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THE REFORM OF THE MILITARY INSTRUMENTS AND AUTHORITY OF THE UNITED NATIONS SECURITY COUNCIL IN THE IMPLEMENTATION OF MILITARY ENFORCEMENT MEASURES

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Abstract

The lack of a *de facto* military component represents a considerable normative and operational shortcoming of the UN system. The existing differences among permanent members of the Security Council, which date back to the early days of the Organisation, prevented the implementation of the provisions of the United Nations Charter and the creation of credible and effective alternatives. When it comes to implementing military enforcement measures decided by the Security Council under Chapter VII, this issue becomes crucial, given that these are measures of *ultima ratio* to maintain or restore international peace and security. Without a working Military Staff Committee, without permanent armed forces and the power to exercise its full authority in the enforcement process, the Council is limited to the mere approval of decisions and is left hostage to the choices of the Member States, its permanent members in particular. Ignoring the urgent need for reform in this area implies perpetuating a dual paradox, while it is strongly demanded that the Security Council assumes its primary responsibility, with an increasing scope, enshrined in art. 24 and, within this context, art. 42, this body continues devoid of appropriate military instruments, on the other hand, correlating the desired improvement in effectiveness, legitimacy and implementation of the Council's decisions solely with the reform of its composition and working methods means neglecting the fact that this transformation requires a reform of the military instruments and authority within a multidimensional reforming process of this body. This article commences with an analysis of the enforcement mechanism under the Charter, to thereafter address the problem underlying the delegation of the implementation of military enforcement measures. Finally, the article reflects on the existing reform proposals, stating the main features and indicating possible solutions.

Keywords:

Reform; Security Council; Military instruments; Chapter VII; Enforcement; Military Enforcement Measures

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THE REFORM OF THE MILITARY INSTRUMENTS AND AUTHORITY OF THE UNITED NATIONS SECURITY COUNCIL IN THE IMPLEMENTATION OF MILITARY ENFORCEMENT MEASURES

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One of the achievements of the Charter of the United Nations was to empower the Organization to take enforcement action against those responsible for threats to the peace, breaches of the peace or acts of aggression. However, neither the Security Council nor the Secretary-General at present has the capacity to deploy, direct, command and control operations for this purpose, except perhaps on a very limited scale. I believe that it is desirable in the long term that the United Nations develop such a capacity (...).

Boutros-Ghali, *Supplement to an Agenda for Peace*, 1995.

1. Introduction

The reference to the subject of “reform” of the United Nations Security Council generally falls within the sphere of its composition and, to a lesser degree, its working methods¹, with the aim of making this body “more broadly representative, efficient and transparent and thus to further enhance its effectiveness and the legitimacy and implementation of its decisions” (*World Summit Outcome*, 2005: 32). There can be no doubt that the power structures of the Council need to be reformed. This is related to the anachronism of its composition established on the basis of art. 23 of the Charter² and to the requirement for greater representativeness of the current geopolitical constellation.³ However, reflection on this issue should not be exhausted on the two spheres mentioned above, since the essential rethinking of the collective security system requires a rethink of the Security Council’s role (Santos, 2011).

1 Increased transparency and accountability of the Member States of the Security Council, particularly that of the permanent members, are the determinant aspects within the scope of reforming working methods.

2 The Security Council consists of fifteen Member States. China, France, Russia, United Kingdom and the USA are permanent members (art. 23(1)). The ten non-permanent members are elected by the General Assembly for a period of two years (art. 23(1) and (2)).

3 The victorious powers of World War II acquired a privileged position in the Security Council, which should correspond to their unique political weight in the international order and their contribution to an effective collective security system. While the United Kingdom and France lost political and economic power since the creation of the United Nations in 1945, the African continent, Latin America as well as Member States with significant economic and political influence at a regional and international level, such as Germany (3rd greatest contributor to the UN budget), Japan (2nd greatest contributor), Brazil, India or South Africa are not represented in accordance with their standing in the international system. At the same time, art. 27 (3) of the Charter enshrines the veto rights of the permanent members, which not only represents a legal inequality but also constitutes a deviation from the principle of sovereign equality of all members of the organisation referred to in art. 2(1) of the Charter. Most Member States and the literature argue that the veto right is anachronistic and anti-democratic.



The calls for a "new vision of collective security," are, within the context of the reform of this body, only associated with a change in the composition and the working methods – assuming that a greater involvement of the Member States which contribute more financially, militarily and diplomatically, of the developing Member States and that an increased democratisation and accountability of Council members in the decision- making process will contribute to greater credibility, efficiency and propensity of the Council to act against the new threats of the twenty-first century.⁴

This perception of "reform" must be deconstructed, given that the desired reinforcement of the "effectiveness", "legitimacy" and "implementation of the decisions" of this body defended by the Member States requires a multidimensional reforming process, in which the reform of the military instruments and authority should be one of its structural elements.

Whilst the Charter places instruments at the disposal of the Security Council in order to fulfil its primary responsibility in the maintenance of international peace and security enshrined in art. 24 of the Charter and the implementation of military measures adopted in accordance with art. 42 of the Charter, there is no *de facto* military component to ensure its practicability.

This normative and operational shortcoming of the UN system has become more evident since the early nineties of the twentieth century, when the Security Council's paralysis was overcome and the nature of certain conflicts required the implementation of robust military operations for the maintenance or restoration of peace. Indeed, without a working Military Staff Committee, without permanent armed forces and without being able to exercise its full authority in the process of implementing measures, the Security Council's role is limited to the mere approval of decisions, thus holding it hostage to choices of the Member States, its permanent members in particular. This is especially visible in terms of the provision of armed forces and of the command and control of military operations.

This article commences with an analysis of the enforcement mechanism under the Charter, to thereafter address the problem underlying the delegation of the implementation of military enforcement measures. Finally, the article reflects on the existing reform proposals, systematising the main features and indicating possible solutions.

2. The Enforcement Mechanism of the United Nations Charter

The enforcement mechanism that has been placed at the disposal of the Security Council is an integral part of the collective security system of the United Nations and of a complex and multilevel nature. Regarding this power of the Council, Edward Luck stated:

⁴ Cfr. UN Doc. A/59/565, A more secure world: Our shared responsibility, Report of the Secretary-General's High-level Panel on Threats, Challenges and Change, 2004, p. 6 and para. 245 and ff., pp. 66-69 and UN Doc. A/59/2005, In larger freedom: towards development, security and human rights for all, Report of the Secretary-General Kofi Annan, 2005, para. 77, p. 24 and para.167 24 and ff., pp. 42-43.



"it was Chapter VII and its enforcement provisions that were to give teeth to its potential. Decisions of the Council taken under Chapter VII were to be enforceable, not just legally binding" (2006: 22).

It is, in fact, this power that enables it to categorically assume its responsibility established in art. 24 and enabled it to gradually become the "law enforcer" of the international community (Frowein; Krisch, 2002: 707).

The application of measures of this nature requires the determination of a threat to peace, breach of peace or act of aggression in accordance with art. 39 and that provisional measures in accordance with art. 40 have not proved effective.

As set forth in art. 41, the Council may decide on different non-military measures and call upon the members of the United Nations to apply such measures.⁵ This type of sanctions constitutes a lower level of enforcement relative to the measures adopted in accordance with art. 42. Its ineffectiveness constitutes the crucial premise for art. 42 to be applicable. This article states the following:

"Should the Security Council consider that measures provided for in Article 41 would be inadequate or have proved to be inadequate, it may take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security. Such action may include demonstrations, blockade, and other operations by air, sea, or land forces of Members of the United Nations."

Military enforcement measures decided by the Council should be carried out by armed forces provided by the respective Member States at the request of this body, based on special agreements as prescribed in art. 43⁶. However, the existing differences among the permanent members, which date back to the early days of the Organisation, have prevented the conclusion of special agreements. (Frowein; Krisch, 2002: 763) and the functioning of another military instrument established in accordance with the Charter, the Military Staff Committee (Novosseloff, 2008: 9). Article 47(2) establishes the aim of the Committee, composed of the Chiefs of Staff of the permanent members (art. 47 (1)): to advise and assist the Council on all questions relating to military requirements, the employment and command of the armed forces placed at its disposal, in accordance with art. 43. Article 47 (3) confers on the Committee the responsibility, under the authority of the Security Council, for the strategic direction of the armed forces that carry out the mission.

The national troops would be subject to their own regulations and respective national Commander. The latter would, in turn, fall under the command of an operational leader

5 Art. 41 provides that the measures "may include complete or partial interruption of economic relations, and of the rail, sea, air, postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations".

6 Article 45 prescribes that "Members of the United Nations shall hold immediately available national air-force contingents for combined international enforcement action".



under the control of the Military Staff Committee. The Security Council would therefore exercise its full authority and control through this instrument (Sarooshi, 2000: 142).

2.1. The Delegation of the Implementation of Military Enforcement Measures

The unenforceability of the ambitions of a United Nations army based on agreements negotiated with Member States and, consequently, of a collective security under the command and control of the Security Council, assisted by a Military Staff Committee, led to the design of an alternative system. In this system, the Security Council delegates the implementation of the mandate decided under Chapter VII to a State or a group of States, i.e. to coalitions of States created *ad hoc* (coalitions of the willing). This is a decentralised implementation in which the armed forces are not under the command and control of that body, but of a Member State belonging to the coalition.

This model was used in situations of a distinct nature. The USA led coalitions of different magnitudes. Worthy of note are, the operation with the objective of cooperating with the Government of Kuwait using "all necessary means" following the invasion of this State by Iraq,⁷ the mission aimed at creating a secure environment for humanitarian relief operations in an interstate conflict in Somalia⁸ and the mission with a view to ensuring the return of the democratically elected Government, deposed by a military coup in Haiti.⁹ In turn, the coalition led by France in Rwanda was aimed at the protection of displaced persons, refugees and civilians¹⁰, the mission led by Italy in Albania aimed at ensuring the security and movement of organisations and international agencies of a humanitarian nature¹¹ and the coalition led by Australia in East Timor supported the mission of the United Nations Mission in East Timor (UNAMET) and humanitarian aid.¹²

If, on the one hand, this system enables the execution of operations that otherwise could not be implemented, on the other hand, several weaknesses are revealed that undermine the authority of the Security Council and international law.

One such weakness concerns the existing disparity between the decision-making dimension and the operational dimension, which is perceptible at various levels.

Once a mandate has been given, the voluntary nature of the provision of armed forces can result in an unwillingness by Member States to do so or a delay in reacting, justified by the political nature of the negotiations and/or the need for approval by the respective national parliaments. The strong dependency on the great powers, especially the USA, which lies in the marked and growing military asymmetries between Member States, may underlie both situations¹³ and have dramatic consequences, for example, in the case of serious violations of human rights.

7 SC Res. 678 (1990).

8 SC Res. 794 (1992).

9 SC Res. 940 (1994).

10 SC Res. 929 (1994).

11 SC Res. 1101 (1997).

12 SC Res. 1264 (1999).

13 This asymmetry is visible through the respective defence budgets: the USA has the largest budget, 711 billion dollars, which represents 41% of the world share. Whereas between 2002 and 2011, the USA experienced an increase of 59%, the United Kingdom, the country with the fourth largest budget - 62.7 billion dollars, only experienced an increase of 18%. In the same period, France and Germany reduced



Another weakness is manifested in the insufficient degree of control exercised by the Security Council in the process of implementation of military enforcement measures. Unlike the classic peacekeeping operations model, in which the Member States are more willing to submit to the command and control of the United Nations, the Secretary-General in particular, in operations of this type, this is not the case mainly with the USA (Kaysen; Rathjens, 2003: 93)¹⁴.

This shortcoming results in the risk of Member States resorting to methods that may contribute to aggravate the situation, they may distort the objectives of the mandate or conduct additional actions arbitrarily based on specific national interests¹⁵. Note that the States may decide to withdraw their troops without this decision being unlawful under international law, as in the case of USA in 1994 - after the other Member States due to the escalation of violence - in the UNOSOM II mission in Somalia¹⁶ after there were several casualties amongst American soldiers.

Added to this is the possibility of divergent interpretations of the resolutions. Although the Council has, following the recommendations of the report of the Panel on United Nations Peace Operations (the so-called Brahimi Report (2000: 10-12)) decided in resolution 1327 (2000) on the development of "clear, credible and achievable mandates", the vague and inconsistent language resolutions make reference to "all necessary measures"¹⁷ or "all necessary means"¹⁸, the lack of procedural and substantial limits, i.e. the absence of determination of concrete objectives and, sometimes, of a time limit or the obligation to submit a periodic report may encourage the abuse of the law by the Member States. It should be noted that the preparation of reports does not *per se* guarantee impartiality or reliability of the actions conducted on the ground, which justifies the need for additional action, i.e., at various levels to overcome the different weaknesses outlined in this article.

It can be said that through the authorisation of the Security Council for the use of all measures or means necessary, coalitions of States receive "a blank cheque" (Dörr, 2006: 162). In addition, if a resolution does not impose a time limit, a permanent member can prevent the termination of military enforcement measures through the threat or exercise of the veto right, which is known as "reversed veto". In this case, the period of validity of the authorisation of the Council is not clear. For example, the USA and the UK rejected the end of measures decided based on resolution 678 (1990), which enabled them to extend military action against Iraq (Stein, von Buttlar 2012: 132). It should be noted that even without being involved in the coalition, the permanent members can prevent the termination of the operation with the purpose of protecting allies who participate in the coalition.

their budget by 0.6% and 3.7%, occupying the fifth and ninth place, respectively. Italy ranks 11th with a 21% reduction between 2002 and 2011. China and Russia rank second and third with 143 billion dollars and 71.9 billion dollars, respectively. Between 2002 and 2011, the increase in the defence budget was 170% and 79%, respectively, The Top 15 Military Spenders in 2011, *SIPRI Yearbook 2012*, Stockholm International Peace Research Institute, <<http://www.sipri.org>>.

14 cf., in this respect, Quigley, John (1996). "The Privatization of Security Council Enforcement Action: A Threat to Multilateralism". *Michigan Journal of International Law*. 17, no. 2: pgs. 264-269.

15 cf., in this respect, Wilson, Gary (2007). "The Legal, Military and Political Consequences of the "Coalitions of the Willing" Approach to UN Military Enforcement Action". *Journal of Conflict and Security Law*. 12, no. 12: pp. 316-327.

16 SC Res. 814 and SC Res. 837 (1993).

17 cf. for example, SC Res. 1264 (1999), SC Res. 1973 (2011).

18 cf. for example, SC Res. 678 (1990), SC Res. 929 (1994).



Similarly, the mentioned problems, albeit on a smaller scale, can arise in the delegation of enforcement operations to regional organisations. The Charter foresees in art. 53 (1) the possibility of regional organisations conducting these operations under a mandate of the Council, an instrument to which the United Nations have resorted in some situations in order to maintain or restore international peace and security. Especially the North Atlantic Treaty Organization (NATO) has conducted several military enforcement operations, even though the resolutions mention Chapter VII and do not refer explicitly in all situations to Chapter VIII. For example, in Bosnia-Herzegovina¹⁹, with the purpose of supporting the operation of the "Blue Helmets" in 1993 and ensure the implementation of the Dayton peace accords in 1995, in Afghanistan²⁰, leading the Mission of the International Security Assistance Force (ISAF) since 2003 and, more recently, in 2011, in Libya for the purpose of imposing a no-fly zone to protect the civilian population²¹.

An issue that is important to point out here is the hiring of private security companies by the Member States, in particular the USA be it in the sphere of the coalition of States or NATO missions with a mandate from the Council. Whilst these security companies support the missions, often they pose considerable legal problems due to non-observance of international humanitarian law and the mandate issued by the Security Council. The performance of these private security companies working for the USA in the ISAF mission in Afghanistan, based on Resolution 1368, is an example of this. They are said to be responsible for a series of incidents, such as the injury and death of civilians, aiding the Taliban, subcontracting of military leaders, damaging coalition's image and efforts (Schwartz, 2011: 15-16), which led Major-General Nick Carter of the ISAF to speak of a "culture of impunity" (cit. in Schwartz, 2011: 16) revealing, therefore, the gaps in the UN system, which are closely linked to the deficiencies of international law on this matter²².

2.2. Proposals for Reform of Military Instruments

The lack of credible and effective military instruments available to the Security Council is a controversial issue and has been recurring since the creation of the United Nations. After the end of the Cold War, this normative and operational shortcoming became more evident, especially when the nature of certain conflicts required the implementation of robust military operations for the maintenance or restoration of peace. In other words, missions composed of heavily militarised forces, deployed without the consent of the parties, based on a mandate of the Council and which may resort to use of force beyond the exercise of the right of self-defence provided for in art. 51 of the Charter with the aim, for example, of imposing peace agreements, enforcing respect for imposed sanctions and conducting military operations against a rogue State.

The proposals concerning military forces include a multiplicity of designations and concessions. The proposal for rapid reaction military units, *ad hoc* or permanent,

19 SC Res. 816 (1993) and SC Res. 1031 (1995).

20 SC Res. 1386 (2001).

21 SC Res. 1973 (2011).

22 It is worth stressing, here, the immunity issue, which may emanate from the agreement of ISAF with the interim government of Afghanistan, cf. Military Technical Agreement between the International Security Assistance Force and the Interim Administration of Afghanistan, Annex A, Section 1.



composed of volunteers recruited by the Organisation should be noted in the context of enforcement operations – in a reduced size and detail and, for this reason, will not be the object of analysis in this article as well as large forces that could be created in the same way²³.

With regard to military and strategic support for the Security Council two proposals are mentioned: the reactivation of the Military Staff Committee and the creation of a new subsidiary body in its place.

2.2.1. Military Forces

In 1992, the Secretary-General, Boutros-Ghali, called for the implementation of the special arrangements provided for in art. 43 not only on an *ad hoc* basis, but also permanent. The mission of these forces would be to respond to a current or imminent aggression. The rapid availability of forces could serve as a deterrent to ruptures of peace, since the potential attacker would know that the Security Council could react on the basis of this mechanism. While recognizing that these forces could not be broad or may not be equipped to deal with a threat posed by an imposing and equipped army with sophisticated weapons, Boutros-Ghali considers that it could be useful to deal with any threat posed by a smaller military force (1992: paragraph. 43). The former Secretary-General defends the creation of "peace-enforcement units" whose primary function would be to restore or maintain a ceasefire and that should be used by the Council in clearly defined circumstances and with their terms of reference specified in advance. Such units of the Member States would be voluntary, in readiness, heavily armed and would have to go through an extensive preparatory training within their national forces. These peace enforcement units should constitute an interim measure on the basis of art. 40 and obtain prior approval from the Council (*ibid.*, para 44).

The failure of the Security Council to contain situations of genocide as happened in Rwanda (1994), in Srebrenica (1995), in Kosovo (1999) and in Darfur (2004) reinforced the idea of the need for a rapid reaction capacity. This conception was defended by Member States²⁴, Secretaries-General²⁵ and working groups within the Organisation, as the Panel on United Nations Peace Operations, in the so-called Brahimi Report and the High-level Panel, as well as in the literature.

The 2000 Brahimi report recommends the definition of rapid and effective deployment capabilities by the United Nations, which would mean its deployment after the adoption

23 Carl Kaysen and George Rathjens allude to a Legion composed of volunteers to perform operations between the model of classic peacekeeping and enforcement that would not have a large dimension and should be supported by large forces ("backup forces") that could be strongly armed and remain under national control, trained and oriented on the basis of common criteria and doctrines. Kaysen, Carl; Rathjens, George (2003). "Towards a UN Standing Army". *Daedalus*, 132, no. 1: pp. 92-100. Johansen believes that in large crises there will be the need for large forces beyond the establishment of a "UN Emergency Service". Johansen, Robert C. (ed.) (2006). *A United Nations Emergency Peace Service, To Prevent Genocide and Crimes Against Humanity*, Global Action to Prevent War, Nuclear Age Peace Foundation and World Federalist Movement, p. 32. Joseph E. Schwartzberg calls for the creation of a large force composed by "globally recruited, all-volunteer, elite, highly-trained, multipurpose UN Peace Corps". Schwartzberg, Joseph E. (1997). "A New Perspective on Peacekeeping: Lessons from Bosnia and Elsewhere". *Global Governance*. 3, no. 1, p. 4.

24 Canada, Denmark and the Netherlands were the main drivers of the creation of a "United Nations Emergency Peace Service" following the Rwandan genocide in 1994.

25 cf. the positions of Kofi Annan and Ban Ki-Moon, UN Doc. A/59/2005, In larger freedom: towards development, security and human rights for all, Report of the Secretary-General Kofi Annan, 2005, para. 112, p. 31 and UN Doc. A/63/677, Implementing the Responsibility to Protect, 2009, para. 64, p. 27.



of a resolution of the Security Council with regard to enforcement operations within 90 days (2000: 14-16). The 2004 High-level Panel report also stresses the need for capabilities to carry out the missions decided by the United Nations including peace enforcement (2004: 53). In this sense, Member States that have global or regional air or sea transport capabilities should place at the disposal of the Organisation, free of charge or based on a negotiated framework hinging on an amount paid for the reimbursement of additional costs associated with the use of these capabilities by the United Nations (2000: 59). This deployment capability would enable the prevention of serious human rights violations and cases of genocide (2000: 23).

In literature, many authors argue, albeit on distinct aspects, for the creation of a rapid reaction force.

Robert Johansen alludes to the creation of an "Emergency Peace Service" of the United Nations, a permanent force that would protect individuals from wars, genocide and crimes against humanity. It could be a military instrument, in particular in the implementation of the conception "responsibility to protect", when the state clearly does not fulfil the responsibility to protect its civilians. The author considers that the measures proposed by the high-level panel would make it possible for the "UN Emergency Peace Service" to work more effectively while this, in turn, would contribute to the achievement of the goals set by this Panel both in terms of the protection of civilians (genocide), and of an increased capacity for rapid reaction. This force would complement national and regional efforts and those of the UN, providing immediate and total protection in some crises and serving as an instrument of peace and paving the way for subsequent additional aid; it would enable the United Nations to act quickly without the decision being obstructed by decisions at a national level. The forces would concentrate on sites designated by the United Nations, including mobile headquarters on the ground and they would be able to act immediately in emergency situations. These forces would be recruited individually from amongst volunteers from different countries, which would avoid the slowness of an *ad hoc* system or the reluctance of Member States to provide their military forces. The forces would be selected, trained and organised, based on strict criteria in order to provide the expertise and equipment for the success of the mission. This service would enclose a wide range of professional skills within a single command structure, prepared to conduct multiple functions in various operations, such as enforcement, avoiding divisions, confusions between the chain of command or functional fragmentation in order to mobilise the military capacity. Although this service is not a large force designed to conduct large-scale military combat, it would maintain the security and stability of the population located in the operating area (2006: 23-30)²⁶.

For Alexandra Novosseloff, a permanent rapid reaction force could carry out initial prevention functions, of enforcement, if the situation so requires, and the imposition of peace. The author points out a few cases where this might be applicable: assistance to an existing peacekeeping operation and which finds itself in difficulties on the ground, bridge the period of time that elapses from the decision of the Security Council to the arrival of "Blue Helmets" by improving the mobilization time of a peacekeeping operation, to prevent the escalation of a crisis or a conflict from spreading and reduce hostilities as a "muscular" preventive deployment. According to the author, the most

²⁶ Peter Langille considers that this service constitutes "a promising proposal". Langille, Peter (2012). *Preparing for a UN Emergency Peace Service*. New York: Friedrich Ebert Stiftung. p. 1.



effective and fastest instrument would be to create a force composed of volunteers recruited directly by the Organization in line with the proposal made by Brian Urquhart (2003: 499-504). This author argued, in 1993, for the creation of a force, a legion or a brigade, composed of worldwide recruited volunteers:

"if the Security Council is to retain its credibility and relevance in the kind of low-level conflicts in which it is now widely involved, it urgently needs a capacity for immediate "peace-enforcement" action" (1993: 102).

In 2006, Brian Urquhart reiterated this idea in the proposal for creating a "UN Emergency Service", as only a professional and permanent force, with specialized training, belonging to the United Nations, could respond quickly in an emergency. (2006: 9).

2.2.2. Reactivation of the Military Staff Committee?

With the end of the bipolar conflict and following the conflict between Iraq and Kuwait in 1990, great hopes were placed in the collective security system, in which the Military Staff Committee would play a key role (Bryde; Reinisch: 775).

In his report "Agenda for Peace", Boutros-Ghali recommended that the Security Council should open negotiations in accordance with art. 43 with the support of the Military Staff Committee. The Committee's role should be seen in the context of Chapter VII and should not be associated with the planning and carrying out of peacekeeping operations.²⁷

Although at the 2005 World Summit, Member States declared:

"We request the Security Council to consider the composition, mandate and working methods of the Military Staff Committee" (2005: 38).

the Committee's significant role is still not recognised by the United Nations²⁸.

In the literature, several authors recognize the importance of a military body that provides military and strategic guidance with the aim of improving decision making and greater control under different situations and operations, including military enforcement measures in accordance with art. 42.

27 UN Doc. A/47/277-S/24111, An Agenda for Peace, Preventive diplomacy, peacemaking and peace-keeping, 1992, paragraph. 43 and s.

28 To mention the position of the High Level Panel. reiterated by Kofi Annan, which considered that art. 47 of the Charter, as well as all references to the Member States in arts. 26, 45 and 46 should be suppressed. The Panel adds that the role assigned to the Chiefs of Staff of the five permanent members in 1945 is no longer appropriate. Cfr. UN Doc. A/59/565, *A more secure world: Our shared responsibility, Report of the Secretary-General's High-level Panel on Threats, Challenges and Change*, 2004, para. 300, p. 77 and UN Doc. A/59/2005, *In larger freedom: towards development, security and human rights for all, Report of the Secretary-General Kofi Annan*, 2005, para. 219, p. 52.



Max Hilaire defends a more active role for the Military Staff Committee so that the execution of the operations entails prior approval of this body (2005: 311). Carl Kaysen and George Rathjens argue that the Committee should be reactivated and expanded, including the representatives of the Member States that are important contributors to the Organization and able to act full time whenever an operation is developing (2003: 101). Alessandra Novosseloff acknowledges that the reactivation of a Committee would be difficult to achieve, since the permanent members have different understandings about what it means to reactivate the Committee and that this would involve, for example, a re-examination of the provisional regulations and the risk of long debates. The author appeals, therefore, to the creation of a new military committee, i.e. a subsidiary body established based on art. 29 of the Charter. This body should be created on the basis of a Security Council resolution, which should also establish flexible working methods in order to allow the overcoming of political divisions. This Committee could provide the Council with detailed opinions on the military implications of the decisions taken by it - issued to address specific real situations - analyze the ideas, operation plans and the rules of the mission prepared and presented by the Department of Peacekeeping Operations, provide guidelines and propose amendments. Its composition should include all members of the Security Council at the level of military advisers with the participation of the contributors of troops and finance. The latter would participate in the elaboration of opinions in proportion to their contribution in order to help the decision at the beginning and end of the process involving a military operation (2008: 83-85).

Paul Kennedy considers the reactivation of the Military Staff Committee "politically impossible", mainly due to three reasons: apprehension of the main and regular contributors to making its forces available to the Committee, dominated by the five permanent members, concern of the G-77 states, who fear that the major powers will act in order to favour their national interests and, finally, the refusal of some major states like the USA regarding agreements for joint forces, under the command of a foreign commander and the fear that the mission objectives are put at risk due to demands made by the allies. This author points out the importance of a "professional military body." The latter would be responsible for preparatory work prior to sending the troops, the establishment of an information system in order to perceive the local conditions, the creation of efficient chains of command ensuring the continuous flow of logistical supplies and the definition of the role of the army on the ground. (2009: 284-285).

2.2.3. Reflections on the proposals and the need for a reform of the Military Instruments and authority of the Security Council

Based on the proposal concerning the recruitment of volunteers and their respective specialized training by the United Nations, this article proposes the creation of two types of permanent military forces, deployed on the basis of the size of the mission and the level of enforcement required. In line with the proposals for the creation of a rapid reaction force, it is considered that this option could contribute to the restoration of international peace and security at an early stage of a conflict with limited dimensions, but that requires the resort to the use of force in situations other than the right to self-



defence. It should be noted that due to new threats, such as intra-State conflicts, serious human rights violations and refugee exodus, the Security Council has approved a number of decisions determining the existence of a "threat to peace" on the basis of an extensive interpretation of art. 39. The increasing "responsibility to protect" of the international community, even though it has not yet been established as a norm of international law, implies the use of military enforcement action when a state clearly does not guarantee the protection of its population. These are, therefore, situations which generally require fast action.

The deployment of more robust forces should be made when a crisis or conflict has a larger dimension, either from the beginning or when the rapid reaction force is not having the expected results, requiring, therefore, a greater degree of enforcement. The two levels of permanent forces belonging to the United Nations should be trained by experts selected by the Organisation based on the features and scope of their qualifications, they should be located in bases in various parts of the world, but on a rotation system under which they would go to a military headquarters where they would receive updated technical knowledge, consolidate their expertise and coordination. With regard to the costs that such forces would involve, the creation of a specific budget and of agreements with certain Member States based on a design along the lines of NATO's "Smart Defence" are proposed. This mechanism would eliminate the possible unavailability of immediate forces or the slowness of the process of forming a coalition of states or even the withdrawal of troops needed for an ongoing operation.

The creation of a new subsidiary body on the basis of art. 29, called Military Staff Commission – to avoid any negative connotation with the current Committee - should reflect the current geopolitical realities and, in the case of reform of the Council, the renewed composition. This Commission, with a strategic and military support function, would enable the Security Council to hold a higher authority with regard to command and control, *ex ante* and throughout the enforcement process. If there were a greater control on the implementation of military enforcement action, it would seem reasonable to assume that a greater international support for such operations would be met.

It should be noted that NATO and the European Union, which have the responsibility for maintaining peace and international security at a lower level than that assigned to the United Nations in art. 1(1) of the Charter and that it is a universal Organisation with 193 Member States, have a military committee.

The reform of military instruments and authority of the Council proposed in this article must be seen in the context of a wider reform process which takes into account the expansion of its competence and the reform of its mode of action, which is closely linked to the need for a new understanding of the collective security paradigm. A renewed Security Council authority is proposed as booster and implementer of a greater normative and operational consensus, however not with an unlimited power, as *ultra vires* actions may arise from it.

In this sense, it is considered that this essential reform of the institutional framework should occur concomitantly with a reinterpretation of the normative framework. A case-by-case analysis and decision hampers the preparation of standardized resources as well as the formation of *ad hoc* forces, involving the risk of inconsistencies and double standards. This reinterpretation should be reflected in a resolution in which the Security Council prescribes the principles for the resort to the use of force under Chapter VII



and in the context of the right of self-defence under article 51, legal limits to the use of force in the process of enforcing military measures as well as the dimension and typology of the armed forces required. In other words, catalogued criteria which would be updated regularly based on experiences gathered, including an attached list of conflicts that required enforcement operations, determining also the understanding of collective self-defence in regards to actual or imminent attacks and in respect to the protection of human rights, the establishment of a list of test criteria in order to help reach a consensus in complex decision-making procedures ideally in a consistent and systematic manner. These criteria could form a consensus platform allowing the surpassing of what Brian Urquhart referred to as the main objection to the creation of a rapid reaction force: the fear that their operations might jeopardize national sovereignty (2006: 9) –, facilitating the decision of military enforcement measures and their subsequent execution. However, this process would have to be combined with previous changes in the use of the right of veto concerning similar situations by the permanent members. (Santos: 2012).

In synchrony with Brahimi's report, and while this system of delegation persists or as guidance for the permanent military forces, it is considered in this article that the mandates of the Council would have to be carefully delineated in order to include temporary limits, establish legal limits, obligate the elaboration of periodic reports and more precise formulations, in order for the interpretation of the Member States to be more uniform and unequivocal, given that the respect for the principle of good faith consecrated in art. 2(2) may not be guaranteed if there is a risk of abuse of law and arbitrariness in fulfilling the mission - although it is an obligation that corresponds to the principle of international law *pacta sunt servanda*, that is, agreements must be honoured. It is also proposed that safeguard clauses be included in the resolutions be it in the case of the Security Council finding that there is abuse of law by military forces or private security firms, or in the case of changes on the ground that require changes in the operation, a fact that could contribute to close the gap pertinently highlighted by Niels Blokker: "the Council does not seem to take this responsibility [from art. 24] very seriously if it leaves member states largely free to carry out these operations and if it gives away the possibility of stepping in if things get out of hand "(2000: 551).

2.3. Conclusion

The urgent need for a reform of military instruments and authority of the Security Council has been ignored. This transformation, however, must be one of the fundamental elements of a multidimensional reforming process aiming at a broader role and intervention of the Council in a new vision of the collective security system. The increased authority becomes absolutely necessary and will determine the future of this system as well as the future significance of the Council as guardian of international peace and security. The importance of the collective security system will depend on the degree of legitimacy, authority and credibility of this body, since it is based on the capacity of the Security Council *ultima ratio* to decide on military enforcement measures.

The appeal of Boutros-Ghali in 1995, to the creation of a capacity to deploy, direct, command and control operations of this type was followed by the recognition that, due to lack of resources and difficulty in assuming its responsibilities in the less demanding



ongoing missions of different nature, it would be a “folly” attempt at the time (1995, paragraph 77). From the continuous postponement of this rethinking results the perpetuation of this shortcoming, whose corollaries are military enforcement instruments in an embryonic state and minimal Security Council authority in this regard, as the guarantor of the observance of international law.

The creation of two types of permanent military forces, depending on the size of the mission and the degree of enforcement required, composed of volunteers would enable the implementation of the consequences mentioned in the Council’s decisions when the existence of a threat to the peace, a breach of the peace or an act of aggression is determined under art. 39 or the ineffectiveness of provisional and non-military enforcement measures in accordance with articles 40 and 41 respectively is verified. Furthermore, the conception of a Military Staff Commission and the normative determination of the current scope and future trends of the competences of the Member States and its own competences would enable the Security Council to hold higher authority in the monitoring and control of these missions.

This reform would allow for improved efficacy, legitimacy and the implementation of the Council’s decisions, just as an adequate representation of the Member States of the United Nations and greater democracy and accountability in the decision-making process would. A process of reform including the reform of the enforcement mechanism will increase the likelihood of compliance in the decisions of the Security Council by the Member States.

The United Nations and the international system require a strong and agile Security Council, more specifically, a new paradigm of what this body should be, that is, a paradigm that includes in its essence the necessary degree of effectiveness, capacity for action, representativeness, legitimacy and transparency, and within which the issue addressed in this article falls.

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**“BRAZIL POWER AND MULTINATIONAL CORPORATION”:
BRAZILIAN MULTINATIONAL CORPORATIONS, FOREIGN POLICY AND THE
INTERNATIONAL INSERTION OF BRAZIL.
AN ANALYSIS BASED ON THE CONTRIBUTIONS OF ROBERT GILPIN**

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Abstract

The first decade of the XXI century evidenced transformations in the international order's financial dimension due to the growth in the so-called emerging powers. An indicator of such phenomenon is the emergence of multinational corporations from the developing world - *MNC Latecomers*-, turning certain countries, as is the case of Brazil, into net issuers of Foreign Direct Investment flows. In this sense, this paper analyzes the impact that the emergence and consolidation of Brazilian multinational corporations has had since 2003 until now on the foreign policy and the international insertion of Brazil (and vice versa), taking into consideration Robert Gilpin's classical work, “*U.S. power and multinational corporation: the political economy of foreign direct investment.*” Gilpin's framework shall be useful for empirical contrast of this study case.

Keywords

Brazil; multinational corporations; Robert Gilpin; foreign policy; new international order

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AN ANALYSIS BASED ON THE CONTRIBUTIONS OF ROBERT GILPIN**

Esteban Actis

Introduction:

The appearance during the second half of the XX century of the multinational corporation as an actor in the global economy and the international relations has led to several theoretical approaches that attempted to comprehend this phenomenon. In that context, in 1975, Robert Gilpin wrote, based on the studies of the International Political Economy (IPE), the famous work *"U.S. power and multinational corporation: the political economy of foreign direct investment"* with the purpose of analyzing the North American transnational corporations and their link to the international insertion of the U.S. in the framework of the post-war North American hegemony.

Beyond the multiple transformations experienced by the international system since then, and the changes in the modes of production, such theoretical framework is still useful to explain the link between the transnational corporations and the states in which the capital originates, and more specifically, the external behavior of such states. From a *realist* point of view which is different from the *Marxist and liberal* conceptions, Gilpin has verified that transnationalism can only be understood in the context of the interstate system characteristic of the Peace of Westphalia and in relation to state interests and actions. The deepening of the financial interdependence and the globalization that prevailed in the post-Cold War international system have not demolished the basis and foundations of the *Gilpinian* theory.

The first decade of the XXI century evidenced transformations in the international order's financial dimension due to the increase in the so-called emerging powers. An indicator of such phenomenon is the emergence of multinational corporations in the developing world - *MNC Latecomers* -, turning certain countries, as is the case of Brazil, into net issuers of FDI flows.

In this sense, the purpose of this paper is to analyze the Brazilian case, more precisely, the impact that the emergence and consolidation of Brazilian multinational corporations has had since 2003 until now on the foreign policy and the international insertion of Brazil, taking into consideration Robert Gilpin's classical work, which, as any other classical work, never loses validity.



The study of the Foreign Direct Investment from the IPE: Gilpin's theory

The Foreign Direct Investment (FDI) and the transnationalization of corporations may be studied from several subject areas and with different analytical goals. Analyzing them from the economy point of view leads us to ask ourselves the reasons and advantages that motivate a corporation to invest abroad, the competitiveness, the intrinsic characteristics of the corporations, the incentives offered by the market and the governments, among others (Dunning, 1981; 2001; Rugman 1981; 1986, Mathews 2006).

This type of approach visualizes the corporation as the main actor and its internationalization ability shall depend, ultimately, on its condition to compete and adapt itself in the markets. Even when these studies are necessary to understand this phenomenon, they exclude the political variable in the analyses: the importance of the State and power relations in the international system. It is precisely those approaches from the IPE that cover this gap, from understanding the complex interrelation between the political and financial activity at an international affairs level (Cohen, 2008). In accordance with Robert Gilpin (1975), the IPE may be defined as the dynamic and mutual interaction in international relations in the search for wealth and power.

In this sense, the IPE tried to overcome the 'mutual neglect', in the words of Susan Strange (1970), among those who were specialized in the study of International Relations, devoted to subjects of the so-called *high politics*, and those who investigated subjects related to *low politics* as issues of the international economy.

Precisely, Robert Gilpin was one of the first thinkers that, having entered the subject through studies related to strategic-military issues - in a framework of predominance of classical realism¹ -, started to steer his studies towards political economy, thus challenging the rigid division between strategic-military aspects – *power*- and financial aspects – *wealth* - in the RRII. His ascription to realism caused Gilpin to be considered the greatest exponent of the realist tradition² in the so-called "American School" to the interior of the IPE.

From that philosophical way of seeing politics and society, Gilpin decided to study the *political economy of the FDI*. In fact, the purpose of the work in question was to "contrast the prevailing literature on multinational corporations, challenging the emphasis of the liberal orthodoxy on the autonomous evolution of a growing interdependence in the global economy whose major current manifestation is the multinational corporation" (Gilpin, 1975: 4). According to Gilpin, from the liberal point of view, the expansion of the corporations is divorced from the global policy arena, multinational corporations are regarded as independent actors of the international

¹ As stated by Cohen (2008:32), Gilpin became the greatest supporter of the "old realist tradition." The changes in the realist trend as of the predominance of Kenneth Waltz's structural approach caused some relegation of Gilpin's work. In an issue of the magazine International Relations, William C. Wohlforth (2011) highlights how Waltz view/narrative prevailed to the interior of the realist theory at the expense of other views such as Gilpin's. The author states that if the realist interpretation in War and Change in World Politics had prevailed instead of the classic work Theory of International Relations, the history of the Theory of International Relations would have been different.

² In opposition to the liberal point of view, Gilpin states in his first works (Gilpin, 1972) that it is politics that determine the framework of the financial activity and the channels which are directed and tend to serve political goals.



system³. For Gilpin, the emergence of multinational corporations confirms that “financial activities are fundamental in the struggle for power between nations” (Gilpin, 1975: 38).

At the same time, Gilpin challenges and questions the neo-Marxist theory that states that the State –and its foreign policy- is nothing but a simple instrument to satisfy the needs of the transnational capital, where the public policies are subordinated to private interests, without any margin of autonomy whatsoever.

Now, having explained in detail the deficiencies that, according to the author, other theories have, what is Gilpin’s contribution to the study of transnational corporations from the IPE? To answer that question we will sum up in six items the main lines of thinking as of his study case: internationalization of the U.S. economy since the Fifties of last century.

- 1) The conditions that enabled the U.S. to expand its corporations beyond its borders, thus constituting North American multinational corporations, were financial and technical, and they are a consequence of the evolution of the post-war U.S. economy (Gilpin, 1975: 6). However, domestic policy and public policies are important since they affect the ability and tendency to invest abroad. The importance of the domestic political order has its foundations in channeling financial forces in one direction over another one. (Gilpin, 1975: 61).
- 2) It is a mistake to think that the expansionism of corporations was planned by politicians or that the consequences of the expansion were consciously designed by the political elite. They gradually perceived that the growth of corporations abroad could serve U.S. interests. One example offered by Gilpin is the positive impact on the balance of payments.
- 3) At an international level, the expansion of U.S. corporations occurs at the same time as an increase in the influence of U.S. politics in international affairs (Gilpin, 1975: 6). The international political order created by the powers that dominate the international system provided a favorable environment for the expansion of corporations (Gilpin, 1975: 19).
- 4) U.S. politicians saw the possibility of turning multinational corporations into an instrument of the U.S. foreign policy (Gilpin, 1975: 139). Together with the international role of the dollar and the nuclear supremacy, multinational corporations served as one of the pillars of the U.S. global hegemony after the end of the Second World War. U.S. multinational corporations favored the expansion of U.S. political and financial values, the access control to natural resources, the increase in the U.S. participation in the global market, the assurance of a strong presence in third countries economies. Moreover, they assisted in consolidating the main goal of the U.S. foreign policy during those years: to expand the U.S. hegemony in the Cold War world (Gilpin, 1975: 161).

³ Even when it is true that Gilpin’s critics are directed towards liberal economists, his work is also inserted in the debate to the interior of the IPE, arguing with colleagues who are closer to liberalism to the interior of the International Relations like Joseph Nye and Robert Keohane, who in 1972 published “Transnational Relations and World Politics”.



- 5) Gilpin challenges the neo-Marxist point of view that states that the foreign policy reflects the interests of the capitalist class materialized in the multinational corporations (1975: 140). The author states that it is true that, in general, the interests of the transnational businessmen and the "national interest" defined by the various U.S. administrations have coincided. However, many times, the foreign policy has gone against the interests of multinational corporations causing divergences. In those cases, the interests of the foreign policy prevailed. Gilpin illustrates this statement with several examples; the most significant one was the divergence between U.S. multinational corporations and the "national interest" as regards to the policy towards Japan. The U.S. tolerated the exclusion of American investments. U.S. multinational corporations who wished to enter the Japanese market were forced to share their technologies with Japanese corporations, thus losing an asset that was paramount for competitiveness and facilitating the convergence of rival corporations. Gilpin wonders (1975: 145) how the foreign policy could go against the interests of U.S. corporations. The answer lies in the fact that the geostrategic interest in keeping Japan under the Occidental influence and thus maintaining the supremacy and stability of Pacific Asia prevailed.
- 6) The aforementioned demolishes the liberal theory that sees multinational corporations as independent actors of the international system and as divorced from the global policy arena. Gilpin's main argument (which can be seen throughout all his work) when observing the U.S. case was that multinational corporations and the U.S. government shared between the Fifties and the Seventies of the XX century a number of complementary and overlapping interests (Gilpin, 1975: 141).

The emergence of Brazilian multinational corporations and Brazil's foreign policy (2003-2012). Is Gilpin's theory still valid?

Having more than 35 years passed since Gilpin's work and with the multiple transformations and mutations suffered by the international order -political and financial-, we wonder about the validity or not of the American author's analytical scheme to explain and analyze the *new multinationalism*, no longer associated to the organizational and productive form of the multinational corporation (Gilpin, 1987) but to the changes in the FDI global system (Actis, 2011). The first decade of the XXI century showed that countries who were traditionally receivers of FDI flows, became receivers-issuers due to the internationalization of their production - third internationalization wave, in accordance with Goldstain (2008).

One of them has been the Federative Republic of Brazil. Since 2003, the South American giant has issued over 160 billion dollars (Department of Foreign Trade of Brazil, 2011). Brazilian multinational corporations such as JBS, Gerda, Constructora Odebrecht, Petrobras, Vale, Metafrio, Magnesita, OAS, Camargo Correa, AmBev, Banco do Brasil, Bradesco, Randon, Andrade Gutierrez, Tupy, Votorantim, WEG, Marcopolo, Embraer, Sabó, Cotaminas, Marfrig, Stafanini, Brazil Food, among others (Revista Valor, 2011; Fundación Dom Cabral, 2011) have presence in multiple countries in the area and around the world.

Now, going back to the aforementioned, is Gilpin's scheme still useful to understand the relationship between Brazilian multinational corporations, the State, the ruling class



and the international insertion of Brazil? To answer this question, we will use the 6 items described in the previous section.

As regards the *first and second items*, the expansion of Brazilian multinational corporations is not a consequence of a planning by Brazilian politicians but of intrinsic advantages, a determined business competitiveness and a *management in a Brazilian way* (Flury, Leme Fleury y Reis, 2010). However, the business environment is inserted in particular *development strategies*. The internationalization of Brazilian capitals through the issuance of FDI is inscribed in the passage from a development strategy whose main goal was to *nationalize the international economy* – as was the developmental model- to other strategies as the neoliberal or the “logistic” (Cervo, 2008; 2010) that, in spite of important differences, bet on *internationalizing national economy*. Since 2003, to the monetary vision for the running of macroeconomy, it was added an active state policy based on the structural premise of driving productive transformation beyond the market natural pace.

Referring back to Gilpin, it has been tangible in Brazil that *the domestic policy and the public policies have been important since they have affected the ability and tendency to invest abroad* (Flinchelstein, 2009). The most representative case of a public policy in favor of internationalization has been the directed credits from the BNDES (Brazilian Development Bank). Between 2005 and 2010, the bank has disbursed in investment operations abroad over 17 billion dollars (Revista Valor, 2011). To illustrate the importance of a state financing policy, in 2005 the company JBS became a multinational corporation after the acquisition of the Swift refrigerators in Argentina for an amount of 120 million dollars, 80 million of which were contributed by BNDES (Ochoa, 2007). Since then, in 7 years, JBS became the world leader in the production of beef, mutton and chicken, as well as the world largest leather processor. The corporation has production units in 5 countries, including the U.S., and distribution centers and business desks in all continents. With the internationalization, the corporation’s income went from 3 billion reais in 2005 to 61 million in 2011⁴.

In conclusion, the aforementioned shows us that Brazilian politicians, but in particular Lula’s administration and the government party (PT) *gradually realized that the growth of corporations abroad could serve the interests of Brazil*. This perception can be observed in the speech given by the then former president in the World Economic Forum in Davos in 2005, in which he stated that

“one thing that I have systematically pointed out to Brazilian businessmen is that they should not be afraid of becoming multinational corporations (...) in making investments in other countries, because that would be good for Brazil” (Rapoport, 2008).

Some advantages of Brazil’s current condition as issuer of FDI are already tangible, *for example in the impact on the Balance of Payments*. Brazil, as well as other countries in

⁴ Data was provided by the JBS CEO, Jerry O’Callaghan, in the Seminar “Brasil em meio às transformações do cenário internacional” organized by SOBEET, the Instituto Besc and the IPEA, which took place on August 3rd of 2012 in Sao Paulo. Available at <http://institutobesc.org/seminariosobeet/palestras/JerryOCallaghan.JBS.pdf>



the area, having a highly transnationalized economy, has suffered since 2009 a strong foreign exchange outflow due to the remission of utilities from foreign multinational corporations to their corporate offices. By that means, 25 billion dollars went out in 2011, an amount seven times higher than the one recorded in 2003. Notwithstanding, due to its condition as FDI issuer, Brazil has been able to compensate, in part, that negative aspect through the influx of foreign currency from its multinational corporations, that also behaved in a defensive manner and remitted their income. In accordance with the balance of payments data from the neighboring country⁵, in 2009 and 2011, 10 billion and 9 billion dollars entered the country on that concept, respectively.

In regards to the *third item*, the transformation of Brazil into an FDI issuer country has occurred *parallel to an increase of Brazil's political influence in international affairs*. In fact, the teaching that shows us the running of the FDI global system is the existing correlation between the rising in the international power structure –in Waltzian terms– and the emergence as FDI issuer actor. As well as the U.S. between the Fifties and Sixties and the European countries and Japan between the Seventies and the Eighties of last century, since the year 2000 we have been seen a temporal coincidence between a greater involvement of the so-called emerging powers – BRIC - in the international system and the emergence of multinational corporations from those countries⁶. Undoubtedly, the mutation in the international financial order which started with a relative loss of power by the developed countries *has provided a favorable environment to the expansion of Brazilian corporations*.

For example, the worsening of the European financial crisis has signified an access door for Brazilian investments. The financial problems (high indebtedness) of many European corporations and the sale of assets by state-owned corporations to private capital⁷ have enabled the inflow of Brazilian capital in the old continent.

The acquisition by Grupo Camargo Correa of 32% of the stocks of the Portuguese cement group Cimpor, added to the 21% that Votorantim has, allowed the corporation to be in the hands of Brazilian capitals now; the purchase by the company Magnesita (mining company) – by the end of 2008 - of LWB Refractory from the hands of the German group Rhone, for an amount higher than 900 million dollars; the disbursement in 2009 of 200 million dollars by the group Votorantim to obtain 50% of the stocks of Cementera de Avellaneda (Argentina) and Cementos Artigas (Uruguay) belonging to the Spanish group Uniland, and the execution of the joint venture between *Banco do Brasil* and the Spanish insurance company Mapfre (year 2010) and between the Spanish company M. Torres Olvega and the Brazilian WEG (year 2011), verify the aforementioned.

⁵ Data from balance of payments of Brazil. Available at <http://www.bcb.gov.br/?SERIEBALPAG>

⁶ The ranking performed by the Financial Time (FT Global 500- world's largest corporations) shows that in all sectors, the emerging multinational corporations are displacing those of countries from the Organization for Economic Co-operation and Development (OECD). Out of the 500 main corporations, 125 correspond to emerging countries, thirty of which are Chinese, fourteen Indian and eleven Russian and Brazilian, respectively. In the ranking for the year 2000, there were only three corporations from Brazil, one from India, and there were no Chinese or Russian corporations. Furthermore, in the year 2000, there were 236 North American corporations, 60 Japanese and 15 Italian. Ten years later, the number was reduced to 156, 35 and 8 respectively.

⁷ The state-owned company Eletrobras was interested and bargained the purchase of the total amount (20%) of the public position of the Portuguese company Energia de Portugal (EDP) for an amount higher than 2 billion dollars. However, in 2012, those stocks fell in the hands of the Chinese, Three Gorges.



As to *item four*, Lula's administration and Dilma's current administration – and most politicians - have understood that *Brazilian multinational corporations may have an instrumental role for the international insertion of Brazil*. The expansion of Brazilian corporations represents one of the main material attributes of power that Brazil has and it is functional to the predominance of Brazil as a power in the future, to the access of natural resources, to an increase in Brazilian capitals in the global market, to propel/consolidate political relations with non-traditional areas and countries for the design of foreign policy. Together with active international relations, the search for a larger presence in multilateral and regional institutions/forums, the bet on cooperation South-South and diversification of foreign relations, the internationalization of Brazilian capitals through FDI have cooperated towards the consolidation of one of Brazil's main external goals since 2003 to now which has been to increase the influence of Brazil in the international policy.

We agree with Sennes and Camargo Mendes (2010: 171) that the support of Brazilian corporations abroad generally coincided with the Brazilian foreign policy strategy of links diversification. Lula's administration attempted to bring closer the relations with South Hemisphere countries, especially Latin America and Africa and so the opening of diplomatic representations abroad followed, in most cases, the logic of the investments made by Brazilian corporations. In November of 2005, the embassy of Brazil was inaugurated in Equatorial Guinea. Several months before, the African country had opened its embassy in Brasilia; the only embassy of that country in all Latin America. A year later, Obiang's administration, approved the acquisition by Petrobras of 50% of the agreement in the participation of an oil exploration block⁸.

The fact that Brazilian capitals have been invested in the five continents, with a strong presence in the so-called Northern Countries is a clear sample that the motto "*democratize globalization*" sustained by Lula and his followers in detriment of the concept of *globalizing democracy* that prevailed after the end of the Cold War starts to show some signs of reality. Such idea has its basis in ensuring a key role for countries known as peripheral until not long ago, in the financial/commercial as well as in the diplomatic and strategic.

Now, stating that the Brazilian government foresaw that Brazilian multinational corporations would be an instrument of the foreign policy is far from sustaining the opposite theory that the foreign policy is an instrument in favor of private expansionism, as stated by neo-Marxist theories (*fifth item*). In general, the problem of the Marxists way of thinking lies in attributing none autonomy whatsoever to the State since this will always be functional to the reproduction of capital. As we will explain in the next item, *the interests of transnational businessmen and the "national interest" defined since 2003 by the government of Brazil coincided. However, Brazil's foreign policy has gone, in certain occasions, against the interests of multinational corporations and some divergences occurred.*

Some examples of what has being said are, in the first place, the bet on the policy of regional solidarity with respect to Bolivia regarding the stability of Evo Morales' administration in 2006 as regards to the nationalization of hydrocarbon, an action that was taken in detriment of the interests of the oil corporation, Petrobras, and, in the second place, Brazil's reluctance to foster new Bilateral Investment Treaties (BIT) or

⁸ For more information, see http://www.acionista.com.br/home/petrobras/guine_contrato.pdf



foster the ratification of those already signed as claimed by the business sector. The reluctance to relinquish sovereignty continues to be a neuralgic point for the Brazilian foreign policy, as or more important than capital internationalization.

As well as the Marxist theory does not make the relation between transnational capital and the State understandable in the cases of the U.S. and Brazil, the liberal view in the RRII –as we have seeing in the first paragraphs- also shows problems when serving as conceptual framework due to the fact that it understands multinational corporations as independent actors in the international system (*sixth item*). Explaining the phenomenon of internationalization of Brazilian capital disregarding its association with the State and with the changes in the international system would constitutes a shortsighted view. Many times, business “efficiency” is not enough to achieve the goal. Political ties with the regions/countries, power attributes and their exercise and strategies of international insertion are fundamental to channel and execute businesses. Thus the importance of the foreign policy as public policy.

Between 2003 and 2012, we observe that the government of Brazil and the multinational corporations have *shared an overlapping of interests*. For transnationalized Brazilian capitals as well as for the foreign policy, the “other one” was functional to their interests, forming, in fact, a kind of condominium, in accordance with Underhill (2003). The African example makes the aforementioned tangible. The expansion of Brazilian corporations in Africa (Vilas-Bôas, 2011) is also a consequence of the active *African policy* that Brazil has been developing since 2003. The opening of diplomatic missions, the presidential tours with businessmen and the presidential lobby⁹ show that the political dimension accompanies and strengthens the financial dimension. In accordance with the Ministry of Foreign Relations of Brazil

“president Lula’s trip to the African continent and those of the ministers... the strengthening and opening of new embassies... are measures that have a strong political component, and, moreover, can strengthen the financial ties... an example of the direct result of those trips has been the creation of the Brazil-Ghana Chamber of Commerce” (Itamaraty, 2011).

At the same time, millions of dollars that corporations such as Odebrecht and Vale have spent in “social infrastructure” in Africa, are a consequence, in part, of the need of the Brazilian diplomacy to avoid associating the investments to a purely capitalist practice, associated to the relations of the type North-South, thus showing a “caring” and “human” aspect¹⁰ of Brazil towards the development of African countries. In the case of

⁹ Wikileaks leaks regarding the wires of the U.S. international relations showed the surprise of a U.S. diplomat when talking about the active lobby that the presidents of Brazil and China performed before the government of Gabón to make sure that the corporations of their nationalities obtained a millionaire bidding for a mining development. *“Como os chineses venceram a Vale no Gabão,”* Diário Valor econômico, Del 8/9/2011. Available at http://www.valor.com.br/empresas/1000546/como-os-chineses-venceram-vale-no-gabao?utm_source=newsletter_manha&utm_medium=08092011&utm_term=Como%20os%20chineses%20venceram%20a%20Vale%20no%20Gabão&utm_campaign=informativo

¹⁰ With the purpose of stating the difference between the business behavior of Brazilian corporations and their Chinese competitors, in the framework of a visit of Lula to Tanzania, he stated “I don’t hold any



the construction company, it develops in Angola multiple plans in the areas of health and education¹¹. The business world has known, from a pragmatic point of view, how to cooperate with the needs of the foreign policy, even at times being opposite to a purely capitalist logic.

Conclusions

The purpose of this paper has been to compare, from an empirical case - which we called the *Brazilian case* -, Robert Gilpin's thinking and theoretical framework in relation to his classical work "U.S. Power and Multinational Corporations," in which the author analyzed the relationship between the North American multinational corporations and the power of the U.S. between the Fifties and the Seventies of the previous century.

If we were to apply Gilpin's theoretical corpus to the Brazilian case, we could ascertain that the role of the State and the government policies, the foreign policy, the international insertion of Brazil and the functioning of the international system cannot be underestimated when explaining and analyzing the expansion and dynamism of the set of Brazilian multinational corporations as of the year 2003.

The use of such framework to understand the internationalization of Brazilian capitals from the International Political Economy point of view shows the validity of the Gilpinian way of thinking despite the decontextualization of his work since more than 35 years have passed since its publishing. The same as in the U.S. case, the internationalization of Brazilian capitals through FDI is a consequence, in the first place, of business competitive advantages. However, the inclusion of other variables as the changes in the international order, the role of public policies in special foreign policy and, closely associated, Brazil's search for power and influence in the international scenario enrich and make the analysis more complex.

In short, as it was attempted to explain, without the different initiatives taken by Brazil's domestic and foreign policy, its international insertion strategy and a determined international environment/situation, the issuance of Brazilian FDI would not have acquired the magnitude and imprint observed in the last years. At the same time, without the thousands of millions of dollars invested in the whole planet by Brazilian capitals, different goals of Brazil's foreign policy, such as the relationship South-South, the diversification of external ties, the search for prestige, among others, as well as its clear strategy to become a global player in international affairs wouldn't have had the magnitude and imprint they have today. Paraphrasing and updating the title of Gilpin's work: "*Brazil power and Multinational Corporation.*"

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grudges against my Chinese friends, but it is true that when they win a bidding for a mine, they bring Chinese workers, without giving opportunities to the local workers".

¹¹ For more information, see: <http://www.odebrechtonline.com.br/materias/01701-01800/1756/>



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EUROPEAN INTEGRATION, FEDERALISM AND THE ROLE OF PORTUGAL (1960-2002)

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Abstract

Portugal's accession to the EEC in 1986 was a natural and important stage in the restructuring of the international scenario, once the empire had been lost and the political and party structures were established following the revolutionary period. However, the movement towards Europe does not start in 1976, during the period of Estado Novo important steps are taken to open the dialogue with Europe, though at that time the objectives were to establish economic links, in a predominantly pragmatic strategy. The commercial agreement in 1972, designed during the government of Marcelo Caetano, is a natural follow-up to EFTA, which was viewed by Salazar, and in particular by the minister Corrêa d'Oliveira, as a complement to the international character of the regime, in the footsteps of its ally, England, and, especially, protecting the country's colonial interests. When the most extremist factions had been defeated and the military had returned to their posts, the several constitutional governments, among which those led by Mário Soares in 1976 and 1983 (Bloco Central) and Sá Carneiro (1980), advocate stronger positions regarding the place of Portugal in the EEC, and move forward with the negotiating process in 1977. The governments of Cavaco Silva and António Guterres, in different contexts, also aimed to evidence the country's role in Europe, though never neglecting our peripheral character. So as to understand Portugal's place in the European Union (EU) also requires an analysis of the nature of the organization, which we will carry out at the beginning of this paper. The EU is a changing political system which has drawn special attention of experts in political science and international relations. In this debate, we shall focus on European federalism and the positions of the Portuguese State.

Keywords

Portugal; European Union; Federalism; Political integration; State

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European integration is, first of all, a political process. Therefore, to reduce its capacity to intervene to the financial and economic field is to crush the expectations of those who believe that the European Union (EU) is the last stronghold of peace and prosperity for Europe in the past sixty years. Globalization seems unstoppable, emerging powers (already an anachronistic name) evidence their strength in an ever changing political agenda. The European integration process began in the postwar period (after 1945) and its initial aims were to re-establish the political and economic balance which had led to World War II. The European example, pioneering and innovative, became a model for several regional integration experiences throughout the globe.

According to Philippe Schmitter, whatever the task or the powers of the functional organization, integration will allow the national and regional actors to: develop relationships of trust; enjoy a better *status*; draw political dividends through cooperation; create significant material prizes; participate in larger and smaller States as formal equals; distribute the initial benefits of cooperation and interdependency with equity so as to avoid the discrepancy between what is at the hand of larger States and of smaller and economically more vulnerable States (Schmitter, 2010). Portugal's accession to the EEC in 1986 would allow the country to establish a new position within Europe and integrate a very specific organization. This specificity is visible in the qualification of the European Union's political system, in the political consequences of the integration (Europeanization), in the role of Member-States, in the dynamics of interests and the role of European institutions.

In this *paper*, we aim to clarify the positions of the several Portuguese governments in terms of European federalism, in terms of the European Communities during the period Salazar was in power up to this century, i.e., in the period Portuguese democracy is already consolidated. Thus, we will identify and analyze the most significant moments of Portugal's integration in the European unification process since 1960 (accession to EFTA) up to 2002 (end of the government by António Guterres). From the early stages of European integration up to now, European federalism has been in political debate within the community: believers still fight for its full constitutional acknowledgement; opponents advocate the contribution of Member-States, each with its own perspective and interests. Portugal's approach to the Communities arises from the need the country has of international repositioning. Since the Communities were founded, their federal nature has been discussed. Therefore, it is relevant to understand the position of successive Portuguese governments at important moments, such as when treaties were revised. In fact, we contend that Portuguese governments acknowledged the



implications of European integration, in particular, of European federalism, and that Portugal would be called on to contribute as all other Member-States.

The present study is divided into two parts. The first will focus on the analysis of European federalism, more specifically, its different names, since to study the history of European federalism implies to study of a very specific type of federalism. In this first part, we will also refer to the two opposing theories in international relations in terms of the debate on recent developments in European integration, neo-functionalism and intergovernmentalism (Bache and George, 2006). In the second part, we will summarize some of the positions taken by Portuguese governments in the European integration process since Estado Novo up to the negotiation and accession process and to the governments of Cavaco Silva and António Guterres. In this sense, ours is a structured approach and we will provide an encompassing perspective of Portugal's approach to and as a member of the Communities.

The European Union as a political model

The construction of Europe was designed on the rubble of WWII as a process which would lead to a European federation. To attain this objective, many steps would have to be taken, as it would be difficult to unify a culturally rich but diversified Europe (Steiner, 2005), filled with tradition at political level, which cannot be overlooked to meet the desires of those, surely visionaries, who aimed at an eventual political union.

Experts on European studies still question the nature and objective of the European project. This debate appears never-ending since, on the brink of a new enlargement, the process is still not moving forward. International relations have taken part in this theoretical debate, which further justifies the exceptional character of regional integration, in particular in Europe, as well as the *sui generis* character of this international organization which has no unanimous classification. The fact that the issue of its name is at the core of the discussion is rather surprising.

Many have contributed to the classification of EU's federalism. Advocates of neo-confederalism believe the European Union has a specific *ethos*, i.e., it is more than the simple union of States, yet less than a union of individuals, the watermark of traditional federations (Burgess, 2000: 41-42). Though in practical term the European Union functions, challenges are posed at a theoretical level, referred to as "an intellectual maze" (Schmitter, 2000: 40-47). Others question whether the EU is rather a neo-federal entity (Camisole & Lobo-Fernandes, 2005: 55-60; Pinder, 1993: 45-66).

The European integration has also been analyzed from the point of view of cooperative federalism, which places in evidence the responsibilities shared at supranational and national levels, proving this is a common project that requires commitment from both parties (Vandamme, 1998: 128-137). Another point of view is that of regulatory federalism, whose partnership is based on a transnational socialization process, consolidated with time. National decision-makers and bureaucrats are instructed to solve national problems, at national level, and are led by these problems to find community solutions at supranational level. The decision-making process is bottom-up, i.e., regulation agencies and informal agents promote them and provide the boost which will lead to decision-making by politicians (Majone, 1996; Cunha, 2005: 1053-1063).



The EU is rather viewed as a federation without a State which requires a constitutional reunification of European integration. This can cause friction with those who believe that underlying this idea is the creation of State-like structure. The solution lies in viewing the development of the EU as a federation which has not yet given origin to a federal State. According to Koslowski, the European Union is already a federation, though not a federal State. This transformation has occurred through a constitutional engineering process (Koslowski, 1999: 561-578). McKay qualifies the development of European integration as a highly peripheral federalism (McKay, 2002: 93) as Member-States have a very influential role while supranational institutions have limited assertiveness. Based on the analysis of the most important moments of the EU since the 1990s, and drawing a parallel with the foundation of the USA, McKay considers the EU "almost a federal State", as taxes are not included in the supranational competences and budget policy is decentralized (McKay, 1999: 154). Vila Maior points out that the decentralization elements are one of the specificities of European federalism. The category of stateless federation includes important elements which should be considered, such as the rejection of a State EU, thus taking into account the specificities that make the EU different: a federation of States rather than a federal State (Vila Maior, 2007: 58-59).

Currently, there are four strategies used in defining EU federalism: the first is designated *constitutional*, based on constitutional law and the jurisprudence of the European Court of Justice and the constitutionalization of the treaties (Sweet, 2004; Maduro, 2006); the second *dis-joining*, as it considers that the EU cannot be viewed as a completed federation but rather evidences features of a federacy in specific policies, inspired by regulatory and taxation federalisms (Mastromarino, 2010; Scharpf, 1999); the third *distributive*, focused mainly on the distribution of power between the centre and its units as well as among its units. As rather unclear competences developed and the subsidiary was announced in Maastricht, the strategy of recovering federalism received a significant boost (Pollack, 1994: 95-145; Swenden, 2004: 371-392); the fourth *essentialist*, for it attempts to understand the essence of federalism. It is therefore crucial to research the type of federalism the EU represents or how the present idea of federalism should be altered to encompass the case of the EU, as well as other similar cases. According to this strategy, the link between federalism and statism, which expanded from the normative to the analytical sphere, should be severed (Elazar, 1995: 5-18; Kelemen and Nicolaidis, 2006: 304-307).

Unlike the American federal unit, the EU is not based on the utopia of one people or even on the idea that its creation would make it real. Experts in identity policy in Europe acknowledge that the European feeling of belonging may be mixed with national and sub-national identities to form more marked multiple identities (Risse, 2010). Other authors suggest that the diversity of cultural and political identities in Europe is not opposed to a federal perspective if that perspective is that of a federal union (rather than a federal State) and aims to develop a new idea of democracy (Nicolaidis, 2004: 97-110).

In the European Union, unlike what happens in the USA, supranational, national and sub-national level work together in a "joint governance" system (Marks, Hooghe and Blank, 1996: 341-378; Amaral, 1998). James Caporaso is one of the authors who claim that the European integration process gave rise to a structure similar to that of an "international State". The author accounts for his opinion based on three items: 1) the



EU has an important mediation role among Member-States; 2) supranational institutions may act independently from the control of Member-States; 3) supranational institutions aim to expand their relations and influence beyond the national governments so as to establish relations with private interest (NGOs, pressure groups...). The aim of the EU as an "international State" is to accommodate international external factors the Member-States, on their own, cannot solve at national level (Caporaso, 1996: 29-52).

The progress of European integration cannot break away from the stigma of "Westphalian State" as it was created after 1648. Countering this perspective and from a rather naive point of view, Jan Zielonka shows how the enlarged EU is gradually becoming more like a neo-medieval empire rather than a classical (federal) Westphalian type of State. For the author, in the future EU borders will be less and less territorial, less physical and visible, as the borders will become areas where people and identities mix. The concept of border was unknown in the Middle Ages, borders were seen as geographical and open areas rather than lines. Besides, in that period there were no administrative, economic, military and cultural borders as such (Zielonka, 2007)¹.

For Isabel Camisã and Luís Lobo-Fernandes, the EU is halfway between the State-nation and the international system, the political macro-region, which goes beyond the classical Westphalian sovereignties as a new territory formula in international relations (making it a new international actor). The political macro-region inevitably implies meeting a set of conditions, such as regional identity, a unique currency and an integrated defense system. To meet the criteria of macro-region proposed by the authors, the EU must improve its coordination significantly, put in motion the implementation of common policies and increase the number of areas in the integration process (Camisã and Lobo-Fernandes, 2005: 241-242).

In the first stage of European integration, neo-functionalism appeared to be in the lead of the theoretical debate. In fact, it aimed to explain the how and the why States voluntarily join and associate with their neighbors though aware that they will lose part of their sovereignty and learn new techniques to solve conflicts among themselves. There are four key elements in the neo-functionalist argument: i) the concept of "State" is more complex than realists had suggested; ii) the activities of interest groups and bureaucratic actors are not confined to national political scenario; iii) non-state actors are important in international politics; iv) European integration is attained through "spillover" pressures.

According to the "spillover" concept, once the first steps are taken by national governments towards integration, the process moves on its own and is irreversible. As Lindberg stated,

«in its most general formulation, "spillover" refers to a situation in which a given action, related to a specific goal, creates a situation in which the

¹ We will briefly refer to the work of Rui Cunha Martins who, in the past few years, has studied the concept of border at historical, legal and political levels. In one of his recent papers (Martins, 2008), he draws on the core of the concept, highlighting its mutability and operationability, its priceless limitation potential, as well as its ability to become a mechanism of resistance against the totalitarianism of societies unable to create boundaries.



original goal can be assured only by taking further actions, which in turn create a further condition and a need for more action, and so forth» (Lindberg, 1963: 10).

However, the development of events, and specifically the assumption by Member-States of what is at stake with the reinforcement of European integration, has led to this no longer being a widely accepted perspective. Therefore, the use of veto by De Gaulle which led to the "empty chair" crisis in 1965-66 was a major setback for neo-functionalism (Bache and George, 2006: 8-12) in its original meaning. From then onwards, national governments vest themselves as responsible for moving the European integration forward, determining its nature and scope (for their seminal work on neo-functionalism, Haas, 1968).

Hoffmann rejected the neo-functionalist perspective that governments would be ultimately oppressed by pressures to integrate of elites in interest groups. Hoffmann based his argument in classical realism, according to which States were treated as unique rational actors, home politics not been given much attention to. Hoffmann's intergovernmental position was a step ahead of that of realists; his political awareness was also more acute than that of functionalists who aim to adopt a plural simplified vision of political processes. For the author, European integration was a mere component of the development of international politics and, as the realists, focused on external limitations to autonomy: States were viewed as independent actors but governments were limited by the position of State in world system (Hoffmann, 1966: 862-915).

Andrew Moravcsik highlights the complexity of communal political process, claiming that more theories are necessary that explain national responses to international interdependence. Liberal intergovernmentalism - just as Hoffmann's approach - stated that States were rational actors but, like traditional realism, did not see the State as a black box. A national political process would establish its national interest. Once the process was clear, this would be the basis for international negotiation. In a second stage, this was also the basis for reconciling national interests in the Cabinet. Moravcsik's perspective on national politics, which he designated as liberal, was essentially the same as that of neo-functionalists, the so-called plural perspective. The determining reason for a government's preference was the balance in terms of national economic interests. Moravcsik was frequently criticized because of this limited view of the national political process (Bache and George, 2006: 14; see pioneering paper on liberal intergovernmentalism in Moravcsik, 1993: 473-524).

According to José Manuel Pureza, throughout the last decades, Europe has been the center stage for rebalancing of power in international relations, which has led it to consider itself the champion of a post-realist world order (Pureza, 2003). Joschka Fischer bases this self-representation of Europe in the fact that, after 1945, it rejected system that continued Westphalia; Romano Prodi draws attention to the role of Europe in world governance, a role which implies replicating its experience at global level; Chirac advocates the reinforcement of European unity though safeguarding the intergovernmental features of the organization; Miliband identifies a model power in Europe but does not project a superpower on the EU; Eduardo Lourenço believes that, presently, Europe is nothing more than a Europe of Nations, it has not yet attained the



goal of being a Europe-Nation. A Europe of "reasons" but equally disillusioned and at odds with its fate, an incomplete work (Lourenço, 2003)².

Considering that, in the building of Europe, States are actors and considering that Portugal has experience in this process besides the period after 1986, we shall now focus on the process from within and analyze some political positions taken by Portugal in relevant moments.

Estado Novo and its approach to the Communities

The regime led by Salazar was a right-wing, nationalist and catholic dictatorship, close to fascism in certain areas, just like other southern and eastern European nations in the period between the two world wars. The ideology was based on authority, on there being one party only and censorship so as to build a new man. This required an economic support. Though the country's motto was "proudly isolated", the need was felt for economic openness, though restricted, as well as a change in its development model. This is what is at stake in the change from EFTA to the EEC.

The British proposal of a free trade zone, submitted in July 1956, was seen by the six as well as by other member of the OEEC as an attempt to question the results achieved at Messina. This was confirmed in September 1956, when the British proposed a fusion between the EEC negotiations and the free trade zone. When the free trade zone was presented at OEEC, the British authorities informed the Portuguese counterparts that the project would include only the industrialized countries within the Organization and Portugal could not be a participant. Considering the Portuguese economy and that this was a free trade zone for the industry and excluded agriculture, it did not seem very appealing to Portugal.

Despite the constraints, the Portuguese government declares being interested in being represented at the negotiations. According to Costa Pinto and Severiano Teixeira, Portugal accepts the general political objective of a freer market; unlike other peripheral countries, it had no financial problems. Finally, the issue of the colonies, which could be sensitive rather plays for rather than against Portugal, as England, who is interested in including the Commonwealth, saw Portugal as a potential ally on this matter (Pinto and Teixeira, 2005: 23).

One of EFTA's core objectives was to negotiate with the EEC as a whole. As the EEC did not respond, Great Britain evidenced more and more interest in bilateral negotiations (Wilkes, 1997). Switzerland and Portugal were the countries which were more strongly opposed to this new position saying that the rights of other EFTA members should be protected. Portuguese export and imports with the EEC, in 1957-1958, corresponded to 32% and 44% of external trade, respectively. In case Great Britain accessed the EEC, those percentages would be even higher, 49.3% and 68.3%. The official statistics of these two years show that the trade with other EFTA countries was not relevant. Similarly to what would occur to other EFTA members, Great Britain's change in European policy would seriously compromise the future of Portugal (Leitão, 2007: 127-128).

² In a context of uncertainty and apparent inability to react, Eduardo Lourenço does not identify a centre in Europe, which is why it cannot be an actor. Eduardo Lourenço in an interview in the newspaper *Público* (section P2, 5 April 2010. Interviewed by Teresa de Sousa.



At economic level, Portugal would have to ensure a specific regime so as to protect its economic development. The *turnaround* of the Portuguese government in terms of its accession to the EEC resulted from the government not having any alternative than to follow Britain as far as European policy was concerned. Nicolau Andresen Leitão refers to

"the non-existence of a narrative is evident in the fact that Corrêa d'Oliveira accepted, right from the start, that only continental Portugal would request accession and that the common exterior criteria would have to be applied. Though the minister responsible for European policy stated that there was political and economic unity between Portugal and its colonies, these core concepts in Salazar's government would be publicly sacrificed so as to ensure the economic development of the nation through accession or association with the Community" (Leitão, 2007: 130).

Therefore, the reasons explaining this change towards the EEC were internal.

Opening to the external market and the increase in commercial relations with countries from the area rather than with the colonies led to the weakening of protectionism and constraints and allowed the fostering of yet unexplored economic relations, such as the creation of foreign companies in Portugal and foreign investment. Accession to EFTA had a significant impact on trade, exports increased to 52% and imports to 40%. The rates in the remaining Member-States were 30% or lower. As a result of the accession to EFTA, Portuguese economic growth took off between 1960 and 1973, this being the period of highest growth in terms of production and income per inhabitant in the history of Portugal (Alípio, 2006: 93-94).

In the summer of 1968, Marcelo Caetano takes on a more European country in terms of commercial trade and evidences some liberating intents. Marcelo Caetano, though neither a democrat nor a liberal, was a reformer within the regime since the end of World War II, highlighting the regime's ability to adjust to circumstances but unable to resist to context. Caetano would become the leader of this reforming group. However, he aimed to change within the regime, not negate or alter it.

What Caetano was really concerned about were the overseas territories (Ultramar) and finding a means of their defense within the framework of a wider defense of Europe or the West, which was surrounded by international communism, also established in the Portuguese colonies in Africa. This would justify the Portuguese colonial policy as well as its need for support within NATO, by definition an organization which defends the West (Castilho, 2000: 120).

As in previous European negotiations, namely for the creation of a free trade zone (1956-1958) and for the expansion of the Community (1961-1963), the government assigned an investigatory committee in March 1970 to study European economic integration, which presented its report in September that year. The Community is referred as the most relevant European element, in opposition to EFTA, able to join in a political and economic group all the European non-communist resources. The



document acknowledged the possibility that the Community could be the first step towards a federation of the United States of Europe³.

According to the report, the association was the most adequate means of regulating the relations between Portugal and the Community. This was the most convincing option for economies whose developing economies did not allow for immediate accession. The association would pose political problems, considering that a recent report from the European Parliament evidenced reservations to the accession of non-democratic countries, mentioning the cases of Spain and eventually Portugal. An opinion from the European Commission, from 1969, established the difference between countries ready to establish association agreements with and those which would only have the opportunity to sign commercial agreements, implying that this would be the case of the Iberian countries. The report detailed that the association agreements would put in place the first step towards a future accession.

On 22 July 1972 an agreement on free trade was signed between Portugal and the Community. Considering the specificities of the Portuguese case and the practice of the Community in these circumstances, the agreement included a clause which opened the "possibility that relations develop and increase when, in the interest of both economies, it is deemed useful to expand them to areas not covered by this agreement" (this clause was important after 1974 in terms of the Community providing financial support and ease the commercial conditions imposed to Portugal by the 1972 agreement).

Portugal's move towards Europe, whether during the government of Salazar or during that of Marcelo Caetano, the strategies used to establish closer links with the EEC were all of a pragmatic nature. This trend is made most evident in July 1972, as the commercial agreement to come into force in January the following year did not establish any political link but the mere exchange of goods, in particular of industrial goods. Guided by continuity, we may state that the gap between Portugal and Europe was not different in January 1960 (formal accession to EFTA) and in July 1972 (signing of Commercial Agreement between Portugal and the EEC and the ECSC) Castilho, 2000: 228; Silva, 2000: 62).

A democratic Portugal in Europe and its role in political integration

Once the parallel diplomacies of the period after 1974 (Período Revolucionário em Curso - PREC), the radical speeches and the political actions in the summer of 1975 (Verão Quente), USA hesitation in helping the country after the vaccination Kissinger talked about, once all this had been overcome, the "international relevance" of the Portuguese case did in fact contribute heavily for the democratic transition. Evidence of this is the involvement of the Community, of some European countries, in particular the Federal Republic of Germany and France, of international organizations, of moderate political parties and of the USA.

The "European option" was politically declared by the first Constitutional Government led by PM Mário Soares, and having José Medeiros Ferreira as the minister of Foreign Affairs. The first step was the request for accession to the Council of Europe in August 1976, which took place in September that year. Once a member of the Council of

³ AHD-MNE, report of the Study Commission on European Economic Integration, September 1970, 3-6.



Europe, once the Portuguese democracy was internationally acknowledged, the next and decisive step was taken: the request for accession to the EEC. From 1976 onwards, Portugal took on its western country condition, both Atlantic and European. The good relations with the USA, the bilateral plan, more participation in NATO, the multilateral plan, all evidenced the Atlantic condition of the country. The "European choice" is a strategic option and a political project, as the merely pragmatic and economic association perspective, which existed during the dictatorship, was over. Travelling around Europe, the Portuguese PM aimed to raise his counterparts' awareness that the democratic process in Portugal was completed, that the country was committed to become a member of the EEC. Considering that the Communities had expressed a positive opinion in May 1978, the following years up to 1985, were devoted to more or less committed negotiations by the Portuguese governments.

In an interview to *The Times* Soares declares

"he is a patriot but also an advocate of a true Europe rather than of a mere association of States based on economic development or economic concerns. (...) I am so much for a political Europe with true supranational institutions that I believe the accession of Southern European countries represents a major contribution to this Europe".

On future negotiation difficulties, he states that:

"In a community of Free Nations, there should be solidarity which should rise above strictly national and selfish criteria".

If Europe does not accept Portugal, that would be a "disaster" for the Portuguese people and for the democracy, which is why "in the current financial difficulties we face, this could lead to new authoritarian regime. If Europe closes the door on us, it would be responsible for both our future and that of Europe⁴". In an interview to *O País*, Soares is adamant: Portugal's accession to the EEC is the logical corollary for the country's development, considering that decolonization process is complete and Portugal is now a democracy⁵.

The 1970s are often portrayed as a lost decade in the history of European integration. However, it was rather a preparatory decade for the political and economic boost of the 1980s. There are more than plausible reasons for the supposed "euro-sclerosis". These include the disintegration of the international monetary system in the early 1970s, the 1973 oil crisis and the following stagflation, as well as the intense British obstructionism to the EEC as successive governments attempted to solve the British budget issue. In isolation, these factors would explain the fluctuation in terms of destiny of the EEC in the 1970s and the early 1980s, with or without the added impact of a more active and authorized European Court. Historical determinism does not begin or end at the moment a decision is taken. This way, the simple fact that nothing very

⁴ Interview to Mário Soares in *The Times*, 11 February 1977. Source: Fundação Mário Soares.

⁵ Interview to Mário Soares in *O País*, 18 February 1977. Source: Fundação Mário Soares.



relevant was decided during those years should not be viewed as period nothing was done. Griffiths claims that the developments of the 1970s paved the way to the renewed "dynamics" of the Community in the late 1980s, under the strong leadership of the Commission's President, Jacques Delors (Griffiths, 2006: 172).

In a speech during parliamentary debate of the 6th Constitutional Government, the Vice-Prime-Minister and minister of Foreign Affairs, Freitas do Amaral, declares that most Portuguese and Portugal's allies see the foreign policy in the last year and a half with doubt and perplexity. The Portuguese Foreign Affairs Ministry states that

"... our foreign policy will clearly be pro-European and pro-Western. It will definitely not be third-world, non-alignment or reservation or distancing towards or Atlantic solidarity, consciously accepted and freely maintained⁶".

The fast and complete integration of Portugal in the European Economic Community, as a full member by right, will from then onwards be "the priority within priorities" of Portuguese foreign policy. For the first time in Portugal, the position was created of Secretary of State on European Integration and one single minister was given the main responsibility of foreign policy and European integration.

In an interview to the newspaper *Tempo*, the prime-minister Sá Carneiro, leaves a notice and a certainty as far as the future in the building of Europe:

"people tend to see a Europe of difficulties in the EEC, in the Europe of the Communities today. (...) It would be a tragedy for the World if Europe stopped believing in itself, if it did not resolve its internal difficulties and did not rapidly enlarge to Twelve members. I am sure that the difficulties will be solved and that the enlargement will go through rapidly. The restructured and enlarged Europe will receive a new impulse I am very confident that this new impulse, this new dimension of Europe, in the important role played in the world by Common Market Europe and other European countries which are not part of it, in contact with our allies, in contact with Arab countries, in contact with China and Japan⁷".

In December 1980 the agreement between Portugal and the EEC was signed on a "pre-accession aid" for Portugal in the amount of present 130 million Euros, to which another 65 millions would be added in the second stage in 1984. These were the first "community funds" from Brussels to Portugal, a few years before the country becoming an effective member of the European Community.

⁶ Portuguese foreign policy. Speech by the Vice-Prime Minister and Foreign Affairs Minister, Prof. Diogo Freitas do Amaral, in the parliamentary debate of the 4th Constitutional Government, 15 January 1980, Secretary of State of Social Communication, Directorate-State of Information Diffusion, 1980, p.9.

⁷ Francisco Sá Carneiro in an interview to newspaper *Tempo*, 18 September 1980.



In a political and party framework not fully peaceful, the 9th Constitutional Government (known as Bloco Central) will lead the negotiation process towards the accession of Portugal as full member of right up to its conclusion. It is during the period between 1983-85 that most technical *files* are negotiated and, in October 1984, the accession of Portugal to the EEC becomes irreversible. Relevant contributors include Jaime Gama, António Marta and Ernâni Lopes. To make up the backlog, Mário Soares claims Portugal needs "the shock of integrating the EEC". The Europe of the EEC Founding Fathers

"was a Europe of complementarity, a solidarity economic space, politically united, with a united and independent voice, in which each State's values and contributions are wealth rather than weakness, are unity in plurality".

Soares sees the future of his country "intimately linked to the enlargement and the building of a transnational Europe, because this is how Portugal wants to fulfil its potential, to be one with peoples they are connected with through the centuries and through unbreakable solidarity⁸".

The accession of Portugal and Spain to the EEC in 1986 has political, economic and even symbolic implications for both countries and for the EEC, at an important time for community life. The implementation of the Single European Act and the creation of an internal market have unforgettable consequences which will influence the next steps in European integration. Therefore, it is crucial to ensure economic and social cohesion in a growing Community (Silva, 2002: 179). Cavaco Silva is aware that the reinforcement of political unity in the Treaty of Maastricht, which proposed a greater commitment by community institutions and a clearer definition of the geopolitical role of Europe, could lead to federalist theories being more accepted. Cavaco Silva is against these theories, stating: "(...) for a better coherence in the Community's foreign action - which is crucial - we should move forward in a pragmatic and gradual manner, in search of common areas of foreign policy and security which correspond to common interests of Member-States" (Silva, 1991: 284). The prime-minister will later recall that the European integration is characterized by its gradual progress towards a political organization of Europe. However, to "establish, at this time, any final model would be both untimely and inadequate" (Silva, 1995: 69).

The enlargement is a challenge for Portugal and the Portuguese Minister of Foreign Affairs, Durão Barroso, claims that the institutional reform of the European Community can only take place after the enlargement. Considering the enlargement of the EU and the new weighting of votes the under-represented countries claim, Barroso defends that the Union is not a federal State⁹. Yet, the governments by Cavaco Silva will take advantage (Franco, 1994) of Portugal being a small peripheral country, in which development is the key in the effort towards the accession to the EEC, that makes it a true public policy (Vicente, 2008).

⁸ Mário Soares, «A Construção da Europa e o Futuro de Portugal». Speech given at the Diplomatic Club, Geneva, 25 January 1984. Source: Fundação Mário Soares.

⁹ José Manuel Durão Barroso, «Alargar a Europa sem enfraquecer a Europa», interview to *Público*, 25 June 1995.



The government by António Guterres is the least enthusiastic period of European project, as focus is being given to the enlargement to eastern countries, to reforming institutions and make community policies feasible in the context of a multitude of national sensitivities. The Treaties of Amsterdam and Nice evidence what was not yet speeded up and how much was yet not implemented. The second Portuguese presidency of the European Community Council, an important step in the Portuguese commitment and the initial drive in the Lisbon Strategy and inspired Strategy 2020 now in force, evidence the action of Portugal in Europe. The Secretary of State of European Affairs, Francisco Seixas da Costa, who knows European policy and diplomacy well, regrets that

"daily life shows that the main priorities of the most powerful Member-states tend to be imposed on the remaining states. This does not occur more frequently because there are often differences among those very same States. The creation of a Board would be increasingly inevitable and the introduction of qualified majority voting within the framework of the CFSP (Common Foreign and Security Policy) would add to the trend. Resuming a classic, we could say that this perspective tends to consider the functioning of the Union as if it was the board of predominant countries' common interests" (Costa, 2002: 49-50).

The opinion of José Magone on the Portuguese negotiation strategy in that period is conclusive:

«(...) the position of Portugal within the negotiation has improved considerably. Although Portugal is not one of the main players of the European integration process, it was able to upgrade its ability to make an impact on the whole process. This can be said particularly for the introduction of a social dimension and employment policy onto the agenda of the IGC 1996 and 2000 in conjunction with other countries as well as the Charter of Fundamental Rights of European Citizens. The main trend was a gradual overcoming of the isolationist position of preserving national sovereignty towards one of shared sovereignty. One can speak therefore of a limited bottom-up Europeanization which is highly flexible and open for negotiations» (Magone, 2004: 42).

In fact, Portugal will benefit if it has a strategy and an idea for Europe.

Conclusion

The history of European integration, the difficulties of its Member-States, is so rich that, also due to the specificities of its model, political scientists have developed several studies on regional integration and continue to analyze the EU as a structure that, bearing in mind the contexts, can be replicated in other areas of the globe. Though



there is no unanimous classification of the EU, the importance Member-States assign to it is visible, in particular countries like Portugal which would not be able to project themselves politically and economically alone. Nevertheless, the EU is also often the scape goat for unpopular measures national governments must implement.

During the time period we analyzed in this paper the European project gave steps forward and backward. In general, the several Portuguese governments, both during the dictatorship and the democracy, acknowledged that the political process in European integration was incomplete. Thus, more integration could imply the loss of sovereignty which many governments were not willing to relinquish. The European strategy by Salazar and Caetano focuses on the economic, since most trade exchanges are carried out with Europe rather than the colonies. Hence, the commercial agreement signed in 1972. The period between 1977 and 1985 is particularly intense in the negotiation process for the accession to the EEC. A small group of politicians was involved in the process but noteworthy are considerations by Mário Soares, Jaime Gama or the short intervention by Sá Carneiro). The governments of Cavaco Silva correspond to the golden period of European integration. This is a period of strong leaders, some of which linked to the reinforcement of European federalism. Cavaco Silva was not truly an enthusiast of European federalism and placed the national State at the core of community dynamics. Already in a different period of Europe, the governments of António Guterres deepen the commitment with the European project, with new proposals and the strong belief that the EU belongs to all Member-States, big and small, and the enlargement would lead to deep institutional reforms which had been repeatedly delayed.

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THE LEGISLATIVE ACTOR IN THE NOBEL ERA: *QUO VADIS* EU?

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Abstract

The idea of a political union, as well as an economic union of Europe, beyond free circulation of persons, goods and services, has always been included in the ideals of the building of Europe. However, its *de jure* formalization only occurs on November 1, 1993, when the Treaty of Maastricht is in force and a new political and strategic actor is in place: the European Union (EU).

Since then, literature has "defined" the European Union in order to clearly establish what this UPO - Unidentified Political Object (an expression by Jacques Delors in the 1990s) - is or what it can be. One of the ideas which has been a focus of discussion is that of "legislative actor" (Manners, 2001; 2002), which claims that the European Union has progressed towards normativity, both internally as well as externally, to its close neighbors and its relations with the rest of the world.

This paper aims to contribute to the discussion on Europe's quality or condition to impose rules. We will begin by systematizing a series of achievements which, according to Manners, lead to the triangle democracy, Human Rights and good governance in the signing of the Treaty of Lisbon on December 13, 2007 and its entering in full force on December 1, 2009. However, this paper does not disregard the fact that the concept "legislative actor" has been (re)worked and perfected by its author and other scholars due to criticism and empirical studies and has thus been altered, enhanced and argued against.

Therefore, some concepts will be studied whose arguments will allow us to question the internal and external dimension of the actor European Union. We will also explore the symbolic power of the Union in the development of tools and capacity to be acknowledged as an actor able to face current threats and challenges but whose profile may not be different from other actors in international relations. Finally, we will discuss the impact of the EU having been awarded the Nobel Peace Prize in 2012 on the (re)defining of rules, values and principles and on the present financial crisis in the future of the "economic giant but a political dwarf".

Keywords

European Union; Legislative Actor; the Treaty of Lisbon

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THE LEGISLATIVE ACTOR IN THE NOBEL ERA: *QUO VADIS EU?*

Ana Isabel Xavier

Introduction

The basic idea for Europe included the creation of a project of peace, Human Rights, Democracy and Good Governance after the destruction of World War II (1939-1945) within and outside its borders. Therefore, faced with "new wars"¹ in the borders of Europe at the onset of the 90s, the European Economic Community (EEC) was compelled to meet the new challenges and moral responsibilities required by the International Community.

Thus, within this international framework, the Treaty of Maastricht presents a "Greek temple model" and introduces a new pillar solely dedicated to CFSP - Common Foreign and Security Policy. The Union gradually becomes a committed political actor with the triangle Democracy, Human Rights and Good Governance as the corollary of the maintenance of peace and enhancement of international security *à la* EU. In the objectives of CFSP under article J-1, n.º 2 TEU it is included that the increase in international security is associated with the major objective of developing and increasing Democracy and Rule of Law as well as the respect for rights and fundamental freedoms.

Ex ante, on June 19, 1992, the Western European Union Council would adopt the Petersberg tasks (the German city, near Bonn, where the Petersberg Palace is located and where the meeting took place) and that the Treaty of Amsterdam, in 1999, would include in article 17, paragraph 2. The Petersberg tasks specialize in humanitarian or citizen evacuation tasks; *peace-keeping* tasks and tasks carried out by combat forces on crisis management, including *peace-enforcing* tasks. In the final part of this paper, we will analyze how the Treaty of Lisbon views these, considering them as part of the European Union current tasks.

Simultaneously, in the same year the Treaty of Maastricht is in force, in 1993, the three criteria which would be included in a State's application to access the European Union would be established in the European Council in Copenhagen and later reinforced in the European Council in Madrid, in 1995. Therefore, the Copenhagen criteria require that the conditions in article 49 and the principles of n.º 1 of article 6 of the EU Treaty be met, fulfilling a political criterion (stable institutions which guarantee Democracy, Rule of law, Human Rights, respect for minorities and their protection), an economic criterion (an effective market economy and the ability to face the market forces and the competition of the Union) and a legal criterion (the adoption of the legal acquis).

¹ See Kaldor's analysis, 2001 (1999), based on the Bosnia-Herzegovina case in terms of the dichotomy between old and new wars.



The triangle Democracy - Human Rights - Good Governance was taken on as a concern with the needs of individuals and communities in preventing conflict and with a focus on the structural roots of its weaknesses, the European Union has progressed towards normativity, in parallel and in complement to what is expressed in the Treaty, now included in the features of the foreign policy actor as well as the security and defense actor.

Thus, one of the most important references is the creation, on March 1, 1999, of the European Commission Humanitarian Office (ECH)² to assist third countries affected by conflicts or natural/human disasters around the world. In fact, the task of the EU humanitarian office is particularly relevant in two interdependent areas. The first, to save and preserve human lives in emergency and post-emergency situations, to reduce or prevent the suffering and safeguard the integrity and dignity of populations affected by natural disasters and human conflicts. The second is, as part of a set of aid instruments, to help populations to recover from crisis in terms of their autonomy through implementing emergency, recovery and development strategies.

Noteworthy are also the several Press Releases on Human Rights and Good Governance and the Commission's Initiative for Conflict Prevention on April 11, 2001, to improve the EU capacities in terms of civil intervention. This initiative results from the joint Report by the Commission and the High Representative for CFSP on conflict prevention, submitted to the European Council in Nice, in December 2000, and precedes the European Program for conflict prevention, adopted by the Council of Europe in Gothenburg, in June 2001. The Commission's Press Release focuses on the Union's capacity to timely react in "rising" conflicts, as well as enhance its detecting and fighting skills against the roots of conflicts at an early stage rather than treating the "symptoms" in crisis situations.

Also in 2001, Europe is faced with the following questions: what is and/or should be Europe's new role in a globalized world? How can CFSP/ESDP promote the Union as a security actor in the international chess? "Shouldn't Europe, now that it is finally united, fulfill a stabilizing role in the world and be a reference to countries and peoples?" The answer to this question, included in the Laeken Declaration for the future of Europe, raised at the European Council on December 14 and 15, 2001, can be found in the same document: "the role it should fulfill is that of a power that fights decidedly against all forms of violence, terror or fanaticism, but which is not oblivious of all the injustice in the world".

However, as it is a Declaration on the Future of Europe, Laeken may also be read as a Declaration on European Identity³, at the onset of the 21st century, under globalization and the fresh memory of the attacks to the Twin Towers in the United States. In fact, September 11 seems to have triggered the concern to design a strategic concept based on dialogue and negotiation, by means of preventing and stabilizing regional conflicts, as well as by integrating all countries in an equal world system of security, prosperity and development. It is a world of Peace, Right(s) and tolerance that the EU aims to create, especially when the fight against terrorism appears as one of Union's priorities.

² In Portuguese, serviço oficial da *Comissão Europeia responsável pela assistência humanitária*

³ Already on December 14 and 15 1973, the Copenhagen Summit adopted a kind of European Identification Card - the "Declaration on European Identity" - which defined the existing European communities as an ethical and legislative beacon and a civil power.



Javier Solana, at the time High Representative for CFSP, will be the one to clarify the Union's contribution and potential as a producer and promoter of rules and values. In fact, the European Security Strategy, announced and approved by Conclusion 83 of the European Council in Brussels, on December 12 and 13, 2003, affirms that the European Union "which gathers 25 States with more than 450 million inhabitants, a production that is a fourth of world Gross Domestic Product (GDP) and a wide scope of tools at its disposal, is undoubtedly a global actor". (Solana, 2003: 1)

To meet this challenge, EES defines three main strategic goals for defence and security for the promotion of European values. Based on "global thinking and local acting" logic, the three strategic goals of the document are (Solana, 2003: 6-9): firstly, face old and new threats such as terrorism, the proliferation of weapons of mass destruction, regional conflicts, failed States and organized crime; secondly, promote stability, Good Governance and security of Europe's neighbors (Balkans, Caucasus, Mediterranean...); finally, contribute to a world order based on effective multilateralism, enhancing the legitimacy of the United Nations, fostering the transatlantic relation and the strategic partnerships with OSCE, the Council of Europe, ASEAN, Mercosur and the African Union, as well as with the World Trade Organization.

These three objectives represented Solana's strategy and what the Union exported to its neighbors and to the rest of the world. Under the legal framework, in terms of Humanitarian Law and International Criminal Law, in both decision-making and operational terms, the EES gave the first green light to a more normative Union. In fact, in his strategy, Solana seems to be certain that the EU has progressed in terms of preventing new global threats, enhancing democracy, good governance and Human Rights as pillars of security.

When, in 2008, at the end of his mandate as High Representative, Solana presents an *amendment* to his "original" strategy, explicit references are made to the global actor to the benefit of promoting the legislative actor and *peace-settler* as an active actor within the international community, aware of its responsibilities and proactive in its strategic action. According to Solana, the Union is a "pole of stability" (2008: 1), and "at world level, Europe should lead a process of renewal of multilateral order." (Solana, 2008: 2).

Also in 2003, the European Neighborhood Policy was launched within the enlargement of the European Union to 25 countries. The ENP was created as a new framework for relations between the enlarged Community and its neighboring countries to the east (Armenia, Belarus, Georgia, Moldova, and Ukraine) and to the south (Algeria, Palestinian Authority, Egypt, Israel, Jordan, Lebanon, Morocco, Syria and Tunisia). This way, it aims to create an enlarged area of stability, security and prosperity, where there is peace and cooperation between the EU and its neighbors through additional liberalization of trade exchange and focusing on a closer relation between Mediterranean countries and the European single market, as well as more technical and financial aid. Again, Democracy and Human Rights are at the core of the relations between the Union and its close neighbors, to the east and to the south.

Finally, and more recently, in June 2012, the Commission approved a Strategy for Human Rights and Democracy, with special emphasis on the rights of women and children in all areas of the Union's foreign relations. This strategy and a specific work plan were implemented to promote Democracy and Gender Equality and will include the



appointment of a special Human Rights envoy who will monitor gender issues in conflict situations.

The legal acquis of the Union: from Maastricht to Lisbon

The references quoted earlier exemplify, to a great extent, the "important power of positive change" (Hirschman, 1963: 4) that the Union has been experimenting. Carr would be the first to refer to rules as guidelines for political action when he says that "political action should be based on coordination between morality and power" (2001: 92).

But how can normativity be measured and who defines it, especially if we consider that there are different types of rules, whether regulative, constituent or prescriptive. Manners, an author who has attempted to answer these questions, states that the key concepts of a legislative Union lie in Peace, Democracy, Rule of Law, Good Governance and Respect for Human Rights (2001, 2002).

These five pillars Manners refers to lead us to conclude that the legislative basis of the EU already is in place (as I have already mentioned in the beginning of this paper), considering that the European Union has defined an institutional framework which produces and promotes rules and values that have been incorporated in what may be viewed as the Union's *legal acquis*:

Scheme 1: The legal acquis of the Union according to Manners

Founding principles	Task and objectives	Stable institutions	Fundamental Rights
Freedom Democracy, Respect for Human Rights and Fundamental Freedoms, Rule of Law	Social progress (positive) Discrimination Sustainable development	Guarantee for Democracy, Rule of Law, Human Rights and Fundamental Freedoms, Protection of minorities	Dignity Freedom Equality Solidarity Citizenship Justice
Basis of Treaty - Art. 6 TEU	Basis of Treaty - Articles 2 TEC and TEU Arts. 6 e 13 TEC	Copenhagen criteria - conclusions of the European Council in June 1993.	Charter of Fundamental Rights of the European Union

Source: Manners (2001: 11-12)

Of all the elements Manners refers to and that we have mentioned in this paper, noteworthy is now to focus on one which we have not fully discussed so far: the Charter of Fundamental Rights of the European Union, formally adopted in Nice, in December 2000, by the European Parliament, the European Council and the European Commission.

In fact, the Charter was written by a convention which included a representative of each EU country and of the European Commission, as well as by members of the European Parliament and of national parliaments. The document includes a preamble and 54 articles divided into seven chapters: dignity; freedoms; equality; solidarity;



citizenship; justice and general provisions. As such, it compiles jurisprudence which was scattered and is now gathered in one document. In December 2009, when the Treaty of Lisbon was in force, the Charter was given binding legal effect. To that effect, the Charter was amended and proclaimed a second time in December 2007.

Considering Manners' conceptual proposal, shown in image 1, we may conclude that, with the Treaty of Lisbon, the EU is more normative, first because the Charter of Fundamental Rights of the European Union, politically proclaimed in the European Council in Nice, in December 2000, was only legally binding in the Treaty of Lisbon.

Therefore, and considering that Manners' proposal dates from 2001 and does not encompass many of the elements we referred to in our introduction, we propose the following model:

Scheme 2: Author's proposal. The Union's legal acquis adapted, bearing in mind the rules of the Treaty of Lisbon

<i>Values, Rights, Freedoms and principles</i>	<i>Task and objectives</i>	<i>Democracy and stable Institutions</i>	<i>Relation with the rest of the world</i>	<i>European Union tasks within ESDP</i>
Respect for human dignity, freedom, democracy, equality, Rule of law, Human Rights (...). As acknowledged in the Charter of Fundamental Rights of the European Union and ensured by the accession to the European Convention on Human Rights and Fundamental Freedoms.	Promotion of peace, values and well-being of peoples Space of freedom, security and justice Sustainable development Economic, social and territorial cohesion	Representative democracy Relation with national parliaments Guarantee for Democracy, Rule of Law Human Rights and Fundamental Freedoms, Protection of minorities	Peace and Security Poverty eradication International Law Multilateralism Respect for the principles in the United Nations Charter Privileged relations with neighboring countries	Tasks in which the Union may use civilian and military means, including joint actions in disarmament, humanitarian and evacuation tasks, counseling tasks and military aid tasks, conflict prevention and peace-keeping tasks, combat tasks for crisis management, including peace-restoring tasks and stabilization tasks after the end of a conflict. All these tasks may also contribute to the fight against terrorism.
Art. 2 TEU Art. 6 TEU	Art. 3 TEU, Art. 13 TEU	Art. 10 TEU Art. 11 TEU Copenhagen criteria - conclusions of the European Council in June 1993.	Art. 3 TEU Art. 8 TEU Art. 21 TEU European Neighborhood Policy EES 2003 and Amendment 2008	Art. 42 TEU Art. 43 TEU

Source: Authorship



Considering scheme 2, as well as our previous comments, there are significant changes in the Treaty of Lisbon as far as the legislative actor is concerned, which significantly influence the management of its foreign relations. In fact, a specific legal basis is introduced on humanitarian aid (art. 214 TUE) which emphasizes the specificity of this policy and the application of principles of international humanitarian law, namely the principles of impartiality and non discrimination. Furthermore, the policy of development becomes a service of development unique within the Commission, there being a commissary responsible for cooperation on development and humanitarian issues, who is also a member of the Commission.

Therefore, with cooperation and development becoming an independent area, with competence to act in terms of relations with developing countries and, consequently, the separation in budget for development and humanitarian aid, all European policies affecting developing countries now need transversal support from developing policies in all its objectives. All reforms put in place also include a hierarchy and a mechanisms to promote development and eradication of poverty as the main objective of this policy⁴ (art. 208).

Finally, a reference must be made to the European Union tasks as such, whose scope in crisis management now goes beyond the traditional Petersberg tasks, having become an actor committed to major international issues. Noteworthy is to mention that the EU has now, at the moment this paper is being written, twelve tasks under ESDP (European Security and Defense Policy), three military and three civilian tasks in three different continents⁵ and is currently preparing three new tasks: EUAVSEC Southern Sudan (civilian task for support and training of airport security against external risks); EUCAP NESTOR (task to enhance marine security in countries in the Horn of Africa and West Indian Ocean in the fight against piracy) and EUCAP SAHEL Niger (civilian task to strengthen capacity in the fight against terrorism and organized crime in Sahel).

In Manners' perspective, the Union is more than a security and defense actor, it is a *special type* of actor that develops foreign relations in the several dimensions and contexts of the international system. According to the author, the Union's foreign relations (in terms of the actor's international or foreign policy) and its presence and action in the international scenario are very specific when compared to the foreign policy of other international actors (relevant and/or equivalent), and these features are closely related to its features as an internal actor, which would be connected to "its long-term achievements as a model for regional cooperation, a multiple actor and political decision-makers, as well as to its new and unprecedented type of power" (Telò, 2009: 1).

However, this is exactly the argument behind the Union's specificity as a foreign policy actor, which has been questioned in recent years (Tocci, 2008a); 2008b), allowing for a critical analysis of this idea.

⁴ A clear sign of the European Union's commitment with the Millennium Development Goals (MDG), defined in 2000, in the United Nations Millennium Summit, having agreed to a world project to reduce all types of extreme poverty until 2015. Thus, the EU claims the role of main financing body of public aid to world development, about 55%, if we consider all its Member-States.

⁵ In Europe/Caucasus EUFOR Althea (military); EULEX Kosovo; EUBAM Moldavia-Ukraine; and, EUMM Georgia. In Africa: EUSEC RD Congo; EUPOL RD Congo; EUNAVFOR Atalanta (military); and EUTM Somalia (military). In Asia and the Middle East: EUPOL Afghanistan; EUJUSTLEX Iraq; EUBAM Rafah/Palestine; and EUPOL COPPS Palestine.



A critical perspective on distinctive normativity

Although the European Union has an important international role and is a core actor in contemporary international scenario, scholars have proposed multiple analyses and concepts so as to define (not necessarily in the Latin perspective of *definire*, "providing and end") the European Union today.

Ginsberg, for example, advocates that "scholars agree that the EU has an international «presence» (visible in regional and global forums) and evidences some of the features of a "developing actor" (an international actor in some areas but not in others)" (1999: 437). This concept of *actorness* attributed to Hettne and Soderbaum (2005), an ongoing and always incomplete concept, with a set of Institutions with different rules and procedures, coordinated at several levels and pillars (up to Lisbon), also evidences the deficit between "want" and "can" in terms of international visibility. 306, 315; Toje, 2008:139).

Hill proposes a similar concept (1993) and considers that, at the time, the European Community had four roles in the international system which were deeply influenced by the cold war dynamics (*idem ibidem*: 310-311): the stabilizing of Western Europe (namely the southern countries becoming democracies, such as Greece, Portugal and Spain and the French-German entente); international trade management (the European Community as the most important sole actor in the negotiation process of GATT and, later, in the WTO); being the most important voice in the developed world in terms of relations with the south (the Lomé Conventions and the preferential agreement with Mediterranean countries); being the second western voice in international diplomacy (European diplomacy as an alternative to the United States, namely in the reconstruction of Eastern Europe after 1989).

Still considering 1993, Hill believed the European Union had the potential to take on six roles in the international arena in the near future (*idem ibidem*: 312-315): replacing the USSR in the balance of power (the EC as a candidate to fill in the room left by Soviet hegemony in a bipolar world); being a regional pacifist (be a mediator/coercive referee when regional peace and stability in at risk of becoming global); being a global player (a player in the global crisis with the economic and political tools and in which the stability of a State or region may threaten the economic interests and the values and principles of the international community); being a conflict mediator (diplomatic action, including coercion and conditioning measures to force third parties to resolve their conflicts and avoid returning to non-democratic regimes); being a bridge between rich and poor (due to special relations, as a result of colonialism, with a wide number of countries doomed to poor conditions in terms of wealth and power); being co-supervisor of world economy (able to act coherently and consistently with the IMF, the World Bank, G7 summits or other institutions in which the EC negotiates directly with the United States or Japan).

On the other hand, Bretherton and Vogler are the first to refer to the Union as a "global actor" (1999), a concept which involves three key elements: opportunity (to act in the world), presence (ability to move and stay outside its borders, influencing the development of other States) and capacity (to take advantage of all opportunities to be present).



Finally, based on the proposal of the EU being an "international actor", Caporaso and Jupille (1998) added four preconditions for the Union to reach a higher international status: acknowledgement, authority, autonomy and cohesion.

Though there is a plethora of proposals, we believe the most important is the idea that "[...] the EU is different from other actors because it is not only a civilian power (in the sense that it does not have military instruments at its disposal), but (also) a legislative, civilizational or ethical power within the international system" (Sjursen, 2006: 170).

Javier Solana adds that "the distinct way in which the EU enforces power, whether civilian or military, is increasingly described as the "European way" of conducting international relations, which implies that there is a set of European values emerging, which determines the rules of foreign action" (2005).

A specific way of viewing rules, principles and values appears to unite all these conceptual proposals, yet Manners himself, in his initial theory, emphasizes a transcendental dimension of this actor, considering that the concept of Europe as a legislative power is part of a key-idea; of "power over the opinion", "ideological power", or "symbolic power" and the desire to go beyond the debate of actor visibility as a State through understanding the EU's international identity² (2001: 7).

This explains why Manners considers that the Union's legislative power is visible: through transmission (international diffusion); through information (strategic communications and statements); through procedure (institutionalization of EU relations); through transference (exchange for benefits between the EU and third countries); through evidence (EU presence in third countries and Organizations) and through culture (cultural diffusion and political learning in third countries and Organizations). (2001: 13)

However, if we consider the symbolic power Manners advocates, we should analyze its double dynamics: firstly, this symbolic power should be internally visible, requiring that the Union ensures that the triangle democracy, good governance and human rights is in force among its own Member-states; secondly, this power must be external, which requires that the Union is able and has the credibility to rise to expectations and take on the role of legislative actor. In fact, this double dimension provides the actor with its *specific character*. Yet, does the Union fully accept this double dimension? Is the Union today a unified actor in its external expression or is it a management crisis actor which acts when asked, especially in post-conflict situations rather than in prevention? Is there a truly European strategic culture? Is sharing values enough? Is there unequivocally a European strategic culture and does it resist transatlantic division?

So as to answer some of these questions, scholars have analyzed how the intensity of Manners' legislative actor has decreased and have questioned the perversity of the Union's externalization, in which the establishing of an area of stability and peace would merely serve European interests. Deep down, the Union would be claiming security as a global public asset by means of *soft power* while it would be holding the most effective tool of *hard power*: the process of enlargement.

Aggestam thus proposes that we consider the limits to the EU aiming to shape the world in Europe's image, which could be easily viewed as moral presumption of superiority. The author draws the attention to a possible scenario of international protectorates, which "could easily lead to an identity discourse between "we" and



"they" and could be viewed as budding cultural imperialism" (2008: 7). Therefore, Aggestam's suggestion of a "Europe of ethical power" would represent a "conceptual change in the role of the EU and in its ambition of what it "is" to what it "does": simply representing a "power of attraction and a positive model to proactively work to change the world towards its perspective of "global common good" (2008: 1).

Furthermore, we must be careful in considering the EU as a distinctive legislative actor, because "if a legislative foreign policy implies meeting legislative foreign policy objectives using means legally established and having a visible legislative impact, then perhaps we will inevitably realize that the EU is not always legislative, just like any other international actor⁶" (Tocci, 2008b: 3). Then, Tocci (2008a: 5) proposes defining a framework based on the three dimensions encompassed under the title "legislative foreign policy": what an actor wants (its objectives), how it acts (how it mobilizes political means) and what it can achieve (its impact). Manners also perfects his original proposal and acknowledges the importance of understanding what being a legislative actor entails, which, in the case of the EU, implies "the way in which the EU promotes those substantive principles, resulting from the principles of "leading by example", the fact that its actions must "be reasonable" and, consequently, its impact to "do less evil" (2008).

Final considerations

Throughout this paper, we have revised some of the basic elements which would enhance Manners' idea that the European Union is a legislative actor and thus concluded that this dimension is, in fact, enhanced in the Treaty of Lisbon.

We identified several elements which contribute to the idea that the Union is a relevant (even distinct) actor in international relations, at the crossroads of multiple conceptual labels. The authors we quoted also suggested that the European Union is essentially a "civil power", a concept by Duchêne in which he describes the European Union as a natural model for stabilization, reconciliation and peace for other regions in the world. Even without a military dimension, a civil power would have the ability to influence other international actors and have a relevant political, diplomatic, legal⁷ and economic presence.

This presence is also closely linked to what Karl Deutsch defined as "security community" (1961), a community united around a process of common economic and political integration, historically connected, developing one another's expectations, with shared values and perspectives on how security may be attained (Adler; Barnett, 1998: 30).

On the other hand, Weiler states that the European Union is neither a classical State nor a community, as the "idea of community aims towards a different type of relation among its members, a self-limitation in its perception of itself, a redefined self-interest and redefined political interests even, which conditions the discourse among States as well as among the people of those States, thus influencing the relation among States. (1991: 2479)

⁶ The author develops this argument using Russia, China and India as examples (2008a).

⁷ On the rules of external action, Morel and Cameron view the Union as a "legislative power" (2009: 81), in reference to the integration of national laws in the European laws adopted in Brussels every day.



However, and in conclusion, it is noteworthy to question all these references and consider the EU having been awarded the Nobel peace prize at the end of 2012. According to the Nobel jury, the prize aimed to recognize the contribution of the European Union to peace, reconciliation among peoples and enhancement of democracy and human rights in the last six decades.

In a joint declaration by the President of the European Council and the President of the European Commission, Van Rompuy and Barroso drew attention to the values the Union continues to promote as a major provider in terms of assistance to development and humanitarian aid, always in the forefront of global efforts in the fight against climate change and in promoting peace and security as global public assets.

However, there were different reactions to the Nobel prize: for some, the prize was more an obituary, considering that the Union only managed to be a project of negative peace (absence of war) whereas the model of positive peace (of social State) is yet to be met; for others, it was an opportunity for the States to rethink the project of European integration, how to avoid the downfall and how to continue pursuing the triangle democracy-human rights and good governance. A triangle that should be considered, both within its States (where anti-Europe extremist movements are becoming stronger), and as a world-renowned actor of security, having carried out more than 20 civilian, military and civil-military missions since 2003 in three different continents (even with the current financial limitations forcing the States to do more and better with less resources through, for example, *pooling & sharing*).

No wonder, then, that now that the identity of the "economic giant but a political dwarf" is in question, advocates of the federal system question the impact that the lack of consolidation of a economic union (whose consolidation was expected with a common currency and a common market) may have on a political union, on which, though more recently and still under development, the pillars of a legislative Europe are based and which the founding fathers idealized and the Nobel acknowledges.

In conclusion, and using Jean Monnet's words: "We unite people. Not States". Yet, in 2013, still bearing in mind the Nobel prize, where do we stand? Are we a renewed utopia? Are we in search of an idea for Europe? In the expectation of a "communion" (Manners, 2011) which brings integration and cooperation together as a constellation of communities, a cosmopolitan space and an example of cosmopolitan coexistence⁸, i.e., both a community and a union?

Even with the support of the analytical tools we used in this paper, we are left with more questions than answers. The latter may be provided by the philosophy of ideas and the more or less federative scenarios, now more acute as a result of the financial crisis. Therefore, the question at the basis of the European project remains: *quo vadis* Europe?

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⁸ The concept of cosmopolitan democracy is also developed by Archibugi, 2003.



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BACK TO THE FUTURE: AERIAL WARFARE IN LIBYA

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Abstract

A century after the first air bomb mission, a new intervention in the same geographic space has made evident the changes in Airpower. The Aerial Warfare in Libya has radically changed the civil war, complying with a UN mission to protect Libyan population, imposing a no-fly zone and an arms embargo. Therefore, Operation *Unified Protector* became one of the most successful campaigns in the history of NATO.

We aim to assess the operational efficiency of Airpower in the conflict in Libya, focusing on the challenges of a War essentially Aerial. Despite the military results and the fact that some political objectives were met, we can identify some concerning trends that, if not shifted, may negatively influence future NATO operations. We do not aim to draw general and universal conclusions on the strategic value of Airpower based on the analysis of a specific case. Above all, we focus on identifying some lessons which have influenced OUP operational efficiency. Thus, we must analyze some factors, such as the scope of objectives, the type of opposing action and aerial strategy used by the coalition and then focus on the challenges arising from the OUP..

Keywords

Airpower; War in Libya; Operation *Unified Protector*; NATO

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BACK TO THE FUTURE: AERIAL WARFARE IN LIBYA

João Paulo Nunes Vicente

Introduction

History repeats itself in a curious way. In October 2011, the first century of Aerial Warfare ended the same way and place it had begun - with military aircrafts bombing the desert of Libya.

On 15 October 1911, only eight years after the Wright brothers' first flight, nine aircrafts and 11 Italian pilots landed in Libya to support the conflict between the Italian and the Turkish Ottoman armies. On the first day of November, the young pilot Giulio Gavotti introduced the world to Aerial Warfare. The era of air bombing began, along with its horrors. In a letter to his father, Gavotti wrote:

"Two boxes with bombs arrived today. They expect us to drop them from the plane. It is rather strange that our superiors have not told us about this. So, we will take them on board very carefully. It will be very interesting to try them on the Turkish" (Johnston, 2011).

Still using the first person, Gavotti describes this historic moment. "Next to the seat, inside a bag, I placed three small bombs weighing about a kilo and a half. In my jacket's pocket I placed another bomb. When I saw the target, some tents around an oasis, I placed the bombs on my lap, withdrew the safety pin and threw them out trying not to hit the plane's wing" (Idem). Seconds after having dropped the bombs, the pilot assessed the damages of the first air bombing in history. Despite the negligible destruction, Gavotti proved that the air missions were not limited to battlefield reconnaissance, mere observers of military forces in the field. Far from his imagination, though, was the destruction Aerial Warfare would cause in the next decades, the evolution of air capacity and that Airpower would become the leading instrument of military coercion.

A century after the first air bomb mission, a new intervention in the same geographic space, has undoubtedly revealed the changes in Airpower, thus leading the Secretary-General of the Alliance to declare ¹ that "no air operation in history was as precise and careful to avoid civilian suffering" (Rasmussen, 2011a).

The last attack mission in Libya occurred in the city of Sirte, at 08:30 on 20 October 2011. The unmanned vehicle *Predator* on combat patrol, controlled in the United States of America (USA) via satellite, detected a convoy of 75 armed vehicles leaving the city.

¹ NATO - North Atlantic Treaty Organization.



Hellfire missiles were launched from the *Predator* and the convoy was dispersed. Moments later, a pair of French Mirage F1CR and Mirage 2000 fighter-bombers flew to the place directed by an English E-3D AWACS command and control airship. The Mirage 2000D launched a GBU-12 bomb, which destroyed 10 vehicles. The isolation of the convoy allowed for Kaddafi to be captured and for the end of the conflict which had begun on 19 March of that year (NATO, 2011a).

The Aerial Warfare has radically changed the civil war, complying with a United Nations (UN) mission to protect the Libyan population, impose a no-fly zone and an arms embargo. Therefore, Operation *Unified Protector* (OUP) became one of the most successful campaigns in the history of NATO (Rasmussen, 2011b). After the operation, the use of Airpower re-emerged as a relevant instrument to coerce the opponent with reduced risk or cost, namely in terms of human casualties. This ability to dissuade and influence potential opponents, to directly affect their sources of power and will to fight without exclusively depending on direct combat, make this military option politically attractive.

We aim to assess the operational efficiency of Airpower in the conflict in Libya, focusing on the challenges of a War that was essentially Aerial. Despite the military results and the fact that some political objectives were met, we can identify some concerning trends that, if not shifted, may negatively influence future NATO operations. We do not aim to draw general and universal conclusions on the strategic value of Airpower based on the analysis of a specific case. Above all, we focus on identifying some lessons which have influenced OUP operational efficiency. Thus, we must analyze some factors, such as the scope of objectives, the type of opposing action and aerial strategy used by the coalition and then focus on the challenges arising from the OUP.

Airpower: vectors of a concept

If we consider Clausewitz's idea, that War is politics by other means, we can easily understand that any military campaign begins with a political decision about its desired outcome². NATO classifies operations in terms of the predominant campaign themes³, which require different military approaches and capacities. All themes require the same modes of military activities, though in different levels and usage - simultaneous or in sequence⁴. The predominance of certain modes over others determines the type of campaign. For example, a combat campaign consists of essentially offensive activities. On the other hand, a security campaign is a complex mix of four modes. In order to contribute to the different campaign themes, by means of several military activities, military components use the features and capacities of Airpower, including space, so that ⁵lethal and non-lethal effects achieve their objectives⁶ and thus attain the desired outcome.

² Political and/or military situation to be achieved at the end of an operation (AAP-6, 2010).

³ Combat; Security; Peace Operations; military involvement in peace (AJP 3(B), 2011: 1-3).

⁴ Offensive; Defensive; Stabilization and Facilitators AJP 3 (B), 2011: 1-3).

⁵ They are a physical state or behaviour of a system due to an action, a set of actions or any other effect (JP 5-0, 2011: xxi).

⁶ Objectives are important for the commander of the joint forces because they link the purpose of the operation with its desired end, thus leading campaign efforts to prioritize the use of available resources. Therefore, they assist in organizing tasks and effects in time and space.



Since the first manned flight, theorists of Airpower have advocated its efficiency. However, through history, extreme declarations on the crucial results of the use of Airpower have obscured the conceptual and real value of this instrument of Power. The conceptualization of Airpower as an instrument of distance fighting dates back to the original idea of overcoming the cruel ground fighting. Airpower, due to height, speed and range, has operational advantages over other military instruments and allows for a wider perspective of the battlefield, greater speed and distance travelled, as well as unrestricted three-dimensional movement, thus significantly changing conflict dynamics.

The flexibility of air capacity, expressed in geographical, operational and effect terms, allows it to meet multiple challenges (Sabin, 2010). The geographical flexibility results from its ability to avoid the opponents' armies and navy, to minimize the impact of geography and allow it to act in different war scenarios and rapidly go from one to the other, attacking targets without having to be in advantage on the ground. The operational flexibility results from its ability to operate in a transversal way in various types of conflicts while minimizing the risks of using military force. The weakness of aerial means, such as helicopters and unmanned vehicles, is compensated by the use of height and speed to avoid the range of possible threats. The flexibility of effects, due to enhanced awareness of the battlefield, survival and arms' precision, is expressed by the possibility of having a mass effect without having to use mass force and better adjust effects to the battlefield.

In this scope, we may see Airpower as a provider of political and military freedom of action (Dalton, 2010). At political level, it provides the air defense of territory, as well as strategic alternatives to the use of force, since it exerts increasing and sustainable global influence. At military level, it provides the ability of air control, a prerequisite for any modern deployable military operation. However, from the political point of view, War, in particular when a consequence of non vital interests, will always have restrictions and constraints which will influence the strategy and efficiency of Airpower. These restrictions and restraints to the use of force may include, among others, target restriction, reduction of collateral damages, conflict duration, the number of means used, the area of operations or the strict abidance to the Rules of Engagement (ROE).

Operational analysis of the use of Airpower in the War in Libya

One of the historic examples that synthesizes the efficiency of Airpower to coerce a change in the opponent's behavior was the attack to Libya in 1986. The Operation *El Dorado Canyon* had limited objectives, was used against a conventional opponent, attacked critical infrastructures and was integrated in other instruments of power. The political objectives aimed to punish Kaddafi for the attack against American forces in Berlin, as well as to dissuade the regime sponsoring terrorist actions. Though the political constraints imposed that the risk for American forces was reduced and collateral damages minimized, there was significant change in Kaddafi's behavior (Stanik, 2003: 151). Nevertheless, noteworthy is to remember that this change was short-lived, as two year later after the attack, Kaddafi's regime was responsible for the Lockerbie attack, hitting a commercial airplane and causing 270 casualties. However, this operation demonstrated that the use of Airpower, combined with economic and diplomatic measures, may influence and ease attaining foreign policy objectives, at



least in the short run. Five years later, the lessons learned from this operation were applied in the war in the Persian Gulf.

Twenty-five years after the first attack, a new airborne operation against Kaddafi, also with limited objectives, had more decisive and long-lasting effects. When analysts discussed the end of interstate conflict, and after a decade in which two wars took place, with high number of casualties and costs, history repeats itself in the success of Airpower as a instrument of coercion. As in Kosovo, the recent operation in Libya confirmed the operational efficiency of Airpower. Though terrestrial warfare is viewed as expensive, with high number of casualties over a long period of time, the operation in Libya brought back the political interest in air campaigns.

Considering the Civil War in Libya and the paradigm of "responsibility to protect", the UN Security Council approved Resolution 1973 on 17 March 2011, authorizing the use of all measures necessary to protect civilians, yet excluding the occupation of territory. On 19 March 2011, a multinational coalition led by the USA⁷ began a military intervention to implement the UN's mandate.

On 31 March, NATO took over the operations, extended the coalition to 18 countries⁸, maintaining protection of civilians and populated areas under attack as the OUP's primary objective, ensuring the non-use of terrestrial means of warfare. The mission included a navy embargo, a no-fly zone and offensive actions to meet the objectives of the mandate. After 214 days of air operations by about 260 aircrafts, over 26,500 missions took place, 9,700 of which were attacks, having destroyed over 5,900 targets, including 400 artillery positions and *rocket* launchers and over 600 armored vehicles, the OUP ended on 31 October 2011, having become one of the most successful campaigns in the history of the Alliance (NATO, 2011b). Furthermore, during the air operations only three aircrafts were lost (one of which an unmanned helicopter) and the coalition suffered no casualties.

This conflict renewed the trend to organize military operations with reduced operational footprint, combining Special Forces in support of rebel forces and precise amounts of Airpower, similar to the success of the "Afghan Model" in the early stages of Operation *Enduring Freedom* in Afghanistan. In this operational model, Airpower once more eliminated efficiency of a regular army and provided an asymmetric and overwhelming capacity to a badly trained and equipped rebel group to defeat the forces loyal to the regime. In this sense, the restricted air campaign, resorting exclusively to precision ammunition, became the most accurate air operation in history (Rasmussen, 2011a).

However, to assess the operational efficiency of the use of Airpower and learn some lessons from this operation, we must study some of the essential factors, namely the nature of objectives, the type of opponent and air strategy.

The UN's mandate defined the political objectives of the intervention. However, as the operation developed, so did the ambiguity of the political objectives. For the USA, the intervention in Libya fit the parameters of the Obama doctrine, according to which humanitarian interests justify military action, though very restricted, with no terrestrial forces involved and in a multilateral shared effort, including the leadership of

⁷ Different names were given to the operations according to each participant: Operation *Harmattan* by France; Operation *Ellamy* by England; Operation *Mobile* by Canada and Operation *Odyssey Dawn* by the USA. Later, Operation *Unified Protector* led by NATO.

⁸ Among which Jordan, Qatar, the United Arab Emirates and Sweden.



operations (Biddle, 2011). From the point of view of foreign policy, Airpower is an irresistible option because it is more accurate, less expensive and would pose less political and operational risk. Perhaps that may help to explain the fact that only 10 days after the decision to intervene, the first missions in Libya took place⁹.

Whereas this was a crucial fight for the Libyan rebels, for NATO, the OUP was another restricted operation, subject to different political interests and complying to a UN mandate that restricted the application of the most effective air strategy. The ambiguity, or better, the dyssynchrony of objectives lay in the difference in terms of NATO objectives and the political declarations of the participating countries. Some of the countries, such as England and France, included the removal of Kaddafi as an objective of the operation though they never stated it openly. The commander of the OUP himself, General Bouchard, pointed out these differences between NATO's strategic communication and the countries' public relations. According to him, the fact that the operation objectives did not frequently coincide with national interests, the short time to plan the operation (about three weeks to prepare the operation plans), as well as the reduced capacities on the ground and the chaos in the country added to the complexity of the planning and the implementation (Gomes, 2011).

As far as the opponent and its tactics are concerned, we may say that the Libyan military forces adopted a conventional position. The geography of the battlefield favored the use of aerial means and navy fires against conventional forces moving in open spaces, preventing their supply chain logistics and massification of forces. The Libyan army's gradual change to irregular tactics was a natural consequence of the air attacks. As a result of their copying rebel tactics, such as the use of civil vehicles, transporting armament and not wearing uniforms, air operations became even more complex. The use of captured material by the rebel forces also added to the "War fog", becoming one of the reasons behind an incident in which Libyan armored cars operated by rebels were attacked (Svendsen, 2011: 56).

As far as the coalition's air strategy is concerned and due to the several constraints, the use of Airpower was organized in a gradual approach and bearing in mind the minimizing of collateral damages. The initial attack, on 19 March, by French aircraft and against armored vehicles in the outskirts of Benghazi, led some observers to point out a shift in traditional air strategy. However, this was an isolated action, politically motivated and aimed at causing an immediate impact on the ground. That same night, 112 *Tomahawk* missiles were launched from American and British ships against critical elements in the Libyan air defense system, followed by B-2 bomber attacks to aerodromes (Anrig, 2011:91)¹⁰. An offensive aerial warfare campaign was in place, crucial to gain air control at the onset of any conflict. This mode of action confirmed one of the most obvious and timeless lessons taken from other conflicts, which is that success depends on establishing air control early. This occurred in the early moments of Operation *Odyssey Dawn* in which Libyan capacity in terms of air defense was rapidly destroyed, making it possible to establish a new no-fly zone.

⁹ In comparison, 11 months went by between the approval of the UN's mandate and the intervention in Kosovo in 1999, more precisely the mission to implement a no-fly zone (Shanker, Schmitt, 2011).

¹⁰ In the first evening of the operation, 3 B-2 bombers took off from the USA, attacked 45 targets in a Libyan aerodrome and returned to base, thus confirming US capacity for global attack, as it had happened in Serbia in 1999, and in Afghanistan and Iraq (Tirpak, 2011: 37).



Once air control was established, the target selection process was altered. The initial strategy focused on attacking concentrated forces, communications, arms depots and key-points in Command and Control (C2) (Bouchard, 2012). In mid April, only 10% of daily missions attacked planned targets. The other 90% attacked dynamic targets (Anrig, 2011:99)¹¹. In practice, airships patrolled certain areas, namely means of communication, so as to detect potential targets. This type of reconnaissance and coordination attack missions¹² provided the necessary support to initial fire against rebel forces when in contact with the Libyan forces. Therefore, the human factor became as important as technology in target selection, particularly in those air missions near friendly forces, when restrictions in lethal force were imposed so as to ensure minimum collateral damages (Baker, 2011).

Air operations (kinetics or not) aim to influence the Centers of Gravity (CoG)¹³ established for the campaign (Bouchard, 2012). In practical terms, three CoGs were selected which were related with the main players in the conflict. Thus, Benghazi was selected as the rebel CoG, considering its importance as a symbol of the resistance. Tripoli was selected as the regime's CoG, as the Libyan power and its military forces were concentrated there. Finally, from NATO's point of view, the CoG was the coalition itself, whose integrity should be protected at all cost to maintain a united command and action.

Therefore, the fall of the regime was the ultimate and necessary effect to a political and/or military situation allowing for the conclusion of the OUP. This fact may lead some thinkers into considering the fall of the regime the desired end. However, the condition defined at the beginning of the operation aimed to attain a situation in which there were no hostilities, all major weapon systems had been removed from the concentration area and humanitarian aid could freely move in the territory (Bouchard, 2012).

Although the operation may be globally viewed as a military success, we may select some challenges the war brought about, especially in Africa. As in any conflict, opinions are not unanimous.

Critics focus on overestimating Airpower efficiency as a result of the operation being misinterpreted. Robert Farley (2011) identifies these gaps, namely the excess concentration on tactical targets rather than the classical option for strategic targets in the use of Airpower. After several months, there were still important stationary targets which had not yet been attacked. That was the case of C2 centers and state communications. In an ideal strategy, these targets would have been attacked in the early stages of the air campaign. From this point of view, the tactical campaigns, in which aerial means are given to commanders on the ground (in this case to Special

¹¹ In modern complex conflicts, dynamic *targeting* (as opposed to deliberate targeting) is the name given to the process of identifying, selecting and attributing unforeseen targets, i.e., those targets which were identified too late to be included in the normal planning process. In accordance to NATO doctrine, a target is "a geographical area, an object, capacity, person or organization (including its will, understanding and behaviour) which may be influenced as part of military contribution to the final political state". The process of *Targeting* aims to determine the effects necessary to attain the objectives of the commander, identifying the necessary actions for the desired effects, bearing in mind the means available, the selection and prioritization of targets and synchronization of fires with other military capacities, and later assessing their efficiency (AJP-3.9, 2008: 1-1).

¹² *Strike Coordination and Reconnaissance* (SCAR).

¹³ *Center of Gravity* - Characteristics, capacity or place from which a nation, an alliance, a military force or any other group built its freedom of action, physical strength or will to fight (AJP 01(D), 2010: 5A1).



Forces and Libyan rebels), make Airpower a rather more expensive artillery and waste its real potential. However, the destruction of armored vehicles, of supply vehicles and entrenched forces, viewed by many as irrelevant and not endowed with the multiplying effect associated to strategic targets, as is the case of communication networks and command centers, have contributed to directly reduce the threat to civilians, in strict compliance with the UN's mandate. Furthermore, the strategic targets, essential to establishing a no-fly zone, were deeply affected in the early hours of the conflict.

Much criticism related to the inefficiency of the operation is based on the duration of the campaign, due to the inadequate air strategy and taking into account the asymmetry between Kaddafi and NATO's forces. Cenciotti (2011) emphasizes the coalition's delay in deciding to attack the regime's ability to supply its forces instead of attacking resources at the front, when they are to be used. The dispersion of attacks to innumerable arms depots, rather than concentrating on the most important, during the early stages of the conflict, may have allowed for the forces loyal to the regime having been able to continue fighting for more than seven months.

This criticism, however, confuses targets and effects, disregards the fact that the use of Airpower in a limited operation is subject to military and political restrictions and constraints. We must realize that in an Era of limited conflicts, in coalitions in which countries have different interests, severely restricted and submitted to limited ROEs to avoid collateral damages and breaches in the coalition, an air strategy under ideal conditions will rarely occur. In this case, the interpretation of the UN's mandate suggested the impossibility of attacking targets which did not directly threatened the population. This way, the imposition to avoid suffering and damages to civilians, as emphasized by Secretary-General of NATO, conditioned the process of target selection. Similarly, the *caveats* imposed by nations in terms of the attacks added to the complexity of the *targeting* process. For example, some nations only led attack missions when Kaddafi's forces were moving against rebel positions (Book, 2012: 69).

Besides this, implementing an adequate air strategy is directly associated to knowing the operational environment and the opponent. Therefore, the lack of means of surveillance and reconnaissance¹⁴ in comparison with other recent conflicts may help to explain some of the shortcomings. For example, during the last decade of operations in Afghanistan, NATO usually had hundreds of ISR daily missions, as opposed to three daily ones in Libya, a territory which is three times larger (Tillyard, 2012: 23). This forced a prioritization in the operational use of dedicated means as well as caused differences in the analysis as to how most adequately affect the Libyan regime.

On the other hand, the contribution of Airpower to field operations can only be maximized, in particular in activities of fire support, if it is integrated in the ground forces. As the conflict developed, the requirements and complexity of air support imposed a closer integration and a faster response. However, the difficulties in integrating air-to-ground activities, namely in coordinating with the rebels, may have affected the pace and intensity in the use of Airpower.¹⁵ This occurred because the rebel forces had operational limitations, they were badly equipped and prepared, were uncoordinated in terms of C2 and communications, which did not allow for detail

¹⁴ *Intelligence, Surveillance and Reconnaissance* – ISR.

¹⁵ In comparison, in the 78 days of the air campaign in Serbia in 1999 there were 38,004 missions, 14,112 of which were attack missions (Cenciotti, 2011).



coordination of operations and added to the complexity of the attack missions as well as heightened the probability of collateral damages. Nevertheless, even if the model of mass and overwhelming air attacks was not applied, as it had been in the Gulf Wars, it would still be impossible to explore its effects on the ground.

The nature of the dynamic process of target selection, together with the reduced persistence of manned aerial means, as well as the rigorous choice of moments for arms launching so as to avoid collateral damages, may greatly justify the fact that most attack missions did not use arms. As the operations developed, the use of foreign military and special forces counselors who were not part of NATO command structure so as to not compromise the UN's mandate, was essential in order to guide attack aircraft, to gather information and, above all, to transform the badly-equipped and trained rebel group into an organized force to capture Tripoli (Svendensen, 2011: 58)

Besides the already discussed factors, we may also identify additional lessons which separate the war in Libya from past conflicts but which, on the other hand, echo concerning trends.

First of all, England and France were at the forefront, having been responsible for most of the war effort. NATO's European Allies provided most of the fighting means; the USA assigned themselves a secondary role after the operation command was passed on to NATO. This means that, though the USA did most combat missions initially, once the operation command was assigned to NATO, the effort was divided among the allies. In fact, the remaining members did 90% of attack missions (Hebert, 2011: 4).

The complexity of coordinating air operations by 18 countries, from bases around Europe and the USA, with no casualties in the coalition, is further evidence of the success of the operation. In the initial phase, there were uncertainties in terms of command relation among the participants. On the one hand, from the American point of view, the African Command (AFRICOM) was in charge of coalition operations, whereas, from the European point of view, each nation was in charge of operations. This ambiguity led to Norway suspending its participation until C2 relations were clear (Anrig, 2011: 91). This only occurred when the command of the operation was taken over by NATO.

On the other hand, efficiency and, up to a point, the efficacy of air campaigns depends greatly on the closeness between aerial means and operational areas. Otherwise, the manned systems will be severely restricted in terms of operational area, which also implies an excessive use of airborne refueling capacities. The option to use aerial means initially covered this need but it was severely affected by the USA no longer carrying out attack missions and thus evidencing the historical importance of Airpower based on ships¹⁶ as well as the fact that Europe lacks *aircraft carriers*.¹⁷ Therefore, the

¹⁶ The aircraft carrier became an essential instrument for the success of military operations. Several examples emphasize the importance of these means for power projection, both long-distance and in areas where an aerodrome is of difficult implementation. The attack on Pearl Harbour or the dependency on aerial means on ships in the operations in Afghanistan and Iraq.

¹⁷ In June, the Italians withdrew their aircraft carrier from the theatre of operations. Later, the aircraft carrier Charles de Gaulle left the area of operations. The English only had a helicopter cruiser, obviously insufficient for the size of the operation.



use of Airpower on ships allowed for faster and more flexible response, as well as a decrease in the use of long-distance based resources¹⁸.

Another lesson is that, despite the effort by some countries and the fact that the OUP was commanded by NATO, only half of the Allies contributed in terms military forces. This situation confirmed NATO's view of an "Alliance of those available"; because there is no overwhelming threat as during the Cold War, the differences among members in terms of their political agendas are made evident (UK Parliament, 2011). This became obvious as only 6 out of the 26 European countries in NATO contributed with attack capacities. In fact, the conflict in Libya increases the existing gaps in NATO, evidencing Europe's ambition in sharing operation theory and concepts with the Americans, as well as its incapacity in terms of war effort so as be able to apply the American warfare model. This paradigm was made evident in its inability to carry out missions essential to maintain limited air conflict, in particular airborne refueling suppliers and unmanned aircraft. This gap will be wider in conflicts geographically distant either without the mass support of the USA or against more able opponents.

The American attitude, to offer leadership and offensive power to European countries, has contributed to minimize the political debate and public scrutiny on yet another long intervention in a Muslim country. However, this secondary role did not correspond to a decrease in the importance of the USA in the campaign, considering that they had to supply what the coalition lacked within specific areas of the mission. As Robert Gates, the former American Secretary for the Defense (2011) stated, "the most advanced fighter airplanes are useless if the Allies do not have the means necessary to identify, process and attack targets as part of an integrated campaign". The dependency on American capacities was also obvious in airborne refueling and ISR (among which, the use of unmanned platforms), considering that 75% of ISR and airborne refueling missions were carried out by the USA (Hebert, 2011: 4).

Without these priceless means, the efficiency of the OUP would have been severely compromised. For example, missions from more distant European bases were eight hours' away and implied five airborne refueling activities for one hour on the objective (Tirpak, 2011: 36). Gates (2011), when referring to other difficulties, emphasized that the USA had to supply the majority of *targeting* analysts to ensure the Air Operations Centre. Besides this, the Operations Centre, prepared to manage 300 daily missions, struggled to manage 150 (about a third of the daily effort in Operation *Allied Force* in 1999).

This conflict also evidences the impact of austerity in the War; several countries struggle in defining the suitable capacities and, above all, at reasonable prices. Specialization in a specific type of capacity, assuming another member of the coalition makes available deficient capacities, implies risks because it cannot always be counted on. Though they have a reasonable attack capacity, European countries lack the means for an efficient operation, namely refueling systems, electronic war, ISR and human resources specialized in *targeting* and data analysis.

Besides the already mentioned needs, two months into the operation and there were already supply failures in guided ammunition (Gates, 2011). This occurred because the exclusive use of precision arms caused it to *run out* in some countries. For example,

¹⁸ According to a study on the use of Airpower in OUP, the use of aircrafts based on land is six times more expensive when compared to similar effects caused by means stationed on ships (UK Parliament, 2011).



Danish F-16 dropped more than 500 guided ammunition until the mid of June, thus creating a problem in logistics typical of this type of conflict, particularly in the case of smaller air forces (Anrig, 2011: 96). However, this does not reflect a direct relation between quantity of arms used and their effects. For example, Norway and Denmark supplied only 12% of the means for air attack but reached a third of their targets (Gates, 2011).

The theatre of operations in Libya allowed for test and operational assessment of the military capacities of the Alliance members. Besides, it was also an opportunity for economic, military and political *marketing* for the advocates of Navy and Airpower. The struggle in arms system exporting markets¹⁹ pressures participants to show their scope of capacities and thus increase the complexity of their mode of action.²⁰ The advocates of Airpower are already capitalizing on this success, the success in Libya justifies higher investment in fighters, bombers, refueling systems and unmanned airships. Furthermore, the shift in American defense strategy for the Pacific increases the relevance of Airpower, more specifically of navy operation. As in previous conflicts, the lessons learned with the conflict in Libya will shape the power system and how the great powers will acquire new military capacities. Besides, these lessons will be the basis for future military interventions.

We can claim that the campaign in Libya is an example of success in terms of the use of Airpower to unbalance the balance of power and favoring a resistance movement against a superior force (Anrig, 2011: 104). Assessing its efficiency, considering its cost, shows that this operation represented a fraction of the costs in the conflicts in Afghanistan and Iraq²¹. However, more important than financial costs is the low number of friendly casualties and the collateral damages²². Though we believe the use of Airpower in this conflict could have been optimized, the truth is that it was an adequate political tool to abide to the UN resolution, meeting the political objectives established, at a substantially lower cost than the available military alternatives. And that, in itself, evidences the strategic usefulness of Airpower as a instrument of coercion. However, instead of considering Airpower decisive, we consider there is no doubt that victory was attained due to the contribution of Airpower.

Conclusion

When considering future wars, we must account for not all having such a low human and material cost. There will be conflicts in which long ground occupation and high human cost will be the only means to the desired end. However, the advocates of ground intervention in Libya, focusing on the operational advantages to speed regime

¹⁹ We must not forget that during that period, both the English *Typhon* as the French *Rafale* were included in a airship sales proposal to India and Brazil.

²⁰ For example, the use of *Tornado* airships equipped with *Storm Shadow* last generation missiles, in long distance missions from England, is an indicator of the English projection ability in the global market as well as validates this technology in future updating on the power system. Operational necessity, after 100 days of air campaign, to do eight-hour missions so as to use a €900,000 missile is difficult to understand (Cenciotti, 2011).

²¹ The American contribution during seven months (about 1.1 billion dollars) was similar to the cost of one week's operation in Afghanistan (Schwartz, 2012).

²² The conflicts in Afghanistan and Iraq caused, up to now, injuries in over 46,000 American military and over 6,200 casualties (US DoD, 2012: 7). The collateral damages are countless.



capitulation, did not consider the adverse strategic effects of the occupation of another Muslim country by western forces, thus leading to a new irregular long conflict.

The criticism on the reduced efficiency of the use of Airpower, or even of a high cost-efficiency or value ratio, as a result of the increased cost of air weapons, may be refuted from a capacity and effect perspective. This means that technological progress has allowed for substantial increase in the capacities of current weapon systems and, consequently, a lower cost for desired effect, whether in the number of targets destroyed by the airship as in the increased awareness of the battlefield through the use of more developed sensors, often in the same platform. This multiplies the capacities of a power with a decreased number of weapon systems. Therefore, assessing the success of a campaign through the quantity of means involved does not seem adequate; the effects are the most important.

To sum up, despite the criticism, these analyses lack an assessment of the growing political restrictions imposed on the use of Airpower as well as of the more and more precise and strict use of air force. The legitimate imposition of political restraints and restrictions, together with the inherent limitations to the use of Airpower, and the omnipresent "fog and friction", do not allow for a simple solution for the phenomenon of War. However, to be effective, Airpower does not have to win wars. It only needs to supply flexible options to be used by political decision-makers when the use of force is required to coerce a change in the opponent's behavior. Thus, the efficiency of Airpower should be assessed taking into account its contribution to meeting the political objectives. This means that Airpower may have political effects through resorting to a wide scope of means, whether through dissuasion, long distance attacks, persistent ISR, special forces or air transport, intelligence operations, humanitarian aid, establishment of partnerships and economic development.

We must not, however, forget that contemporary conflict demonstrates the historical truth that Airpower, *per se*, is not a panacea to resolve armed conflict, thus evidencing that the use of this tool will necessarily have to be integrated with other military components and within a wider approach through coordination with other power tools. Therefore, despite the operational brilliancy of the OUP, it is still early to confirm the long-term strategic effects that ensure long-lasting peace. We can only claim that this supreme objective goes well beyond the potential of the military tool, requiring a wider approach to the phenomenon of hostile conflict. As in the past, this is still the challenge facing the future use of force.

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**EPISTEMIC COMMUNITIES:
STUDY ON THE REGULATION OF THE USE OF STEM CELLS IN BRAZIL**

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Abstract

The objective of this study is to review the literature on epistemic communities, analyzing the concept and setting out the main arguments of the authors. In the first section, we present a proof of concept and the main arguments on epistemic communities. The second section is an analysis of the role played by the academic elite. In the third and final section presents a case study on the regulation of the use of stem cells in Brazil and the participation of scientists.

Keywords

Epistemic Communities, Beliefs Shared, Brazil, Stem Cells.

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EPISTEMIC COMMUNITIES: STUDY ON THE REGULATION OF THE USE OF STEM CELLS IN BRAZIL

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I. Introduction

The analysis of epistemic communities in the field of International Relations is of extreme relevance as it joins elements either second-place or not normally used in this field, such as the sharing of ideas, the structuring of networks and information as a means of power.

Information, in its broadest sense, has become a crucial means of power with professional bureaucracy and, consequently, its control and/or monopoly has been highly sought for.

Presently, epistemic communities are considered by many analysts as a relevant actor in international relations, which act systemically through knowledge networks that have national and international impact.

In Brazil, a case study was carried out on the action of epistemic communities in the approval of a law regulating the use of stem cells for research purposes. This paper is divided into three parts: the first focuses on the history of epistemic communities in the theory of International Relations; in the second a brief study will be conducted on the interaction and practice between epistemic communities and academic elites; in the third, we will analyze a case study - the approval of the law on the use of stem cells in Brazil.

II. The Study of Epistemic Communities in International Relations

The term *epistemic communities* stems from the Greek word *epistemè*, which means justified and true knowledge, science. The study of the *epistemè*, epistemology, has its origin in Plato, who contrasted true and justified knowledge (*epistemè*) and belief or opinion (*doxa*).

In International Relations, the importance of networks based on knowledge was initially mentioned by Ernst Haas in his book "*When Knowledge is Power: Three Models of Change in International Organizations*", in which the author discusses how knowledge can make a difference in discussions within International Organizations, becoming a rather effective type of soft power in international politics.

However, systematic and further study of this sub-field in IR was carried out by a group of authors influenced by the constructivist approach, which focuses on social epistemology, in the role of collective knowledge in international and community social



life, where knowledge is created and through which it is spread at political and institutional levels. (Adler, 2005, p. 3)

The constructivist approach appeared as an alternative to traditional approaches, unable to interpret the mechanisms of interest mediation, of understanding diverse and complex processes

"... often characterized by non-hierarchical interactions and a low level of formalization in terms of resources and information, as well as through the participation of new actors..." (Faria, 2003, p. 21)

The definition of epistemic communities created by Haas in the paper *"Introduction: epistemic communities and international policy coordination"* (1992, p. 4-7) includes several features. The first refers to a group of experts from different areas and with different experiences, i.e., a network; the experts need not be from the same field - in a discussion on global warming, for example, it is possible that the meeting includes biologists, chemists, environmentalists, internationalists and social scientists.

A second feature is that the members of an epistemic community share casual beliefs, derived from their practical analyses, leading or contributing to a set of core issues in their fields, which will then be the basis for explaining the multiple connections between possible political actions and desired results. This means that the experts of a community are able to explain the really crucial issues to resolve a specific situation which will then create the expected product.

The next feature is that the community members share a set of normative principles and beliefs which provide a rational value to their social action. This feature is linked to the legitimacy granted to experts' authority through common principles they have to adopt.

The fourth feature is related to sharing concepts of validity by community members, i.e., experts adopt "validity tests" which serve as standards for further studies.

To summarize, the definition of epistemic communities is described in the following text

"(...) a professional group that believes in the same cause-and-effect relationships, truth tests to assess them, and shares common values."
(Haas, 1990, p. 55)

In a specific interpretation, we defined epistemic community as a set of experts that have a common speech, shared knowledge and analysis of a specific problem area by means of published papers, conferences and other types of oral presentations, either formal or not, reports to government agencies, and have the ability to influence public policies through those public presentations.

According to Haas, the logic of coordinating international politics by means of epistemic communities occurs because present uncertainties in *policymaking* tend to foster demand in information which lead to a strong dependency among States and political options for successfully meeting the objectives and involve multiple and only partially



estimated consequences. Epistemic communities are a possible supplier of this type of information and advice.

For Emanuel Adler (2005), on the other hand, ideologies may be powerful because they tell actors which objectives are most relevant, which may be implemented, the importance of those objectives when compared to others, while they identify allies and opponents to the cause valued by the actors. Ideologies are important variables to understand political and economic behavior because their origins do not lie solely in material development and they may have substantial and independent effects and may even become a powerful political force.

Adler's argument is that ideologies may form consensus and these serve as a "beacon" to understand human behavior in groups or institutions. Institutions tend towards collective understandings, which help to meet the objectives, making these understanding pre-conditions for institutional changes.

As far as their ability to influence policies are concerned, epistemic communities, according to Haas's argument, should institutionalize that influence and promote their points of view in international politics. They influence *decision-makers*, who can influence interests and behaviors of other States. This may lead to an increased probability in convergence in political behavior and coordination. Communities can, thus, contribute to the creation and maintenance of social institutions which are at the forefront of international behavior.

The following scheme summarizes the influence process of epistemic communities on bureaucracies.

Increase in professional bureaucracies and in the technical nature of issues



Increase in technical expertise, in particular, scientific expertise



Cognitive authority (Epistemic Communities)



"Permission" of the scientific community



More rational policymaking

The chart above shows that epistemic communities are an intermediary in the *policymaking* rationalization process, legitimating policies.



For Goldstein and Keohane (1993, p.3), an epistemic community is formed through consensus on a certain issue among a community of experts. This consensus is decisive to provide this actor its unity of action and strengthen its influence in the definition and carrying out of national policies, influencing *policymakers* on the practicality of a certain policy.

Studies based on the approach of epistemic communities are representative. The book "*Communitarian International Relations*" by Emanuel Adler presents case studies carried out by the author in the 1990s, such as the on the Brazilian computer industry and the control of nuclear weapons in the USA.

In the case of the Brazilian computer industry, Adler points out that the behavior of relevant political actors to the design of policies in Brazil could be described as "*guerrillas*", a rather predictable behavior because ideologically oriented. It started with a small group of actors radically engaged with an anti-dependencia ideology, the process of discussing this policy induced and co-opted the economic and political elites both in Brazil and in Argentina to close ranks around a proposal of market reserve policy which would protect the local industry and allowed for its development.

III. Epistemic Communities and Academic Elites

We can, therefore, say that the behavior of the elites is heavily influenced by cognitive factors and linked to restraints imposed by the institutional structure. Adler (2005, p. 147) states that

"Ideological elites such as Brazil's pragmatic anti-dependency guerrillas have the ability to mobilize the collective beliefs, expectations, and concepts that are ultimately responsible for institutional action."

Thus, decision-makers have turned to specialists to minimize uncertainties, help them understand the current issues and anticipate future trends. Without the help of experts, their choices could not only overlook the links with other issues but also high future uncertainty which could compromise future choices and threaten future generations. (Haas, 1992, p. 4)

The concept of uncertainty is important in Haas's analysis. Firstly, because, in the face of uncertainty, many conditions which would make focus easy are lacking. Secondly, because misunderstood conditions may lead institutions without any functions, impractical. There will be no power, no institutional clues for behavior and this can lead to new action patterns.

For Nelkin (1975, p. 36) scientists play an ambivalent role in politics - they are both "necessary" and "biased", as their technical knowledge is a source of power. According to the author, the authority of scientists lies in the rationality their analyses, interpretations and predictions are conducted. Their actions are perceived as being based on objective data obtained through rational processes, assessed by the scientific community through a strict control process.

Haas also proposes that scientific rationality becomes an alternative knowledge paradigm as a model for decision-making. This process stems from the proliferation of ministries and governmental agencies aimed at coordinating several new tasks, making



regulation an important bureaucratic function and expertise came into demand in many disciplines as never before (Haas, 1992, p. 8).

According to Nelkin, some *policymakers* state that it is more efficient and comfortable to name decisions technical rather than political. Scientific knowledge becomes, therefore, a basis for substantive planning and in particular a "defender" of legitimizing specific decisions. The author furthers her argument stating that the practicality of a bureaucracy depends much more on control and monopoly of knowledge in a specific field (Nelkin, 1975, p. 36-37).

For Amitav Acharya, on the other hand, the elites are important for the process he calls *localization*, which refers to the process of disseminating regulations, i.e., local agents reconstruct foreign regulations to ensure those regulations are in accordance with the agents' priorities and identities. The elites would then be intermediary in the process, supplying the necessary information to carry it out (Acharya, 2004, p. 241-242).

However, we must consider that, in accordance with Haas's argument, the knowledge conveyed by experts is not necessarily the *truth* but rather consensual knowledge. This means that expert advice includes experts' interpretation of their own knowledge, their perspective of reality and their ideas of validity (Haas, 1992, p. 21).

To discuss epistemic communities is also to discuss the potential power the elite of knowledge holds in influencing policies. Therefore, the ability that the elite of knowledge has of influencing policies is a type of Soft Power, being used as parameters in the carrying out and structuring of new policies.

IV. Case study: The regulation of the use of stem-cells in Brazil

In March 2005, the Law regulating the use of stem cells in Brazil was approved by the National Congress and sanctioned by President Luís Inácio Lula da Silva. The Law on Biosecurity (Lei da Biossegurança), as it was named, authorized and regulated research with human embryo stem-cells and allowed the growing and trading of genetically modified organisms. However, this was not a simple process, it involved discussions with scientists, society and the media.

Considered a borderline case, the use of stem-cells has been researched all over the world. In Brazil, in particular, the scientific community has required that politicians regulate research so as to avoid the misuse of stem-cell potential and avoid abuse. "Abuse must be avoided and, at the same time, infrastructures should be provided to scientists", declares Mayana Zatz, Coordinator of the research Centre, Centro de Estudos do Genoma Humano, and assistant rector at Universidade de São Paulo (USP) in an interview with journalist Karla Bernardo for the website *Ghente*.

According with the geneticist (Zatz, 2004¹), stem-cells are

[...] progenitor cells that keep the ability to differentiate in several tissues/blood, muscles, nerves, bones, etc...) of the human body. They are totipotent when they have the ability to become any human tissue and pluritotent when they manage to become some but not all human tissue.

This ability may be used in the treatment of genetic diseases such as diabetes, Alzheimer's or Parkinson's. According to the scientist Radovan Borjevic,



*"you can (sic) use embryo stem cells to correct a genetically malformed organism. Implanting these embryo cells in the organism (upon laboratory manipulation), they will potentially have the ability to become other cells and promote the regeneration because they do not have the genetic defect the rest of the organism suffers from."*²

As in other countries, the process of regulating this type of research was rather long in Brazil. Several actors were involved in discussing the approval of the law regulating the use of stem cells. The main actor in the approval of the Law on Biosecurity at the National Congress were the scientists.

Scientists were mainly involved in public hearings, presenting didactic outlines on the use of embryo stem cells, having informal talks with senators, besides writing papers and scientists and patients being present at sessions in which the law was voted.

A specialist on stem cells of Faculdade de Farmácia e de Medicina da Universidade Federal do Rio Grande do Sul (UFRGS), Patrícia Pranke, declared that she was in Brasília at least 20 times when the law was being discussed in the Congress."³

Talking to the journal *Revista de Pesquisa FAPESP* on 15 August 2008, geneticist Mayana Zatz stated that

"My pilgrimage to Brasilia has begun. I started participating in the public hearing and talking to senators because the law has returned to the Senate for rewording. We visit senators, one by one, to explain the relevance of this law. And it was eventually approved in the Senate at the end of 2004, with 96% in favor".

The first time the law was presented at the Senate, in February 2004, it was rejected. The proposal, after being approved in the Senate, would be returned to the House of Representatives for approval. At the time, Severino Cavalcanti, president of the House of Representatives, was not completely sure the project should be submitted to vote because he belonged to the Catholic wing of the Congress. Some scientists, led by Mayana, had a meeting with Cavalcanti and thoroughly explained the potentials in terms of research for curing chronic diseases. The scientists left the meeting with the House president's promise he would submit the law to vote.

The main difficulties for approving the law was its scope and the fear of human cloning. The first draft of the law sent to Congress included both the use of genetically-modified organisms and the issue of embryo cells. Due to the resistance of both the Catholic and Evangelical benches in terms of the use of stem cells and of the environmentalist bench as far as Genetically Modified Organisms (GMOs), the report's author Renildo Calheiros (representative of PCdoB-CE) vetoed therapeutic cloning and limited the competences of the commission on biosecurity Comissão Técnica Nacional de Biossegurança (CTNBio) to authorize research and granted another institutions, Instituto Brasileiro de Meio Ambiente e Recursos Renováveis (IBAMA) and Agência Nacional de Vigilância Sanitária (ANVISA) the power to decide on the growing and trading of GMOs.

Meanwhile, the issue of human reproductive cloning, i.e., the attempt to produce a copy of the individual, is condemned by all scientists. The document *A Propósito da Ação Direta de Inconstitucionalidade da Lei que Autoriza a Pesquisa em Células-Tronco Embrionárias* (2005, p. 5) clearly reflects this point of view, when it states that



"In accordance with the guidelines advocated by the world academic community, the Brazilian scientific community also explicitly condemns all experiments aimed at human reproductive cloning."

To evidence the Brazilian position on the issue of human cloning at world level, The Brazilian Academy of Sciences asked Mayana Zatz to help write a document which was being drafted by researchers from several countries suggesting the ban of reproductive cloning. Together with other scientists, Zatz helped to write a document, ratified by 63 countries, which condemned human cloning but defended research with embryo stem cells

The main arguments used by the scientific community included the possible use of stem cells on chronic diseases, on preventative therapy (in the case of parents who decide to freeze their children's embryo stem cells for possible future use) as well as the status of research in the rest of the world. The argument referring to the status of research in the world is visible in the table below, which is included in the document written by Mayana *et alli* (2005).

Table 1 - summary of the status of stem cell research in several countries

Summary of the status of derivations of new stem cell lines and nuclear transfer in some countries
Countries which allow derivations of new stem cell lines and nuclear transfer (therapeutic cloning)
<i>United Kingdom, China, Belgium, Israel, Japan, South Korea, Singapore</i>
Countries which allow derivations of new stem cell lines but do not allow nuclear transfer (therapeutic cloning)
<i>Australia, Brazil, Canada, Denmark, Estonia, Finland, France, Greece, Hungary, Iran, Latvia, Netherlands, Czech Republic, Russia, Slovenia, Spain, Taiwan, Switzerland</i>

The head of the laboratory, Laboratório de Genética Molecular do Instituto de Biociências at USP, Lygia Pereira, adds to the list of presented arguments the issue of assisted reproduction, in use in Brazil since 1978, [...] perhaps without even realizing it, by accepting assisted reproduction techniques in 1978, we have accepted the destruction of the embryo, of this form of human life. Yes, for almost 30 years, this medical technique has generated human embryos that are not used for reproductive purposes and end up being frozen or disposed of - and we have lived with this fact very well.

The scientists is referring to the fact that the Law on Biosecurity allows research of stem cells only with embryos which were frozen up to March 2005 and for over three years, resulting from assisted reproduction procedures that were not used for fertilization.

Scientist' participation was decisive for the approval of the Law on Biosecurity by the Brazilian National Congress and subsequent ratification by President Luís Inácio. What can be inferred from the analysis of epistemic communities is the issue of sharing casual beliefs, because it is based on scientists' daily experience through research and with their patients that they define what are the core issues in their research and



contribute to establishing links with political actions in the area and producing a specific result. For example, Mayana Zatz declares that she decided to get involved in stem cell research due to her experience with patients with neurological diseases, specifically with diseases causing progressive muscle degeneration.⁴

Another important topic that evidences how the regulation of the use of stem cells in Brazil can be understood by means of the study of epistemic communities is that of the "validity test". When referring to the results obtained by the group of Catherine Verfaillie on the identification of bone marrow stem cells with properties similar to those of embryo stem cells, which cannot be reproduced by any other researcher in the world, Brazilian scientists working in the field wrote the following

However, more important is yet to inform that the studies conducted by Dr. Verfaillie could not be reproduced by several laboratories of renowned scientists all over the world, thus making these findings in need of evidence and confirmation by several research groups to be accepted as scientific truth. In any case, at the moment this population of cells, if it exists, cannot be separated and studied, so its use in terms of treatment is not viable.⁵

Thus, there are indicators that an epistemic community was formed around the debate on the use of stem cells in Brazil. The first indicator is the diversity of participating actors in the group advocating the approval of the Law on Biosecurity. The fact that the group was interdisciplinary, i.e., includes professionals from several areas: doctors, computers engineers, biologists, mathematicians, educators, physicists, among others. This is the major important feature of an epistemic community: include members from different academic fields.

The second indicator is linked to its influence in the planning of public policies and in the establishment of an agenda for that specific area; the group can influence policymaking in a certain area in the country. This indicator is proven when we analyze the scientists' travels to the Brazilian National Congress so try to convince Brazilian MPs of the importance of approving the Law on Biosecurity through educational lectures and the presentation of case studies.

The third indicator is the establishment of international discussion agendas or even direct influencing the use of Brazilian techniques in the use of stem cells to treat degenerative diseases in other countries, fostering simple solutions for unsolved problems.

The fourth indicator is the consensus in terms of decisions and strategies within the group of scientists so as to convince policymakers to approve the law. Consensus is usually seen as fundamental for the process of influencing in policymaking in studies on epistemic communities. Consensus is decisive to provide unity in action of the actor epistemic community, to reinforce its influence in defining and carrying out national policies and influence policymakers on the practicality of a certain policy.

V. Final Considerations

An important legacy of the study on the role of ideas and specifically of epistemic communities is that ideas inspire policies. And epistemic communities would work as channels through which new ideas would flow from society to governments, from country to country.



In this process, information consists in describing physical or social processes, their interrelation with other processes and the probable consequences for actions requiring the use of scientific or technical expertise. Information is, therefore, neither hunches nor raw data. It is a product of human interpretation of social and physical phenomena. Epistemic communities are a possible supplier of this type of information and advice. From a retrospective and bibliographical analysis on the action of epistemic communities, we were able to assign four features of those actors to the community of professionals linked to the use of stem cells in Brazil, allowing us to state that there is an epistemic community in the country in the area of stem cells.

VI. References

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VII. ENDNOTES

- 1 Paper available at http://www.ghente.org/temas/celulas-tronco/artigos_mayana.htm <Retrieved on 18 December 2009>
- 2 Interview to the website *Ghente*. Células-tronco: O Brasil a um passo da criação de órgãos em laboratório. Paper available at http://www.ghente.org/temas/celulas-tronco/artigos_radovan.htm <Retrieved on 18 December 2009>
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- 4 In: Revista de Pesquisa FAPESP. *op cit*.
- 5 Marco Antonio Zago, Mayana Zatz and Antonio Carlos Campos de Carvalho. *A Propósito da Ação Direta de Inconstitucionalidade da Lei que Autoriza a Pesquisa em Células-Tronco Embrionárias*. (p.5) December 2005. Available at www.ghente.org/temas/celulas-tronco/abc_prol_cel_tronco.pdf <Retrieved on 10 December 09>