *International Justice Tribune*, as "An African head of state being tried in Europe is highly offensive on a symbolic level". Nigeria has been harshly criticized for not having referred the case to the

African Union, and more for having taken the unilateral decision to hand over Taylor to a "white man's Court" to be tried in The Hague.[58]

A focus on the local is hence manifested and certain reluctance when it comes to the global. That gives the impression that the world is dominated by the big powers, which impose for others, but not for themselves. The proof is that only two of them have accepted the ICC jurisdiction.

A demise of sovereignty is questionable. It is more than important that the international community and nation states share the same values and principles. Rather than speaking about a demise of the Westphalian legal meaning of sovereignty, we would prefer to embrace the approach of the maturation of states' responsibilities and their awareness of the necessity of the international criminal law's advancement. For that purpose, professional and social interaction on a worldwide level between academics, policymakers, and legal professionals is essential.

Debates on the changing nature of sovereignty in the post Cold War world have left many diplomats, military planners, and academics uninterested. The debate has been widely treated as something of "purely theoretical" appeal with little or no application in the real world. There has been until relatively recently too large a gap between the post-structuralist debates on international relations theory and the more empirically based literature on conflict resolution and changing forms of governance. The evidence of emerging models of sovereignty in actual use by political actors, or implied in the pragmatic compromises made or being actively discussed by political actors in contemporary nationalist politics and in peace making process, fundamentally challenges the absolutist conception of sovereignty. The traditional Westphalian model of sovereignty, based on absolute monopoly of internal force and absolute recognition of external borders (subject only to very limited universal human rights provisions) still forms the basis of the positivist legal definition of sovereignty but it is being increasingly departed from when pragmatic compromises are being negotiated to resolve nationalist conflicts in the post Cold War world. In this context, maintaining the fiction of traditional sovereignty, while perhaps comforting to voters skeptical of globalization or regional integration, actually hampers our capacity to construct models of governance appropriate to serious ethnic conflict or areas of contested sovereignty.

The compatibility of the principles of national sovereignty and of international legality under the emerging concept of the *Responsibility to Protect* is at the basis of the intervention of the international community to ensure the exercise of jurisdiction over the most serious crimes.

As post-Westphalian elements reflected by the new dimensions of international criminal law, we may simply elaborate on the composition of the panels of judges who came from all over the world and, above all, on the fact that "sovereignty" can be put on trial with the help of the nation states and for its own good and

[58] Lutz and Reiger 2009, p. 226.

relevance. A new dimension of extradition is obvious—states handover their people more easily now, in the name of the human rights' observance.

The ICC and the international criminal tribunals having temporary character help sovereignty to acquire new procedural meanings, and this can be achieved only with the support of national states. States understand that these special courts do not violate their sovereignty, but rather help them to exercise it properly, interdependently and on a consolidated basis. Because nobody, not even a state leader should be above the law. A head of state is not the state itself, but a servant of the state institutions. And states have created these international institutions as to help them in respecting human rights and the rule of law.

Here it is what Geoffrey Robertson said about forays into international justice:

> Many mistakes have been made, particularly with the inefficiency and expense in some new courts. I do think, however, that justice will have its own momentum and in time we will look back on these problems as teething troubles, and future generations will be amazed that we let people like Pol Pot, Augusto Pinochet, and Idi Amin live happily ever after their tyranny.[59]

The future of international justice, particularly the ICC, depends on the extent to which political influence can be annihilated by proper and independent investigation of the cases. It is unfortunate that large countries like US, China, and Russia do not align the rules of international humanitarian law enshrined in the ICC Rome Statute. "*If the United States and other states actively seek to influence the law that is applied to others, the institutions must develop and institutionalize ways to resist. Otherwise, international humanitarian law becomes just one more venue for political intrigue*".[60]

States that have not ratified the Rome Statute of the ICC pose a challenge to international criminal law. However, an optimistic view should prevail due to a reason. Thus, if the US was hostile to the universal jurisdiction of the ICC during the tenure of George W. Bush, Obama administration's positions indicate a moderate support, which enables us to consider that managing these challenges represents a matter of time.

Many issues remained to be clarified regarding international relations and the impact of various doctrines on sovereignty and the attached responsibilities of the states and international institutions. One of these is the pre-emptive doctrine. The terrorist attacks of 11 September 2001 in the US, the American-led international coalitions' interventions in Iraq and Afghanistan, many other such experiences, including starting a global war against terrorism, will certainly have an impact on the development of international law.

The pre-emptive doctrine, as it is conceived, appears to correspond to the legitimate right to self-defence, but often, intentionally or not, it is confused with that of prevention. Obviously, the pre-emptive doctrine, like that of prevention, does not affect sovereignty, but it raises very serious questions of legality and

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[59] Geoffrey Robertson, quoted by Armatta 2010, p. 446.

[60] Armatta 2010, p. 445.

legitimacy of military actions. Proponents of the US position on pre-emption have forcefully argued that if the UN itself does not adapt to meet new realities of terrorism, then the UN would render itself irrelevant and go the way of the League of Nations. But the controversy between advocates of an international order based on the cancellation of the imperial type of the nineteenth century and the devotees of a new cosmopolitan system based on human rights and universal values, quite substantially affects the sovereignty principle, especially its exercise. It is hard to predict which will be the position of international law in connection with these extremely controversial perspectives. But sovereignty is rather a function of identity and accountability in a system of co-existing identities and wills as to solve the disputes between them, rather than one of isolation, voluntarism, and often confrontational attitude in international relations.

In conclusion, we do not believe that the Westphalian model is obsolete, so much as altered and diluted, and that Westphalian sovereignty has been de-legitimized. It has really been overseen, rather than de-legitimized. It has really become a subject to appeal to the international legal community through courts and relevant cases. One can no longer speak of a Westphalian model in which the government is completely powerful and can do whatever it likes to its subjects. While it can still do a lot to them, it is now accountable to international law, and only when it violates their rights severely can it be said that it is acting illegitimately.

Chapter 4
A Case Study in Cooperative Security: The Greater Black Sea Area

Abstract This chapter provides a practical study about perceptions of sovereignty and security in a regional framework. The object of analysis is the Regional Stability within the Greater Black Sea Area Working Group of the PfP Consortium of Defense Academies and Security Studies Institutes. This Working Group is co-chaired by Romania, having its Permanent Secretariat hosted by the Romanian Institute for Political Studies of Defense and Military History. The insiders' perspective focuses on the role which integrated expertise plays in the consolidation of national sovereignty in new independent states, based on specific mechanisms of academic cooperation. The epistemic community encompassing security experts from the Greater Black Sea Area states has developed a data base on the regional security risks and threats in order to produce mutual trust and a long-term common strategic culture for the benefit of the region. It is therefore described as a type of sovereignty based on interdependence, the classical Westphalian norms being questioned by the common interest to create a cooperative security culture.

Contents

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4.1 The Strategic Challenge: Cooperation Versus Competition

Sovereignty is perhaps one of the most discussed and most contentious topics in both international law and the policies and strategies on security and defense. There are two radical and irreconcilable views on this subject, but also some that take into account the dynamic reality and the need for a realistic and flexible attitude in addressing this issue.

Some analysts argue that sovereignty in the era of globalization is an obsolete topic and a new construction of international relations requires a transfer of sovereignty to international institutions, only able to manage the current security environment.

Others, especially realists and neo-realists argue that, on the contrary, the concept of sovereignty has not exhausted its meaning, significance, and importance in an international system based on states. International institutions and international organizations are created by states not to diminish their sovereignty, but on the contrary to strengthen and adapt it to the new requirements of an international, increasingly complex, and difficult environment, in which the degree of uncertainty and interdependence greatly increases.

The Greater Black Sea Area (GBSA) is a concept that goes into this constructive trend and brings together the interests of countries in the region, based on new coordinates generated by recent developments in all segments of this area. Here NATO, the EU, Russia, the Caucasus, and even Central Asia, stakeholders of energy interests and the groups identified by culture, religions, and ideologies areas meet.

GBSA does not intend to diminish the sovereignty of states in the region, but rather provide clearly defined tiers of confluence, interests, and common objectives in order to generate power, confidence, cooperation, security, and prosperity. These objectives are very difficult to be realized, as the countries in the region have a culture of isolationism, distrust, and suspicion, rather than one of confluence and cooperation.

There is no unique understanding of the geographical boundaries of the Greater Black Sea Area (GBSA). If it is taken into consideration the geographical basis only, this region includes the six Black Sea states: Bulgaria, Russian Federation, Georgia, Romania, Turkey, and Ukraine. The term “greater” or “extended” refers rather to a political-economical-cultural region than to a strictly geographical one, so that in the region may be included countries, such as Moldova, Armenia, and Azerbaijan, taking into account the political, economical, and strategic importance of these states.

From a geo-strategic point of view, the Black Sea makes the connection between Europe and Asia, but also between Central Asia and the Middle East, representing an important commercial connection and a transit zone. Also, GBSA

is an extended area of transport, integrated in the Pan-European system of transport corridors, covering Central Asia within the Transport Corridor Europe-Caucasus-Asia (TRACECA). The area has major transportation facilities linked to the Rhine-Danube-Black Sea and Volga-Don canal, being also connected to the Open Sea (Atlantic Ocean) through the Mediterranean.

GBSA appeared as an autonomous geopolitical space at the end of the Cold War, polarizing the attention of large global players and projecting a complex image in full security overhaul. Recurrence of *power politics* in the sphere of international relations is evident in this area (with reference to the Russo-Georgian war), leading naturally to the great efforts of the international community to ensure stability and regional cooperation.

The end of the Cold War did not bring peace, stability, and prosperity in the Black Sea region and in south-eastern Europe, but it has helped to restore some frozen conflicts, while stimulating others, leading to outbreaks of new tension and insecurity in the entire area. An exhaustive analysis of these conflicts and tense situations shows that most have a common historical background and that the area is confronted with big economical, financial, political, and social problems.

Maintaining the service of bad economy based on low-tech industrial capacity, inefficient energy consuming and polluting, non-consolidation of democratic institutions, and the lack of viable programs of economic and social development, favored instability.

Contrary to the favorable momentum of detente and international cooperation, in the GBSA risks and security threats continue to manifest, such as:

- internal instability in the states which were built up again after the break-up of the former USSR;
- organized crime, corruption, arms, and nuclear materials' trade;
- increased pollution;
- economic competition triggered by exploitation and transportation of hydrocarbons from the Caspian Sea area;
- an emphasis on ethnic-separatist conflicts and the disintegration and establishment tests of independent state entities (Transnistria, Abkhazia, South Ossetia);
- exportation of instability: the interests of promoting Islamic fundamentalism and the Islamic states' interests to the south-eastern Europe, the existence of ethnic groups in adjacent areas (Turkish-Tatars from Crimea, Gagauz in Moldova, the Turks in the south-eastern Bulgaria, Bosnians, Kosovars, and Albanians in the Balkan Peninsula);
- use of the space as a drug transit area, from Central Asian suppliers to consumers in Europe.

Representatives of the military and the politico-military environment give greater importance to these threats and challenges to security in the Western Balkans and GBSA, believed to be increasing. The number of NATO members has increased to three, the length of the Euro-Atlantic coast has increased by 14 %, the use of one of the largest commercial seaport in Europe—Constanta, are just some of the quantitative results of the NATO enlargement, to which can be added a significant number of combat equipment and NATO air bases.

Despite positive effects of the Alliance's enlargement, there is still a slight "tension" in the relations with some countries bordering the Black Sea, although outside the three NATO member countries (Bulgaria, Romania, and Turkey), there are countries in the region which are members of the Partnership for Peace (PfP NATO) but also states that have special cooperation arrangements.

The GBSA is now in a historic new phase: the west coast is integrated into NATO (Bulgaria, Romania, and Turkey) and the European Union (Bulgaria, Romania, and Turkey is under negotiation). The countries of the east coast have established cooperative relations with NATO and the EU, and some of them are willing to accede to these organizations. All the states in the GBSA are engaged in institutional relationships with the Euro-Atlantic structures: Council of Europe and OSCE; NATO—Partnership for Peace, NATO-Russia Council, and NATO-Ukraine Partnership; EU's Eastern Partnership.

There are different mechanisms and forms of cooperation among the riparian states such as BSEC (Organization of the Black Sea Economic Cooperation), the Black Sea Forum for Dialogue and Partnership, the Black Sea Synergy, the EU Strategy for the Black Sea, etc. However, the results of multilateral cooperation have not always been satisfactory and some regional initiatives have been viewed with suspicion, especially because of their connections with the energy pipelines policies. The potential of cooperative arrangements seems to be overshadowed by policies based on specific interests and ad hoc alliances[1].

Due to the developments in the area, Euro-Atlantic integration has been slowed down, being somehow replaced by EU's bilateral partnerships.

The European Neighborhood Policy (ENP) has been focused on the GBSA, in the context of the emergence of the Eastern Partnership. There is a real opportunity to attract the Russian Federation in this new EU form of cooperation with the six former Soviet republics—Moldova, Ukraine, Georgia, Azerbaijan, Armenia, and Belarus. Moreover, there is a discrepancy in power between the countries in the Black Sea region—from Russia and Turkey (regional powers with expansionist geopolitical tendencies) to fragile states in the process of articulating their own identity, such as Georgia, Armenia, and Moldova—which, given the historical mistrust, leads to the reality that every member of the region links its development prospects to extra-regional sources and arrangements, since the multilateral settlings are hardly achieved.

[1] Geir 2011.

The Black Sea is an ideal route by which the oil and natural gas from sources other than the Organization of the Petroleum Exporting Countries (OPEC) and the Persian Gulf region reach the European markets. The energy resources and the potential of energy transportation in the South Caucasus is an important guarantor of Europe's energy security in the coming years. The area lies at the crossroads of transport corridors linking Europe to South Caucasus, Central Asia, and the Middle East.

Russia and Turkey are the most powerful regional actors in the GBSA, the offspring of the empires that have controlled the Black Sea in an authoritarian way. They represent the *status quo* in the region, defending the regime created in 1936 by the Montreux Convention. While favoring these countries, this regime is perceived by the Romanians and other citizens from different EU and NATO countries, as obsolete and as a brake on internationalization of this strategic region.

Policy makers from the Russian Federation see the GBSA as part of its "immediate/close" neighborhood and fear Western powers' entry in this region. Thus, Moscow has tolerated with difficulties the "interference" of the West—NATO, EU, United States—in countries such as Ukraine, Moldova, Georgia, and in addition has encouraged the leaders of secessionist movements in these former Soviet states.[2] To smaller neighboring states, Russia has used the same *carrot and stick* strategy: economic advantages offered to those who had an obedient attitude (Belarus and Armenia got preferential prices for hydrocarbons) and economic sanctions imposed on others considered "rebel" (embargo on Moldovan wines and mineral water and wines from Georgia).

Currently, Russia is not concerned with identifying a new military harbor to place its military forces in Sevastopol after 2017, because Ukraine finally agreed to extend the lease contract. Russia wants a geopolitical and economic control of a part of the Black Sea area, being interested in keeping Ukraine, Armenia, and Moldova within its sphere of influence and security. The reasons are related to the perception of risks coming from west and east, the economic calculations and even motivations of prestige specific to the great powers. It is clear that Ukraine and Russian troops stationed long term on its national territory is not likely to be acceptable to NATO, even if the future leaders of this country will be pro Atlanticists.

Energy is an essential book in the hands of Russia. Russia and the EU are interdependent in terms of energy (the main importer of the Russian gas is just the EU), but Russia wants to create the impression that the EU's dependence is obvious. By interrupting the gas supplies to Ukraine, it has underlined Moscow's willingness to impose its rules to a Europe which is over insistent on the competitive energy market.

Stopping NATO's enlargement to the East was and still is a major goal of Russia that has not hesitated to discourage this trend, including by severe measures such as the speculation of consequences of the war in Georgia, or unilateral ones

[2] Flenley 2008, pp. 189–202.

like freezing its participation in the Treaty on Conventional Armed Forces in Europe (CFE) in December 2007. In 2009, when the EU launched the Eastern Partnership—an initiative dedicated to the states from the Eastern flank such as Moldova and Ukraine—Russia's reaction was negative from the very beginning since Moscow considered the EU as a competitor in the GBSA and not as a dialogue partner.[3]

A sensitive issue is the "frozen conflicts" in the GBSA. We know that Russia has often offered material and human support to some secessionist groups and also contributed to the ethnic cleansing operated by the Abkhazians against the Georgians in Abkhazia. Moreover, Russia encouraged other militias (Cossacks, Caucasian) to participate in the fights.[4] Even if we cannot put the blame on Russia for the hostilities against Georgia in the summer of 2008, still Moscow has encouraged active secessionist movements in other countries and subsequently recognized phantom mini-states of South Ossetia and Abkhazia (recognition inspired by "The Kosovo" model which ironically Russia has always denounced!).

Reset policy practiced by Barack Obama in relation to Moscow is convenient to Russia to the extent that the latter is given a free hand in areas of its close proximity. However, the U.S. continues to support Georgia, Azerbaijan, Moldova, although in a more discreet way than in George W. Bush Jr mandate. Strategically, Russia wants to gain a maximum of concessions from the U.S. on the American missile shield installation, because it seems to be understood that Washington would not give up this plan. Obviously, Moscow would like the states from the GBSA to not host the shield's elements and if this is unavoidable, however, a right of co-decision and joint control of the facilities must exist.

Turkey is a key player for the entire Wider Black Sea Region, controlling the means of access to this basin by two straits, the Bosphorus and Dardanelles and enjoying a "pivotal" position since it connects the Balkans to the Middle East and Central Asia. Turkey is a reliable NATO member. In the last decade, Turkey's foreign policy is a multi-vectorial one, proactive, "neo-Ottoman", focused on strengthening and expanding its influence in neighboring areas: the Balkans, the Middle East, Caucasus, and of course GBSA. Turkey also has relevant assets, having the second largest army in NATO after the U.S. and being the 15th largest economy in the world in terms of GDP.[5]

The methods chosen by Turkey to assert its influence in the GBSA are multiple. At the institutional level, in 1992 the Organization of the Black Sea Economic Cooperation was established, which is now a true engine of economic cooperation in the area and of trade and other areas of non-military security development. Also, the Black Sea Harmony operation to secure the region is also a Turkish initiative,

[3] "Russia and the world: 2010" (in Russian language)—report of the Institute of World Economy and International Relations, 15 March 2010; available at: http://www.globalaffairs.ru/events/13359.html.

[4] Socor 2004, pp. 127–138.

[5] http://www.canadaexportcentre.net/index.php/press-release-mena-region-turkey, accessed on 20 May 2011.

imitating the famous Active Endeavor model—NATO's mission in the Mediterranean. In the military field, BLACKSEAFOR was a great diplomatic success of Ankara.

Turkey believes that the maritime security issues in the GBSA should be managed only by the littoral states (*local ownership*), excluding external actors (U.S., EU, NATO) which raises serious problems, given its NATO membership and its aspirations for EU accession.

Strategic proximity to Russia is clearly the most important and troubling aspect, because in the last 3 years Turkey seemed closer to Russia's interests and sensitivities. Turkey seems tempted by turning the role of regional power in the GBSA—Caucasus, alongside with Russia which is increasingly more perceived as a possible partner or even ally, rather than a potential rival (like what happened in the 1990s).

While Russia is increasingly involved in shaping a relationship with Iran, Syria, and Hamas in Palestine, given the wave of revolutions that have broken out in the Arab world, Ankara has partially damaged its relations with Syria and completely broken the relations with its traditional strategic partner, Israel. Recently, Foreign Minister Ahmet Davutoğlu predicted a partnership with Egypt as "Regional Anchors" which he said could create a new axis of power at a time when American influence in the Middle East seems to be diminishing.[6]

In GBSA, Turkey is currently defending the *status quo* and prefers a Eurasian future of the region rather than one of Western-centric type. Ankara's official policy—"zero problems with neighbors"—was partially successful!

The "battle" for Turkey between the West and Russia will be visible also on the pipeline routes[7]: Blue Stream I and II, South Stream, and Nabucco. Baku-Tbilisi-Ceyhan pipeline is a major economic and geopolitical asset of Turkey, providing it with the role of an "energy bridge" between the Caucasus, Black Sea, and the EU. Turkey wants to be an energy hub for Europe, although it is highly dependent on gas from Russia and the CIS space. The big EU energy project Nabucco which would reduce the dependence on the Russian natural gas cannot be implemented without the participation of Turkey.

Regarding military security, it is known that the Turkish army played a major role in the formation of the modern Turkish state. The Justice and Development Party (AKP) seems to have decided to drastically reduce the interference of the army in the political game. In February 2010, the acts to arrest militaries in reserve continued, indicating a "smoldering war" between the AKP elite and the conservative military circles. The "Ergenekon" process split Turkish society and on August 1, 2011 the Turkish military leadership resigned in protest for not liberating the arrested officers. It can be said that the event corresponds to the double purpose of eliminating a domestic political rival but also of approaching the EU that encourages the democratic control of the armed forces.

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[6] Shadid 2011.

[7] Özdemir 2008.

Nevertheless, accession of Turkey to the EU is a process in real difficulty since Turkey does not accept the Greek Cyprus (Republic of Cyprus which is recognized by UN and is an EU member) to assume the EU presidency. High officials from Ankara said that they would freeze relations with the European Union if the Greek Cypriots continue to delay negotiations and assume the EU presidency before the parties reach a solution on the divided island of Cyprus till July 2012. Under these circumstances, Turkey seems to exclude itself from the European Black Sea Synergy and becomes an obstacle of the European Neighborhood Policy in its southern flank.

Simply said, Russia and Turkey prefer keeping the GBSA as a sphere of interest, belonging to their own "dowry"—opposition to the West.

Recently, Russia negotiated with Germany—one of the symbolic powers of the EU—an agreement called by the media "Messeberg Memorandum" which, in exchange for re-launching negotiations in the Transnistrian dossier, and eventually the withdrawal of the Russian forces, it would get the formation of a EU—Russia joint committee on security issues.

Regarding its foreign policy, one can say that Russia is a *pro-status quo* power at a global level and a revisionist one at a regional level.[8] In GBSA, Russia is likely a revisionist actor, judging from a Euro-Atlantic perspective since it tries to prevent the Western presence in the region. However, as concerns the Montreux mechanism on the access through the straits, Russia is a conservative player, like Turkey.

The key word defining the relations of the West—US, NATO, and EU—with the Russian Federation seems to be "reset", if taken into account the latest political developments. Barack Obama's opening toward Russia since 2009 and the provisions of the last NATO' Summit Declaration in Lisbon 1 year later—inviting Russia to allied defense initiatives—stand as vivid testimony of a genuine and productive "reset" policy currently under consolidation.

Scenarios for the evolution of security in the GBSA are diverse, but its immediate vicinity with the Greater Middle East and the fact that it is a vast transportation corridor of energy resources from east to west and also a place for manifestation of new non-conventional risks, forecast a period of instability in the short, medium, and long term. Complexity of the area showing identified vulnerabilities and risks derives both from the development of the region in the post-Cold War, but also from an exponential increase of the interest of major global and regional actors in the ongoing events in this geopolitical area. In what follows, we review some of the strategic scenarios associated to the GBSA.

The successful continuation of the "reset" policy of the US-Russian relations, has already been initiated by Barack Obama administration. In this case, Moscow would be increasingly more attracted toward cooperation and the EU-NATO-Russia triangle would become mainly positive and focused on "soft" and "hard" aspects of security. Thus, one can conceive even the articulation of a common

[8] Krastev et al. 2009, p. 4.

strategy for the region, with the tacit approval of Russia that would give the "green light" for the settlement of some frozen conflicts in the region. Russia would negotiate the return to the CFE Treaty and become a factor of regional stability, having previously won concessions from the U.S. on the missile shield and the WTO accession. Moscow would abandon the threat to install nuclear missiles to counter the shield. Moreover, Russia could push Turkey to open access to the Black Sea and even to accept the revision of the Straits' regime. Ankara would get EU integration and gradually would abandon its "neo-Ottoman" policy toward its neighbors, becoming a pillar of the West in the region. Obama's re-election in the U.S. is probably a *sine qua non* condition, because the Republicans could give up the maximalist aspect of the openness toward Russia.

The failure of the reset policy would involve increased competition for power and security of the great powers, intensifying the arms race and bringing to a final end the CFE Treaty regime, while the U.S. will accelerate the process of installing the shield and of the strategic encirclement of Russia. Being marginalized and frightened, Russia will focus on China so as to counterbalance the West perceived as more aggressive, and in the GBSA it will try to attract Turkey in a kind of strategic condominium involving the preservation of the "closed sea" status of the Black Sea. Being pushed by the Russian energy incentives and marginalized in the West, Turkey would adopt a foreign policy behavior more unpredictable and chaotic, focusing on the antisystemic actors like Iran, Syria, etc.

In the long run, the ability to anticipate and forecast the events is drastically reduced, interfering with the macro-systemic factors and accidental events that break the linear development of events. In the context of a lasting economic crisis, there is a high level of uncertainty concerning the future EU strategic profile. As concerns the Russian Federation, we anticipate that it will remain a strong regional player, balancing between the West and China. China's rise in the current system of international relations, its competitive-cooperative relations with U.S. and the system polarity change will result in a repositioning of the interests of great powers in GBSA. In the future, GBSA will be not only a strategic confrontation region between former great empires but its identity's central pillar will be represented by the process of building a cooperative security area.

4.2 Romania in the GBSA: An Active Academic Presence

Romania defined its vision on the Black Sea area in its national security strategy. Thus, "the Black Sea area is both an opportunity and a source of risk, being at the crossroads of two strategic axes: the Black Sea–Mediterranean Sea, that is NATO's southern flank—an area of strategic importance for the North-Atlantic Alliance which is mainly affected by cross-border risks; Black Sea–Caucasus-Caspian Sea—an area of transit for the energy resources of the Central Asia, influenced by certain types of sub-regional instability from the Central Asia".

Romania is acting and will act as an important player in stabilizing the regional security environment through its role as a catalyst of cooperation policies, ensuring a climate of stability in the Balkans, and promoting the positive effects of multinational cooperation from Southeast Europe to the Black Sea area and Caucasus. At the same time, Romania has a fundamental strategic interest in the GBSA: the region to be closely connected to the European and Euro-Atlantic structures. Subordinated to this interest, the strategic objective of our country is to stimulate a strong European and Euro-Atlantic involvement in the region.

Countering the risks and threats to regional stability and security is, above all, a primary responsibility of the bordering states at the Black Sea. They must be aware of these dangers and be able to develop internal and external security policies so as to neutralize the negative phenomena within their borders. Equally, the Black Sea riparian countries are obliged to cooperate actively and effectively, to promote measures to increase confidence in the region and to meet their obligations on conventional arms reduction and the withdrawal of military forces illegally stationed in other countries. For this purpose, Romania actively promotes the necessity of defining and implementing a Euro-Atlantic strategy for the Black Sea region, taking into account the experience of a NATO-EU concerted stabilization process in South-Eastern Europe and the need for a balance able to prevent aggravation of risks and threats and to contribute and resolve actively and effectively all conflicts, tensions, and disputes.

Expanding the responsibilities of the European Union in stabilizing and rebuilding the region and strengthening the presence and contribution of NATO and Partnership for Peace Program (PfP) in promoting democracy, peace, and security are vital factors able to contribute to core essence of such a strategy. In this context, a major priority for Romania is to harmonize and streamline the institutional processes of cooperation, to counter monopolistic or hegemonic temptations and to establish a new framework for dialogue and cooperation involving all the democratic states and interested organizations. There is an imperative phase to shift from words to deeds, from the discussions about the region's geopolitical importance and identity of the Greater Black Sea Area, to viable strategies and programs and their implementation through concrete actions.

In stabilizing the security situation, an important part is played by the multilateral international cooperation. The greater interaction between regional actors to create a unitary picture of the Black Sea is promoted through institutional mechanisms capable of contributing significantly to building a regional identity and a culture of cooperative security.

Romania has been active as one of the countries which have initiated academic cooperation in the Black Sea region. The decisive contribution to the development of academic cooperation in the region, through the promotion of Romanian academic and scientific values, the initiation of regional projects of scientific and academic cooperation and, not at least, through the affirmation of Romanian universities, is illustrated by the activities of the Black Sea University Foundation (BSUF) and by hosting the Secretariat of the Regional Stability within the Greater Black Sea Area Working Group (RSGBSA WG) of the PfP Consortium of Defense

Academies and Security Studies Institutes. Within the RSGBSA WG framework, also co-presided by our country, recently Romania launched the initiative of establishing a Black Sea Defense and Security College.

Established in 1992 and being currently under the aegis of the Romanian Academy, BSUF was created to develop studies on the Black Sea as an international center for research and training. The main activity consists in organizing summer courses of a postgraduate profile, the target audience being from the first row of the 11 countries of the Organization of the Black Sea Economic Cooperation. Within its three permanent structures—the Centre for Conflict Prevention and Resolution, the Information Technology Laboratory for Education (ITLE), and the Centre for the Study of Energy—there are often developed courses on ecology and marine resources, sustainable development, innovative education, economics, and management, etc.

Gradually, BSUF has gained consultative status within the UN, and the observer status within the Council of Europe. BSUF has initiated the creation of a network of universities of the Black Sea, based on the exchange of experience with the Baltic Sea University (Uppsala) and the Mediterranean University (Rome).

On 25 June 1992, Heads of State and Government of eleven countries, including Romania, met and signed "The Summit Declaration on Black Sea Economic Cooperation". Six years later, on the 5th of June 1998, the Romanian Parliament ratified the "Charter of the Black Sea Economic Cooperation Forum". The participating States of the Black Sea Economic Cooperation Forum (BSEC) have created an important organizational structure, with intergovernmental, interparliamentary, business, financial, and academic components.

The PfP Consortium of Defense Academies and Security Studies Institutes (PfPC) is a voluntary association of institutes of higher education in defense and security, financially supported by the United States, Germany, Austria, and Switzerland. The consortium acts "in the spirit of PfP", its activities aiming at supporting the security priorities of stakeholders (partner countries) and North Atlantic Treaty Organization (NATO).[9] PfPC mission is to strengthen the defense and military dimensions of the educational training process, through an enhanced cooperation at national, regional, and international level in order to prepare future leaders to meet defense and security challenges of the twenty-first century, and to assist PfP nations in the process of building democratic institutions for defense.

The Consortium's working groups bring together experts from across the Euro-Atlantic region for projects which are designed to support stakeholder priorities. The six working groups are: Education Development Working Group, Advanced Distributed Learning Working Group, Combating Terrorism Working Group, Security Sector Reform Working Group, Regional Stability in the South East Europe Study Group, and the Regional Stability within the Greater Black Sea Area Working Group (RSGBSA WG).

[9] https://consortium.pims.org/user-manual

Next, we refer to the activities of the RSGBSA WG which is an institutional mechanism able to increase the mutual trust between its member states, by promoting joint projects aimed at developing a common vision related to the security and cooperation problems in the area, increasing dialogue, and strengthening analytical capacity and expertise on key issues with which the regional community is currently confronted.

Co-chaired by Romania, the WG's Secretariat is hosted by the Romanian Institute for Political Studies of Defense and Military History (IPSDMH). "Carol I" National Defense University from Romania is a full member of the Consortium, having an active presence within all working groups listed above. Looking for the development of an impact analysis of academic cooperation on building cooperative security in the GBSA, we tried to underline the significance of an integrated expertise in strengthening national sovereignty.[10]

RSGBSA WG had its origins in the decision of the Supreme Advisory Council of the PfPC taken at the meeting in Geneva on 1–3 of September 2004.

The group's official launch took place in Bucharest in February 2006, at the conference entitled *Enhancing Security Cooperation in the Black Sea Region: Can we build bridges and barriers?,* organized by the Institute for Political Studies of Defense and Military History from Romania, the National Defense University in Washington, George C. Marshall Center from Garmisch and the PfP Consortium. The inaugural conference was attended by over 50 foreign delegates representing 12 countries and 10 international organizations (all states in the Black Sea region, NATO's International Secretariat officials and representatives of international organizations with responsibilities for the Black Sea issue).

In essence, the RSGBSA WG's goals are:

- the identification of common sensitive security issues in the region;
- to create a network of experts able to develop analysis and evaluation of the regional security environment and also to provide expertise to policy makers and the specialized agencies;
- to develop and promote joint research projects, involving countries in the region and other international actors like NATO, EU, US, etc.
- to encourage the multidisciplinary cooperation and dialogue between national authorities and civil society.

The group members are experts and specialists from Armenia, Azerbaijan, Bulgaria, Georgia, Moldova, Russian Federation, Romania, Turkey, and Ukraine. Contributors to the initiatives of the group are US, NATO, EU, George C. Marshall Center, NATO Defense College, the Geneva Centre for Democratic Control of Armed Forces (DCAF), etc. Concerning the membership of the group, ministries of defense, defense academies, and institutes for security studies are mainly concerned.

[10] The author of the Book is a member of the RSGBSA WG's Secretariat.

4.3 Major Projects on Regional Stability

Two main relevant projects stay at the core of the RSGBSA WG's activity, namely the Mobile Contact Team Project (MCT) and the Black Sea Defense College (BSDC).

The first and main project of the RSGBSA WG, called ***Mobile Contact Teams*** was developed between 2008 and 2011, being designed to enhance the regional security cooperative culture among the Black Sea countries; support reform in interested countries according to the individual needs as identified through IPAP/ANP programs; and sustain and assist the partner nations in their efforts to implement their NATO IPAPs/ANP programs.

In short, the MCT Project's goals are: to promote a common vision of regional security dynamics; the creation of an academic network in security and defense studies; intensification of contacts between interested actors; and the development of cooperative security in the region. The target audience consists of security and defense specialists, specialists in curriculum development and academic experts from relevant NGOs.

Regarding project implementation, in Bucharest, in February 2007, a preparatory meeting was held where it was decided to apply a modular format and the organization of seminars on various issues that reflect the priorities of NATO in the region and the individual national needs for assistance. Thus, it was decided to organize the first 2–3 seminars in a multinational format, to ensure visibility of the project, followed later by subsequent seminars with national audience. It should be mentioned that the seminars have an inter-sectorial approach, being designed both for the security sector and the civil society.

A second meeting was held in Bulgaria in May 2007, when four cluster areas of assistance and the leading institutions of MCT seminars were established, as follows:

- Defense institution building—"Rakovski" Defense and Staff College in Bulgaria;
- Crisis management and conflict prevention—"Carol I" National Defense University and IPSDMH in Romania;
- Human Resource Management—George C. Marshall Center, Germany;
- Transnational security challenges—Kadir Has University in Istanbul, Turkey.

The last preparatory meeting was held in Germany, in Garmisch, in October 2007 when it was agreed, by consensus, that Romania should host the first seminar organized in multinational format, in the spring of 2008.

The table below presents in a chronological order, the MCT seminars that have thus far been conducted.

MCT seminar Title and format	Seminar dates and location	Leading institutions
Crisis Management and Conflict Prevention (multinational format)	13–17 May 2008 Braşov, Romania	"Carol I" National Defense University and IPSDMH
Defense Institution Building in Security Sector (multinational)	12–16 May 2009 Sofia, Bulgaria	"Rakovski" Defense and Staff College from Bulgaria
Effective Practices in Civil Emergency Planning and Consequence Management (national audience)	23–25 September 2009 Baku, Azerbaidjan	"Carol I" National Defense University, in cooperation with the NATO International School of Azerbaidjan—NISA
The building blocks and the effective functioning of a national crisis management system (national audience)	25–28 May 2010 Kiev, Ukraine	"Carol I" National Defense University and IPSDMH, in cooperation with the National Institute for International Security Problems—NIISP of Ukraine
Human resources management (multinational format)	13–17 September 2010 Kishinev, Moldova	George C. Marshall Center

In addition to these events, annual meetings of the RSGBSA WG were held in late autumn of every year. These events capture a review of the Group's activities and the proposals to improve future activities. Other outreach activities, involving the Presidency of the RSGBSA WG and its Secretariat members (experts from IPSDMH) are:

- PfP Consortium Annual Meetings;
- Meetings of the Senior Advisory Council of the Consortium-SAC;
- Political-Military Steering Committee of the Partnership for Peace (PMSC);
- South Caucasus and Moldova Clearing House Conferences;
- Scientific meetings of other working groups within the PfP Consortium.

At the PfP Consortium Annual Conference in 2008, which was held at NATO Headquarters (Brussels, Belgium), the Secretary General Jaap de Hoop Scheffer and his Deputy Assistant for Security Cooperation and Partnership Robert Simmons attended and spoke in front of the audience. NATO's General Secretary appreciated the Consortium's efforts toward strengthening the "spirit of academic

freedom" necessary to promote changes in attitude and to ensure a stable security order.[11] In particular, Robert Simmons stressed the responsibility of the PfP Consortium in supporting defense reform processes in the partner countries, stressing in this context the usefulness and effectiveness of the activities of the mobile teams experts and, most important, the support of the North Atlantic Alliance for the continuation of this initiative.

BSDC initiative has been assumed since 2007 when the MCT Terms of Reference was issued. The MCT TOR states that the RSGBSA WG has to examine this idea. It is considered that the creation of such a College is in line with the Level of Ambition stated in para 2.1 of TOR: "*MCTs might become a stepping stone towards building a virtual Black Sea Defense and Security College*".[12] The mission of the BSDC is to educate and train civilian and military personnel, identify, and disseminate the best practices in defense and security fields, in order to promote a common understanding of GBSA environment. The BSDC is deemed to become a regional engine to spread regional cooperative security culture, complementing efforts by the existing European educational institutions.

On the occasion of the RSGBSA WG annual meeting held on 4–5 November 2009 in Kishinev, at the request of WG's chairmanship, representatives of "Carol I" National Defense University presented the options for implementation of this initiative, the optimistic view being its subsequent institutionalization, through the establishment of a College of the Black Sea.[13]

A first option—*Step-by-Step implementation option*—includes the following phases:

- Phase I—Black Sea Security and Defense Course, a continuation at a higher scale of the MCT project, to be developed as a national or multinational initiative, held in one of the lead education and training institutions, stated in TOR, para 9.3., on the basis of a curriculum developed by the RSGBSA WG in cooperation with other WGs of the PfP Consortium, as appropriate.
- Phase II—rotating the course in different education institutions from RSGBSA WG member states to identify capability/willingness of the nations to participate in this initiative.
- Phase III—(if the previous two phases are successful)—based on the experience accumulated during Phases I and II, create a permanent/rotating national/multinational institution in one of the education institutions willing/having the capabilities to organize such event.

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[11] Opening Statement by NATO General Secretary Jaap de Hoop Scheffer, The 10th Annual Conference of the PfP Consortium of Defense Academies and Security Studies Institutes, 17–19 June 2008, Brussels, Belgium. *["The Consortium helped to foster a spirit of academic freedom that I consider a very precious asset."]*

[12] *Terms of Reference* of the MCT Project, agreed during the RSGBSA WG's reunion held in Garmisch, Germany, October 2008.

[13] *After Action Report* of the RSGBSA WG annual reunion, Kishinev, Republic of Moldova, 4–5 November 2009.

The second option—*The Big Bang implementation option*—involves the establishment, from the very beginning, of the Black Sea College with a national or multinational structure. Eventually, this option allows changing the location of the College among the member states.

In Kishinev it was also announced the organization, in Bucharest, March 2010, of a planning meeting aimed at exploring the options for the BSDC implementation. The audience reactions to the initiative advanced by the Romanian specialists were positive, in addition to some reticence regarding the financial constraints. In order to ensure the visibility of the initiative and the support of NATO, the Co-Chairman of the RSGBSA WG presented the BSDC concept during the Politico-Military Steering Committee (PMSC) meeting held in Brussels on 15 December 2009.

The BSDC planning meeting was held on 11–12 March 2010, at the Military Club in Bucharest. Representatives of NATO member states in the region, NATO's International Secretariat and European higher education institutions (George C. Marshall Center and the European Security and Defense College) attended the meeting. The main objectives were to gain feedback on the opportunities of BSDC implementation and to learn more from the experience of similar existing European entities concerning institutional development. Moreover, there was an attempt to determine possible topics to be considered in drafting the academic curricula, target audience, duration of courses, number of students per course, and other academic issues, together with an assessment of possible financial mechanisms and the legal framework for BSDC establishment.[14]

The Bucharest event was fruitful in consequences, such that a road-map (work schedule) of future activities was articulated by the general consensus of the participants. In essence, it was agreed to the establishment of a Planning Team (secretariat), composed of representatives of Romania, Bulgaria, Turkey, NATO, and Ukraine, coordinated by a Romanian Interim Executive Director. Responsibilities of the planning team concern the drafting of a BSDC concept document, based on the Rules of Engagement (ROE) released by the RSGBSA WG Secretariat. The BSDC Concept should meet the following principles: demand-driven; IPAP requirements; regional consensus; inclusiveness and ownership; not restricted to RSGBSA region.

The initiative to set up the Black Sea College has to become a priority topic on the agenda of the RSGBSA WG and relevant steps should be explored. For example, an international agreement as a foundation act of the College will enhance the RSGBSA WG's visibility in the international arena. The whole range of assumed objectives in terms of recognized expertise and experience to the benefit of all RSGBSA WG members has to be articulated in a coherent manner, and such an international agreement will provide the Group with a clearer voice and credibility in its relations with third parties. Moreover, an international agreement lays the ground work in establishing a unique juridical personality of

[14] *After Action Report* of the BSDC planning reunion, Bucharest/Romania, 10–11 March 2010.

the College, acting as an international legitimate institution. Thus, for the sake of a successful implementation of the project itself (BSDC), this alternative should be carefully considered and strong arguments must be invoked at high political levels, able to sustain the necessity and the benefits of the College for regional stability and security cooperation.

There are strong reasons to consider the conclusion of the agreement at governmental level. That because it will include political and financial commitments that will define legal status of the College and of its personnel, as well as the necessary financing mechanism. BSDC is deemed as a regional education institution with adequate governance and full international juridical personality and therefore there should be considered aspects such as: (1) the establishment of a decision-making mechanism concerning the management and functioning of the College; (2) possible rights, privileges, and immunities for the College and its personnel on the host nation's territory, and (3) multinational logistics and financial systems and principles for providing logistic and financial support. Simply said, ratification by law ensures substantive juridical effects, covering—as legal basis—the competencies of all involved institutions such as ministries of foreign affairs, the ministries of finance, or ministries of justice, etc.

Also NATO SOFA, PfP SOFA (and Paris Protocol on the Status of International Military Headquarters set up pursuant to the North Atlantic Treaty) may be considered as principled agreements in the process of negotiation, since the "PfP spirit" represents the emblem of the College itself.

In conclusion, as a step to be done in the next future, it is necessary to further develop and build upon these existing perspectives, in order to complement them with other possible ways of action that could be submitted by interested nations, based on their own legal procedures. Second, we have to admit that the successful establishment of the BSDC depends on a common assessment of all possible legal options and their harmonization into a legal solution that responds to the internal legal procedures of all stakeholders, and also reflects their direct implication and contribution to the project.

Concerning the BSDC location, two options are to be taken into account, namely the permanent and the rotational location. Advantages of the first are obvious and numerous, beginning with simplified and clear procedures, larger and safer investments, or reduced operational costs. In addition, the host nation could plan its support on a long-term perspective, especially with regards to the infrastructure to be provided (materials, personnel, etc.). A permanent location affords also a larger visibility in international arena and among possible customers.

As a collateral option we may envisage a rotational mechanism developed upon specific requests by those countries wiling to host the College on their states' territories. If taken into account the experience of SEEBRIG—the South-Eastern Europe Brigade consisting of 7 NATO and PfP nations (Albania, Bulgaria, Republic of Macedonia, Greece, Italy, Romania, and Turkey), and the Agreement on Multinational Peace Force South-Eastern Europe signed by the ministries of national defense of the said countries on September, 26th 1998, we could say that the general purposes match, of course at a corresponding level of appraisal, the

ones of the College—to promote regional stability and security, to foster political and military trust and to develop cooperation among countries.

The legal foundation act of the College might entail in this formula a more legal comprehensive approach in terms of demarches of implementation and similar provisions that allow a *rotational basis for location and chairmanship*.

Implications of a rotational basis for location concern: a long negotiation process (since the requirements of all countries involved should be accommodated), possible differences on status of College and its personnel, according to national legal constraints; and, importantly, additional costs for relocation which might produce temporary discontinuities in the College's activities. A comment is necessary here: it is very important not to confuse the rotational basis when talking about location and chairmanship. So, a permanent location could also entail a rotational basis for chairmanship.

A genuine epistemic community project consisting of the Black Sea College assimilated experts is desirable to be implemented in the near future, and Romania, by assuming a leadership role in this project, will be in a position to lead progressively the challenging political and financial efforts for its support. In that respect, Romania might provide a BSDC location in Brasov, where the Regional Department of Defense Resources Management Studies (DRESMARA) is located. This Department mission is to conduct professional education programs in analytical decision making and resources management for military officers of all services and senior civilian officials. The main focus of all DRESMARA programs is to develop an understanding and appreciation of the concepts, techniques, and decision-making skills related to defense resources management. The goal of the Department programs is to enhance the effective allocation and use of resources in modern defense organizations.

The SAC/CSC meeting held in Berlin on 26–27 October 2010 gave a new impetus to advancing the BSDC's implementation.[15] The new NATO Strategic Concept (Lisbon, November 2010) could serve as a good guide in terms of topics to be addressed within the BSDC framework.[16] The enhancement of education and training was recognized as a successful method of partnering. Acknowledging Partnership as a "core task" of the Alliance must be followed by pertinent measures to build cooperational relationships, so that ample perspectives are open for the RSGBSA WG.

[15] *After Action Report* of the joint SAC/CSC reunion, Berlin/Germany, 26–27 October 2010.

[16] *Lisbon Summit Declaration*, 20 November 2010, http://www.nato.int/cps/en/natolive/opinions_66727.htm?

Both EU Strategies for the Black Sea and Danube regions open new perspectives for an increased cooperation and encourage the steps toward creating genuine partnerships in the regions. They call for regional partnerships to include the transfer of knowledge and technology in areas relevant for defense and security fields.[17]

There is a need to identify a niche to ensure a distinct international profile of the College and avoid duplication skills of similar existing institutions. This "niche" refers to the objectives of the College, mainly to its academic programs to be focused exclusively on the Black Sea related issues.

The basic problem is that the spectrum of the European training institutions on defense and security is relatively broad: NATO Defense College in Rome, European Security and Defense College, Baltic Defense College, George C. Marshall Centre from Garmisch. To these, some national initiatives such as regional NATO–PfP training centers could be added.

One of the obstacles which surrounds the establishment of the College is about the possible perception of competition (or overlapping) with the institutions mentioned above. In reality, these institutions and initiatives have reported shortcomings in the Black Sea College's stated goals, namely that the academic programs used by them are oriented on European security in general, without emphasis on the Black Sea issues, or are limited to some educational component of defense (crisis management, language training, etc.). A Black Sea Defense College will have a chance to focus on a specific area with its own peculiarities which are developing fast and differently than other continental regions.

Drawing on relevant information on Partners' Assistance Needs in the framework of Individual Partnership Action Plans (IPAP), Annual National Plans (ANP), and PARP list below highlights possible topics on which the BSDC might build its future decisions on curriculum, and target audiences.

The cluster areas of expertise for the Mobile Contact Teams (MCTs) have been considered: Security Sector Reform/Defense Institutions Building (SSR/DIB), Human Resources Management (HRM), Crisis Management and Conflict Prevention (CM&CP), New Security Challenges (NSC), and Greater Black Sea Area Regional Security (GBSARS). While for the SSR/DIB and, partially, HRM cluster areas the PAP-DIB Reference Curriculum offered a helpful tool to identify concrete topics for modules which might be included in the BSDC curriculum, for the CM&CP, NSC, and GBSARS cluster areas only the key education and training needs were identified.

[17] EU Strategy for the Black Sea, http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2011-0025+0+DOC+XML+V0//EN, and the EU Strategy for the Danube Region, http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2011-0065+0+DOC+XML+V0//EN.

Security Sector Reform/Defense Institutions Building

1. Public Administration and Governance

- Role of Parliaments in Budgeting for Defense and Security Institutions;
- Legislative Oversight of Strategic Documents;
- Interagency Cooperation both in non-crisis and in crisis situations;
- Security and Defense Policy Formulation;
- Civil Society and Media Engagement with the Defense and Security Sectors;

2. Defense Management and Economics

- Defense Planning; Strategic Defense Reviews;
- Management Systems for Defense;
- Defense Acquisitions and Procurement;
- Material Resources Management;
- Financial Management;

Human Resources Management (HRM)

- Strategic Management of Human Capital;
- Effective policies and practices for:
  - Management of Civilian Personnel;
  - Management of Military Personnel;
  - Professional Development and Career Management.

Crisis Management and Conflict Prevention (CM&CP)

- Effective National Crisis Management Systems;
- Civil Emergencies Planning and Consequence Management;
- International Organizations and Regional Cooperation on CM&CP;
- Negotiation, Conflict Prevention, and Resolution.
- Strategic Communication in Crisis Situations.

New Security Challenges (NSC)

1. Combating terrorism

- Well covered by the NATO Centre of Excellence Defense against Terrorism, Ankara.

2. **Fight against corruption**; **Building Integrity in Defense Establishments**
   - Reducing Corruption Risks;
   - Promoting transparency and accountability;
   - Standards for integrity in defense establishments;
   - Building effective partnerships with civil society;
   - Implementing GRECO (Europe's Group of States Against Corruption) anti-corruption recommendations;

3. **Non proliferation of WMD and of Their Means of Delivery. Export Controls**
   - Explain relevant international frameworks/agreements;
   - Explain how may regional cooperation assist in implementation of existing agreements;
   - Explain structures and methods for law enforcement;
   - Explain best practices in enhancing the release of public information on how a country complies with relevant international commitments.

Greater Black Sea Area Regional Security (GBSARS)

- Security Risks and Challenges in the GBSA;
- Geopolitics and Cooperative Security in the GBSA;
- Foreign and Security Policies of Countries from the Region;
- Approaches of the External Actors (international organizations, states from outside the region) to the GBSA;
- Black Sea Regional Cooperation on Defense and Security Matters.

During the development of the curriculum by the faculty of the BSDC, NATO and possibly the EU and also different stakeholders might provide appropriate advice to further fine-tune curricula and target audiences to the assistance needs of regional Partners.

The importance of the EU Strategy for the Black Sea Region is to be recalled here. How will this strategy contribute to the BSDC vision? Well, this document could be instrumental in making the BSDC vision happen concretely. To do so, there are three main elements to be considered in the near future: a list of concrete actions, cooperative working methods, and the creation of a strong political support.

The recent EU Strategy on the Black Sea approved by the European Parliament in January 2011 "welcomes the initiative to establish and support a College of the Black Sea to foster the emergence of a regional elite which sees cooperation as a natural method of tackling common challenges".

It also encourages the development of the EU Strategy for the Danube Region. The document emphasizes the need to extend the EU Strategy for the Danube Region toward the Black Sea region and it points out that the sustainable development of the Danube region will further enhance the geo-strategic importance of

the Black Sea region. Consequently, while acknowledging the differing nature of the regions and the distinct geographical focus of the two strategies, the strategy considers that they should be complementary and mutually reinforcing.[18]

Investing in people is, therefore, a must so that the region can progress and grow sustainably, prioritizing knowledge and inclusion. Building the region's existing strengths also needs to involve promoting better access, to further education and modernizing training and social support. In this context, the creation of a genuine college will target strong networking between universities, policy-making communities, and security studies related NGO's so as to advance the Black Sea region's grows and modernization. This approach focuses on the idea that the pillar of straightening the region aims to step up institutional capacities and cooperation and work together to promote security and tackle new security challenges.

Joint initiatives in the field of education and media are much needed in order to create and consolidate meaningful links between the opinion-formers in the region, and that initiatives such as the Black Sea Universities Network provide good examples of how academic interaction can trigger positive synergies in the region; calls for the strengthening of academic and student networks, e-infrastructures and collaborative research projects.

Meanwhile, the EU Strategy for Danube approved in April 2011, shows that both the Black Sea region and the Danube region have to be considered in a comprehensive manner, not only because of the territorial linkage, but also taking into account the mutual interests shared by the states from both regions and their future projects (transfer of energy, commerce, security interests, etc.).

The establishment of the Black Sea College is to demonstrate that we are able to promote best practices and models of European cooperation in GBSA. In essence, it aims to promote a new logic of cooperation, based on a new type of management of the regional issues, and also to create a framework within which countries of the region are able to express their views freely, without inhibitions, and in which their expertise to find a much better sounding and the foreign contributors are able to promote ideas that do nothing than to contribute to connecting the region to Europe.

Based on these evolutions, RSGBSA WG has considered the existing opportunities and on the occasion of the recent Bucharest planning meeting in March 2011 it launched relevant decisions on its vision and main objectives. In this context, we must refer to the strategic shift produced within the RSGBSA WG' s activities—from training and education to research oriented activities—, and also to the need to increase synergies with the Regional Stability in the South East Europe Study Group (RSSEE SG) focused on the Western Balkans and the Danube Valley and coordinated by Austria.

[18] EU Strategy for the Black Sea, on http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2011-0025+0+DOC+XML+V0//EN.

Regarding the cooperation with the RSSEE SG, the following major issues of common interest were discussed: identifying and researching separately a topic which would be relevant to both GBSA and SEE; organizing two separate workshops in late 2011; and organizing a joint meeting of the two WGs in spring 2012 on *Cooperative Security in the Danube-Black Sea Nexus*. The discussions led to a fruitful exchange of experiences between the RSGBSA WG and RSSEE SG and highlighted potential synergies in the work of both WGs.

The implementation of these measures offers major opportunities for the BSDC project, taking into account both WG's activities and the EU's interest for the two neighboring regions. It remains to be seen to what extent such a BSDC could take over a series of missions and objectives of the EU envisaged College, considering the fact that the security aspects are without any doubt congruent, or what other expertise niches could be assumed as to respond the EU's interest as well.

The RSGBSA WG's creation and the MCT Project implementation respond to the exigencies regarding the cooperative approaches in the region, as reflected by the recent political dynamics. The BSDC project is a high level demarche of this undertaking launched in 2006 and additional efforts are therefore envisaged so as to fully convince the regional political actors on its evident benefits.

It becomes obvious that the BSDC establishment is urgent, and in this context, Romania provides an ideal location with renowned expertise, in Brasov. It is true that in the current context marked by growing financial constraints all over the region, the resource allocation is crucial. That is why all the decisions taken during the BSDC planning meeting in Bucharest in March 2010 must be put into practice as soon as possible.

4.4 A New Vision for the RSGBSA WG

The SAC/CSC meeting of 28th of October 2010 in Berlin settled new guidelines for the RSGBSA WG, namely: to shift the focus from practical and academic training to strategic research; to concentrate more on research activities and develop the capacity for security studies institutes (a form of defense institutions building); to focus on regional policy recommendations primarily targeting partner policy makers; and to maintain a demand driven and inclusive approach through cooperation with other regional initiatives and avoid duplication. The SAC's intent for the Regional Stability in the Greater Black Sea Area (RSGBSA) Working Group was that it should narrow the focus of their efforts to those issues that have a high priority for NATO, stakeholders, and partner policy makers.

The RSGBSA WG will build on the success achieved in its first 4 years of activity through the MCT Project. The new strategic research oriented approach will be implemented through organizing international/regional conferences addressing relevant topics for the Black Sea region. The outcome of the conferences will be shaped in a policy paper/policy recommendation that will be circulated within the professional community. The CSC decided that the way ahead

was to use the Individual Partnership Action Plans and Clearinghouses to identify requirements and priorities, and to focus on regional policy recommendations primarily targeting partner policy makers.

Four areas of research have been so far identified: Mutual Security in the Greater Black Sea Area; Old and New Security Challenges; Democratization and Good Governance; and Economic Development and Energy Security. The list of key area for research will remain open to inclusion of other topics that might be subsequently agreed by the Working Group.

On invitation of the Romanian MoD, the working group assembled for an additional planning meeting from 10th to 11th March, 2011 in Bucharest at the National Military Center. The event was co-organized by the PfP Consortium and the Institute for Political Studies of Defense and Military History which hosts the RSGBSA WG Permanent Secretariat. Participants from all Black Sea countries (Armenia, Azerbaijan, Bulgaria, Georgia, Republic of Moldova, Romania, Russian Federation, and Ukraine), except Turkey; representatives of Austria, USA, PfP Consortium, George C. Marshall Center (Germany) also participated at this meeting. The participants exchanged lessons learned and shared best practices with a representative of the RSSEE SG, deciding to deepen their cooperation in the future.

It developed a new vision and a detailed agenda for the next 2 years to come, identified the need of additional co-funding for future research activities. All participants were invited to provide the contact details of possible contributors (institutions and individual specialists) from their countries which might be engaged in future RSGBSA WG research projects. Finally, the working group decided to realign its approach to regional stability with its original mandate and use its activities in 2011 to transition into a new format of policy-oriented dialogue between practitioners, defense academics, and representatives of civil societies with a view to pursuing a mutual exchange of ideas, in a comprehensive setting and with a focus on relevant topics of the region. All activities will retain regional ownership, as well as their project-oriented, demand driven and inclusive approach, and will aim at creating a wider network of regional security experts. A vital part of this approach will be cooperation with other regional initiatives, winning co-sponsors, and avoiding duplication.

A calendar of activities for 2011–2013 was discussed, as follows:

- October/December 2011, Tbilisi (Georgia), international conference on: *The Role of the EU as a Stability Factor in the GBSA* (provisional topic)
- Spring 2012, Vienna (Austria), Joint Workshop with the RSSEE SG on: *Cooperative Security in the Danube-Black Sea Nexus*
- Fall 2012, Erevan (Armenia), international conference: *Stability and Security in South Caucasus: Developing Cooperative Solutions*
- 2013, Yalta (Ukraine), international conference: *Key Players in the GBSA*
- 2013, Soci (Russian Federation), international conference: *The role of Russia in the GBSA*.

The SAC/CSC meeting of 27th of October 2011 guided the RSGBSA WG to assume as its top priority event for 2012, an international conference organized in close cooperation with a Turkish academic institution.

The international conference to be held in Turkey will be organized in line with the new SAC's guidance and will conduct strategic research on an academic level aiming at strengthening defense and military education and research through enhanced national and institutional cooperation. The event will be the first base on the new RSGBSA WG format of policy-oriented dialogue between practitioners, academics, and representatives of civil society with a view to pursuing a mutual exchange of ideas in a comprehensive setting and with a focus on relevant topics of the region. Three proposed topics approach issues such as: Perspectives of collaboration in the GBSA: Impact of the recent developments; Cooperation, and Stability in the GBSA: Joint and Sustainable Projects in Priority Areas; and Ways of Collaboration within the GBSA; and Current Mission and Efforts. By way of example, the last item focuses on cooperation in joint research, outreach and expert formation initiatives (a network of universities and NGOs should be created as to identify appropriate policy recommendations on specific issues of interest). Topics outline might include issues like:

1. Assessing the current state of scientific cooperation in the GBSA
2. Promoting research synergies across the Black Sea Region
3. Expansion of new ideas, experiences, and practical exchanges
4. Forging cooperative security mechanisms: networking within the academic environment
5. Analysis, documents, networks, debates, and identifying the best practices in security sector reform and governance
6. Formulation of recommendations for governments, security sector organizations, parliaments, and civil society actors
7. Building security culture and democratic reforms. The role of civil society
8. Governing civil-military relations in democratic environments
9. Increasing the population awareness and involvement in political debates addressing international/regional issues
10. Contemporary issues of Inter-agency and civil-military cooperation and their impact on the processes of strategic policy formulation
11. Analyzing defense strategic management
12. Understanding defense economics and contemporary financial management dimensions of the defense
13. Guiding and governing defense establishment in a democratic society under ongoing information age processes
14. Problem-solving: assessing obstacles hindering the regional cooperation
15. Ways ahead: new fields of cooperation in an extended security agenda
16. Development of initiatives of common interest and their validation for a comprehensive implementation of reforms in security sector

The target audiences will be as inclusive as possible, and will include specialists/experts and academics from relevant regional defense and education

institutions, security institutes, NGOs, defense and security governmental agencies, young MPs, parliamentary staff, representatives of civil society, and journalists dealing with defense and security issues in the Greater Black Sea Area, and also the NATO allies and Partners. The selection of the participants should aim at building a network of specialists to be later invited to similar reunions organized by the RSGBSA WG. NATO, EU, and other Black Sea regional organizations are called on to contribute experts/specialists to contribute to the research activities by presenting papers and/or assisting with expertise for elaborating the policy papers/recommendations.

The volume containing the conference's papers will be edited by the RSGBSA WG's Secretariat and published based on the available funds provided by the PfP Consortium. The state-sponsor system concerning the expenditures generated by the publishing activities might be also considered. Upon request, the participation of the Mediterranean Dialogue nations might also be considered so as to promote and share with them the initiatives of the RSGBSA WG developed in the spirit of PfP.

4.5 Strengthening National Sovereignty: The Role of Experts

In the process of changing the international relations system, universities have a partnership role in the analysis of the phenomena. Politicians are rediscovering the growing importance that academics, research centers, universities and civil sector in general have today.

In the neo-liberal theory of international relations and especially in the neo-functionalist theories of European integration, it has been often spoken of so-called "epistemic communities" defined as networks of professionals working in specialized areas and who, thanks to their research work, have common values, beliefs, and expectations. The experts develop research practices and common methods of solving algorithms with similar validation criteria. They provide valuable information to politicians, necessary to developing the policy-making process. By selecting relevant information to be delivered then to the politicians, they have a great influence on the structure of foreign policy and security agenda.[19]

In our analysis of the RSGBSA WG, we postulate the hypothesis of such an epistemic community emergence consisting of experts in security studies from the GBSA member countries and the EU, US, NATO, etc. They have already formed a "pool" of relevant information which is broadcast both as an intergovernmental and transnational model. The desired effect is to harmonize the views of experts on the risks and threats of the GBSA security agenda and the actions which must be taken to manage them. The knowledge related to national sovereignty and security is rapidly transnationalized through the mechanisms of academic cooperation.

[19] Adler and Haas (1992), pp. 367–390.

The Black Sea is primarily a synthetic space in which relations have a historical tradition and, consequently, today, the residents—allies, partners, other states—may extend the cooperation exercise in and for security.

The concerns regarding the Black Sea of the European and Euro-Atlantic security institutions open opportunities for strengthening the existing cooperation formats, at the Alliance level. This happens in conjunction with the EU assistance and in complementarity with successful regional initiatives. An effective instrument for achieving security, stability, and prosperity in the Black Sea is developed through the differences' management pursued by the PfP Consortium. The RSGBSA WG initiatives and programs adopted to strengthen the security environment demonstrate their usefulness, even though in some cases, the aims are still to be met. The Consortium's role in articulating an identity of the security culture in GBSA is manifested in the support given to the states expected to understand easier and correct the concepts of "nation building" and the expression of full transparency and willingness to support the reform processes. An important demarche was the Partnership Action Plan, introduced in the cooperative mechanisms of the NATO Summit held in Prague in November 2002. The initiative of the Individual Partnership Action Plans (IPAP) allows the Alliance to personalize the assistance given to the partner countries interested in more structured support for national reforms, especially in the defense and security fields, according to their own needs and specific situations.

Based on the inventory of the RSGBSA WG working papers and the results of the initiatives conducted under its auspices, in this section we try to generate some conclusions concerning specific research objectives such as:

- The relevance of the Group by forging a common vision of the states in the management of the GBSA security environment;
- The impact of the epistemic community on the policy makers in the security field;
- New initiatives undertaken by the RSGBSA WG members (The Black Sea Defense College);
- The role of cooperation with other working groups within the Consortium, and the role of the international actors in the development and promotion of RSGBSA WG activities;
- Assessing the role of the expert in the process of strengthening the integrated national sovereignty;
- The contribution of the RSGBSA WG projects in ensuring the cooperative security and interstate trust;
- The increased responsiveness of the representatives from NATO candidate countries (Ukraine and Georgia) to Euro-Atlantic standards propagated by the Group.

The table below tries to capture the main directions of the foreign and security policies of the GBSA states. We took into account the conclusions of a group of researchers from the Institute of Political Studies of Defense and Military History

Country	Memberships in various regional organizations[a]	Foreign Policy Guidelines Comments
Armenia	BSEC, INOGATE, TRACECA, CIS	Allied with Russian Federation and close ally of Iran (vs. Ankara-Baku axis) Relative openness toward EU and the US
Azerbaijan	BSEC, GUAM, INOGATE, TRACECA, CIS	Dispute with Armenia over Nagorno-Karabakh; Tensions with Iran for the Caspian hydrocarbons Role of a "balance" between the Western interests and those of the Russian Federation
Bulgaria	Blackseafor, BSEC, INOGATE, SECI, TRACECA, NATO, UE	Part of the Black Sea Synergy and European Neighborhood Policy Openness to the Eastern Partnership initiative
Georgia	Blackseafor, BSEC, GUAM, SECI, TRACECA	It could control the routes between the Caspian and Black Seas, and those of the North and South Caucasus if not affected by the territorial secessionism (frozen conflicts) Internal secessionist and autonomist actions Enhancing relations with NATO, the EU, and with the US especially It campaigns for the restoration of the territorial integrity (the case of South Ossetia and Abkhazia recognized by Russia and some other countries, inconsistent with national security interests of this state)
Moldova	BSEC, GUAM, INOGATE, SECI, TRACECA, CIS	Sustainable frozen conflict Split loyalty of citizens between Romania, Russia, Ukraine, and the option of neutrality Active cultivation of Moldovan identity by certain political circles close to Russia
Romania	Blackseafor, BSEC, INOGATE, SECI, TRACECA, NATO, UE	State which built a foreign policy identity based on anchoring the GBSA to the West. Subchapter of the National Security Strategy dedicated to GBSA The launching in 2006 of the Black Sea Forum for Dialogue and Partnership Contribution to the issuance of the EU Black Sea Synergy Supports the Eastern Partnership The inclusion, in the NATO Summit Declaration in Bucharest, of a section on the importance of the GBSA

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Country	Memberships in various regional organizations[a]	Foreign Policy GuidelinesComments
Russia	Blackseafor, BSEC, CIS	Role in weakening the political regimes in Kiev, Kishinev, and Tbilisi GBSA perceived not as a separate security complex, but as its eastern flank of the "close proximity" area Stopping the NATO's expansion in the region, including by "hard" means The war with Georgia has shown that Russia does not keep pace with RMA (Revolution of Military Affairs) Interdependence with the EU in the energy field Strategic Partnership with Turkey, under construction The proposal, in 2008, of a pan-European security treaty, based on the recognition of the systemic multipolarity (considered by some countries an attempt to demonstrate the "pacifism" at an oratory level or an attempt to weaken NATO)
Turkey	Blackseafor, BSEC, INOGATE, SECI, TRACECA, NATO	Through Turkey, GBSA is strategically connected with the Greater Middle East Supports military and economically Azerbaijan and Georgia Reconciliation with Armenia, started in 2008 EU accession negotiations started in 2005 (massive opposition from France and Germany) The wish of affirmation as a regional power, advocating for conservation of the Montreux Convention and non-involvement of the Active Endeavor operation in the area Strategic approach of Russia to provide regional leadership in Central Asia and Caucasus, along with this country Considers that the GBSA maritime security issues should be handled exclusively by the littoral states, excluding the major external actors, like NATO, EU, or U.S. "Energy bridge" between the Caucasus, the Black Sea, and the EU, through the Baku-Tbilisi-Ceyhan pipeline. Lured both by Nabucco gas pipeline (EU) and Southstream project (Russia) Policy Paradox: "western" state through the participation in international security institutions versus the trend of coming close to Russia and the engagement into an Eurasian partnership

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(continued)

Country	Memberships in various regional organizations[a]	Foreign Policy GuidelinesComments
Ukraine	Blackseafor, BSEC, GUAM, SECI, TRACECA, CIS	Divided between pro-Western and pro-Russian aspirations—identity crisis, cleavage between the supporters of rapprochement with the West and those of a privileged relationship with Russia Dependent economy on hydrocarbons imported from Russia Germany and France considers inappropriate the accession of Ukraine and Georgia to NATO, although at the summit in Bucharest (2008) the Allies promised this course of action Significantly altered relations with Romania, despite our country's support for NATO membership (the success of Romania to the International Court of Justice on Snake Island)

[a] The main organizations and on-going programs in GBSA are Blackseafor-The Black Sea Naval Force; BSEC-Black Sea Economic Cooperation; INOGATE—international energy co-operation programme between the European Union and the Partner Countries of Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan. SECI—Southeast European Cooperative Initiative; TRACECA—Europe-Caucasus-Asia Transport Corridor; GUAM—Organization for Democracy and Economic Development; CIS—Commonwealth of Independent States.

contained in a monograph devoted to the GBSA, focused on identifying risks, threats, and regional security environment characteristics.[20]

During the annual conference of the PfP Consortium held in Munich in June 2009, entitled *Regional Stability Challenges: Evaluation and Potential Future*, there were discussions over issues particularly relevant to the security architecture of the GBSA and to redefining Black Sea space by its classification in an extended region (Central Asia and the Middle East), characterized by important political and economical transformations. We present some of them briefly:

- The economic crisis is when the convergence of EU member states from Eastern Europe to Western standards has ceased to be an accelerated process, becoming a difficult effort, with long-term results;
- The importance of the Balkan states maintaining the policies of coming closer to the EU and NATO and the PfP Consortium's role in this direction;
- In the name of stability, democracy, and strengthening the rule of law in the Balkans, the fight against corruption is of vital importance and the lack of political determination of the governments in this region continues to remain the main cause of the recorded failure;
- Intensification of the fight for the planet's energy resources as the crisis worsens. The geo-strategic importance of the Caspian Sea area is highly relevant in the context in which Russia and the Western powers play out their supremacy over this area and promote their political interests through the "energy weapon";
- Strengthening Georgia's prospects of integration into NATO, as a state remained outside the Russian Federation's hegemonic influence and which has assumed the likely implications of this development (of political, strategic, and economic nature, namely the possibility of installing pipelines for transporting energy materials outside the territories controlled by the Russian Federation);
- The consequences of ignoring Russia's attitude on NATO expansion; the conflict in South Caucasus has shown that the extension of NATO can undermine the relevance of the alliance;
- GBSA seen as both an important regional border between north and south, between Russia and Turkey, two countries with major imperial histories, which determined the last half-millennium history of Eastern Europe and as the border separating East and West, between the Euro-Atlantic security space and the space of insecurity of the Greater Middle East; GBSA returned to the core of cross-border activities in both a positive (trade, tourism, and transportation of energy resources) and a negative sense (point of intersection of supply and demand of different products trafficked illegally). The frozen conflicts, terrorism, radicalization of the autonomist-separatist movements, organized crime are serious challenges to which the actors in the region should respond;
- Discrepancy of power among the Black Sea region countries, from Russia (global power) and Turkey (regional power) to fragile states in the process of articulating their identity, such as Georgia, Armenia, and Moldova, which, given

[20] Ionescu 2009.

the historical mistrust, leads to the reality that every member of the region links its development prospects to extra-regional sources and arrangements, and the multilateral settings are difficult to be achieved;- The involvement of major global powers (US and EU) as a solution for stablity, and the opposition of Russia and Turkey in this involvement—Russia due to geopolitical reasons related to the conception of its own security and Turkey due to the fear of reviewing the legal framework governing the Turkish straits system;

- Black Sea Region is an important energy stake for the European Union and for the riparian states, that it can provide a diversification of energy sources and new alternative transport routes; referring to NATO and military issues, it was noted that the energy security and the security of facilities of the transportation routes are a national responsibility, and not a responsibility of the Alliance;
- The multilateral cooperation is the chance to maintain GBSA stability and unity. In the political field, the regional cooperation should aim at completing the transition from authoritarianism to the rule of law, democracy, and human rights principles. From the economic point of view it is necessary that the region should pay attention to joint projects that promote market liberalization and privatization and create an attractive investment environment. In terms of security, programs, and projects should have priority, aimed at accelerating integration into European structures and NATO membership, effective strategies to prevent and fight against new risks, dangers and threats to the region. These forms of cooperation and dialogue should be encouraged and further developed using methods and instruments of European, the Euro-Atlantic and Eurasian security.

These new developments are reflected in different areas of security and regional cooperation from military to energy, environment, or academic. Regarding the academic field, we hereinafter describe the PfP Consortium and the RSGBSA WG involvement in the process of harmonization of the security interests of the GBSA states.

Under the impact of various programs of the PfP Consortium and of other interested international actors directly involved in the process of regional stability (in which experts from GBSA countries have been prepared in order to assess their needs for assistance in national security and to implement effective security strategies), a slow process of implementation of effective mechanisms for estimating the risks and threats to national security is obvious.

RSGBSA WG activities reflect this trend, and the undertaken projects indicate a need for increased awareness of their role in the growth of confidence building within inter-regional cooperative security. There are tangible and measurable results in terms of the MCT project, shown by the results of the workshops held under the RSGBSA WG aegis, but there are clear indications that the Group's objectives are not achieved yet.

Here are, for example, some conclusions drawn from the execution of the last RSGBSA WG annual meetings:

- IPAP (Individual Partnership Action Plans) are very large in the human resource management field, so that narrowing the topic assumed by the RSGBSA WG through its academic curricula is practically impossible; a constructive solution could be the creation of an expertise on some aspects related to the general staff, and one devoted to specific issues of defense institution building (PAP–DIB);
- The lists of priorities related to the needs of expertise of Armenia and Georgia had a generic presentation or, alternatively (in the case of Armenia which announced areas with greater specificity to the PAP-DIB academic curriculum), the delegates of these countries being advised to select specific topics to be integrated closely in the RSGBSA WG area of expertise;
- Concerning the establishment of a Black Sea Defense College, there were expressed some reluctances about financial issues and competition with other European institutions of defense and security training. In addition, the need and relevance of a general consensus as to implement the initiative was underlined;
- The lessons learned from organizing MCT seminars were reviewed in order to improve academic programs. The main recommendations resulting from discussions were: a better coordination between those responsible for articulating the academic curricula, and active cooperation with NATO experts in this regard, more careful selection of the audience, most dedicated lectures and translation of the required study materials, the appropriate duration of the seminar activities, etc.
- The proposal launched by Georgia and reinforced by Azerbaijan to consider not only the same team of lecturers but the same segment of participants (a *pool of participants* for each area of expertise which should be easily accessible and effective after the RSGBSA WG objective fulfilment).

The PfP Consortium actions have a double impact on strengthening democracy and national sovereignty of GBSA states:

1. **Harmonization of approaches** on areas of common interest concerning the regional community;
2. **Customizing the key issues**, by connecting general assistance projects to the individual specific needs of the stakeholders.

The first impact is reflected in the articulation of appropriate academic curricula of the RSGBSA WG's four areas of expertise. It should be noted that these academic programs are the result of integrated efforts of experts from the leading institutions, in conjunction with NATO specialists and those from international organizations and NGOs with interests in the respective fields. For example, in the PAP-DIB curriculum development, the key roles were held by the Educational Development Working Group, specialized in the development of academic curricula and the Security Sector Reform Working Group in collaboration with DCAF.

The second impact comes as a natural consequence of the success of the MCT events conducted in multinational format, so that various partner countries have openly expressed their interest in organizing similar events, this time with the

national audience. This implies, of course, the adaptation of the advanced general curricula to the specific individual needs of the beneficiary countries.

The initiative to set up the Black Sea College has become a priority topic on the agenda of the Consortium and the RSGBSA WG. Again, the ambitions of crossing in a higher level of the MCT project by avoiding duplication approach and providing consistency of programs covered by this College are directed toward meeting the goals of stability and reconstruction, but especially **to preserve the right to sovereignty**, territorial integrity, and political independence—basic attributes of the nation state. In this sense, the epistemic community would be one that seeks to strengthen national sovereignty by transnational and intergovernmental activities.

In the background, we can also talk about actions of the **Consortium of technical and administrative nature with indirect implications on the phenomenon of state sovereignty**. These relate in particular to the insurance of a greater synergy among the working groups, particularly with the Education Development Working Group—ED WG which is involved in developing and implementing academic programs. In the case of RSGBSA WG, the cooperation with this group proved to be fruitful, by engaging experts in articulating the academic programs used during the MCT seminars. In the future, there are new opportunities for collaboration, on the recently articulated PME curriculum *(professional military education).* The issue of synergy among the Consortium working groups is the basis for the discussions within the biannual meetings of the Consortium Steering Committee (CSC).

Another relevant aspect relates the Consortium's efforts in the direction of exploring funding opportunities from private organizations interested in the projects developed by the working groups, and the increased interest in NATO financial assistance.

Finally, the Consortium tries to ensure organizational and functional consistency within each of its working groups, despite the different security cultures of the GBSA states.

Thus, the representatives of Azerbaijan have given assurances at the request of the Executive Director of the PfP Consortium, that in the event that a multinational seminar is organized in their country, Armenian experts will be invited and treated without discrimination. There were also disputes between representatives of Georgia and those of the Russian Federation on the military intervention in 2008 and related responsibility. We mention in this context that in the aftermath of the military action in Georgia, the Russian Federation has been absent at the RSGBSA WG events, coming back on board late fall 2009.

The vision on security in the GBSA divides riparian countries in three categories: NATO and/or the EU countries, Bulgaria, Romania, and Turkey, which structure their security strategies according to their status and international role derived from the membership of such organizations; the Russian Federation, which has a distinct view about the security that comes from its unique position in the international relations system; and the countries aspiring to NATO and EU

membership, such as Georgia and Ukraine, which began a process of adaptation to the requirements of membership in these organizations.

Regarding the position of the Russian Federation, Dr. Petr Razvin from the Diplomatic Academy of the Russian Foreign Ministry who has been an active participant in the RSGBSA WG's activities said that "*the development of practical interaction in the GBSA and the Caspian regions will preserve the individuality of BSEC and strengthen mechanisms for cooperation of the states in the Caspian region, based on the evaluation of their contribution to ensuring stability and good neighbourhood, and the understanding of the legitimate interests of the Russian Federation and respect for the existing ones*".[21] Referring to NATO expansion, the Russian diplomat expressed the satisfaction of the Russian Federation regarding the non-adherence of Georgia and Ukraine, arguing, on the first of these countries, as the main obstacle to accession, the territorial claims related to Abkhazia and South Ossetia. It is worthwhile noting that his remarks related to energy security and its role in shaping foreign policy directions of a country that considers the role of a state in the global energy market as determining, in many aspects, its geopolitical influence.

Concerning the cases of Georgia and Ukraine (NATO candidate countries), their increased sensitivity to the norms propagated by the RSGBSA WG, is justified for the following reasons:

- In Georgia, the war produced major stability and reconstruction problems, but especially the challenge to preserve the right to sovereignty, territorial integrity, and independence recognized throughout its territory. Moreover, this country is going through a social and political crisis arising as a consequence of the Russo-Georgian war, the most direct result being a vehement leadership's disproof;
- Ukraine is currently in an unstable situation that brings about distortion of EU and NATO accession prospects and designates it as an unpredictable state in the region, even in terms of future strategic direction. Democratic mechanisms used to their own limits and the institutional instability are the main problems to be solved in the near future, in order to become a credible partner for the EU and NATO.

The increased responsiveness of both countries is translated into an active involvement in all RSGBSA WG activities and the requests for assistance by organizing MCT events on their national territories (RSGBSA WG organized the annual meeting in 2008 and a national MCT seminar in 2010 in Ukraine; Georgia is working to select the most appropriate options for assistance).

Two clarifications are necessary to reveal the role of the involvement of all RSGBSA WG members in achieving the Group's objectives.

First, the management of the GBSA security environment is a shared responsibility of national governments of the states in the region. At our level of analysis, the promotion of the initiatives on security and defense challenges toward

[21] Razvin 2009.

strengthening democracy and national sovereignty in GBSA is attributed to RSGBSA WG members. Political elites must realize that ***"ownership"*** means determination for the efficiency of the programs implemented under the aegis of the Consortium and hence for RSGBSA WG credibility.

Second, the participation in these programs, through the contribution with expertise and its subsequent integration into a finished product designed to bring about democratic reform, means freedom of expression, and availability for cooperation. The RSGBSA WG working format ensures equal treatment for all the members of the Group and also their sense of belonging to the Group (***inclusiveness***) which is essential for a real "epistemic community".

In the Greater Black Sea Area there are various institutions and projects, but unfortunately, they often find themselves unable to fully operate due to the diverging interests of participating states.

The recent developments in the security environment, measured primarily by the interest of accession to NATO and the European Union, promise to revive at least some of these initiatives. Not to be neglected is the Russian involvement, given the historical legacy of the metropolitan dome influence over the former Soviet space and its special partnership relations with Turkey. These realities mean that the balance and relevance of any regional demarche is determined, to a considerable extent, by the active participation of both state actors.

The RSGBSA WG does not have the ambition to resolve regional political disputes, but provides actors with a platform to address issues of common interest—from crisis management and conflict prevention, to transnational security challenges. The cooperation develops gradually, although during the informal and academic discussions there are inherent issues of divergences.

We mentioned the relevance of the ownership, as a decisive factor of an effective epistemic community, in our case translated into a common management of the regional issues by the littoral states. Exclusivity, however, should not be overrated. Countries like US, Austria, Germany, and Switzerland make substantive contributions to the smooth running of the working group, by direct observation and involvement in its activities. Russian Federation and Turkey do not enjoy a favored status within the Group's internal decision-making process, even if it is clear that the foreign policy guidelines of the states in the region show the open maintenance of alternative security options.

Through the epistemic community generated by RSGBSA WG, a broad consultation of experts is developing in the field of security and defense, so as to adjust the key issues of common interest (translated into subjects of study) to the needs of "market" of the partner states that require precise and radical reforms. The decisions regarding the initiation of a new RSGBSA WG ambitious project (Black Sea Defense College) will have as a central basis a consensus gradually built over time, this issue arising from the need to speed up the implementation process, often deficient due to the above-mentioned considerations.

In conclusion, the central pillar of the GBSA identity is represented by the process of building a cooperative security area. The network of the cooperative security in GBSA must include several aspects of interest, such as regional

geopolitical pluralism, competition for energy resources, close proximity to areas of risk (Central Asia and the Greater Middle East), the amplification of non-conventional threats, but also the existence those of a conventional type, and not least the existing network of organizations (initiatives) for cooperation. The PfP Consortium is part of the cooperation initiatives landscape, actively advocating for the construction of the cooperative security through academic cooperation.

An optimistic scenario would be to articulate a common strategy of NATO and the EU on the GBSA. The PfP Consortium involvement in this direction would be more than welcome. The predictable result would be to integrate the different views that exist today in the direction of building cooperative security in GBSA, but also in increasing the receptivity of the major players—Russia and Turkey.

The works of the annual conference of the PfP Consortium held in Warsaw on 17–18 June 2010, were initiated by US President of the Senior Advisory Council of the Consortium, Dr. James MacDougall. He referred to the analysis and recommendations of the group of experts led by Madeleine K. Albright (in charge of drafting the new Strategic Concept of NATO) that the Alliance will focus further on the partnerships with the countries of the Euro-Asian region. In this context, he appreciated the efforts made by the PfP Consortium and their results, with the financial support of the "Warsaw Initiative". Regarding the RSGBSA WG, the Deputy Assistant Secretary of Defense for Partnership Strategy and Stability Operations, Dr. James Schear said: "*The RSGBSA WG is an important forum for finding regional solutions to regional problems. The activities of this group act towards the developing a common vision of regional cooperation and the need for its development. It is very important the focus of this working group on practical applications that bring together diverse nations in the Black Sea region*".[22]

The last decades of regional security research represent the sequence of theoretical and methodological imports necessary from the epistemological field of the GBSA. With the creation of the PfP Consortium and the RSGBSA WG, the researchers have operated an intensive recovery and a solid theoretical import, especially in areas that previously were difficult to be operationalized—the crisis management and conflict prevention, the defense institution building, the human resource management, and the transnational security challenges (if we refer only to RSGBSA WG areas of expertise).

The stage necessary to the theoretical timing seems to have established a common security culture of the GBSA states on the issue of Black Sea, which became part of a mandatory academic discourse for experts and national policy makers. The epistemological connection seems mandatory, however, to reproduce indefinitely, provided that the conceptual and theoretical systems, research

[22] Proceedings of the Twelfth Annual Conference of the Partnership for Peace Consortium titled "Leveraging Networks to Enhance Defense Education and Build Partner Capacity", Warsaw, Poland, June 2010, p. 51.

methodologies need readjustments and changes necessary to operate in a reality of the regional security environment, which is in a rapid change process.

The sovereignty idea needs a new elaboration which must be added to the classical paradigm in the sense of evolution, including the academic level where integrated expertise brings immeasurable benefits. The conceptual system of political sciences and international law was reordered, the intervention on the territory of certain countries to protect human rights projecting in a second raw the key-concept with which international law previously operated—*sovereignty of states*.

The emergence of communities of experts, in our case reflected by the activities of RSGBSA WG and PfP Consortium suggests the phenomenon of a *sovereignty strengthened through integrated expertise to the benefit of regional security and stability.* What seems less clear is the degree of proximity of the epistemological rupture, due to the current changes in the GBSA. This scenario is a pessimistic one and most likely to be avoided, given the fact that the approach in question on the activities conducted under the RSGBSA WG aegis—"*expertise offer*"—*demonstrates to this moment the cooperative attitude of the GBSA states, enhancement of professionalism of the involved parties, and the strengthening of the mutual trust. Transnational community of experts gradually come to a certain line of values and principles, which may be beneficial for enhancing long-term cooperation*.

Finally, we wish to refer to the work of the renowned analyst Zaki Laidi entitled "The Great Disruption", in which it is highlighted the fact that global civil society is dominated by a loss of confidence in the public sector and a constant search for new forms of authority, independent of the national central authorities' pressure. In his view, the authority shift from the national sphere to the global sphere represents the authority outsourcing of the expert and of his knowledge in sensitive areas of concern to the international community today. Particularly interesting is the central idea of the book that the main source of legitimacy of international civil society is just its **expertise**. Moreover, La said that the authority of the expert does not in any way prejudice national sovereignty.

The PfP Consortium model reproduces a more daring and more democratic form of academic organization regarding regional security, calling for political transparency, civic involvement, and sensitivity to identity differences at regional level. The political influence on both national governments and the European institutions, regarding ownership of the results of projects developed by working groups of the PfP Consortium is a goal intended to contribute to the strengthening confidence and cooperative security.

Referring strictly to our country's role in the RSGBSA WG, by providing and hosting the Secretariat of the RSGBSA WG, Romania demonstrates once again that it is a dynamic vector in the Black Sea. The ambition of our country through the initiative recently advanced within the Group—establishment of a Black Sea Defense College—is to demonstrate that we are able to promote best practices and models of European cooperation in GBSA.

The RSGBSA WG stage must now therefore be followed by the creation of an institutional structure that 1 day will cover the purpose and functions of the Group

itself. A genuine epistemic community project consisting of the Black Sea Defense College assimilated experts, is desirable to be implemented in the near future, and Romania, by assuming a leadership role in the project, will be in a challenging position to progressively generate political and financial guarantees for supporting it, in anticipation of obtaining benefits in national and regional security on a medium and long terms.

RSGBSAWG can be classified as positive experiment of a common manifestation of sovereignty, the relationship between the Group and the member states being symbiotic and not competitive. We witness a projection of a ***shared sovereignty***, a concept implemented pragmatically by the American analyst Stephen Krasner and which can be the key to developing a culture of cooperative security.[23] The attributes of the internal RSGBSA WG member states' sovereignty do not dilute through the contribution with expertise, but external and interdependent capacities of national sovereignty develop by strengthening the capacity to regulate issues of safety and national security in a coherent and efficient manner. The states of the area are urged to strengthen that joint sovereignty through integrated expertise to the benefit of regional stability and security.

This demonstration of a sovereignty of interdependence folds on the grounds that the measure in which the Westphalian rules continue to govern international practices is blurring. Krasner questions the contemporary relevance of the Westphalian rules in his book entitled "*Sovereignty: organized hypocrisy*".[24]

[23] On the concept of shared sovereignty, see, in detail, the works of Krasner 2004a and Krasner 2004b, pp. 85–120.

[24] Krasner 1999.

Chapter 5
International Perspectives on Sovereignty: Searching for a Common Denominator

Abstract This chapter focuses on supra-state organizations like the UN, NATO, and EU which seem to contradict Westphalian principles, but in fact support them by helping nation-states to exercise their sovereignty more powerfully, particularly when it contributes to individual and collective self-defense. The position of great power sovereignty is also examined through the constraints which international law and treaties impose upon the US, Russia, and China. Within the EU, there has been a gradual transfer of sovereignty from nation-states in order to that the Union, as a representative entity of these states, should exercise collective sovereignty in a manner that will have greater impact than if each state had exercised its sovereignty to achieve the same end.

Contents

5.1 European Union and the Concept of Shared Sovereignty

The sovereignty issue appears to be very simple, since sovereignty is a basic principle of international relations, all states being sovereign. Beyond this assertion, a wide debate takes place, because sovereignty is not an abstract and

S. Ţuţuianu, *Towards Global Justice: Sovereignty in an Interdependent World*,
DOI: 10.1007/978-90-6704-891-0_5,

unconditional concept, but a dynamic reality, very complex, depending on many factors, especially those who emphasize interdependences. States cannot always do just what they want, because the dramatic experience of the two World Wars, the Cold War, and numerous conflicts within the ongoing battle for markets and resources shows that the very principle of sovereignty should be amended, i.e., strictly conditioned to the new realities of this world. This explains the multitude of views on this concept and the striving of political scientists, of the theorists in general, of the politicians and specialists in international relations to find a common denominator of these views and update the content of this basic principle in the international relations, in the international system based on new realities.

In the UN, things are not very clear at all in terms of sovereignty. Hans J. Morgenthau shows that, under Article 27, para 3 of the UN Charter, while the Security Council permanent members retain their sovereignty, the others lose it[1].

The principle of unanimity is replaced with the principle of majority in the relationship between these two categories of members. An affirmative vote of the nine members, including the permanent members' votes in favor, becomes mandatory for all other members of the Council and the United Nations.[2] If it would also have the necessary means to subdue those who did not vote, then the Security Council would indeed have supreme authority over all UN member states, replacing their governments and creating a sort of world government. But this does not happen *de jure*, even if it often happens *de facto*, at least for some of the member states' governments.

However, for Article 27 of the UN Charter to become reality, nations must cede sovereign issues—amendments to the constitution, the size, and composition of the armed forces, declaration of war, composition of government, financial policies—to the UN Security Council or other international institution. However, as it is well know, this has not happened. There are a lot of regulations and international agreements to which states are parties, documents limiting armaments and level of the armed forces, or requiring certain preconditions in developing of the national legislation on the territory, infrastructures, etc. These boundaries and conditioning do not affect the principle of sovereignty, but impose certain limitations and conditions with which states must comply, in order to ensure proper, non-confrontational and non-offensive implementation of the principle of sovereignty. In other words, the boundaries and standards agreed at an international level do not deny the principle of sovereignty, but only require certain necessary conditions (caused by the current reality) of its exercise.

If the two World Wars, the Cold War, and local wars were and are so destructive, and the strategic nuclear weapons can destroy the world, then it is logical that states have no right to force, meaning the right to declare war unless

[1] Morgenthau 2007, p. 341.

[2] These are the privileges enjoyed by the founders of the UN, namely the five "permanents" within the UNSC. The founding states of other international intergovernmental organizations have no such expanded rights.

they are attacked and forced to apply the principle of self-defence or collective defence. In a tense and dangerous international environment, states must establish and comply with scrupulous new rules of relations between them. These rules do not deny sovereignty, but re-establish it in current parameters. For this purpose, states have created institutions to explore new reality, to perform and provide expertise, to propose solutions, to develop regulations, and other documents. But these are all signed and ratified by the states as part of these organizations. The majority vote, apparently affects the principle of sovereignty in its Westphalian formula under which there is nothing above the states, makes sense to avoid the blockage and impose the will of the majority. This requirement is considered necessary, since interdependencies have increased, interests diversified and the world's propensity for conflict does not seem to be lower. The fact that no state in the world can alone ensure its security requires the rule of coexistence, of active participation in decision making and ratification of the agreed documents. But majority rule is not compatible with the principle of sovereignty, nor does deny it, but imposes restrictions on implementation. In principle, nobody can force a sovereign state to join an organization where the decision is taken by a majority and not unanimity, but once agreeing the first, it will be subject to this rule, accepting in advance that certain decisions might not necessarily be consistent with its national interests. Large organizations with universal vocation (UN type) adopt, in general, the system of majority decision, while smaller regional organizations (for instance NATO) prefer unanimity for decisions with a major impact. To hope in the effectiveness of the unanimous vote in the case of UN (organization with more than 190 members) would be pure utopia!

Can parts of sovereignty be ceded? In other words, is sovereignty divisible? For the sake of world peace, can a nation cede a part of its sovereignty to an international organization, such as the UN? Morgenthau shows that something like that is impossible, since it contradicts the logic of international relations and even the basis of these relations. Such a conception is an expression of the gap between international law and international politics, between real relations and the ones considered to be existent in a modern system of states. But sometimes what seems logical is not true.

Sovereignty means supreme authority over the development of laws, promulgation, and enforcement system, over the territory and the governance. The supreme authority is not divisible. In other words, two or more supreme authorities cannot exist at the same time and same place. "A political sovereignty can not last without a supreme will. Sovereignty is nowhere uncertain." (Judge Sutherland in *United States vs. Curtiss Wright Export Corporation*).[3]

An interesting situation in this regard took place in Romania in December 1989 after the expulsion of Ceauşescu from power. For a very short period of time—several hours or several days—the army provided the necessary framework for authority to take over sovereignty until the establishment of a legitimate

[3] Morgenthau 2007, p. 345.

government by elections. But even in the early hours of the Ceaușescu's expulsion, a group was formed and self-legitimized in the name of the Revolution, taking decisions in accordance with the principle of sovereignty.

Over time, the situation became more complicated and complex, and the doctrine of shared sovereignty increasingly gained more ground. All nations are sovereign. Sovereignty makes them equal before the law, provides a maximum possible degree of freedom in a world where the real constraints are becoming more numerous.

The issue of sovereignty is neither neutral nor completely objective in the scientific field. Sovereignty is a highly politicized concept and a very sensitive domain. Nobody wants to abandon its sovereignty in favor of other entities, without being a member of this entity, because sovereignty is closely linked to identity.[4] There are many criticisms of this concept, for descriptive, normative or moral reasons, but also in terms of the new internal structure of the state. According to some, sovereignty is a kind of treasure, which will never be abandoned either for epistemological reasons or moral reasons.[5] But EU accession requires compromises, including in respect of sovereignty. Conceptual solutions are needed to allow the assurance that national security does not threaten the European integration, but also that European integration does not threaten national sovereignty. A strategy to meet these two requirements is necessary.[6]

The sovereignty of nations is both a source of freedom and equality, but also of conflict. The economical, political, social, and military realities are complex, dynamic, and the effects of wars, of periods of imperial and colonial domination, all sorts of pressures exerted on behalf of some interests considered important or even vital, are not reconciled with the indivisibility of sovereignty, or to the image of sovereignty as the absolute monopoly of the state. The struggle for power, influence, and strategic dominance is one of the unwritten rules of the international relations, although international agencies and institutions proclaim and support equality of legal status of the nations. Clearly, there is a tension between the sovereign equality of states and the inequality between their level of power and security. Hence, in the case of the weaker and vulnerable states, sovereignty remains a pure juridical fiction.[7]

Also, to take one example, there is a major conflict between the principle of sovereignty and the distribution of seats and votes in the European Parliament. Small states are advantaged because they benefit of a rule of representation set at one Euro-MEP (europarliamentarian) for 800,000 inhabitants. In general, the way

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[4] Sofaer and Heller 2001, pp. 24–52.

[5] It is, for example, the classical vision of many American neoconservatives, but also of the communist nationalists from China.

[6] András Jakab, *La neutralisation de la question de la souveraineté. Stratégies de compromis dans l'argumentation constitutionnelle sur le concept de souveraineté pour l'intégration européenne*, http://www.juspoliticum.com/La-neutralisation-de-la-question,28.html?artpage=5-5.

[7] Krasner 1999, p. 9.

of building the EU affects the sovereignty, even if the Union is made up of sovereign states.

If the EU is to become a sovereign supra-state polity, all member states would lose their sovereignty, since there can be no sovereign entities within a sovereign polity or meta-sovereignties.[8] But such a transformation could be beneficial for the European continent and the population from at least three perspectives:

- the reduction and even the elimination of the European endogenous conflicts, which marked a long period of conflicts and wars in the history of the continent;
- the development of a remarkable economic capacity, which would make the EU one of the most powerful state in the world, although the continent does not have sufficient primary resources (non-renewable energy) and is almost totally dependent on imported energy resources;
- the establishment of an extended European security space, which would certainly be one of the safety and stability nucleus, absolutely necessary to reduce conflicts in the globalization era.

These prospects are very distant, since at present, the EU does not include all European states and, moreover, is made up of sovereign states which stick firmly to their own sovereignty.

The most numerous and persistent pressures in terms of sovereignty seem to be exerted in the context of EU institutions and bodies. In fact, the European institutions do not exert such pressures, but they represent only an effect of an efficient European building project. Jean Monnet dreamt of a unified and durable European construction. This cannot be achieved immediately, but only gradually. In his declaration of 9 May 1950, Robert Schuman, the French Foreign Minister at that time stressed the idea that a united Europe such is the United States of America cannot be done at once through a global integration, but in the long term by integrating different sectors and by political integration parallel to economic integration.[9] There have been many years since then and it seems that things have changed. The steps taken in the field of European integration, including the development of a European security and defence policy, seem to have worked against the concept of national sovereignty, both in terms of practical achievements (the EU has now 27 member states) and the sphere of ideas related to this concept and to its materialization.

From1986, the constitutions of the EU member states referred to different ways of possibly jointly exercising certain elements related to sovereignty in a seemingly contradictory context. It became a case of, on the one hand, the existence of states in the EU, as distinct sovereign entities and, on the other hand, the independent existence of the EU as an entity having its own power of decision.[10]

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[8] Caporaso 2000, pp. 42–75.

[9] *Déclaration de Robert Schuman*, Paris, 9 May 1950; http://www.ena.lu/declaration_robert_schuman_paris_mai_1950-010000152.html (accessed on 20 October 2010).

[10] Elgström and Smith 2006, p. 4.

It seems clear that member states have accepted a gradual and conditioned limitation of their sovereign power in the process of integration. Transforming the EU from an entity of entities into a federation can only be achieved through the transfer of sovereignty from the member states to the future European federal state, to the extent that such state is created. However, if the direction of the European development will be such, the new federal state will have to have sovereignty. If we are to admit the idea of limiting the sovereign power of the integrated states, by the delegation of sovereign powers, through joint exertion of responsibilities related to state sovereignty, by creating joint armed forces, etc., then this should be reflected in the constitutions of those states and in creating a truly European constitution to register this transfer.

The German Constitution refers to the *transfer of sovereignty rights*; the Danish one to the *delegation of sovereignty attributions*; the French to *the transfer of competencies*; the Italian admits the limitation of state sovereignty required in the integration process; the Portuguese stresses that the powers necessary for European construction shall be jointly exerted; that of Luxembourg refers to the possibility of entrusting the exertion of the legislative, executive, and judicial powers to certain institutions of international law; and the Swedish one goes even further and foresees the forgoing of the power of decision of the national bodies, in certain circumstances, in favor of the communitarian ones.[11]

In the constitutions of subsequently incorporated states, including the Romanian Constitution, such provisions are somewhat pondered. However, the interpretation of texts shows that all European countries, even those whose constitutions do not contain express provisions regarding the cession of sovereignty or its limitation, are concerned with this topic.

It is normal to be so, since at least some EU member states or a number of their leaders, want the EU to become a federal state like the United States or a different version, specific to the European continent. This is the "German vision" on the EU as a federal supra-state, as reflected in Joschka Fischer's famous speech in 2000 from Humboldt University.

There is yet another vision in terms of philosophy and physiognomy of the EU, which designs the Union as an entity of entities, i.e., of sovereign states. This "French" type vision, a legacy of political Gaullism, contains, however an antinomy, namely that an entity of sovereign states cannot have sovereignty, since there is no meta-sovereignty concept, i.e., we cannot deal with a sovereignty of sovereignties. Not even the Lisbon Treaty solves this problem, since, after rejecting the draft Treaty establishing a constitution for Europe, steps toward federalization of Europe have become more difficult and much more cautious.

In fact, even the constitutions of the countries that have express provisions in connection with the cession of a part of their sovereignty do not refer to *cession of sovereignty,* but to the *cession of some of its ways of exertion*. Moreover, the

[11] András Jakab, *La neutralisation de la question de la souveraineté.*

respective constitutions make explicit reference to the transfer arrangements, the conditions under which the transfer is exerted, etc.

Article 23 of the German Constitution, for example, provides that the transfer must be made after Parliament has adopted a law revising the Constitution and also the conditions under which institutions can compete for the achievement of the EU tasks.

The Romanian Constitution also provides, in Article 2, para 1 that "national sovereignty belongs to the Romanian people and is exerted through its representative authorities constituted through free, periodical and fair elections as well as through a referendum."[12] It also speaks of "Romania's accession to the constitutive treaties of the European Union, with the purpose of transferring responsibilities to the communitarian institutions as well as the joint exertion of competence provided in these treaties, with the other member states…"[13]

The French Constitution (and that of Italy and Portugal) also makes sure to introduce the "*reciprocity principle*." France agrees, subject to reciprocity and in accordance with the EU Treaty, to the transfer of the competencies necessary to establish European economic and monetary union and to the adoption of some rules on free movement of people, and other related fields.

The Swedish Constitution states that the power of decision following the approval by a vote of three-fourths of the voters or by a voting procedure applicable to an organic law may be forgone. There is also a limiting list of situations in which this power cannot be transferred and, at the same time, it also refers to parliamentary competence to assign certain administrative and judicial responsibilities.

In our opinion, it is quite clear that if we want to achieve full unity of the European continent, through extending and strengthening the European Union, then it is necessary that the new entity should operate unitarily and indivisibly as a state, so that it functions as a state. This new entity should operate on the basic principle of the existence and functioning of a democratic state, which is that of sovereignty. How this transfer of sovereignty from the current member states to the future European state already under construction, be achieved, is not easy to predict, although the Lisbon Treaty is an important step toward it.

The European Council's debates on the new European Union Treaty (Lisbon Treaty), which came into force on 1 December 2009, managed to find solutions accepted by the authorized representatives of 27 member states, to three very important elements related to the configuration of the future status of the Union and sovereignty under construction of this European entity in the early twenty-first century:

- President of European Council meetings;
- Head of European diplomacy;
- Mutual defence of member states.

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[12] *Constitution of Romania*, All Beck, Bucharest, 2003, p. 1.

[13] Ibidem, p. 44.

It has been agreed that a President will be elected at the European Council meetings for a mandate of two and a half years, which may be renewed.[14] This way, the current half-year presidency, carried on a rotating basis by member states, would be abandoned. And as far as the position of Head of European diplomacy is concerned there were serious discussions.

The Draft Treaty establishing a Constitution for Europe suggested the establishment of the office of Minister of Foreign Affairs. That was, in our opinion, one of the provisions that caused the treaty to be rejected. This time, following the objections of the British delegation, this position has been replaced by that of the EU High Representative for Foreign Affairs and Security Policy. It is not just a change in meaning, or a change of the name, but a reflection of this period of European construction. As long as states have ministers of foreign affairs, such a position at the European level would have suggested a transfer of sovereignty from the states in the field of foreign policy, and this could not yet be accepted. The High Representative will have no hierarchical authority (command) over the foreign ministers of member states; he will only coordinate their efforts and establish a guideline in foreign policy.[15] However, the EU has a foreign policy and a security and defence policy, and therefore, the created position corresponds to this reality. It is not a sovereignty matter, but one of competence.

The Council has made some important changes as far as the mandate of the High Representative is concerned. First of all, it has been agreed that, through this function, the Union has a higher burden, as an entity on the international scene. Then, the Union's High Representative for Foreign Affairs and Security Policy was entrusted with the responsibilities of administrating the external aid budget of the European Commission. He represents the merger of the two previous positions: the European Commissioner for External Relations and the former High Representative appointed by the European Council. He is also Vice President of the European Commission.

It has also been agreed, from British delegation's proposal, that the High Representative should be accountable to national governments, which stresses the continuing role played by governments of the member states in foreign affairs and security policy. This is very important as the states' sovereignty, under the new Treaty, is neither affected, nor diminished, but adapted to the new stage of the European construction, and thus modernized and strengthened.

The European Council has also decided to establish a mutual defence clause, following the model of NATO, in the event that one of the member states would be attacked.[16] This does not affect the sovereignty of member states either, but only provides a common security and defence instrument, consonant with that offered by NATO.

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[14] *The Lisbon Treaty*, http://eulex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2010:083:FULL:RO:PDF.

[15] Duke 2005.

[16] Mazilu 2010.

Each of the provisions of the Treaty considers the sensitivities of the states regarding sovereignty. Some of them precipitated to consider this concept obsolete or inadequate to the stage that we go through in the European integration process, in the context of globalization, which is not justified. A powerful and stable EU can be achieved only if member states are strong and stable. Complete and permanent integration will be possible only when states will reach maximum of competence on national sovereignty, under the new international geopolitical and geo-strategic context, and move to a higher level of sovereignty, that of the EU as an integral state with a major role in the security of the continent.

There are three concepts, three phrases (used in constitutions and other official documents), which can be taken as three types of sovereignty: *people's sovereignty*, *national sovereignty*, and *state sovereignty*. Are those three concepts equivalent? The distinction between the *right of sovereignty* and the *exertion of sovereignty*, namely of this right, is crucial.

All the constitutions that stipulate the limitation of sovereignty or its partial concession do not refer to *the right of sovereignty concession*, but only to the release of some ways of effective exertion of sovereignty or of some of its supports. These supports are, in fact, determinations, more precisely interrelated elements which do not affect sovereignty, but only condition it, according to the existent realities. Because, although it is indivisible, sovereignty is not immutable, but adaptable to new reconfigurations, depending on the many factors that determine and condition it, among them being that of respecting each other's sovereignty.

The above-mentioned transfer of sovereignty is not, in fact, a transfer of sovereignty, but of competencies. The new European institutions created by the European states have been established precisely because of the emergences of a new spectrum of competences that cannot be exerted directly by the states, but by interstate institutions, within a fixed mandate approved by all concerned states. These institutions perform three kinds of roles:

- attributes of sovereignty allocated by member states, as they are common and a common expertise is required as well as a joint exertion of these (common security, collective defence, etc.), which do not affect the principle of sovereignty, but are constituting in a new form of its exertion;
- some attributes of the EU can only be jointly exerted with the member states, which involves not only their consent but also their effective participation and validation (ratification) of decisions by national parliaments;
- tasks specific to the EU and its institutions, which do not become obligatory norms for member states until they are validated (ratified) by the respective parliaments.

There is a distinction between the *theory of popular sovereignty*, promoted, among others by Jean Jacques Rousseau, and the *theory of national sovereignty*. Both are rather abstract concepts, transparent in meaning, and therefore can often be interpreted in accordance with the interests of those in power. The notion of *state sovereignty* is found in the constitution of Ireland and that of Finland. There are no essential differences between national and people's sovereignty. Over time,

the differences regarding the voting process, the form of government, the democratic formulas, etc. have diminished.

State sovereignty is also a concept that must be explained. The State can be understood in two distinct ways:

- as a society and, in this respect, it is confused with the notion of people or nation, the state representing all its members, located on a territory over which it exerts its sovereignty, elaborating laws, regulations, and a security and defence system;
- as an organizational system which carries out, in a sovereign manner, the ruling of a society, i.e., of a population situated on a certain territory.

In the first way, state sovereignty is the same as that of the people or the nation. In the second way, things get complicated as it will be necessary to identify the social contract, what kind of state we deal with, whether state sovereignty representative is mandated by the people or the nation through vote, to what extent we are dealing with a legitimate state, namely a power that is legitimated by the vote of the nation and registered in the constitution.

De jure, all the powers—including the dictatorial ones—emanate from the people, from the nation. *De facto*, things are more complicated. In many cases, the organizational structure called the state assumes rights and responsibilities that it does not have, and the decisions they take—as mandated by the vote—may be disastrous for the population, such as the outbreak of wars or the imposition of unbearable restrictions which can lead to serious consequences for the country, etc.

On behalf of the principle of sovereignty, the leaderships of countries can generate true dictatorships, and even genocide against their own people or, worse, extremely bloody wars, such as those in the former Yugoslavia.

Under current conditions of inter-determination of international relations, sovereignty is not and cannot be an exclusive and irresponsible right. It is rather a conditioned strictly liable right as today, more than ever, *ab uno disce omnes.*[17] Today, sovereignty is not an exclusive isolating principle, which erects a protective wall, but a principle of identity that enables clear, direct and responsible communication, and cooperation between states. European policies, especially those of proximity and partnership, take into account respect for the principle of sovereignty in the relations between neighboring countries and those with partners. It is one of the essential conditions for successful implementation of these policies.

5.2 Innovative Approaches in NATO's Strategic Concepts

NATO has managed to ensure freedom of its members and to prevent war in Europe for 40 years, as long as the Cold War lasted. Dramatic changes made in these years are reflected in the Alliance's strategic concept of Rome in 1991. This concept is in

[17] Schell 2004, pp. 1–8.

fact a response to many questions that were asked and are still being asked after the dissolution of the Warsaw Pact as well as the system of the socialist countries and after the geopolitical reconfiguration of the East, with the dissolution of the Soviet Union and the formation of the Russian Federation and of the Community of Independent States (CIS). In the situation in which the reason why NATO was formed does no longer exist, which may be the fate of the Alliance? Does NATO still have any sense, as long as the military threat of the Soviet Union and its former allies (most of them became even members of NATO) has disappeared? What does NATO mean now and what role does or may have the Alliance for Europe, America, and especially for countries that compose it?

As is well known, NATO is an alliance of sovereign states. It never pretended to be a meta state, or a "state of states", or another force to overcome the will of the states that make up this Alliance. The Washington Treaty from 1949 as well as the strategic concepts that followed did not affect in any way the principle of sovereignty, but rather strengthened it. And we believe that this is one of the reasons why NATO has not only survived the end of the Cold War, but was also strengthened by new members and by assuming new tasks and competences. The essential and immutable aim of the Alliance, as it was announced in the Washington Treaty, was to safeguard the freedom and security of all its members by political and military means.[18]

The new European and Euro-Atlantic security structure that has developed under the pressure of new challenges has as a central pillar the North Atlantic Alliance.

The fundamental principle of the Alliance is that of the mutual commitment and cooperation between sovereign states on behalf of the indivisibility of security for all its members. The cooperation, the solidarity and cohesion are achieved, both in the political and in the military domain, so that no member country relies only on its forces in case of danger. Importantly, the right and duty of states to assume their security responsibilities as sovereign states are not prejudiced in any way.

To reinforce this philosophy, respecting and strengthening the sovereignty of member states, NATO has developed since the early 1990s, relations of cooperation and partnership, the Partnership for Peace, with a lot of countries that share the same major political objectives.

NATO provides one of the most important means for the establishment of a stable Euro-Atlantic security environment, contributing effectively to resolving peacefully the disputes but also to strengthen the sovereignty of states on the new basis of trust and political, military, and strategic security.

Moreover, the Alliance is a transatlantic framework where the allied states may consult on all issues affecting their vital interests, especially in terms of security risks and coordination of their efforts in areas of common interest. The common

[18] *The North-Atlantic Treaty*, 4 April 1949; www.nato.int. See also *The strategic concept of NATO*, Washington, 1999, Part I (6), *The purpose and tasks of the Alliance*.

interest does not affect sovereignty, but it creates a base to coordinate efforts to strengthen NATO's role in security and defence of all its members. The function of deterrence and defence against any threat is strengthened on this premise, according to Articles 5 and 6 of the Treaty of Washington.

The other elements related to the role of NATO in crisis and conflict management, according to Article 7 of the Treaty, and promoting broad partnerships, as well as expanding the role and competences of the Alliance beyond the NATO area, come to reinforce the principle stated in para 8 of the Washington Strategic Concept.[19]

There is a big difference between the philosophy and physiognomy of the Alliance and that of the EU regarding the concept of sovereignty. While the EU tends to shape the concept of sovereignty in order to strengthen the Union, even at the expense of some states—one of the reasons for which the first treaty on a European constitution was rejected, NATO aims at strengthening state sovereignty by providing a uniform and collective component of security and defence on which each state can rely in defending its sovereign rights and freedoms, through political and military means, within the framework of the Washington Treaty.

The collective defence and crisis management operations undertaken by the Alliance do not affect the principle of sovereignty, but instead create guarantees for its strengthening, in the sense of discouraging and resolving all the situations that might constitute challenges, threats, and even security threats for the member states.

The 22nd NATO Summit held on 19–20 November 2010, in Lisbon (Portugal) had as its main purpose the discussion and adoption of the New Strategic Concept of the Alliance.[20] This aims, among others, at developing better relations with Russia, maintaining an open door policy for countries willing to adhere, and highlights a new mission, the missile defence.

The document reaffirms the main commitment of NATO, the collective defence, and recognizes the decisive role of partnerships in strengthening international security, in defending the values of NATO and in preparing the countries interested in accession. NATO needs to clarify and deepen the relationships with key partners, to start new relationships and expand the area of the partnership activities. Hence, the EU is viewed as unique and essential partner of NATO, with a clear role in ensuring the global security of the Euro-Atlantic area, while NATO–Russia cooperation is of strategic importance for creating a common space of security, stability, and peace. Regarding the latter, more than relevant and designating the "historic" proximity between NATO and Russia, is the official invitation launched by the US and their NATO allies, to Russia, to participate in implementing the missile defence system.

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[19] *NATO Strategic Concept*, Washington, 1999, Part I (8).

[20] Text of the New Strategic Concept is available on-line at: http://www.nato.int/lisbon2010/strategic-concept-2010-eng.pdf.

The group of experts led by Madeleine K. Albright established to ensure a broad consultation of scientists and specialists, civilians and military, in developing the new strategic concept, submitted on 17 May 2010, a comprehensive report on the realities, demands, and proposals made in this respect. Among other things, from the outset, it was stressed that although NATO's role has increased significantly, the population of the member countries do not know this and do not fully understand the new role of NATO.[21] If the population does not understand the new role of NATO, the Alliance may not enjoy its support, which would be very serious. Moreover, even within the 28 participating countries, there is some controversy about the role of NATO in the twenty-first century. Some argue the expansion of this role, i.e., the globalization of NATO; others believe that NATO should remain as it was designed by the Washington Treaty, an instrument of defence of NATO area and of the countries that are part of it.[22]

Today, the Alliance's members are concerned about the resurgence of regional conflicts which could become dangerous and even pose threats to the Alliance or the member states. NATO must cope with the volatile and less predictable risks, including terrorism, proliferation of nuclear weapons, and other advanced technologies, cyber attacks, attacks on communications systems, sabotage on energy pipelines, etc. Often, an effective defence against these unconventional security threats must begin beyond the Alliance territory. NATO has already responded to this new requirement, to this new reality, by assisting the Government of Afghanistan in the fight against political and religious extremism, by combating piracy in the Gulf of Aden, by ensuring the safety of navigation in the Mediterranean, by resolving conflicts in the Balkans.

NATO needs further transformation to take new risks. NATO's goal remains to protect, by political and military means, and the freedom and security of all its members. NATO embodies the transatlantic link by which the security of North America is permanently linked to European security. NATO's security is indivisible: an attack against an allied state is considered an attack against all members.

In this regard, the Alliance's military forces must be able to deter any potential aggression and also to ensure political independence and territorial integrity of the member states. This approach does not diminish the sovereignty of the member states (sovereignty can neither be diminished nor augmented), but it only amplifies the means for its securing and exercise. The principle of consensus (the unanimous decision in the North Atlantic Council) and sovereignty over strategic and political decisions guarantees the proper functioning of the Alliance, the safety of each

[21] *Towards the new Strategic Concept: A selection of background documents*, NATO Public Diplomacy Division, www.nato.int—www.nato.int/ebookshop: http://www.nato.int/ebookshop/stratcon/off-text-e.pdf.

[22] See the position of Angela Merkel, Chancellor of Germany, opposing to a global NATO, in March 2009—"I don't see a global NATO… It can provide security outside its area, but that doesn't mean members across the globe are possible."—cited by Z. Brzezinski, "An Agenda for NATO. Toward a Global Security Web", in *Foreign Affairs*, October 2009.

member state, and the security environment necessary for each to develop freely and independently in international and regional context.

Of course, the success and smooth functioning of the Alliance depends on the equitable sharing among its members, of roles, risks, and responsibilities and benefits. The new NATO strategic concept does not change the essence or its principles. But there are other circumstances. Also the systems and processes generated by dynamics of the new challenges, dangers and threats (conventional and unconventional, largely asymmetrical), requiring new attitudes and new actions, particularly for the management of crises and conflicts situated far from the borders of the Alliance, and undertaking and fulfilling *out of area* security missions.[23]

NATO is a regional organization, not a global one and its mission is consistent with the UN and OSCE concepts on regional security. Its resources are still limited and therefore it does not intend to substitute or replace the international security organizations. NATO's mission in Afghanistan is considered to be one of the largest met so far by the Alliance. Afghanistan should no longer constitute a base for terrorist organizations and should become a stable, viable state. This experience is not yet done.

NATO's new strategic concept opens a new era of partnerships. It promotes, therefore, consultations, partnerships, both within the Alliance and in its relationships with partners already become traditional—Russia, Ukraine—as well as with other partners, to find realistic and sustainable solutions to the increasingly complex problems which affect security.

All the other issues approached by the concept (reducing the nuclear arsenals, anti-missile defence involving both NATO countries as well as its partners, especially Russia, appropriate responses to cyber attacks, etc.) require responsibility and consistency. Being a member of NATO is not a right but a responsibility. Of course, such a responsibility does not diminish the sovereignty of that state, but involves assuming different obligations, and this helps to reshape the concept of sovereignty, in the sense of corroborating it with the responsibility concept.

For the next 10 years, the uncertainty will be exacerbated by factors among which we mention the following:

- proliferation of weapons of mass destruction (WMD);
- recrudescence of international terrorist networks and groups;
- persistence of regional, ethnic and religious rivalries, and amplification of their corrosive effects;
- increase of the dependence on information systems which, in turn, are potentially vulnerable;
- amplification of competition for oil and other strategic energy sources, and thus the increase of the importance of maritime security;

[23] Lugar 2002.

- significant demographic changes that might aggravate global problems such as poverty, hunger, illegal migration, pandemics, etc.;
- environmental degradation and climate change.

There are not any stability sources or, anyway, they are very limited. NATO is one of them. The organizations and organisms created years ago still provide means to settle international disputes in harmony with the state subject to the rule of law. NATO considers the state subject to the rule of law as an important leverage and beneficiary of stability and security, as well as the emerging powers China, Russia, India, and Brazil, which play a more and more important role within the system of international relations at all the levels. Over the next decade (2010–2020), the security environment will evolve both on predictable coordinates as well as on certain unpredictable trajectories. The cross-border flows, criminality, arm trafficking, etc., will intensify affecting the state and the rule of law.

5.3 American Strategic Thinking

The American strategic thinking is strongly impregnated with large doses of pragmatism and messianic idealism and, at the same time, with a mechanism for long-term global projection (*grand strategy*).

The Americans always make innovations, particularly in terms of strategic concepts and doctrines. Although these innovations express the pressures of the American interests in the most direct way, they have significant global effects. The American policy, from the isolationism generated by the Monroe doctrine to the latest formula of the American national security strategy, generates global effects that rely on a specific way of building and managing the American security environment. The Americans are aware of crisis hotbeds, which they try to monitor and, of course, to settle as quickly as possible. They are also aware of the way in which these may weaken the American state. The American national interest is present in everything, but it is not always in tune with the global or regional realities. The Americans have their own way of seeing and understanding the world, and the essence of their philosophy of security and, implicitly, of sovereignty is prevention and pre-emption. The term that fits best the American way of thinking at the strategic level, would be, in our view, active security. Active security includes the two terms of the American strategic thinking that always find the most interesting forms of expression and materialization, some being very direct, even aggressive (the Bush Doctrine), and others less trenchant (Obama's foreign policy). We say this because almost all the American political, economic, diplomatic, informational, and military actions have an almost apotheosis-like end: *homeland security*. The security of the American space and of the American citizens is the only philosophy that emerges from the huge dimensions of the American strategic thinking.

Although it appears that the Americans almost never find common ground, and their policies and strategies are excessively simple, even simplistic, the reality is totally different. The dynamism of the American strategic thinking and of the scientific, political, economic, social, informational, and military supports—both theoretical as well as pragmatic—is impressive. No other country in the world invests in the field of strategic thinking as much as the Americans. All the Americans—from politicians, to those working in business and especially in the scientific research field—know that sovereignty represents power in international relations, pragmatism, and vision in economic and social relations, substantial scientific support in political and strategic decisions. Therefore, for the Americans, more than for anyone else, security is a complex concept, a permanent preventive and pre-emptive, and omni-directional action.

National security is the prerequisite for the existence of the state and nation, and therefore a fundamental objective of governing.[24] All the countries have and must have this concept in the centre of their policies and strategies. The text of the National Security Strategy of the United Kingdom, adopted in 2008, for instance, expressly and explicitly stipulates such a provision, even among the first sentences that form the introductory paragraphs ("Providing security for the nation and for its citizens remains the most important responsibility of the government"). The mention is interesting not only from the perspective of sobriety and care shown for concise formulation that characterizes British writings in this domain, but especially in terms of the convincing settlement of the debates, almost useless now, about the myth of the weak state or of the state's withdrawal as preconditions of an illusory absolute individual security.[25]

National security is and will be for a long time, if not forever, a very important attribute—perhaps the most important—of the state and an expression—perhaps the most concrete—of sovereignty. The concept of national security is very wide, and the more general it is, the more important it becomes. Current debates and the effective practice of the governments approach the issue of state security, as well as the whole issue of human security—of the individual (citizen) and of the human communities—in all their variety. From such a perspective, the emphasis of the debates has shifted on the issue of protection of human rights and freedom, generating, of course, partisan positions more or less politically founded. Huntington's writings and especially the writings of the representatives of the Copenhagen School (Barry Buzan, Ole Weaver, Jaap de Wilde, etc.)[26] had an important role—or, better said, a triggering role—in shifting concerns from the hard, traditional core, of classical security states (military security against external threats and military action to undermine the authority of the government—from an internal perspective), toward the original reference and fully justified object—the human being, the citizen.

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[24] Degeratu 2010.

[25] Strange 2002.

[26] Waever et al. 1993; Buzan et al. 1998; Buzan 1997, pp. 5–28.

These debates seem somewhat parallel to those regarding the new dimensions of the concept of sovereignty, but the need to provide a reference framework for the respect and security of the human beings represents the core issue. This problem has two sets of essential constants and variables. On one side, there are different institutions created by international organizations and/or by states which oblige the signatory states to respect the laws and rules that were commonly agreed and, on the other side, not in opposition, but in another dimension, there are some of world's great powers, which, although they participate in the establishment of such institutions (the International Criminal Court, International Criminal Tribunal for the former Yugoslavia, etc.) their parliaments have not yet ratified the respective documents or, anyway, they are not in the first row of support for these institutions which, normally should affect them as well.

The United States of America represent one of the great powers which, somehow, go in parallel with these institutions, although, for example, the International Criminal Tribunal for the former Yugoslavia was created following a decision of the UN Security Council, including by American vote.

Instead, the Americans are very concerned about their own security, as an essential attribute of the state, which they exercise at all possible levels, including through active and effective participation in the world security, and conflict control.

For modern security studies, the reference moment is represented by the Monroe Doctrine, just a few years after the fall of Napoleon in Europe. The dominant vision for the pre-Napoleonic and even Napoleonic period had been the fragmentary historic Euro-centrism. This vision characterized the evolutions before this doctrine. The security evolutions which drew both the physiognomy of the pre-Westphalia world as well as the Euro-centric post-Westphalia model, had been influenced by the early Asian events (the Mongol invasions, "Black Plague", the messages of the Chinese and Indian civilizations, the two assaults of Islam against Europe—the Arabic and Ottoman wave—the emergence and rise of Russian tsarism with its double geopolitical nature) as well as by opening the world toward the West—exploration of the Atlantic, Europeanization of the Americas, exploration of the Pacific. On the 2nd of December 1823, James Monroe's message addressed to the American Congress stated, in essence, that the time of the European domination over the New World has passed and that the new North American new state built on the grounds of the Christian civilization, of democracy and free market, wanted to participate in the organization of international relations in a manner that would provide security against military threats coming from the tutelary continent. In other words, the USA reserved the American continents as exclusive sphere of influence, free from interference of the Europeans.[27]

The American State was, at that time, under construction, its borders were not clearly enough defined, and the tools to promote its interests were insufficient. America had not yet come out of the tutelage of those who created it. But Monroe

[27] Kissinger 1998.

suggested that the USA should not intervene in the affairs and interests of the European states, provided that the European states should cease colonization or re-colonization actions on the territory of the American continents. It was perhaps the first attempt to organize the global security, if it were to refer to the origins of the concept. It was also the first act of sovereignty.

At that time, the main European powers (empires) were engaged in the Holy Alliance, generated by the Congress of Vienna in 1815, which mainly aimed at the political reorganization of Europe after Napoleon's ultimate defeat in such a way as to ensure a certain balance, to prevent the revival of the French expansionism and to prevent revolutionary movements with internal or external political target. Certainly, it was not an act of limitation of sovereignty, but a sovereignty reconstruction act under the new circumstances. The great powers were tracing again the principles and the boundary lines regarding, in the first place, the relations between them, as well as relations with the rest of the world. The signatories of this system were the Tsarist and Habsburg Empires, the Holy Roman Empire of German origin (in the process of dissolution) as well as the British Empire. The French Empire revived on the traditions of the old monarchy also joined the same system. The Ottoman Empire had not been invited to participate in the Holy Alliance, although it still ruled a great part of South-East Europe and carried out different cooperative political–military actions with almost each of the signatories of the Holy Alliance. The effects of the Congress of Vienna in 1815, both in terms of sovereignty, as well with regard to the actual relations between the European states, are still felt today.

Two of the signatories—the British and French Empires—were the main colonizers of North America, and the other two—the Habsburg and German Empires—had not participated in the colonization of America. South and Central America had been colonized by Spain, Portugal, and the Netherlands, which, practically, did not play any important role in the European politics of that period.

James Monroe's doctrine—a kind of expansion of the Westphalian spirit, but on other coordinates—had an important role on the issue of sovereignty. The policies arising from such a view became perennial, either in terms of pursuing the objective to defuse the recovery tendencies or the tendencies of regaining influence of the former colonial powers, or with regard to the state construction line of the USA.

In the next century, the USA strengthened its independence, settled border issues, and defined its sovereignty very clearly and precisely. The "Monroe Doctrine" (which was given this name two decades later) was permanently enforced in the late nineteenth century (the Theodore Roosevelt Corollary). It generated American isolationism for almost a century (it should be understood as an act of intense, sovereign construction), it modernized and adapted to the requirements of the period. It has to be mentioned, however, that the Monroe Doctrine is the most stable, clear, and perennial American doctrinal model within the global security arsenal.[28] Thus, its invocation, as the guiding principle in the missile crisis in Cuba, 1962, did not surprise anyone, and even vehemently

[28] Ibidem.

contested, the principle ended up by being accepted in practice as it was also the case of other complex crises such as those in Chile, Nicaragua, Panama, Haiti or the Dominican Republic, etc.

Nevertheless, the American isolationism promoted by the Monroe Doctrine aimed at the direct use of the American military power only and it did not aim trade, business in general. Since free and non-discriminatory trade is a rapid construction element of the American power and of its share in international relations, the American prosperity mostly relies on business value. Business value, the pragmatism, the market, and the active spirit in international relations have significantly contributed to the achievement of sovereignty which, today, in an era when in different states it is collapsing, in America it is reaching impressive levels. It is very difficult to assume that the Americans, at least as we can notice from the situation at the beginning of this century, will ever accept to dilute or diminish their sovereignty over the American space.

The First World War dramatically changed the balance of power, the dynamics of international relations, and the security environment. The new qualitative paradigmatic evolution embodied in the "Wilson doctrine" corresponds to the new security environment.

Europe had entered a real strategic deadlock. Woodrow Wilson, who had won the elections with a normal isolationist, non-interfering platform, and faithful to the Monroe Doctrine, decided to support military intervention of the USA in Europe on the side of the democratic nations against the non-democratic, tyrannical, and aggressive powers. By this action, the US did not aim to conquer territories or to acquire wealth, geopolitical advantages, or war compensations. The aim of this intervention was made known to the other European nations through the declaration often known as "Wilson's Fourteen Points". At that time the young Romanian state also benefited from this declaration. Articles 10 and 11 stipulated the perpetrators' obligation to immediately and unconditionally withdraw their troops from the Romanian territory before the war, as well as the right to self-determination for the Romanians in Transylvania. From the Romanian point of view, the American effort in the war—which was not very substantial, if we compare it with the effort made by the USA in the Second World War—meant for Romania, the possibility to denounce the Buftea Treaty, to re-mobilize the Army, to evacuate occupation troops, to free Transylvania, and to complete the process of political and territorial unification of the Romanians within their reference territory. Moreover, the completion of this process included a significant episode from the perspective of modern history: the first military intervention to prevent the establishment of a communist totalitarian regime in a European country—respectively against the puppet regime (supported by Lenin) of Bela Kun in Budapest. The military actions of the Romanian state and of the Romanian Army were in line with Wilson Doctrine—whose purpose was to eliminate a security threat by removing tyranny in favor of human rights.[29] The USA sent

[29] Ibidem.

approximately 12,000 troops to Russia in the summer of 1919 to fight against the Bolsheviks in the context of the Russian Civil War, at the express wish of President Wilson. Of course, they did not see the intervention as a violation of Russian sovereignty, as the legal government of the country was considered the government of the "white" Russians.

The analysts pointed out that the American external policy establishment created a persistent myth: that through its preventive or punitive action, the USA has often acted externally such as a "reluctant superpower"—respectively in extreme cases to counteract the aggression of other powers, as well as having serious grounds.[30]

We summarized these two doctrines because they played a very important role in shaping international relations during the difficult periods of consolidation of the national states, of implementing different policies of the power balance, etc. But neither the Monroe Doctrine nor Wilson Doctrine settled the Westphalia-type sovereignty issues or the issues relating to the balance of power or the security of the European continent. But they have significantly contributed to the strengthening of American power. This aspect had two very important complementary effects for the next decades of the twentieth century and even for the beginning of the twenty-first century. The first effect is the consolidation of the American state and its transformation into a global power. The second effect is the creation of favorable conditions to externally exercise the American sovereignty in a significant way. The latter effect can be considered—from the perspective of the countries that are neither aligned nor willing to align with Western concepts of development, power and operation—a conflicts generator and, in some way responsible for the chaos existing at present in the world, and therefore reflecting the Americans' insistence to install a new world order based on American and Western values. From the perspective of promoting human rights, democracy, and Western values, this effect can be considered a generator of solid bases for a sustainable development, a promoter of the democratic principles, and of the market economy.

Reality is much more complex than these possible dichotomous effects of the massive, very active and even offensive involvement of the USA in shaping the world order according to the American interest or, anyway, according to the American vision on international relations, balance of power, and configuration of state and rule of law.

Almost all the attempts registered after the First World War—from the establishment of the League of Nations to a regional micro-alliance system (Little Entente, Balkan Pact) and the attempt to define and prohibit war (Kellogg-Briand Pact, Convention of defining aggression and the aggressor) or providing security guarantees for the Eastern democratic states by the Western democratic countries—did not prevent the outbreak of the Second World War. The famous American historian Charles A. Beard insists on the fact that the decisions of the American leaders to launch the country into war in 1898 and 1917 were based on

[30] Bacevich 2002, pp. 7–8.

the desire to expand on a global scale a developing commercial empire, to provide wealth for the dominant classes and to find a solution for the social rebellions.[31] Other authors give more credit to the messianic American mentality, in line with the Wilsonian idealist doctrine.

The interwar period and especially the period after the Second World War projected on the horizon, a new type of threat—the threat of totalitarianism, at first of the fascist type, then, especially after the war and during the Cold War, of communist type—which required the US, on the one hand, to elaborate a new doctrine, with national security and protection functions against these dangers and, on the other hand, to strengthen sovereignty of the democratic states, not in an isolationist but a cooperative sense.

The subsequent American doctrines—the doctrine of transatlantic cooperation—which aimed, at first, only at the Anglo–American cooperation and was based on the active cooperation between the two countries' leaders (Churchill and Roosevelt), aware of the dangers of the emerging totalitarianism for the national and global security, the Truman doctrine (doctrine of limiting the communism, containment), which reflected the difficult state of international—represent clear and distinct landmarks of a security construction in an extremely conflict, bipolar world, in which tensions continued to increase, and dangers against the rule of law, especially against democratic, and prosperous Western countries continued to grow.

The very complex and complicated dynamics of international relations during this period—reflected in international relations theory—determined the Americans to take the strategic initiative and impose a way of thinking and analyzing the state of insecurity generated by the true nature of the Soviet communism and to understand the danger it posed to global peace and security. Through the position he adopted in response to the risk of a Soviet aggression against Western Europe, Truman set the pattern for the whole East–West confrontation, between the Euro-Atlantic democracy and Soviet totalitarianism, during the period which we still call the Cold War. He got inspired by the memorandum of George Kennan, a young US diplomat specialized in the Russian issue.

In order to counteract the overwhelming Soviet military superiority in Central and South-eastern Europe, the state secretary John Foster Dulles insisted on a doctrine that provided the possibility of using nuclear weapons, recently included in the American arsenal, based on the Massive Fight back principle. Dulles Doctrine allowed deterrence of the aggressive actions of the Soviets and their allies.

The *National Security Act of 1947* was the new approach of the security issue, bringing this concept to its first modern shape—as part of the political field and becoming a priority task of the President. This concept was the starting point for the reorganization of the national security field, particularly in terms of: foreign policy, defence policy, national security policy, intelligence policy, political, administrative, and strategic leadership in the field. The Act of National American Security laid the foundations of modern institutions specific to this area (NSC—

[31] Barrow 2000.

National Security Council; CIA—Central Intelligence Agency and generated a reconstruction process of the Department of defence (through conversion of the former departments—Naval and War Departments, the establishment of the Department of Air Force and their integration within a single federal ministerial department—the Department of Defence/DoD).

Externally, the economic expression of these efforts was the launching of the Marshall Plan and the subsequent setting up of the Organization for Economic Cooperation and Development (OECD) in order to manage humanitarian aid.

The democratic states joined their efforts to counteract the Soviet threat by multiple methods and means, among which the most important were those which aimed at the establishment of a large number of organizations with the primarily or complementary purpose of ensuring European security and defence. Among these, the most important were the Western European Union/WEU (March 17, 1948) the North-Atlantic Alliance/NATO (4 April 1949), Council of Europe (May 5, 1949), European Coal, and Steel Community (April 18, 1951); the European defence Community (May 27, 1952). Some have been successful and have survived up to today; others disappeared in the course of time or failed from the very beginning. Their doctrinal-strategic trend was usually the one set by the US and the main instrument through which the US have materialized their commitment to protect the security of the democratic Europe, respectively the North Atlantic Alliance.[32]

It is in such a context, in the years 1949–1950, that the first Strategic Concept of NATO appears; it is a complex doctrinal politico–military construction, designed to guide the efforts of the Alliance, aiming to counteract the Soviet threat and to provide the protection of Western democracies. The doctrinal, ideological, and political–military foundation of the Concept was provided by the US, thus, reflecting the main values of the American democracy, the guidelines of the Truman Doctrine, and the American military strategic principles and concepts. Among these we mention the provisions relating to the possibility (and necessity) to use nuclear weapons by the USA in order to counteract the overwhelming Soviet superiority in terms of force and conventional military means; the formulation was circumscribed to the concept called Doctrine of Massive Retaliation which dominated the military strategies of the 1950s.

A few years later, in the 1970s, the state secretary John McNamara launched the Flexible Response Doctrine, based on the idea of a more rational approach of the Soviet-American confrontation, as a measure of building peace and security. A Soviet aggression with conventional weapons was to be counteracted with similar weapons, followed by tactical nuclear attacks, avoiding mutually destruction (MAD). Thus, the lessons of the Cuban crisis of 1962, prudently managed by N. Khrushchev and Kennedy had been appropriately assimilated.

This doctrine, which kept intact the basic principles of Containment, as well as the principles that preserved the US supremacy in the area of the American continents (the Monroe Doctrine), considered that the nuclear arsenals of the two

[32] Ibidem.

superpowers provided what political scientists and military experts called the MAD Doctrine—mutually assured destruction, and proposed a model which allowed to avoid the nuclear confrontation even from the beginning of a conflict, or in case of confrontation with intermediaries (proxy wars), the gradual escalation of the conflict and reaching war limit in hopeless situations only. The feasibility of such an approach was tested in the Cuban Missile Crisis (1962), which brought the world on the verge of a nuclear cataclysm following the breach of the Monroe Doctrine principles by the USSR (by deploying on the territory of the newly communist Cuba, a substantial number of nuclear ballistic missiles capable of attacking the American territory). The Soviet Movement brought, for the first time, an external military threat close to the American border, proving not only a virtual vulnerability (generated by the intercontinental ballistic missiles installed in Russia) but also a direct threat, impossible to be counteracted by the action of the defensive systems or by effective deterrence. The missile crisis in Cuba also determined the failure to install American missiles in Turkey.

The Nixon and Carter Doctrines reaffirmed the US commitment to defend the allied countries, in spite of the effects of failed actions in Vietnam, but they also asked each country to be responsible for their own defence. In addition, the Carter Doctrine affirmed the US interest in the Persian Gulf, including by the use of force. It was, of course, another effect of the confrontation between the USA and the Soviet Union in an area of great strategic importance (considered by Zbigniew Brzezinski, National Security Advisor of the President Carter, as an area of vital interest for the USA). The Carter Doctrine was a warning doctrine, showing that oil was becoming a very serious reason for war. This aspect should be considered today, especially by those who believe that globalization will eliminate ipso facto future conflicts. The Carter Doctrine is also the one which paid special attention to human rights, as a significant issue of international relations, in opposition with the socialist states which considered it an internal matter. The Americans transformed this issue into an ideological weapon against communism, totalitarianism, and tyranny.

The Weinberger Doctrine, which was based on Carter Doctrine, restored order perhaps for the first time, in the way of using the US Armed Forces, especially after the failures in Vietnam, where the decision belonged to the political leaders and the army suffered the consequences, to which there were added the intervention in Grenada, the consequences of the terrorist attack in Beirut of October 23, 1983 resulting in 241 deaths among the US marine infantry etc.

Reagan Doctrine (Rollback) is related to the Carter Doctrine, and, somehow, prepares the transition to the post-Soviet stage, through a new approach of American security policy. The Reagan Doctrine aimed to push back the extensions of this power which escaped, however, through the dikes of containment. Rollback became the central idea, but it precisely aims a number of Soviet influence hotbeds that had to be shut down. First of all, it was the case of a few countries such as Afghanistan, Angola, Kampuchea, Ethiopia, Laos, Libya, and Nicaragua. Reagan

defined the Soviet Union as an *empire of the evil*[33] and threatened it with the use of force. The effects of this doctrine consist, above all, in launching in March 1983, the Strategic Defence Initiative (SDI) Programme aiming to eliminate the Soviet ability to destroy the US nuclear arsenal, by building a space anti-missile shield. Against this background, the communist system collapsed. The Reagan Doctrine (Rollback) ended the bipolar system and the Cold War, but it also represented the mission accomplished report of the Truman Doctrine (containment).

In September 27, 1993, in a speech in front of the UN General Assembly, President Clinton launched his concept called *Democratic Enlargement*. It was about looking for new ways to provide the extension of the democratic states based on the free market and on the respect for human rights and fundamental freedoms. The new doctrine aimed at a long-term strategic vision, focused on a major pragmatic goal—engagement and enlargement—able to synthesize the essence of the new American external policy founded on two requirements: neo-Wilson idealism around an action core of neo-Morgenthau essence. The strategic concept of democratic expansion, aiming to become the successor of the containment, incorporated a few very important ideas: the consolidation of democracy in the new Europe freed from communist domination; the support, and encouragement of democracy wherever this objective seemed possible and realistic; containment and suppression (coercion) of reactionary regimes that opposed expansion of democracy and which seriously violated human rights; expansion of the range of humanitarian actions. The concept represented a long-term strategy, which aimed the expansion of security as the sphere of the democratic states enlarged, including the security of the United States. The doctrines which followed were subordinated to this doctrine.

The Clinton Doctrine overlaps on a true revolution in the field of security studies, of political science in general, in which new surprising and often contradictory concepts emerge and develop, playing an important role in reshaping US security strategies as well as in the revival of geopolitics and the rapid proliferation of interest in this field[34]; idea of competition between the role of the state and the supremacy of human rights (the human rights issue becomes at the beginning of the ninth decade, a true political religion); theory of state withdrawal and theory of the weak state; Copenhagen School—with its new concepts regarding security regimes, regional security complexes, human security, etc., failed states and bankrupt states, etc. The US and NATO policy generated new forms of engaging former adversaries, through programs of cooperation, consultation, mil-to-mil relations, etc. The most prolific, durable institutionalized form which generated positive consequences was the Partnership for Peace Program (PfP).

The Clinton Doctrine is characterized by a unique feature, respectively, being based on a literal interpretation of the provisions of the Goldwater–Nichols Act.

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[33] Reagan first used the term in his speech to the House of Commons on June 8, 1982; he qualified the Soviet Union as an "empire of the evil".

[34] Kagan and Kagan 2000, p. 120.

The document has been reprinted every year since its official appearance—as a separate document—since 1994. Thus, there were printed updated editions, brought into line with developments in the international security environment in 1995, 1996, 1997, and 1998. In 1999, however, against the background of NATO's intervention in the Kosovo crisis, the Clinton Doctrine appeared as a completely new doctrine, promoting the idea of humanitarian intervention as a principle to settle serious crises which generate or may generate humanitarian disasters. Intervention in Kosovo in 1999 and the bombing of Serbia—a consequence of the Clinton Doctrine, but illegal from the perspective of the UN Charter—failed to pass the test of time. Unilateral proclamation of Kosovo's independence generated a major split between the former allies of the Allied Force Operation in 1999, some (most) of them recognized the state of Kosovo, while others (still a significant part, among which Romania—a former supporter of intervention) did not agree with unilateral solutions, but fought for the original spirit of the 1244/1999 Resolution. The Clinton Doctrine is somehow linked to the new NATO Strategic Concept adopted at the jubilee summit in Washington in April 1999, during the full strategic bombing campaign over the former Yugoslavia, which enshrined among other things, the NATO intervention outside its area in the process of crises and conflicts management.

The Bush doctrine is evidenced in the document entitled the National Security Strategy of the United States (US NSS—2001), which develops the idea of pre-emptive strikes and preventive actions, bringing very close these different terms and even interchanging them. The Bush Doctrine was, so to speak, the end of an illusion, namely that of the fact that once the Soviet threat and the equation of welfare-state security disappears, there is another great danger, another challenge, another great enemy: international terrorism. The peak of this threat materialized in the attack of 11 September 2001 on World Trade Center and the Pentagon, hence, the justification for the Global War on Terror (GWOT). This doctrine has again led to a strategic split, on one side, is the modern democratic and prosperous world, and on the other side terrorism, the countries that are part of the Axis of Evil, and failing states that support terrorism. The war started, as early as 1991 against the dictatorial regime in Baghdad, then in the fall of 2001with the intervention in Afghanistan programmed to destroy Al Qaeda, as well as the war started in 2003 on Iraq, have cost over 600 billion US dollars, and the effects are not only those of questionable wins and big losses (for example, in Iraq more than 4,000 US troops have died), but also those which have led to the consolidation of US power and sovereignty and the role of the US in managing global conflict situations. Moreover, subsequent developments during the Bush Administration led to a state of permanent war or continuous war, as a legitimate response, a pre-emptive action against terrorists who launched the war against the United States. The GW Bush administration attacked Al Qaeda terrorists on the Afghan territory, eliminated the Taliban political regime (Islamic extremism), then toppled Saddam Hussein's secular dictatorship in Iraq. Thus, for a period of time, the sovereignty of both countries in the Greater Middle East was suppressed and there was the temporary imposition of a "governor" of Iraq, Paul Bremer, representing the temporary interruption of the state's sovereignty. Subsequently, Iraq regained its sovereignty

especially since 2010 when American troops withdrew, leaving behind only a small contingent with a watch role.[35]

Of course, the Bush doctrine, as well as the arguments presented, many of them questionable, have produced many varied reactions from the loss of popular support, to direct charges for forcing the note, and even for "directing" a justification of the war. One thing is sure, as a result of the tough Bush administration actions, no more terrorist attacks took place on the US territory and the war objectives led by the US, in coalition with other countries, including Romania, produced effects which require further consideration.

The Obama Administration is in a different stage of thought and strategic practice, which however variable it would seem, has a very ingenious and perfect continuity.

Many critics have stated that America's foreign policy was not going to change despite a change in the country's leadership. Yale Literature professor David Bromwich has a column in the Huffington Post that's primarily an attempt to push the meme "Bush-Obama Presidency." It does persuasively argue that President Obama has continued many of President Bush's policies in foreign affairs. Much less persuasively, it attempts to make the case for Obama's perpetuation of Bush's economic policies.

Concerning the issue of security, there were huge debates on the President Obama's National Security Strategy (NSS) released in May 2010, characterized either as a real change or as "Bush Lite"[36] (basically plausible remake of President Bush's National Security Strategy).

On May 26, 2010, the latest National Security Strategy was issued by President Barack Obama. The new Strategy was referred to by United Nations ambassador Susan Rice as a "dramatic departure" from its predecessor. The Strategy advocated increased engagement with Russia, China, and India. The Strategy also identified nuclear non-proliferation and climate change as priorities, while noting that the US security depended on reviving its economy. The drafters of the new Strategy made a conscious decision to remove terms such as "Islamic radicalism", instead speaking of terrorism generally.

A qualitative difference between the Obama and Bush foreign policy is to be noticed, starting with the assumption that first and foremost, George Bush and his neocon allies got America into two costly wars, while Barack Obama is getting America out of those two wars. Moreover, Obama's gesture of extending a hand toward Muslims was unheard of in Bush's foreign policy.

A significant moment of transition was brought by the US new military strategy. On 5 January 2012, President Obama outlined this strategy, one that refocuses the armed forces on threats in Asia and the Pacific region, continues a strong presence in the Middle East, but makes clear that US ground forces will no longer

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[35] Brzezinski and Scowcroft 2008, p. 56.

[36] Feaver 2012. The article tries a comprehensive comparison between Bush's most recent NSS released in 2006 and Obama's NSS of 2010. On the same topic, see also Lendman 2010.

be large enough to conduct prolonged, large-scale counterinsurgency campaigns like those in Iraq and Afghanistan. Obama put his mark on a military strategy that moves away from the grinding wars he inherited from the Bush administration and relies more on naval and air power in the Pacific and the Strait of Hormuz as a counterbalance to China and Iran.

The new military strategy of the US is driven by at least $450 billion in Pentagon budget cuts over the next decade, this goal being linked, in the US leadership's recent statements, with the need to renew the long-term economic strength of the country. Nevertheless, Obama administration will continue to invest in counterterrorism, intelligence gathering, cyber warfare, and countering the proliferation of nuclear weapons.

The main focus of the new military strategy is to make the US a security partner of choice with those nations that share a common vision of freedom, stability, and prosperity. It is an approach that can easily be found in the former US administrations' foreign policies, backed by the strong willingness and determination to remain the world's pre-eminent military power.

5.4 The Russian Federation: The Obsession to Defend National Sovereignty

The collapse of the Soviet bloc in Central and Eastern Europe and the replacement of the bipolar system of the Cold War with an entirely new geopolitical reality, marked by American hegemony in the 1990s, is a milestone in the evolution of contemporary international relations. The political system this generated, the geopolitical borders, and surrounding area are unprecedented facts in the Russian history, which has to reinvent itself as a state and to operate in a radically changed system of international relations.

The re-elected Russian President Putin was the one who led Moscow to reaffirm its hegemonic ambitions, causing, consequently, many tensions in the new geopolitical reality, and strengthening the Russian area. The military nuclear arsenal and substantial oil and natural gas resources are strategic parts of the state forces, capable of re-propelling it in the world power centre.[37]

The close proximity—the former Soviet republics—represents a competition ground with the American superpower, ever more deeply infiltrated through NATO and its military bases present in Europe and Central Asia.

In order to understand the foreign policy pursued by the pragmatist Vladimir Putin, during the years of consolidation of the new physiognomy of Russia, we will conduct a foray into the areas of Russian military doctrine, analyzing comparatively the conservative and innovative elements of the military doctrines of the years 1993, 2000, and 2010, respectively. Beyond the reality according to which

[37] Secrieru 2008.

the new geopolitics is building a political space beyond the Westphalia type, beyond the national phase of "mythologies" on the creation of a nation, and the obsession with borders seen solely in terms of dominance of one state by another, we will identify in these doctrines the phenomenon of the revival of Russian geopolitical thinking, between the imperatives of globalization and nostalgic aspirations to Eurasia.

On 21 April 2000, President Vladimir Putin signed the military doctrine designed to replace the 1993 version and developed the military policies stipulated in the new national security concept of the Russian Federation (published in January of 2000).[38]

The impressive new doctrine addresses a range of issues, including: the nature and causes of modern wars, internal and external military threats to the Federation, the organization and financing of the army, the governing principles of the use of military force, the implementation of arms control treaties, threats from illegal armed groups established within the borders, and international sanctions, etc.

Specific elements of novelty are presented, primarily by reducing the *threshold for using nuclear weapons.* Prevention, which was granted by the 1997 strategic concept, through the first-strike possibility in case of the identification of a threat to the existence of state, is replaced by the expression of soft power of answer for the wide scale aggression with conventional weapons in critical situations for the national security of the Russian Federation. For the first time, however, the right to use nuclear weapons as a response to all attacks, with weapons of mass destruction and extension of the nuclear umbrella over Russia's allies, is stated explicitly.

Terms of fundamental interest are those on the defensive nature of the doctrine and on the transition toward a democratic state and a mixed market economy. On 5 February, 2010, then-President Dmitry Medvedev approved the new Russian military doctrine that captures the new direction of the military and nuclear policy of the Russian Federation, generated by the settlement of the missile shield and the proximity of NATO to its borders. According to this reason, pre-emptive strikes on states considered to threaten Russia's safety with nuclear and conventional weapons are still allowed.[39] We say *further on,* because there has been speculation according to which the doctrine intended to extend the threshold and to allow the use of nuclear weapons even for preventive attacks, which would have led to an alarming decline similar to the Russian political line in the 1990s. Moreover, the new version of the military doctrine does not stipulate the use of nuclear weapons in regional conflicts, another relaxing aspect, given the uncertainties hanging over the approach in the political and military Russian environments, prior to the issue of the official document.

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[38] *Intre doctrină militară şi realitatea din Federaţia Rusă (Between military doctrine and reality of the Russian Federation)*, http://www.jurnal.md/ro/news/intre-doctrina-militara-si-realitatea-din-federa-ia-rusa-181762/.

[39] The text of the new doctrine of the Kremlin administration is available on-line: http://news.kremlin.ru/ref_notes/461.

But these "encouraging" aspects are annihilated by the panoply of external military threats mentioned in the document. Broadly, they concern:

- the expansion of NATO military infrastructure near the Russian borders;
- the dislocation of some foreign military contingents on the territories near the Federation or near its allies;
- the development of the anti-missile system that undermines global stability and affects the strategic balance of power;
- the territorial claims against Russia and its allies;
- the use of military force in neighboring territories of the Federation, in violation of the UN Charter and other norms of international law;
- the global spread of terrorism.

Claims relating to the period of transition to a democratic state and the defensive nature of the doctrine are not found in the final document. It remains to be interpreted whether the democratic state has already been established or, on the contrary, Russia abandoned at a certain point in time its intention to build such a state.

Regarding the August 2008 military experience—the war with Georgia—we notice the provision which allows the use of military force to defend Russian citizens from abroad, provision which did not exist in the 2000 version. Moreover, the new doctrine defines as a threat the territorial claims against Russia's allies, thus covering enclaves such as Abkhazia and South Ossetia that have bilateral agreements of cooperation in the military field with the Russian Federation. Even the military exercises carried out in neighboring countries such as Georgia and Ukraine may be considered provocative to the state's security according to the new doctrine.

Belarus enjoys a special status in the document. An attack against this state produces a similar impact to an attack against Russia. This consideration is likely to cause an uproar of public opinion in Belarus, given the foreign policy orientation of this state toward Europe.

When it comes to the West, the military relations are virtually excluded, which does not exclude the development of relations with it.

Finally, as a last comment in this brief overview, while the 2000 version ends with the firm commitment to comply with the provisions made, the new version ends with the statement according to which the provisions may be changed depending on changes in the security environment. This consideration questions the existence of any coincidences related to the abandonment of the word "democracy" in the new military doctrine of the Russian state.

The new Russian military doctrine practically restores a new pragmatism, in corroboration with the adoption of Putin's strategy, but also a definite withdrawal of the Russian political line of the 1990s.

The ideology of the new doctrine is based on an approach in which the Russian state should develop along with other responsible sovereign democracies. The Medvedev Doctrine is based on five key principles which claim: democracy, sovereignty, national states, single democratic standards, and using persuasion rather than coercion.

According to Medvedev's doctrine, only countries which have or assume a responsible sovereign democracy can be considered the most valuable partner in the process of building the new world order. Nevertheless, the former Russian President reclaimed that the Russian democracy will endure in the future, being categorical on the respect of sovereignty and also on the importance of treating this principle respectfully in the foreign policy approach of the modern states.[40] The theory of "sovereign democracy" was promoted by doctrinaires belonging to Vladimir Putin's circle, to show to the world that Russia does not accept lessons of democracy from abroad and that it chooses its own path of political development.

Geopolitical realities reclaim a security vacuum in the post-Soviet, a high level of symmetrical and asymmetrical threats in the region, unresolved geopolitical status of some countries in Central and Eastern Europe, regional conflicts, and territorial disputes. After the 2008 war with Georgia, Medvedev stated a new doctrine—that of protecting Russian citizens living in former Soviet states, including protection by armed force. Coupled with the unilateral recognition of Abkhazia and South Ossetia, this doctrine suggests that Russia is ready to violate the sovereignty of states placed in its "direct" neighborhood in order to ensure its control over them.

Russia supports a campaign of reaffirming the sphere of influence of the former Soviet Union and pretends to be one of the key players who would build the future world order in Eurasia. The new doctrine wants to emphasize that the principles of foreign policy instituted by Medvedev's predecessor, the current President of Russia, Valdimir Putin, are found in the current Russian foreign policy strategy, even if there are also new strains attached to the message.[41]

The geopolitical future and the role of Russia in this area of "close proximity" are subjects of concern to Russian foreign policy analysts, each with its own approach in terms of solutions, from the promotion of the expansion in Eurasian (Alexander Dugin),[42] to the acceptance of Western domination in Eurasia and to the development of a purely European identity, modeled on Great Britain (Dmitri Trenin).[43]

The current foreign policy seems to be inspired largely by Alexander Dugin's expansionist theories, if we think about Russia's special relationship with Germany, which provides about 70 % of energy needs, the protection that the Kremlin attaches to Iran (including the hundreds of Russian atomistic physicists working for the regime in Tehran), or the recent dialog with Japan. Trenin's visions, although realistic at first glance appear to be typical of Yeltsin's era, the policy of "withdrawal" from the giant American and Western attempts to integrate the space being unnoticed.

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[40] *National Security Strategy of the Russian Federation until 2020, May 12, 2009*: http://www.scrf.gov.ru.

[41] Mankoff 2009, p. 55.

[42] Dugin 2000.

[43] Trenin 2002.

In the Russian geopolitical thinking, the extreme views of "civilisers" are striking. From Filofei ("Moscow is the Third Rome"[44]), to Brezhnev (limited sovereignty), Ghenadi Ziuganov believes that any doctrine of the Russian geopolitical must take account of Russia's military supremacy and the need to create alliances with Asian and Muslim countries to offset shares in Western Eurasia.[45] Ziuganov insists that Russia has two civilizing missions: to define a "political-economic autarchy" and to constitute the "Wide Area" in its natural borders, which would provide total security for the peoples.

The problem of Russian sovereignty over its territory is in itself an interesting reconstruction following the principle that, within the same borders there can be only one sovereignty and, consistent with the principle of indivisibility of sovereignty. In this regard, in June 2009, Russia, through the Constitutional Court, called for the autonomous republics to abandon the principle of sovereignty of their own Constitution, citing the conflict with the federal legislation. According to *Kommersant*, quoted by *NewsIn*, the principle of sovereignty, in the form of various formulations, is present in the constitutions of many autonomous regions and republics of Russia, working as a federal subject. Since 2000 and 2001, the Constitutional Court decided on the inadmissibility of the presence, in the Constitutions of autonomous republics and regions in Russia, of the provision concerning their sovereignty. Still no concrete measures became visible up to this date.

It is more and more of a fact that the only way to resuscitate the imperial force would consist in designing a major project for the former client states, i.e., the CIS. A Russian geo-socio-cultural project that would also address to the West in the post-Soviet and Central Asian republics seems pretty rudimentary, but not impossible.

In the foreign policy strategy of Russia, a third geostrategic priority is reserved to the western direction in the CIS space. In its composition there are Ukraine, Moldova, and Belarus. The Kremlin must insist on the path of its "close proximity" policy while applying harsh measures, consider the Russian analysts. The characteristics of the importance of this line are largely justified; they are cultural historical, economic, military political, and religious. And that's why Moscow should take action against its major suburbs more harshly than in other regions.

2011 represented a jubilee year—20 years of the CIS and conclusions and incentives are expected in the integration processes in the post-Soviet. During the last meeting between the former Russian President Medvedev and the CIS Executive Secretary, Serghei Lebedev, they considered that the CIS remains the main

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[44] The idea first appeared in a series of letters for the great Tsar Vasili III, attributed to Filofei, a Pskovian monk of the early sixteenth century; http://ro.wikipedia.org/wiki/A_treia_Rom%C4%83.

[45] Ghenadi Ziuganov, *The Geography of Victory. Introduction to Russiaís Geopolitics* (see also *My Russia*, from 1997), 1999, 319 pages—best illustrates the geopolitical school of the Russians "civilisers"; it is interesting that the author reaches the same conclusion as the neoconservative American philosopher, Samuel Huntington, stating that *a major conflict of the future world will be a clash of civilizations, rather than an economic or ideological one*.

integrative union in the post-Soviet space. However, in 2009, Medvedev proposed to the world a plan for a pan-Eurasian security structure, a kind of umbrella for NATO, OSCE, and the CIS that would become sub-organizations! Therefore, in the US and in Europe, excepting Germany, the reactions were rather sceptical …[46]

Russia is a big country with many problems, including the harmonization of the national legislation concerning sovereignty, and obviously the close proximity geopolitics. It does not seem willing to accept shared sovereignty and continues to strengthen its sovereignty on its territory, by all means at its disposal, but also by promoting a coagulation policy over its close proximity, especially in the southern and western areas, obviously in its own interest.

5.5 Assertiveness in China's Foreign Policy

China represents a pillar of history since, both as an ethnic group and state, it has had a multi-millennial existence. The former 'Middle Empire' which authoritatively dominated the geopolitical space that coincided with the South and East Asia has transformed into a modern and efficient state, run by the authoritarian Communist Party, for more than half a century.

In the early twentieth century, US Secretary of State John Hay pointed out that the Mediterranean is the maritime area of the past, the Atlantic—of the present, whereas the Pacific stands for the future. Since the 1970s, this claim is starting to materialize, primarily through the Asian miracle. The Asian Area has huge human, territorial, and energy resources.

Over millennia, this area has also given birth to numerous civilizations, generating simultaneously a continuous movement westwards. One might say that the Asian region is a generator both of populations and of movements of these populations, especially to the West. The British Harfold Mackinder[47] was mentioning an Eurasiatic pivot (heartland), which, in terms of power and potential, meant a cluster of huge forces and resources and also the formation of infrastructures that allow such potential to dominate the world. Therefore, the main concern for the *off shore* maritime powers was, just as it should have been, in Mackinder's vision, as well as in another geopolitician's, this time an American, Nicholas Spykman, to restrain the continental powers, especially by dominating the coastline and prohibiting access to the warm planetary ocean.

These visions were not merely theories. They have resulted in a huge and continuous confrontation, apparently won by the *offshore* maritime powers, through the application of a US strategy of containment, as well. The end of the Cold War, war which limited this pivotal geopolitical space, is still affecting us,

[46] "Russia promotes Medvedev's Euro-Atlantic security plan", December, 2, 2009, http://english.ruvr.ru/2009/12/02/2481669.html.

[47] Mackinder 1904.

but the domination of the off shore powers, particularly of the US ones, is quite relative, since it only partially succeeded in restricting the powers of Asia and substantially increasing the economic disparities. Any Asian power would require more than a century to overtake the US, and in terms of military capability, the gap is much larger. Obviously, the military capability is supported by the economic potential, and the US GDP is seven times higher than China's, to take only this example.

China remains an emerging power with huge human potential, an ancient culture and a rapid growth rate. Although its achievements, particularly over the last 20 years, are remarkable, China is still very far away from the splendor of its imperial times.

Many analysts claim that 'the land of the four dragons' has all the requirements to be considered a superpower, but it is not yet one, due to its complex situation, the political regime, and the huge gap separating it from the United States. In China, revolutions have taken too long and reforms have been too little. Even if the Chinese think they are in the centre of the world—and, to some extent, they are right—their philosophy of life and action is not one of conquest, but a strategic and subtle approach, once described by *I-ching*[48] and its great philosophers (Confucius, Lao Tzî, Sun Tzî etc.). It does not follow that the Chinese are extremely generous, nor that they selflessly work for the benefit of the world, it simply means they are not interested in conquering the world, as they are in their unity and territorial stability, in feeding the 1.3 billion mouths, as they say, and in having a good neighborhood.

China's geopolitics stand on three pivots, at least: the cult of its own territory, its great culture, and its renowned stability (resulted from its firm and intolerable politics, especially in regions considered uncertain—Xinjiang and Tibet).

The Chinese territory is a sort of taboo area. The Great Wall of China, 12,000 km long, one of the great wonders of the world, is one of the arguments of this philosophy of the taboo-space, taboo-territory, of this vital space. China's sovereignty over its own territory is unwavering, and the idea of creating a safe space in its immediate vicinity, somewhat similar to the European Union Neighborhood Policy, but of another nature, is an emerging one. The Chinese have stated it out loud that the Formosa Strait, which separates the Chinese mainland from the island of Taiwan, is an area of vital interest to China. Actually, the people of this country consider every foot of land or water to be vital for China, to its more than 1.3 billion people. In this spirit, the Chinese have recovered Hong Kong in 1997 and Macao in 1999.

China has a huge territorial deployment of 9,596,960 km^2, out of which 9,326,410 km^2 land and 270,550 km^2 water. Numerous Chinese seem convinced that never ever, in the multi-millenary history of this great country, has any government signed an act to give up any square meter of land or water from its

[48] *I-ching* (*Book of changes*) is part of the five classical canonical books that form the basis of Chinese culture and tradition. Moreover, *I-Ching* is the oldest of them.

territory. China is very careful about its territory and nobody dares to contradict or counteract it. Not even the United States of America, a huge economic and military superpower that cannot be overtaken by anyone at least for the following three decades. Even the Americans have acknowledged that there is only one China, even if the US administration supports the regime in Taipei.[49] A single China with two political regimes. China is not a phenomenon, as one may be tempted to state, given the exceptional capacity of continuity and resurrection of this country. China is just a down to earth, realistic, and highly prolific country.[50]

Despite all this, China has gone through geopolitical trauma that marked its collective identity. In the second half of the nineteenth century, the Chinese empire displayed serious weaknesses and several Russian expeditions in the Amur river area led to the 1858 Aigun Treaty, by which Russia controlled the entire left bank, to the sea. It was the first 'unequal treaty' between Russia and China, and in 1860 the Convention of Peking was signed, by which Russia gained the Vladivostok region from a China recently defeated by France and England. These unequal treaties have permanently remained etched in memory, at least for the Chinese leaders, communists, and nationalists likewise, that's why in the 1960s the Communist leader Mao Zedong requested the former USSR to return the territories taken by force by the Russian Empire from China. Moreover, in 1969 there were border incidents, causing hundreds of deaths; since both Russian and Chinese troops opened fire and held one another ambush. Given this background, the US took advantage and, in the 1970s, established relations with China, to the detriment of the USSR.

On 16 May, 1991 Russia and China signed a treaty on the border, which did not cover the disputed territories. A new treaty is signed in 2004 and China recovered some small territories.

On 2 June 2005, in Vladivostok China signed an agreement with Russia, on the common border, which measures 4,300 km. After signing the agreement, Vladimir Putin, the Russian president at that time said that for the first time in the Russian–Chinese relations, the borders are clearly defined. As it is known, on the Amur, Ussuri, and Argun rivers, at the Russian–Chinese border, thousands of islands have been disputed. Therefore, solving such a problem is indeed a great achievement. One might infer, however, that the myth of not signing documents to cede portions of Chinese territory was over once this agreement was concluded.

In our opinion, such an assertion would not be correct. Signing an agreement for the definition and delimitation of the border with a neighboring state is not primarily a transfer of territory, but a border regulatory regime. We do not know whether by signing this agreement the problem of Chinese migration in the

[49] By 1971 China's representative in the UN SC was Taiwan, and the USSR has consistently protested against the exclusion of PR China from this structure. In 1971, with the US agreement, Taiwan was expelled from the UN and RP China occupied this place. From a legal perspective it would seem that a single China took this place continuously from 1945 until today.

[50] Văduva 2007.

Russian Far East will disappear, but anyway, such legislation can only be beneficial for both the Russian–Chinese strategic partnership, and for the whole region.

Its recent actions for demarcating borders with North Korea (related to the ongoing disputes over the islands on the Yalu and Tumen rivers) and stopping the illegal migration of Koreans in this country fall into the same strategy of building a sovereign neighborhood. China is also concerned with the introduction of a clear demarcation border with Vietnam, especially in fisheries, according to the agreements ratified in 2004, but this process is somewhat slower.

For decades China has had a state of conflict with Japan, Vietnam, and the Philippines over several islands in the South China Sea: Paracelsus and especially Spratley. Every time the Japanese Navy seize Chinese fishing boats, or a Vietnamese boat harasses them, China claims sovereignty over these islands.[51] At the same time, under pressure of the international environmental organizations from Burma and Thailand, but also in the spirit of amicable settlement of all problems in relations with its neighbors, China has stopped construction of the 13 dams on the Salween River.

On 11 April 2005, an agreement for talks was signed with India, on border disputes dating back to 1962. China claims a territory of 20,000 km^2 in north-eastern India called Arunachal Pradesh, while India claims the Aksai Chin region of Kashmir, 38,000 km^2. Kashmir is widely disputed among China, India, and Pakistan. It is one of the world's hottest outbreaks, in an eternal conflict which particularly reflects in the Indo–Pakistani rivalry—a very dangerous one, should we consider that all three countries that are disputing parts of this territory, one way or another, are nuclear. These three countries together account for 2,616,459,966 inhabitants, more than one-third of world population, and 13,688,490 km^2. Never have they been in very good relations, although at some point China supported Pakistan in the dispute with India. The two great cultures—the Chinese and the Indian—almost never communicate with each other, which is one of the paradoxes of that area of vital importance for the future of the planet.

China's and India's territories have been conquered and ruled by others, experiences which significantly marked (in somewhat different manners) both populations of these countries. This is why their sovereignty over the own territories, especially China's, is a firm, even excessive one. However, in the new vision of economic development in China, Beijing's authorities practise a method of territorial concession to foreign companies investing in this country.

China has 20 % of the world's population, but not 20 % of the resources. More than half of its oil consumption comes from the Middle East, which explains the paramount importance China gives this region, like all major oil-consuming countries. China's attitude toward the Middle East is a particular one, specific to the Chinese. Hence, it is careful, prudent, appropriate to the circumstances, and persevering.

[51] Goldstein 2005.

Together with Russia, Japan and South Korea, China is part of the North-East Asia Forum. The stated purpose of this organization is to develop strategic reserves of oil, particularly by exploiting the hydrocarbon resources of Siberia and the Far East. As it is already known, Russia has been cooperating with Japan in oil exploitation in the Ohoţk Sea.

China gives a great importance to its strategic partnerships, made primarily with Russia and the European Union. Japan and the EU are strategic investors in the Chinese economy, and the partnership with Russia resolved a lot of problems that could have never be solved otherwise. The two great countries are concerned with the development of their economy and the substantial improvement of their relationships. On a somewhat more distant plan, it focuses on creating a Euro–Asian entity or even Euro–Asian community.

In view of this project of Euro–Asian unity and, of course, of east and southeast Asia unity, China built a few years ago, a 4,000 km railway from Kunming, a city located in a south region of the country, to Singapore, plus the ferry line between South Korea and China, and it also improved the railway in North Korea to Russia. There is ongoing talk about the building of a sub-oceanic tunnel between Japan and the South Korean city of Pusan, similar to the Channel Tunnel.

All these considerations and many others, which are absolutely normal in the development of fair and sustainable relations among major entities of the world, show that the eastern, south-eastern and southern parts of the Asian continent are stepping out of a millennial conflict and starting to build their status together, guided by an architecture that deserves all attention. It is true, the Asian platform, just like the European or the North American ones, is a strong nuclear one, but such a reality cannot be avoided. Russia, China, India, and Pakistan are countries which legally posses nuclear weapons, whereas North Korea is suspected to be possessing them 'illegally'. Iran apparently wishes to align as well (of course, 'illegally') to this community. Israel plays a different game in the nuclear space; some believe it is because of the special conditions of this country and the threats it faces, others' believe there are other interest at stake.

Ultimately, the world—greater or smaller powers included—will have to realize that higher or lower powers must realize that once Hiroshima and Nagasaki took place the nuclear weapons arsenals will gradually enter the most powerful countries on the planet and sooner or later, the chain of these types of armaments will be unstoppable or, in any case, hardly ever kept under control.

China is not a 'rimland', as Nicholas Spykman defined the area (or part of it), the concept on which the US policy and strategy of damming communism was built. At that time, there were good relationships between China and the United States, even a kind of a strategic partnership. Perhaps in the not too distant future, Sino–American relations will deepen and improve substantially, since it cannot be otherwise in a world of interdependence and interacting. The fact that China's dollar reserves of 2,000 billion dollars, is equivalent to the US budget deficit, says a lot in this regard, even explaining the relations between these two large countries. Hence, China is not and has never been a rimland, i.e., an edge, even if, apparently, it somehow seems marginal or marginalized from today's struggles.

It is always in the centre of the world, due to its great culture, its multi-millennium history and also because it gathers 20 % of the world's population, because of its extremely high economic growth rate, its good neighborhood concerns, its partnerships, and the manner it solves all problems existing in the area. The Shanghai Cooperation Organization (SCO) is an example as conclusive as possible in this respect. This organization was created in June 2001 and in 2002, in Moscow, held its Third Summit in the presence of the Heads of Member States from China, Russia, Kazakhstan, Kyrgyzstan, Tajikistan, and Uzbekistan. A document was released, the 'Shanghai Declaration',[52] which defines its operating principles: mutual trust, mutual benefit, equality, consultation, respect for the diversity of civilizations, and common development. Although it looks like a common regional organization, this one plays a very important role in the geopolitics of the region. It is situated at the very heart of the old disturbing foyer, it brings together countries of Central Asia producing oil and natural gas with and the two great powers—China and Russia—and the objectives which they propose and which seem somehow they are doing a null with what is currently happening in Afghanistan are of great importance for the future of the region.

Of course, the organization favors primarily Russia and China but also the Central Asian countries. This region is extremely tense and upside down, it needs not only stability, but also an 'outing in the world'. It is actually more about 'outlets'. One of them is produced by the Caspian, another, probably by Afghanistan to the Indian Ocean, and the most reliable of them could be in China. In fact, China itself, being the second biggest consumer of energy, is effectively this 'outlet'. The quality of this 'outlet' depends on the Uighur region, i.e., the autonomous province of Xinjiang, the largest Chinese oil producer itself. In 2003, the Chinese have published a White Paper on the province entitled 'The history and development of Xinjiang'.

The attention that China attaches to this generally rebel province is significant. Wars and clashes are over, it is time for peace. Only a strong country from an economic point of view has or may have a say. The Chinese apply and have successfully been applying the doctrine of the four 'no': No to hegemony, No to policy of force, No to block policy, and No to arms race!

They oppose four 'no's to four affirmations: Yes to constitution of confidence, Yes to mitigate difficulties, Yes to development and cooperation, and Yes to avoidance of confrontations. To achieve these objectives and the infinite possibilities between 'No' and 'Yes', the Chinese practise a highly mobile policy of asymmetry based on several vital accents: correct and friendly bilateral relations, sustainable economic development, and reduction of tensions of any kind.

Under certain conditions, North Korea could become a kind of a 'sentinel of China', while Japan, although it is one of the countries with the most substantial investment in China, still has the status of a thorn in the Chinese tiger paw.

[52] http://russian.china.org.cn/archive2006/txt/2002-09/20/content_2043327.htm

The Chinese have not forgotten and will never forget what happened during the Second World War—no one, nowhere, will ever forget this war. The museum in Shenyang (exhibiting slaughter, tortures, and experiments made by the Japanese army on the Chinese people sine 1931) is a testimony. There were even some disputes on this issue because, despite its good-neighbourly policy, China does not accept any situation that would call into question the core elements of its sovereignty over its territory. No matter if China will adopt a *peaceful rising* according to the script, or the arms race and anti-hegemonic alliance, Beijing will always consider vital for its security policy the need to protect its national sovereignty, according to the vision of a global powers that dominates the Asian rimland as well as a vast portion of the Pacific Ocean.[53]

The changes in China's foreign policy behavior during the global economic downturn demonstrated that an increasingly powerful and influential China is likely to use its capabilities and influence to seek to shift the global balance of power in its favor. However, China is still hesitant to use its capabilities and assets to exert influence in global politics and security, and will continue to take most of its foreign policy decisions in accordance with issues central to China's national interests (as opposed to regionally and globally relevant issues).

China has become a powerful country, equipping itself with the means and instruments to defend its state sovereignty and exert increasing global influence. However, Beijing is still obsessed with the so-called "core interests"[54] relevant to regime survival and economic growth. Beijing's assertiveness, therefore, has not yet been accompanied by a broader vision defining the quality and scope of China as a rising global power—this in turn will continue to stand in the way of China's assuming of global responsibilities or indeed a leadership role. Against this background, China's increasingly assertive foreign policy behavior is above all a reflection of its ambivalent position as a rising power.

As regards its foreign policy agenda in the years ahead, Beijing will be charged with the task of balancing its traditionally low foreign policy profile with its increasing assertive day-to-day actual foreign policy behavior.

5.6 Conclusions

All these visions of sovereignty, even though they appear to be different, are not at all opposite. More than ever, humanity understands today that the world has become interdependent, and the problems of one state concern, one way or

[53] Kang 2007, p. 16.

[54] The Chinese are still engaged in debates on what those core interests are. At the first China-US Strategic and Economic Dialogue in July 2009, State Councilor Dai Bingguo stressed that China's number one "core interest" is to maintain its political system and state security; this is followed by defending China's state sovereignty and territorial integrity, and thirdly the promotion of stable development of the economy and society.

another, all other states, especially those in close proximity. This is why the great powers do their best to build a quiet, non-confrontational neighborhood, allowing a harmonious development of regions or at least not creating vulnerabilities, and tensions close to their borders. Such a policy has been adopted by the European Union. The European Neighborhood and Partnership policy, Russia's policy of delimitation and border security, Chinese policy regarding border security and solving problems in difficult areas, the Indian policy of solving the disputes, especially in the Kashmir area, (which concerns both Pakistan and China), the US policy of conflict management in areas of strategic interest and, generally speaking, all policies of neighborhood, and partnership of all states exercise the principles of sovereignty and cooperation. Difficult issues, complex situations, yet unsolved regarding borders, migration, infrastructure security, regional management, etc., do not affect the principle of sovereignty, but require certain preconditions to its exercise.

In the EU, the issue of sovereignty is facing a new development. The EU is a sovereign entity, which in case it comes to function as a state, then all European states will cede sovereignty to the new identity of which they will become part. This perspective, of a centralized Westphalia state, is yet far away; a federalist model would be more likely to appear, as the one described by former German Foreign Minister Joschka Fischer in his famous speech at Humboldt University, in 2000.[55] An exciting vision of a Europe is the one of a neo-medieval empire, with centres of sovereignty of different levels and hierarchies that 'overlay'. The neo-medieval model, proposed by Jan Zielonka, shows both the disadvantage of the inability to create a super concentrated sovereignty with Westphalia, and many other advantages: the cultural, ethnic and societal differences, corresponding to numerous ethnic groups within the EU will be more accurate reflected, and easier to defend regional interests.[56]

The EU as an entity of entities, UN, OSCE, regional organizations, and, generally speaking, any institutions created by states have powers, not sovereignty, and manifest those powers on behalf of the Member States, not at all to their detriment. In other words, international organizations do not affect the sovereignty of states, but help them in their exercise according to new measurements and interdependencies.

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[55] "From Confederacy to Federation—Thoughts on the finality of European Integration", speech by Joschka Fischer, Humboldt University, Berlin, 12th May 2000, available online: http://www.auswaertiges-amt.de/_aktuel/index.htm.

[56] Zielonka 2006, pp. 7–11.

Chapter 6
The Responsibility to Protect

Abstract The uprisings in MENA have shown both the potential and the limitations of the "responsibility to protect" doctrine (R2P) when applied to states with authoritarian regimes which cannot cope with popular demands for human rights. The most important development of R2P was by Security Council's motions 1970 (referring the situation in Libya to the ICC prosecutor) and 1973 which authorized NATO to use "all necessary means" to protect civilians in the course of an insurrection where they could only be protected by overthrowing the regime. Ironically, R2P is designed to uphold national sovereignty, by defining it to include an obligation to protect civilians, so foreign intervention should only be justified to protect civilian lives rather than to effect regime change. In Libya, however, the one could not be achieved without the other. There has been much more reluctance to invoke R2P in relation to Syria where suppression of protest has led to a full-scale civil war in which the opposing forces may turn out to be little better than the Assad regime. The Arab Spring has had its detractors and democracy will be difficult for Egypt, Tunisia, and Yemen but the greater opportunities for human rights' protection and universal values expressed in constitutions and in accession to the ICC and human rights treaties are nonetheless harbingers of post-Westphalian states.

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6.1 Consolidating the Doctrine

The post-Cold War era has brought major novelties in the process of surpassing the Westphalia model, and they are reflected in some actions that are not exactly new, but are exponentially multiplied by the *peace keeping* operations, or in processes of regional cooperation which have standardized ways to strengthen the nation-state's flexibility.

It is worth mentioning that the process of post-Westphalia modernity or the post-Cold War post-modernism is not new, because the reliability of the international state system required almost from its beginning the creation of systemic management organizations designed to correct the Westphalian constraints (anarchy before everything and then the war). What was known as "the Concert of Europe" formulated in 1815 or the "liberalism 1.0"—as it is called now — partially but decisively shaped by W. Wilson at the Peace Congress in Versailles in 1919–1920, or the UN, founded on FDR's "four policemen" (liberalism 2.0),[1] if not efforts to ensure the systemic management by surpassing the Westphalian constraints?

The change in the Westphalian model is mostly a process taking place in the context of systemic democratization by integration of European Union type, and not as the result of the unquestionable hegemony of an actor, be it extremely powerful and benign. In a recent study, John S. Mearsheimer shows that, in the past 20 years, the USA has pursued a policy of applying military force to lead a unipolar world, unashamedly laying down the rules of world order and being prepared to enforce them.[2]

Is it so, or does the deep systemic process show the installation of a cooperative security that rejects both the concept of balance of power and the concept of MAD (mutually assured destruction) and refine the concept established by Article 16 of the League of Nations, restated in the UN Charter? And this deep process is accompanied by another one, more harmful for the Westphalian paradigm, that is the *de facto* surpassing of the nation-state in favor of an international community homogeneously governed by restrictive rules and regimes for the common good and eliminating any attempt to install the war-generating systemic anarchy.

It is worth recalling that, in the academic world, there exists a deep skepticism toward the possibility of installing the post-Westphalian paradigm, and that the global generalization of respecting human rights—despite all the historical progress seen in the last two centuries and especially understood from the post-Cold War institutional perspective—is considered by a school of thought as "the last utopia".[3]

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[1] Ikenberry 2009.

[2] Mearsheimer 2010.

[3] Moyn 2010; review by John Grey in *The National Interest*; http://nationalinterest.org/bookreview/what-rawls-hath-wrought-4570.

In this context, we recall the debates on the doctrine of humanitarian intervention and the conditions for the affirmation of a new political, strategic, and humanitarian concept—**the Responsibility to Protect/R2P**—the compatibility between the principles of national sovereignty and those of international legality making the international community intervene in order to exercise its jurisdiction on the most serious crimes against humanity. But how did this concept emerge, under what circumstances and what is in fact its content?

On the occasion of the Millennium Summit in 2000 which brought together heads of state and government from 191 countries, Secretary General Kofi Annan raised a controversial question related to humanitarian intervention—usually perceived as an unacceptable assault on sovereignty—and its necessity and realistic impact in situations such as Rwanda or Srebrenica where human rights were systematically violated. In response, Canada announced the creation of the International Commission on Intervention and State Sovereignty which developed its own report in 2001, creating thus a new concept: ***the Responsibility to Protect (R2P).***

The responsibility to protect has three fundamental and interdependent pillars. The first pillar is the responsibility to prevent that is a duty for each state. Following the social pact concluded with the people, the state gains its supreme power and necessary recognition to use it, but also the responsibility to protect its people in case of dangerous situations, from natural disasters to foreign aggression. This responsibility comes with the sovereignty enjoyed by that state. The state institutions, national or international NGOs, and international organizations with regional or global vocation have all to concur to deal with these difficult situations. The International Crisis Group (ICG), Human Rights Watch (HRW), and Fédération Internationale des ligues des droits de l'Homme (FIDH) are good examples of NGOs dealing with conflict situations in certain areas from all over the world.

This responsibility has been recognized in the final declaration of the 2005 UN World Summit, the largest gathering of heads of state and government in history, with 192 participating countries: "*Each individual State has the responsibility to protect its populations from genocide, war crimes, ethnic cleansing and crimes against humanity. This responsibility entails the prevention of such crimes, including their incitement, through appropriate and necessary means. We accept that responsibility and will act in accordance with it. The international community should, as appropriate, encourage and help States to exercise this responsibility and support the United Nations in establishing an early warning capability*".[4]

In 2008, UN Secretary General Ban Ki-moon said: "*Now that the concept has received the ultimate United Nations accolade, a distinctive acronym, we need a common understanding of what R2P is and, just as importantly, of what it is not.*"[5]

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[4] 2005 World Summit Outcome, Article 138.

[5] Secretary-General SG/SM/11701 material, 2008; http://www.un.org/News/Press/docs/2008/sgsm11701.doc.htm.

The second pillar consists of the responsibility to react by offering assistance to implement concrete measures to stabilize a potential conflict. We recall here the intervention of the international community mediated by its institutions and bodies. The responsibility is divided between the international community and the state where the intervention occurs. The measures may vary from direct assistance to sanctions, from financial incentives to humanitarian aid. In the same 2005 World Summit Outcome Document, it is stated that "*The international community, through the United Nations, also has the responsibility to use appropriate diplomatic, humanitarian and other peaceful means, in accordance with Chapters VI and VIII of the Charter, to help protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity*."[6]

Besides the political and diplomatic measures, there is a series of legal ones available and more than efficient. Offers for mediation or international arbitration by a disinterested and well-intentioned state or available staff to monitor respect for human rights help to convey the idea of support and involvement of the international community to deter future misconduct. The threat of international sanctions has recently become a major weapon in forcing the states to re-enter into legality. Establishing the International Criminal Tribunals for Rwanda and Yugoslavia, the Special UN Court for Sierra Leone and the International Criminal Court are relevant achievements for reaching this purpose.

The third pillar concerns the responsibility to react at the right time through a decisive action. When the previous two stages fail and the tensions escalate, harsh measures are necessary, including military. Nevertheless, it is suggested that the exhaustion of all coercive political, economic, and legal means before an armed intervention be considered. It is therefore a measure of last resort when all other alternatives have been exhausted and if the gravity of the situation requires this course of action.

There are certain conditions that must be met by a military intervention in another state: to have a just cause, to be well-intentioned, to be ultimately used, to enjoy a legitimate authority, to be proportional and have the chance of success. The need for legitimacy is a sensitive and controversial matter. The authorization of the UN Security Council is desirable, but if this is not possible due to objective reasons, under the obligations to respect human rights and in ensuring international peace, the possibility of a state or group of states to intervene is recognized (but not preferred), provided that all previous stages have been observed and the military intervention meets all the conditions listed above. The 2005 World Summit Outcome reinforces the third pillar "*in this context, we are prepared to take collective action, in a timely and decisive manner, through the Security Council, in accordance with the Charter, including Chapter VII, on a case-by-case basis and in cooperation with relevant regional organizations as appropriate, should peaceful means be inadequate and national authorities manifestly fail to*

[6] 2005 World Summit Outcome Document, Article 139.

protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity."[7]

On the occasion of the 2005 World Summit, heads of state from 192 countries expressed unanimous support for adopting the Responsibility to Protect, but this political declaration must be normatively implemented, so as to produce legal effects. The UN General Assembly was therefore asked to take the necessary steps to develop a strategy by which the responsibility to protect be consecrated and finally implemented. The Security Council has stated its position since 2006, when Resolution 1674 entitled *Protection of civilians in armed conflict* reaffirmed the provisions of paras 138 and 139 of the 2005 World Summit's final document.

Despites these positive developments, there are valid criticisms, according to which the two proclamations are empty of content, both legal and factual. Legal because the responsibility to protect principle was not included in a treaty signed by an overwhelming number of countries, thus making it mandatory for all of them. And factual because the situation in Sudan, Somalia, and Zimbabwe is the proof that this concept is manipulated for various interests, the main victims being always the same: civilian population and disoriented militaries.[8]

Debates surrounding humanitarian intervention focus on the fact that it operates in violation of some *jus cogens* norms that protect state sovereignty and territorial integrity in order to save human lives threatened by danger. What is mostly in dispute is the given priority to direct intervention and the use of force to the detriment of peaceful relations between states and the UN principles.

As human rights are increasingly crystallized into an "over-international right", the obligation to monitor their compliance belongs to all the members of international community. Even if some members either cannot (Somalia) or will not (Sudan) observe them, the interest in human life should nevertheless prevail so as to meet the moral exigencies of humanity. The situation in Libya required the intervention of the international community to perform the responsibility to protect human lives.

With the arrival of the 1990s and the break-up of various Cold War state structures, conscience-shocking situations repeatedly arose, above all in the former Yugoslavia and in Africa. Whenever the international community did react through the UN, it was often counter-productive, as in the debacles of Somalia (1993), Rwanda (1994) and Bosnia (1995). Then, after the ethnic cleansing started in Kosovo in 1999, the option of the so-called coalition of the willing acting outside the authority of the Security Council led to questioning the integrity of the whole international security system. The same happened four years later with the invasion of Iraq.

We have recently witnessed a major shift in attitudes on the scope and limits of state sovereignty. The notion that the state could do no wrong in dealing with its own people has meant that for years human rights catastrophes have gone almost

[7] 2005 World Summit Outcome Document, Article 139.

[8] Mepham and Ramsbotham 2007.

unremarked. The emergence and consolidation of the new norm—*Responsibility to Protect*—may not in itself guarantee that mass atrocity crimes are reaching the end. But at least it gives us a better chance of getting there than we have ever had before.

Responsibility to protect is making political power more responsible, both to the domestic citizenry and the international community. It has democratized humanitarian intervention in a way which reconceptualizes sovereignty as responsibility. This dissertation bears great potential related to legitimacy, both in terms of its normative commitment to protect human beings and its cosmopolitan deconstruction of sovereign immunity. Furthermore, the Responsibility to protect permits indigenous democratic movements and state formation, only insofar as they serve the purpose of managing internal conflicts, in conjunction with external support. In Libya for example, the international community has privileged armed struggle over politically-conscious civil resistance.

It is interesting to notice that with the capture and death of Gadaffi, the practice of R2P is increasingly perceived as being progressive. This happens in the context of all Arab revolutions. Criticism of R2P's theory and practice slow down and the political imagination in relation to humanitarian intervention, peace and security flourishes. Although the R2P doctrine does not abolish war, it rejects wars of national pride or selfish power, in favor of progressive wars fought for humanitarian reasons.

The responsibility to protect opens up a new universe of policy options. The new language used nowadays reflects a fundamental conceptual shift from 'the right to intervene' to 'the responsibility to protect'.

Can the responsibility to protect be now described as a new rule of customary international law? This will depend on future events and how this concept is to be implemented and applied in practice. Nonetheless, the responsibility to protect can already be properly described as a new international norm and a new standard of behavior for every state.

It will be good to believe that the responsibility to protect doctrine is now applicable in the right manner. But realities on the ground make it difficult to apply consistently. For instance, the implications of the war in Libya are far more important than the fate of one individual, Muammar Gaddafi. The outcomes will affect the Greater Middle East and the international politics for many decades. This is because a fundamental principle stands at the core of the problem. It is questionable that the western powers that sustain this principle will still have the economic power and public support to undertake other interventions of this type in the future. Moreover, the new economic powers like China, India, Brazil, and others are skeptical about the R2P concept.

It remains to be seen how far NATO's intervention to protect civilians in Libya represents a deepening of the norm of responsibility to protect. As already mentioned, there are many visible signs of a progressive acceptance of R2P. However, while the Security Council agreed to the doctrine of R2P in 2006, it has only been invoked in two cases, first Darfur and now Libya. With respect to the latter, we could say that no other resolution has connected "all necessary measures" to

civilian protection so explicitly. Therefore, the Libya case stands apart from other recent interventions for alleged humanitarian purposes. No comparison with the case of Kosovo, or with that of Iraq in 2003.

Action in Libya consolidated significantly the norms of civilian protection. A plausible argument relates to the Security Council's referral of the situation in Libya to the International Criminal Court (ICC), less than 2 weeks after the beginning of the protests. This was also done in case of Darfur, but more than 2 years after the crisis had begun.

The situation in Libya met all criteria necessary and sufficient to invoke the "responsibility to protect". But, generally speaking, there are three key issues that are likely to undermine R2P's moral force and its preventive and/or punitive function: the selective application, lack of a clear and successful operationalization concept, and the ignorance of the preventive dimension circumscribed by the responsibility to prevent principle.

The UN resolution authorizing the military operation "Odyssey Dawn" in Libya must be understood in the context of recent democratization movements in North Africa and Middle East. Beyond the violent fights between protesters and security forces, we have witnessed systematic and deadly attacks against civilians in Saudi Arabia, Bahrain, Egypt, Jordan, Morocco, Syria, and Yemen. Moreover, the civil war in the Ivory Coast got to the size of a humanitarian catastrophe that required a prompt response. To be added also the explosive situation and ethnic violence in Somalia, Sudan, or Chad, and the major risks associated with the Gaza Strip, Lebanon, and the indefinite extension of the Israeli-Palestinian settlement.

But how can it be justified to protect a Libyan citizen's life, while condemning others through the absence of similar action approved at the UN level? It sounds like a selective humanitarian logic and double standards, which mask a moral insincerity and raises accusations of humanism interested in acquiring access to oil. A contrast is made with Syria which by June 2012 had killed over nine thousand of its people but there had been no action taken by the Security Council against the Assad regime other than to send observers to watch the killings. Like Libya, the situation in Syria had begun with legitimate peaceful protest which had been brutally suppressed resulting in a civil war. Unlike Libya, however, the opposition was not organized and intervention was not possible without causing a blood bath. So, it can be argued that intervention in Syria did not pass the human rights test that it would be likely to succeed or end up causing less damage than Assad.

Regarding the efficient operationalization, in order to win a war, a clear mission, sufficient resources, and political will are needed. In case of Libya, there was disagreement about the ultimate explicit goal (civilians' protection) or the non-declared one (regime change) not only between members of the UN Security Council, but also between members of NATO or those of the EU. Even if, in a short period of time, anti-Gaddafi forces seized power and were recognized as legitimate by the Libyan population and the international community, the transition and democratization of the country require political, economic, diplomatic,

humanitarian, and even military efforts in which directly involved states must engage, despite the risk of losing political support of their domestic public opinion.

Given the above, it is important that all the involved countries, once they decided to intervene, have the political will to successfully accomplish the mission. An important idea like responsibility to protect can be easily discredited by an unfortunate implementation.

Lastly, whether it is about religious, ethnic, economic conflicts, or those motivated by failed states and dictatorships, the political international community has a duty to not only help to protect people exposed to violence, death, disease, or famine, but also a duty to prevent conditions that enable all these causes and human suffering associated with them.

Anne Marie Slaughter, one of the best known advocates of the responsibility to protect and prevent said that the idea of responsibility to prevent is advanced as the corollary of the responsibility to protect and it circumscribes every effort to avoid the appearance of conditions that make inter- or intra-state violence possible. Without proposing a new politically correct R2P vocabulary, she has tried to understand how "intervention" assumes that sovereignty is a closed sphere, when in fact it is an increasingly, and legitimately, permeable one.[9]

Fred Kaplan, the national security columnist for *Slate* considers that the responsibility to protect (R2P) is just a "sanitized version" of humanitarian intervention.[10] This approach is questionable now, when international law fully recognizes the rights of citizens and an immutable relationship between governments and their citizens: a relationship of protection. R2P has an important impact on the political discourse and gradually becomes a useful tool for international decision-makers to help prevent humanitarian crises and contain genocide and other serious human rights violations. By the means of this tool, the great powers of international politics may overcome their divergences and better acknowledge the demonstrable power of human rights.

Weakening traditional sovereignty rights in favor of an R2P-like conception is a policy that lacks coherence despite the arguments based on humanitarian intervention carried out in the past by Western states to further their self-interest. The world is changing, new threats and dangers appear day by day and even if the R2P is not admitted yet as a new theory of international relations, it could be perceived as a continuation and consolidation of former ones dedicated to morality and humanity.

However, criticism is understandable. The advocates of R2P do not necessarily want to have Libya held up as an example of their doctrine in action. Their struggle and motivations go beyond this purpose. And despite the counter-approaches served on a regular basis (as for example the obvious contrasts with the situation in Syria and other places in the world),[11] it is clear that post-Gaddafi

[9] Slaughter 2011.

[10] Kaplan 2011.

[11] Mataconis 2011.

Libya will be better than the government that preceded it, given that it could hardly be worse.

Through its moral, preventive, and punitive force, the responsibility to protect has an evolutionary potential in the thought and practice of international relations in the twenty-first century. To increase the chances of a prosperous world with fewer wars and human suffering, state actors of the international political system have a responsibility to engage for a consistent, coherent, and successful application of the sovereignty principle limited on humanitarian grounds. Moreover, responsibility to protect can be designed and implemented only in the light of the duty to prevent, which also has all the ingredients necessary for a high-level UN resolution.

An intelligent foreign policy to successfully face the challenges, expectations, and ambitions of a multipolar world has to combine in perfect balance the need to protect human lives and values with the need to protect state interests; the responsibility to protect with the responsibility to prevent; soft means with the hard ones; a unilateralist approach with the multilateral one. Idealism and realism should not be condemned to always be in opposing camps. Their synthesis is probably the answer of all uncertainties of the twenty-first century world, resulting in a kind of *enlightening realism* to make states and their citizens more responsible.

Today, the responsibility to protect is one of the most powerful but least understood ideas of our time. R2P is an ally and not an opponent of sovereignty: to protect its own people is an objective key of the modern sovereign state. By supporting states to achieve this objective, R2P has the effect of reinforcing sovereignty, and in no way weaken it.

6.2 "All Necessary Measures": Resolution 1973 and Regime Change in Libya

The recent "revolutionary" explosions in the Middle East and North Africa prove once again that sovereignty cannot be absolute and the leader's impunity tends to become a fiction. The outbreak of popular unrest in the Middle East and North Africa (MENA) to chase dictatorial leaders from power will certainly produce major legal consequences. The most important ones concern the international community's intervention for humanitarian purposes, but also the related scenario of the use of force.

In Libya, the serious breach of the humanitarian norms by the regime led by Colonel Muammar Gaddafi—who threatened to apply genocidal measures against his own people—caused the prompt reaction of the international community. UNSC Resolutions 1970 and 1973 imposed an embargo on arms sales to Libya, made a reference to the ICC prosecutor and authorized the establishment of a no-fly zone. A military intervention assumed by NATO began, its scope being far from clear: the dictator's overthrow, expelling him from the country (eventually, his killing) or the obligation to negotiate with the rebels.

The Libyan episode has shown a reality of a post-Westphalian world in which we enter more deeply: "*State sovereignty is not a license to kill. No state can abdicate the responsibility to protect its people from crimes against humanity, let alone justify perpetrating such crimes itself. When it manifestly fails in that protection, it is the responsibility of the international community to provide it, if necessary—should peaceful means be inadequate—by taking timely and decisive collective action through the United Nations Security Council.*"[12]

Thus begins a plea for an intervention in Libya, published by the Financial Times in late February. Its author, Gareth Evans, former Australian foreign minister and president of the International Crisis Group is the intellectual "architect" of the *Responsibility to Protect* (R2P) doctrine, now the normative and conceptual framework behind the UN intervention in Libya. Resolution 1973 adopted on March 17 authorizes UN member states to "take all necessary measures … to protect civilians and civilian populated areas" in Libya. From this perspective, the intervention was unique, marking the first time when a Security Council resolution under Chapter VII explicitly authorized a coalition of Member States to use all necessary measures (including military force) to implement the R2P doctrine.

If we need to understand how this "mindset" has become part of the global consciousness, we must relate the observations to the events of 1999 and the NATO "war" against Serbia of Slobodan Milošević. Then emerged a true doctrine of international community based on active involvement in the intrastate conflicts and on the externalization of genocide as a threat to international security and stability.

Tragedies in Rwanda, Somalia, and Kosovo have amplified the reinterpretation of national sovereignty, meaning a transition from the traditional "Westphalian" logic (in the sense of legal immunity in relation to any external interference) to the post-Westphalian sovereignty which is contractual and based on interdependence. The late 1990s marked a conceptual leap of sovereignty from right to responsibility. The Westphalian sovereignty was reinvented, as far as understanding of the pivotal norm of the international relations' system moves from a sovereignty conceived as a right to absolute jurisdiction, exclusive and complete within their own territory (sovereignty seen as inviolability and legal immunity) to a post-Westphalian sovereignty which essentially promotes an ethic of the sovereignty exercise. States and their leaders are not only beneficiaries of the privileges, rights, and immunities guaranteed by the sovereignty, but they are also the owners of its attached responsibilities.

A decisive role in driving the international community consensus on the "Responsibility to Protect" (R2P) concept was played by the former UN Secretary General Kofi Annan who strongly argued that its essence is that a sovereign state has the primary responsibility to ensure security of its own citizens, and if the sovereign authorities have not the institutional capacity or the political will to

[12] Evans 2011.

fulfill this founding obligation, the responsibility to protect shifts to the international community. In this context, the Security Council may decide under Chapter VII of the United Nations Charter on measures including "enforcement action". As mentioned in the previous section of this chapter, this dual responsibility was raised to the rank of doctrine by the UN General Assembly, during the anniversary summit in September 2005. Moreover, each State's responsibility to protect its populations from genocide, war crimes, ethnic cleansing, and crimes against humanity was recognized.

In early March of 2011, the distinguished lawyer Geoffrey Robertson said: "*To be lawful, the intervention must be at the request of potential victims, for the purpose of stopping crimes against humanity and with no ulterior motive, eg obtaining territory or oil. It must be proportionate—no greater force than necessary. Subject to these preconditions, Nato's intervention in a Libyan emergency would be lawful, unless or until it was denounced by majority vote in the Security Council.*"[13] In his view, there is now a narrowly proscribed international law right for states to render assistance to innocent civilians battling for their lives. This right of humanitarian intervention goes back to the "just war" theories of Grotius and Vattel in the seventeenth century and becomes a controversial subject since it proclaims a new juridical order with new connotations for the national sovereignty.

Resolution 1973, authorizing "all necessary means" to protect civilians clearly respects the principle of responsibility to protect. It helps to create R2P as a customary norm, together with Resolution no. 1706 which had authorized the use of all necessary means to protect Sudanese citizens.[14]

War in Libya was a military confrontation to a regime which threatened genocide for its own people. Following the UN Security Council resolution, there were ground fights, together with air attacks launched by NATO in support of the rebels. Moreover, means of manipulation of domestic and international public opinion were used, as well as running from public accountability. Of course, the Libyan government was the most responsible actor.

Great Powers like the U.S. and the Russian Federation showed an ambiguous behavior in the Libyan war issue which was reflected, in a paradoxical way, by their low involvement. The difference between the two great powers is essential in relation to the systemic post-Westphalian exigencies.

Thus, the U.S. which, at the very beginning, massively participated in the no-fly zone enforcement did everything possible to get a NATO-led intervention, assuming the equal member status within the coalition. The motivation of the US position derives from the analysis of the domestic debate on the massive intervention in the early application of the UN resolution. It is all about the

[13] Robertson 2011a.

[14] To be mentioned also Darfur precedent and the UNSC resolution no. 1706 expressly authorizing a UN force to use all necessary means to protect Sudanese civilians. For the first time in a Security Council resolution, operating under Chapter VII, the "responsibility to protect" was assumed and implicitly codified.

phenomenon of imperial overextension (U.S. military forces involved already in two wars in Muslim countries), but also about Washington's demand for burden sharing with its allies during the international community's missions to promote the rule of law. So, in this case it is a complexity of problems connected with the size of financial effort and the systemic management costs without the support and fair contribution by the entire international community.

The Russian Federation understood that the UN Security Council resolution would only allow attacking Gaddafi's planes rising from the ground, and not attacking military airports, the artillery, tanks, and military units that besiege civilian cities. In reality, the image game is dual, given that Russia did not oppose the intervention in the UN Security Council, although it could simply have done so. Most probably due to reasons regarding the agreements of billions with Gaddafi, or Russia's traditional policy on sovereignty or non-intervention, the decision-makers in Moscow claimed that they did not know what the consequences on the ground would be. In this context, the declarations of the Russian Federation's high officials in the aftermath of Gaddafi's death are nor surprising at all. The foreign minister Serghei Lavrov said that Moscow has many questions to raise especially related to the "legality" of NATO's attack against the convoy with which Gaddafi was trying to escape from Sirte.

One of the reasons that led to the decision to impose a no-fly zone in Libya was the fear that, if the leader from Tripoli would have succeeded to crush the popular unrest and remained in power, this could have sent a strong message to other Arab dictators. And yet, paradoxically, in the aftermath of the UN resolution, regimes like Syria confronted with pro-democracy protests have felt threatened enough to suppress democratic movements.

The UN Security Council referred the Libya case to the International Criminal Court, the court being determined to consolidate the old paradigm of international relations *Nemo este supra leges!* The former ICC prosecutor Luis Moreno-Ocampo claimed arrest warrants for crimes against humanity committed in Libya and said that the gathered evidence was sufficient to demonstrate that extensive and systematic attacks against civilians have been committed in Libya, including political killings and persecution, which are crimes against humanity.

Stephen Walt in a recent article which appeared just before Gaddafi's death raised the possibility to get rid of the individual through a surgical strike assassination which would have stopped a prolonged civil war that killed lots of combatants and civilians and inflicted vast property damage. Walt goes back in time and asked about the consequences of such an intervention targeting Adolf Hitler sometime in the 1930s.[15]

The development of the R2P norm is under challenge for three separate reasons. First, as warfare became increasingly destructive, states began to look for cheaper alternatives. Second, terrorist groups routinely employ assassination against the states they oppose, and states have responded with targeted killings against

[15] Walt 2011.

suspected terrorist leaders. Third, and perhaps most interestingly, in the post-Nuremberg environment, national leaders are increasingly seen as individually responsible and morally accountable for acts undertaken at their behest. The creation of the International Criminal Court is another sign of a shifting moral and legal context in which *raison d'etat* no longer protects national leaders from accountability. And if individual leaders are seen as morally responsible, then it is easier to slip into viewing them as legitimate targets in war.

There were serious debates on the fate of the Gaddafis—whether it should be a matter for the Libyan people or whether it should be an international justice trial held in the Hague. The first approach would parallel the trial of Saddam Hussein, with a death penalty imposed by local judges. It would be na to believe that Gaddafi could have received justice in a corrupt judicial system that he has controlled for such a long time, a system which needs decisive reconstruction. Colonel Gaddafi was charged with crimes against humanity in the year 2011. He had in previous years been guilty of the mass murder of civilians; ordering the massacre of 1,200 captives in a prison compound; blowing 270 people out of the sky over Lockerbie and almost as many in a UTA passenger jet over Chad a few months later. These could not be charged at the ICC because they had occurred prior to July 2002.

The wish for a fair trial seems to have been initially shared by the rebels' leader Mustafa Abdel Jalil who declared in Benghazi that he hoped to capture Gaddafi alive for this specific end. But it was difficult to envisage that he would ever get a fair trial in his own country. Despite this fact, the transitional council insisted that he should face trial in Libya before being transferred to the International Criminal Court.

It is crucial for the Libyans to understand the fact that their liberation has come by courtesy of international law, so that they have a reciprocal duty to abide by it, by handing any capturing indictees over to the ICC. "Gaddafi to The Hague" would have been a clear signal to all other governments tempted to abuse their own people.[16]

What would the trial of Gaddafi have looked like? This is hard to tell now, when Gaddafi is dead and the ICC unique alternative, certainly the most efficient one, was not materialized in any way. Had it been held in Libya, there would have been a danger of it becoming like the trial of Saddam in Iraq in 2003. In front of biased local judges manipulated by local politicians, Saddam was dispatched to the gallows after only pretence of due process. The feelings against Gaddafi was shown by the fact that he was butchered by the rebels who captured him, and who, far for being punished as Jalil claimed they would be, have never been held to account.

Even if it was believed that only domestic justice is satisfactory for the Libyans, the ICC by issuing arrest warrants showed that it legitimately wanted to try the

[16] Slogans in the Syrian streets said "Assad to The Hague"—showing an expectation of justice that has arisen in the Arab Spring.

dictator and his acolytes for their atrocities. A solution satisfying both ICC partisans and the new leaders of Libya, suggested at first by the ICC prosecutors, was to conduct the trials in Libya, with ICC assistance. The advantage of this, in theory, is that the ICC has the experience, expertise, and legal infrastructure to try mass crimes. The practical benefits would consist in the fact that more Libyans would be involved in the proceedings and the Libyan lawyers would be provided with experience of a modern system of justice. It could also be an opportunity for the Court to engage directly with the society for which it is acting, while serving as a platform for the international community to help Libya rebuild the rule of law. It is said that for Libyans, trials conducted in Tripoli would be a bridge toward taking ownership of their future. However, for all these arguments it is clear that Libya was in no fit state to conduct a serious trial, either of Gaddafi or of his son Saif.

The International Criminal Court has not, at time of writing, decided where this trial should be held. The Court has heard submissions from counsel for the Libyan transitional government claiming that Saif will get a fair trial in Tripoli. However, this is obviously nonsense because the Libyan government could not protect the liberty of the ICC lawyers who went to visit Saif in prison. He was being held by militia in Zintan, who arrested Melinda Taylor, his barrister, and held her in prison for 45 days. The Libyan government clearly had neither the power nor the credibility to obtain her release or even to obtain custody of Saif—the man they claim that they can try fairly. In fact, it seems they may not be able to try him effectively because they are not in control of their own country! The capture of Ms Taylor, an Australian barrister, and the defamations of her by the Libyans is perhaps the greatest threat yet made to the authority of the ICC. It has power to punish for contempt of Court, but the prospects of this deterring Zintan militia was obviously distant. It was extremely na of the ICC prosecutor to rush to Libya and to imagine that he could negotiate sensibly with an unelected junta that did not control parts of the country, including the part where Saif was in custody. This appalling episode emphasizes that international crimes should be tried in the Hague as a matter of principle, irrespective of nationalist claims to put their own dictators on trial as such claims thinly disguise a wish for revenge. The Charles Taylor trial was moved to the Hague because of the danger of rebellion or disruption in Sierra Leone. The ICC should only release an indictee for local trial when it can be certain that conditions are such that his trial can be fair.

Although the international community has generally welcomed the fall of the Libyan totalitarian regime and the momentum of the "Arab Spring", it should have been more cautious about the future of the country. This is a future in which Europe and the US will have an important role to play but the direction of post-Gaddafi Libya is uncertain and already human rights groups have protested against the inhumane treatment in detention of Gaddafi's loyalists, who must be brought to trial or released.

The overthrow of dictators requires less time than restoring normality. The fair trial of those responsible for the atrocities will be a small step toward the objective of a peaceful and stable Libya, a reliable exporter of oil and important political center in Maghreb. A reconstruction that the Libyans will not achieve only with

the support of U.S., NATO, and the EU. Countries like China, Russia, Turkey, and other Arab and African countries will also have to participate.

The EU can advise the Libyans on how to organize free elections, how to create a system of political parties and how to support them financially, but sooner or later, the counselors will return to Brussels, the funds will be exhausted and Libya will remain on its own. It will be a very painful process, because, like Afghanistan, Libya is a composite state, a constellation of 150 tribes, each with their own interests. The European success of the Libyan operation is indisputable: the fact that Paris and London had replaced for the very first time Washington within the leadership of a NATO operation cannot remain without consequences for the future of the North-Atlantic Alliance. Despite the reluctance of Germany, and due to the French-British determination, Europe has shown that it is capable of acting in her close neighborhood. A democratic and peaceful Libya is an attractive prospect, but also a distant one. Libya will not be the last country to experience the consequences of the "Arab Spring". Lots of other countries from the region, especially Syria, are in a row.

6.3 Beyond the Arab Spring

The Arab Spring began in December 2010 when a Tunisian street vendor immolated himself in protest against the arbitrary seizure by police of his cart. This government action was all too representative of arbitrary arrests and property seizures by dictatorial governments not only in Tunisia but throughout the region. In Tunis, protesters went on the street in support of his martyrdom inflamed by the information about the endemic corruption of the president, Ben Ali, and his family, contained in US Embassy's cables published by Wikileaks. There was some bloodshed when police and military authorities were ordered to put down the protests but they swelled to such a point that these authorities could not contain them and many in their ranks sympathized with the protesters. Ben Ali and his family fled the country and were denied refuge in France. They found it in Saudi Arabia which under the guise of Muslim hospitality is a familiar haven for retired tyrants (Idi Amin was a guest there until his death).

But that was just the beginning. Soon, Tahrir Square in Egypt held tens of thousand protesting nightly against the 30-year repressive rule of Hosni Mubarak. Troops were ordered to fire and 850 protesters were cut down before president Mubarak was forced to step down on February 11, 2011.

Only a fortnight later came Resolution 1970 whereby the Security Council referred the situation in Libya to the ICC, a prelude to its "all necessary measures" Resolution 1973 three weeks later which unleashed NATO against Colonel Gaddafi's forces and produced regime changed in due course. Meanwhile, the Arab Spring struck down president Saleh of Yemen. Pro-democracy protests began in February and in June he was injured by a rocket attack on his palace and had to go to Saudi Arabia for medical treatment. In November he signed a deal to step

down in return for immunity from prosecution, at least in Yemen. In Bahrain too, some 35 pro-democracy protesters were killed by the troops of the king who cleverly and unusually responded by setting up an immediate truth commission of independent and foreign human rights experts who speedily reported with reform recommendations that the king promised to implement. In Syria, violent demonstrations had led to the death of over 9,000 civilians by the end of May 2012 and the Arab League and the UN had put pressure (unsuccessfully) on president Assad to stand down. By that time, the Arab Spring had claimed four Arab leaders, with two more in jeopardy.

It is important to analyze the ways in which justice was or was not delivered at this time of transition and the rationale for international intervention in some of the situations, as well as the outcome which in most countries has produced greater democracy but with considerable increase in the power of Islamic political parties. It shows that the international community now recognizes that it has the power to intervene in nations' internal affairs on human rights and humanitarian grounds, to prevent a massacre and even, as in Libya, to side with the more democratic party in a civil war.

However the mode of post-transition justice is different depending on the local circumstances, despite justice being the most prominent demand in all these revolutions. The world is not prepared to intervene to make a country safe for democracy, although if too many protesters are killed in the process of exercising their human rights, then the UN will intensify its response.

It is also important to analyze the forms in which post-conflict retributions take in relation to heads of state. Ben Ali, overthrown by his own people without direct foreign intervention, other than the evidence of his corruption from Wikileaks cables, went into exile with his corrupt family. He was prosecuted *in absentia* by the Tunisian high court and sentenced very speedily to 35 years imprisonment after the judge took only six hours to hear the case and decide the verdict. He was convicted for possession of arms, drugs, and artifacts and for misappropriating public funds. Neither his own people nor the international community could be satisfied with this verdict which could not be credible because there had been no defense.

It is questionable whether Ben Ali should have been tried *in absentia* at all, although Saudi Arabia has been adamant in refusing to extradite him and the verdict did send an important message because Ben Ali has always boasted about using the judiciary as his "right arm" and it showed that the judges could now throw off such governmental interference with their independence. Tunisia has subsequently held free and fair elections, returning moderate Muslim government in a parliament where 24 % of the seats are held by women.

In Egypt, Mubarak retired to a palace at Sharm el Sheikh where he awaited his legal fate. It took the form of a televised trial in which he was humiliatingly pictured on a hospital stretcher in the dock—a wire mashed cage with his sons as co-defendants. He was accused not only of corruption but also for ordering the death of 850 protesters. On Saturday, 2 June 2012, Hosni Mubarak was sentenced

to life in prison for his role in killing protesters during the revolution that ousted him from power.

It is important to understand that Egypt has had a functioning and relatively independent legal system in relation to the civil courts and Mubarak was tried by genuinely independent judges in a process that was perceived as fair. Many protesters, however, had been tried by the parallel military courts and had been convicted ironically for demanding democracy and often for insulting the army.

This revolution was a genuine national uprising, although led by cosmopolitan forces which were funded to some extent by America and Europe. Nonetheless there quickly developed a broad based local support which, at the ensuing elections returned mainly Islamist candidates.

It was a crucial factor in Mubarak's decision to resign that America had lost confidence in him and urged him to stand down. However, the revolution remains indigenous and at the time of writing features a struggle for power between the elected government and the military, which claims to be the prime authority in progressing toward a new constitutional settlement. The trial verdict was a historic opportunity for Egypt to hold its former leader and his inner circle to account for crimes committed during their rule.

Yemen was a different matter. Here, the transition was effected by international diplomacy, particularly the US and its right wing Arab allies through the traditional mechanism of amnesty.

From the outset it should be made clear that the removal of heads of state accused of crimes against humanity and genocide is not mentioned in the UN Charter. Regime change may, however, be necessary to restore international peace and security or for self-defense under Article 51 of the Charter.

In March 2003, when Great Britain was involved alongside with the US in the military campaign against Iraq's Saddam Hussein, British Attorney General Lord Peter Goldsmith sent a secret memorandum to Prime Minister Tony Blair which said that the invasion to achieve regime change in Iraq would not be legal. It was stated that there was a need for a second UNSC resolution showing that Iraq has not complied with Resolution 1441.[17]

But the regional security environment changes not only by actions of external actors but also by the internal dynamics of human societies. For so long considered too obedient, the Arabs managed to shake the stereotypes through peaceful revolutions and to regain their wounded pride after decades of oppression. After the fall of presidents Ben Ali and Hosni Mubarak, and the death of Muammar Gaddafi, thousands of people, from Tunis to Sanaa, proclaim now their enthusiasm for their membership to the Arab world.

Internet pages under slogans like "Proud to be an Arab" or "A united Arab world", among others, have become the place to express feelings of solidarity and fraternity among the Arab nations. We are witnessing an unprecedented transition from a silent Arab nation described as apathetic and humiliated, to a nation whose

[17] Goldsmith 2003.

revolutions are discussed throughout the world, maybe even to the start of a social and cultural revolution.

The 2011 events are a great innovation in history, according to the historian Georges Corm who argues for a constructive interaction between human rights and modern technology.[18]

Free from fear, aspiring to freedom and democracy, many dare to dream again of an Arab unity. But there is a justified fear of an Islamization of the region often considered as a reservoir of extremism, particularly after the September 11 attack. Democracy may therefore empower Islamic extremism which may in turn extinguish democracy.

Victorious revolutions must face the challenge of how to deal equitably with past abuses. The former presidents Hosni Mubarak and Zine El Abidine Ben Ali were forced to withdraw from office, while Libya's eccentric dictator Muammar Gaddafi was embroiled in a civil war which caused his death. In the case of Tunisia and Egypt, the transition toward democracy was possible through internal mechanisms, but in Libya, the serious breach of the humanitarian norms required the prompt reaction of the international community. The Syrian president Bashar al Assad still survives, threatening the Western leaders that in case they dare to military intervene in his country following the Libyan model, he will transform Syria into a new Afghanistan.[19]

The military interventions for humanitarian purposes have extended in Sub-Saharan Africa. France, acting under UN mandate, together with the forces of the organization overthrew in April 2011 the regime of Laurent Gbagbo in Côte d'Ivoire. On 29th of November, the former leader was transferred to The Hague after being issued an arrest warrant. Gbagbo appeared before the Court for the first time on 5th of December 2011 over his role in the deadly aftermath of his refusal to accept defeat in the 2010 polls. He faces four charges of crimes against humanity (over 3,000 people were killed), including murder and rape. The date of the beginning of the confirmation of charges hearing in the case of *The Prosecutor v. Laurent Koudou Gbagbo* began on 18th of June 2012.

Laurent Gbagbo is the first head of state sent to the International Criminal Court at The Hague. His trial is riddled with controversies. There is contention over whether Gbagbo's transfer from Côte d'Ivoire to The Hague constituted a lawful transport or a "political kidnapping" in which Gbagbo was deceived as to where he was being taken. Furthermore, debate surrounding the ICC has escalated in recent years. Created in 2002 to prosecute those responsible for the world's worst atrocities, the ICC is now the target of many criticisms, particularly from Africans, who claim the ICC spends a disproportionately large amount focusing on crimes allegedly committed on their continent. President Omar al-Bashir of Sudan and the

[18] Corm 2011.

[19] Interview given by the Syrian president Bashar al-Assad for *The Daily Telegraph*: http://www.telegraph.co.uk/news/worldnews/middleeast/syria/8858667/Bashar-al-Assad-I-wont-waste-my-time-with-Syrian-opposition.html, accessed on 9 November 2011.

late Libyan leader, Muammar Gaddafi, have likewise been subject to ICC arrest warrants, but neither has come into ICC custody.

In the years to come, the ICC will have a decisive role in the global struggle against impunity. As the importance attached to the Court's work and the relevance of the Rome Statute on the international scene grows, great challenges remain. The increased casework, and the referral of a new situation by the Security Council, has added pressure on the resources available to the Court. The cooperation of States in bringing the suspects to justice continues to be a key condition for the effective implementation of the Court's mandate.

It is more than obvious that we are now entering into a new moral era in which tyrants and their relatives and acolytes are dispatched (or at least should be) to The Hague for fair trials in the name of international standards on human rights. International justice is the only form of justice available in many post-revolutionary settings. It is the only form of justice appropriate when the crimes of former regimes amount to crimes against humanity.

The case for intervening in Syria is complex and at time of writing has the attention of the international community. The difficult situation of this country now requires the full attention of the international community. Human rights groups and activists say more than 9,000 people have been killed by Syrian security forces since the uprising began in March 2011. The Security Council might have referred the situation in this country to the ICC prosecutor as it did with Darfur, and has recently done with Libya under Resolution 1970. The UN's Human Rights Council has rejected for the time being a request by the High Commissioner for Human Rights for a full-scale international investigation and the Security Council has only sent "observers" who were powerless to remedy the brutality they observe. This weak UN approach seems inconsistent with the "responsibility to protect" doctrine. The Security Council should, in June 2011, once it had become clear that a crime against humanity was being committed by widespread and systematic killing of peaceful protesters, have referred the situation in Syria to the ICC prosecutor, as it had done with Libya under Resolution 1970. That Resolution had the effect of weakening the Gaddafi regime because a number of his generals defected because they did not want to be put on trial in the Hague. An indictment of Assad might have had the same result or at least deterred the Syrian army from some of its barbarities.

Leaders of great powers warned that chances for a brutal civil war would increase, unless international steps provide another way. Unfortunately, Russia and China are defending their veto of a United Nations Security Council resolution that would have endorsed an Arab League plan for Syrian President Bashar al-Assad to give up power and help end Syria's months-long unrest. One thing is clear: this double veto of February the 4th, denounced by the UN Security Council Hillary Clinton as a "travesty" has made more difficult the efforts to tighten regional and national sanctions on Syria.

Also, as a response to the crisis and lack of agreement within the UN Security Council, the formation of a formal group of responsible nations to co-ordinate assistance to the Syrian opposition—similar to the Contact Group on Libya, which

oversaw international help for opponents of the former Libyan leader Muammar Gaddafi—was discussed. The problem here is whether such a coalition would back the Free Syrian Army, since Western countries fear further militarization of the conflict and the prospect of an Islamic extremist alternative to Assad.

6.3.1 Osama Bin Laden's Fall and the Arab Spring

A major reason for contesting the idea of classical Westphalian sovereignty is represented by transnational terrorism. The typical case is illustrated by Al-Qaeda and its former leader Osama Bin Laden. Wanted by the whole international community, bin Laden was finally overthrown by a U.S. commando unit acting on the territory of Pakistan. Legal issues link here the intervention on another state's territory (although a bilateral US-Pakistani cooperation agreement was in force) and the option of physical liquidation, instead of capturing and judging him, whether by a domestic or an international court.

The operation in which Osama bin Laden was killed was "absolutely legal and it is a legitimate act of national defense", said the U.S. Secretary of Justice, Eric Holder.

Legal experts like Claus Kress, professor of International Law at the University of Köln, argue that it is questionable whether the United States can still claim that they are engaged in an armed conflict with Al Qaeda.[20] The status of combatant is brought increasingly into question but also bin Laden's authority to issue orders as head of a quasi-military organization.

Without contesting the legality of the operation in which bin Laden was killed, many international human rights lawyers agree that the terrorist could not have been tried for 9/11 at the International Criminal Court—its jurisdiction only came into existence nine months later—, but also believe that the Security Council could have set up an ad hoc tribunal in The Hague, with international judges (including Muslim jurists) to provide a fair trial and a reasoned verdict. Instead, the killing of Osama Bin Laden might be seen as a missed opportunity to prove to the world that this charismatic leader was in fact a vicious criminal, who deserved to die of old age in prison, and not as a martyr to his inhuman cause.[21]

Prior to the outbreak of the "Arab spring", the repressive regimes in North Africa and the Middle East have tried quite successfully, to convince the whole world that there were only two possible options: either supporting authoritarian regimes or Islamic fundamentalism, embodied by Al Qaeda. In turn, Al Qaeda claimed that it is the only alternative to the repressive regimes in Muslim states, which were supported by the "unfaithful" West. By using this dichotomous approach, the life of those repressive regimes was actually prolonged.

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[20] Darnstädt 2011.

[21] Robertson 2011b.

The "Arab Spring" helped to discredit the ideology of Osama Bin Laden. Al Qaeda denounces pluralism and representation, does not promote political emancipation, diversity of opinions, or economic development. Shaken at ideological level by the Arab Spring, hunted by US and their allies and without its charismatic leader, Al Qaeda has been destabilized and is increasingly irrelevant.

The elimination of Osama Bin Laden from the Jihadist equation is undoubtedly the signal legitimizing twilight of the security paradigm called "Al Qaeda-inspired global terrorism". It does not mean that the Jihadist threat will disappear but that we might witness a "territorialization" of Islamic fundamentalist terrorism, in militant areas of Iraq and Afghanistan. Ironically, this could become a greater threat to the West than the shrinking and peripatetic Al Qaeda.

The Jihadist ideology will continue to play a significant role in the Muslim world for many years to come, even though it has begun to lose popularity. The "Arab spring" and the liquidation of Osama bin Laden do not necessarily announce a regression of international terrorism. A process of radicalization which can be exploited by Jihadist groups might also appear at the periphery of the protest movements in the Arab world.

As demonstrated by the recent revolutionary movements in MENA and by the global war on terrorism, the international security requirements—mandatory prerequisites for systemic reliability—have led to considerable progress in terms of consolidating the R2P doctrine.

From a legal perspective, we witness the crystallization of a new *jus cogens* norm which could gradually modify or even replace the traditional norm of non-interference in internal affairs of the states. This is likely to make states' leaders more responsible for their acts, discouraging them from committing crimes against humanity.

On the other hand, another recent event—the liquidation of Osama bin Laden—shows a different direction to overcome the classical non-intervention in the internal affairs of states. When the exigencies of an international effort applied to the benefit of the whole system require an intervention in a sovereign state, the possible complicity of the state's leadership with the systemic disturbance (in this case the leader of a terrorist organization) legitimizes the international community's intervention on that state's territory.

The road to a post-Westphalian system leading to the reduction of conflicts on the world stage has been initiated, and the international community seems determined to move toward its completion. The current attempts to re-imagine sovereignty will depend on a combination of Western public perceptions concerning the results of interventions in the Balkans, Iraq, Libya (and of all recent developments in Middle East and North Africa), together with the self-interest perceptions of the emerging powers seeking to secure their places in the more multi-polar world order that is imminent.

6.4 Conclusions

What is happening in the Arab world is an uprising for democracy and freedom, for independence and human rights, for the first time since the fall of the Ottoman Empire. All Arab countries were practically born from the disintegration of this empire. Some have a separate history as a nation state, such as Iran, Turkey, and Saudi Arabia, but the colonial period had a huge impact on local policies. Authoritarian state entities arose, as new states have tried to create the idea of what it means to be Syrian, Iraqi, Jordanian, and so on. Uprisings have roots in these entities, and require a new type of politics. New television stations, Al Jazeera in particular, broadcast independent programs, which is another novelty in the region. Thanks to them, a new kind of political consciousness has been born (the emergence of Arab and Turkish nationalism) together with a new understanding of policies, and thus new requirements have emerged. These are requirements for accountability for those in power, and for the social justice.

In order to understand the phenomenon of authoritarianism in the region, we must understand that these countries are successors of a period of violent colonialism and then of a post-colonial resistance. In Europe, nations have evolved over the centuries (for example the gradual emergence of French and British nation-states since the fifteenth century). There was the French Revolution, two world wars, the wars of Hitler, Mussolini and Franco. Civil societies in Europe have developed very slowly and have matured into a tested, proven, and reliable democracy. But the Arab world has not had the luxury of such a fortunate history. Since decolonization became effective, the new post-colonial ruling elites managed to build only weak and fragmented states. Now, sub-state forces based on tribal allegiance growing from the bottom up rose against the state and its sovereignty and there is no turning back.

There are many security and strategy issues created by a land in constant motion. There are governments still experiencing consolidation, which will hear more the voice of their societies. Also, there are societies which will require a foreign policy independent to that of the West. The European Union and the United States will have to be prepared to control much less than they managed to do so until recently. Here we see similarities with Latin America, where previous regimes were too docile in relations with the West. As the imperialist interventions in their internal affairs are not possible now in Latin America, so they will probably not be possible in MENA. There will be a less direct political influence of the West in the region, but nevertheless a greater influence of Western ideas.

It is too soon to herald the end of impunity in the region, but there is an encouraging "justice cascade",[22] even though there is still some way to go in ending impunity. Properly conducted trials can demonstrate that no one is above

[22] The "justice cascade" concept was developed by Ellen L. Lutz and Kathryn Sikkink in their work titled "The Justice Cascade: The Evolution and Impact of Foreign Human Rights Trials in Latin America", *Chicago Journal of International Law* 2, no.1 (2001):1–34. They documented a

the law, no matter how rich, how powerful, or how seemingly untouchable. This is the message currently conveyed by the trials of the Arab Spring.

The *Big men in small cells* image is expected to contribute to increasing institutionalization and respect for the rule of law in MENA. Ultimately, the symbolic value of the trials depends on the quality of the process and the demonstration effect it is seen to have for strengthening the rule of law. If conducted transparently and in a way that inspires the population's confidence, trials can contribute to ending pervasive traditions of impunity in the region.

Generally speaking, trials are inherently risky in the aftermath of transitions where peace or democracy is not yet fully consolidated. Fortunately, most prosecutions of heads of state or other senior leaders at the time of or immediately after a transition were not followed by violence, as showed by the Milošević or Charles Taylor cases. A case in which further violence followed a trial was in Iraq where the particular circumstances of the insurgency and US military occupation relegated Hussein's trial to a minor causal factor. In today's uprisings in MENA, we see countries in security turmoil due to the street confrontations between protesters and the recently empowered police or army forces. However, there are some encouraging signs: Bahrain has agreed to release or retry protesters convicted hastily by military courts; Libya's revolution triumphed after Western military intervention in support of the rebels, and Yemen's president, Ali Abdullah Saleh, resigned on November 23, 2011.

The buildup of international interest in trying former rights abusers encourages national courts throughout MENA to entertain such cases. Governments in the early phases of a transition may want to demonstrate their effort to make a "fresh" start by seeking judicial condemnations of the old regime, believing that it is their duty to prosecute those most responsible for serious human rights and corruption crimes, with or without international assistance. Others may want to pursue the way of international courts when they recognize their inability to deal with serious abuses.

The Cote d'Ivoire cases before the ICC allow the spectacle of a head of state being judged by that Court. The potential mixture of the ICC jurisdiction with that belonging to the domestic courts which need urgent reform may give an impetus for a genuine post-Westphalia system where the international community supports the nation-state in exercising its rights to sovereignty and to the rule of law. The vice-versa approach that claims a breach of the principle of sovereignty through the interference of the international juridical mechanisms in the internal affairs of the concerned states is only consistent with the local conservative beliefs which refuse to understand the benefits of current security and human rights developments.

(Footnote 22 continued)
broad norms shift in Latin America between the late 1970s and the mid-1990s that led to increased regional consensus in trying former human rights abusers.

Despite the positive trends, politics can still trump legal process. The long-standing tradition that former heads of state will find shelter in exile is still prevalent. For instance, the former Tunisian president Zine El Abidine Ben Ali's exile has protected him from a real trial in Tunisia. He is not a singular example since exile also has protected many African leaders from going to prison: on 12 December 2006, Ethiopia's former dictator Mengistu Haile Mariam was convicted of genocide in absentia after a decade of legal proceedings and he is still in Zimbabwe being protected by Robert Mugabe; Madagascar's former leader Didier Ratsiraka was convicted for violating state security and sentenced to fifteen years in prison; Uganda's Idi Amin escaped prosecution by fleeing to Saudi Arabia. These are clear examples of legal loopholes but there is hope for improvement, thanks to the international community's efforts and pressure. It is the example of Chad's former leader Hissène Habré and, more notorious, of the former Liberian president Charles Taylor. Both enjoyed the exile treatment, the first still being protected by Senegal despite attempts to extradite him to be tried in Belgium, and the second benefiting from this treatment in Nigeria but only for a limited period of time.

Positive developments in MENA show that states in the region give now lip service to the rule of law and the protection of human rights. In a relatively short amount of time, there has been a dramatic rise in the prosecutions of those who undermined these values. This transformation is not just cosmetic, nor can it be explained by hegemonic pressures or instrumental political calculus alone. Something bigger has occurred—something that is at least in part normatively grounded. It is most embedded in Europe and Latin America, but the trend has reached beyond these regions to MENA, where the rule of law, anticorruption, and human rights are weaker but are moving in a positive direction.

If most of the analysts agree with the causes of the wave of protests in the Arab world—dictatorship, repeated violations of human rights, endemic corruption, poverty, high unemployment, and lack of prospects for young people, inflation, Wikileaks revelations about the autocratic regimes that suffocated countries in the region—, their opinions differ when it comes to the outcome of the revolutions. An optimistic approach to the phenomenon has been so far presented, taking into account the positive legal effects produced within the contemporary international relations system.

But there is a perception[23] that the Arab Spring has reached a kind of hibernation. Elections were held in different countries, violence continues in others, there is the prospect of some Islamic conservative governments, and we still wait to see how other governments will take shape. Syria still faces a civil war and Saudi Arabia fears of change. The realities on the ground are more complex and there is a risk that in the absence of structural reforms, substantial changes are unlikely to transform the "Spring" into a successful one.

[23] Among them Binoy Kampmark, doctor in history and lecturer at the RMIT University in Melbourne.

On the other side, Richard Gowan, an expert in security issues of Africa and United Nations with the European Council on Foreign Relations believes that it is wrong to assert that the Arab Spring "failed" because of the problems already listed. He thinks that the outpouring of public emotion in early 2011 in Tunisia, Egypt, and Libya was a remarkable manifestation of the power of people, and the courage of the Syrian demonstrators who risk their lives to defy the totalitarian regime is amazing. However, a humanitarian operation in Syria, even if comforting in the short term would be deceptively dangerous. He argues that "if Syria sinks into war, peacekeepers may be required to stabilize it later. But humanitarian corridors and safe areas are not a strategy to prevent that war escalating now".[24]

Israeli experts on Middle East issues (among them Ehud Yaari) consider that the Arab spring has taken the shape of an Islamist sandstorm, from behind which the Muslim Brotherhood has emerged as the dominant player. They point out that there is no repetition of the democratization of Eastern Europe, because the power goes to the Islamist parties that are fundamentally anti-democratic. These parties can win elections, but will not meet other criteria of a real democracy. They are full of anti-Western doctrine, an anti-Israel position, and there is an increased risk of confrontation. In short, the new Islamic regimes will have a doubtful commitment to democratic values. The real challenge will be to strengthen the rule of law, especially to eliminate corruption which is deeply entrenched in Arab societies and to secure human rights which are not satisfactorily protected by *sharia* law. Geopolitical factors, including a possible military confrontation with Iran in the Persian Gulf will create more turbulence for the Middle East. However, there can be no return to the authoritarianism that prevailed in governments before the Arab spring. The international community, by nurturing these broken states must help them spring back to a better life—if not the kind envisaged by the protesters, at least one where human rights are protected.

[24] Gowan 2012.

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