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## EU Universities

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# L'analyse du macro et du meso-environnement des Universités au Sein de l'Union Européenne

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PROFESSEUR ERIC OLSZAK

UNIVERSITES CATHOLIQUES EN SCIENCES ECONOMIQUES<sup>1</sup>

**Abstract:** All European universities, whether public or private, are increasingly facing strong competition to develop strategies that can attract large numbers of students. One of the elements of this strategy is to better understand the influences of the macroenvironment that revolve around these universities; this is the purpose of the PESTEL model. At the same time, the universities are confronted daily with relationships with all a range of players who force them to adapt their strategy; this is the purpose of the Stakeholders model. The purpose of this article is to put these two tools into the light in order to better understand the macro and mesoeconomic constraints faced by universities.

**Keywords:** University, Competition, Macroenvironment, Stakeholders.

**Résumé:** L'ensemble des universités européennes qu'elles soient publiques ou privées sont de plus en plus confrontées à une forte concurrence qui les poussent à développer des stratégies susceptibles d'attirer un grand nombre d'étudiants. L'un des éléments de cette stratégie consiste à mieux connaître les influences du macroenvironnement qui gravitent autour de ces universités, tel est l'objet du modèle PESTEL. Dans le même temps, les universités sont confrontées quotidiennement à des relations avec toutes une série d'acteurs qui les obligent à adapter leurs stratégies, tel est l'objet du modèle des Parties Prenantes. L'objet de cet article consiste à mettre en lumière ces deux outils afin de mieux comprendre les contraintes macro et mésoéconomiques auxquelles sont confrontées les universités.

**Mots clés :** Universités, Concurrence, Macroenvironnement, Parties prenantes.

L'analyse des stratégies des universités a fait l'objet de nombreux ouvrages depuis le début des années 1980 mais un ouvrage en particulier retient toute notre attention celui de Kotler et Fox (1995)<sup>2</sup> portant sur le marketing stratégique des universités. Ces deux auteurs en préambule de leur ouvrage font ressortir sept éléments caractéristiques selon eux du marché de l'université, respectivement :

- « certains pays comme les pays anglo-saxons mais pas uniquement peuvent se vanter de posséder un système universitaire très performant à l'instar de n'importe quels autres secteurs d'activités économiques » ;

- « le fait de posséder un secteur universitaire performant contribue à améliorer la situation de la Balance des paiements de certains pays. En effet, le fait de pouvoir attirer des étudiants du monde entier correspond en fait à une exportation de services pour le pays d'accueil » ;

- « les effectifs étudiants ont considérablement augmenté depuis un demi-siècle et l'évolution de la démographie d'une part mais surtout le fait que de plus en plus d'adolescents souhaitent désormais poursuivre des études supérieures accentuent encore cette tendance » ;

- « le risque de voir une université faire faillite n'est pas totalement exclu mais apparaît pour l'occasion moins fréquent que dans nul autre secteur d'activité » ;

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<sup>1</sup> Professeur des Universités Catholiques en sciences économiques Faculté Libre de Droit- C3RD Université Catholique de Lille, eric.olszak@univ-catholille.fr

<sup>2</sup> Philip Kotler, Karen Fox, *Strategic Marketing for Educational Institutions*, Hall, Englewood Cliffs, Nj, 2<sup>nd</sup>, ed, Prentice, 1995.

- « seule une université est capable d'attirer autant de talents en son sein sur une période conséquente, c'est vrai du côté des étudiants mais c'est encore plus évident si l'on se place du côté des personnels enseignants et non enseignants d'un très haut niveau » ;

- « en s'inscrivant à l'université, les étudiants concluent un accord avec elle dans la mesure où cette dernière en échange des frais d'inscription ne leur offre pas uniquement un service d'éducation mais dans la plupart des cas : un logement ; de la nourriture ; un accès à la culture, aux équipements sportifs, aux bibliothèques, etc. L'ensemble de ces services qui sont joints au produit initial sont proposés à des prix avantageux » ;

- « le retour sur investissement d'un étudiant ayant choisi de poursuivre quatre ans d'études supérieures se traduit inmanquablement par le fait d'occuper un poste plus important et généralement mieux payé qu'un individu ayant choisi d'arrêter après le lycée »<sup>3</sup>.

Ces sept caractéristiques peuvent s'appliquer à toutes une série d'établissements de l'enseignement supérieur en Europe mais également aux universités situées sur les autres continents. Ces considérations générales sont naturellement prises en compte par les Présidents et les Recteurs des universités mais afin d'optimiser leur prise de décision, ils se doivent de prendre en considération les influences du macro-environnement universitaire dans un premier temps, ce que nous verrons dans une section 1, de mettre en exergue ensuite les relations qu'elles entretiennent avec toute une série d'acteurs, ce que nous verrons dans la section 2.

## §1. L'ANALYSE PESTEL APPLIQUEE AUX UNIVERSITES

Le modèle PESTEL est un acronyme signifiant respectivement : Politique ; Economique ; Sociétal ; Technologique ; Environnemental et Légal. Chaque organisation que ce soient des entreprises, des associations et des universités subissent l'influence de chacune des dimensions, Brulhart, Favoreu, Gherra (2015)<sup>4</sup> en font une description détaillée dans leur ouvrage consacré à la stratégie des entreprises. Dans cette section, nous examinerons les caractéristiques de ces six dimensions en les appliquant aux universités européennes. Le tableau 1 nous indique les différentes dimensions afférentes plus spécifiquement aux universités européennes quelles que soient leurs situations géographiques.

*Tableau 1 : Les caractéristiques des 6 dimensions du modèle PESTEL appliquées aux Universités européennes.*<sup>5</sup>

Dimensions	Caractéristiques
<b>P : Politique</b>	<ul style="list-style-type: none"> <li>- Attitude du pouvoir vis-à-vis de l'enseignement supérieur ;</li> <li>- Mise en place de programmes visant à développer les universités ;</li> <li>- Instabilité politique : absence de majorité politique stable ;</li> <li>- Existence de régime autoritaires.</li> </ul>
<b>E : Economique</b>	<ul style="list-style-type: none"> <li>- PIB par habitant faible ;</li> <li>- Grande pauvreté ;</li> <li>- Présence d'infrastructures ;</li> <li>- Développement des moyens de communication ;</li> </ul>

<sup>3</sup> Philip Kotler, Karen Fox, *Strategic Marketing for Educational Institutions*, Hall, Englewood Cliffs, Nj, 2<sup>nd</sup>, ed, Prentice, 1995.

<sup>4</sup> Franck Brulhart, Christophe Favoreu, Sandrine Gherra, *Stratégie*, Collection Openbook, Dunod Editeur, 2015, pp.6-11.

<sup>5</sup> Le tableau reprend les grandes dimensions du modèle PESTEL telles qu'elles apparaissent dans tous les ouvrages, la seconde colonne a été élaboré par l'auteur du présent article.

	<ul style="list-style-type: none"> <li>- Financement partiel de l'activité des universités par les autorités publiques;</li> <li>- Intensité de la concurrence avec les autres universités ;</li> <li>- Liens étroits entre l'Université et les entreprises.</li> </ul>
<b>S : Sociologique et démographique</b>	<ul style="list-style-type: none"> <li>- Evolution du nombre de naissances ;</li> <li>- Proportion des jeunes en âge de rentrer dans les universités ;</li> <li>- Impact du COVID 19 et de la diffusion des épidémies.</li> </ul>
<b>T : Technologique</b>	<ul style="list-style-type: none"> <li>- Importance du digital et impact sur la vie universitaire ;</li> <li>- Développement des formations à distance ;</li> <li>- Développement du télétravail.</li> </ul>
<b>L : Légal</b>	<ul style="list-style-type: none"> <li>- Statuts juridiques des universités ;</li> <li>- Statut des personnels des universités catholiques.</li> </ul>
<b>E : Environnemental</b>	<ul style="list-style-type: none"> <li>- Prise de conscience des problèmes écologiques par la population ;</li> <li>- Développement de la RSE et intégration aux stratégies de l'université ;</li> <li>- Application des principes du développement durable aux stratégies de l'université.</li> </ul>

Le tableau numéro 1 appelle un certain nombre de commentaires, concernant tout d'abord la dimension « Politique » on peut la subdiviser en deux sous-ensembles : les facteurs spécifiquement politiques et les facteurs liés à la mise en œuvre des politiques publiques en direction des universités. Au niveau des facteurs politiques, la présence des universités dans chaque pays européen implique qu'elles soient confrontées à des situations politiques très différentes, ainsi la dérive constatée vers une forme d'autoritarisme de la part de certains pays comme la Pologne et la Hongrie laisserait craindre une tentative de prise de contrôle de la gestion des universités par ces autorités politiques même si cela ne s'est pas encore produit<sup>6</sup>. De la même manière, l'instabilité gouvernementale qui existe dans certains pays rend parfois plus difficile la mise en œuvre de politiques ambitieuses envers l'enseignement supérieur. Ce dernier élément nous conduit à mettre en évidence, la place qu'occupe le développement de l'enseignement supérieur dans les politiques publiques mises en œuvre dans les différents pays, certains d'entre eux peuvent considérer la formation comme une priorité nationale alors que d'autres choisiront de réinvestir dans d'autres secteurs d'activités. L'Union européenne peut également jouer un rôle dans le développement des universités, la mise en place du programme ERASMUS au début des années 1990 en favorisant les échanges d'étudiants entre les universités leur a permis également de renforcer leur coopération sur différents programmes.

Au niveau de la dimension « Economique », on peut également subdiviser en deux sous-catégories : la conjoncture économique et les conditions économiques d'une part ; les facteurs ayant un impact direct sur la gestion des universités. Au niveau de la conjoncture économique, on peut estimer que les pays ayant des économies solides avec des taux de croissance élevées sont de nature à développer le niveau de vie de la population constituant un facteur favorable aux inscriptions dans les universités notamment les universités privées. Dans cette optique, les pays les plus pauvres de l'Union Européenne ont une probabilité plus faible de voir se développer des universités privées au profit des universités publiques. Etroitement corrélées avec le développement économique, la multiplication des moyens de communication et le développement des infrastructures contribuent à faciliter le développement de l'implantation des universités sur un territoire. Au niveau des facteurs influençant la gestion des universités, plusieurs paramètres peuvent avoir une énorme influence sur

<sup>6</sup> L'actualité quotidienne nous montre que l'Union Européenne s'inquiète régulièrement des dérives de ces deux pays en matière de libertés fondamentales, on peut estimer que l'Université n'échappera pas à ces dérives.

leurs activités. De la même manière que les relations étroites avec les entreprises peuvent constituer une source complémentaire de ressources (contrats de recherche, mécénats) en même temps qu'elle peut assurer plus aisément les débouchés auprès des étudiants. Pour finir, l'intensité de la concurrence entre les universités constituent un autre point important influençant leurs stratégies, c'est le cas des pays anglo-saxons notamment.

Concernant la dimension « Sociologique et Démographique », une fois encore on peut subdiviser celle-ci en deux sous-catégories : l'évolution et les caractéristiques de la population d'une part ; les facteurs sanitaires d'autre part. L'évolution et les caractéristiques de la population peuvent avoir un impact significatif sur l'évolution des inscriptions au sein des universités. Dans un premier temps, si l'on effectue une analyse à court terme, le nombre de jeunes susceptibles d'intégrer l'année suivante l'enseignement supérieur constitue une bonne indication du marché potentiel d'un établissement par rapport aux nouvelles inscriptions. De la même manière, si l'on se place sur le long terme, le niveau des naissances au cours d'une année constitue un indicateur approché du nombre d'inscriptions potentielles 18 ans plus tard. A titre indicatif, le boom des naissances enregistrée en l'an 2000 dans certains pays a eu un impact significatif sur les inscriptions dans l'enseignement supérieur à partir de 2018. Un autre élément que l'on aurait pu classer dans la dimension économique peut avoir une influence sur les inscriptions est lié à l'importance des classes moyennes et aisées dans la structure de la population totale, plus celle-ci est élevée plus cela constitue un facteur favorable à l'inscription dans des formations payantes. La deuxième sous-catégorie apparaît plus ciblée en se focalisant sur le facteur sanitaire. En effet, l'irruption inattendue du COVID 19 au niveau mondial a eu un impact sur la gestion quotidienne des établissements d'enseignement supérieur (fermetures partielles ou totales, adaptation des enseignements) et les conditions sanitaires différentes d'un pays à l'autre ont modifié en conséquence les stratégies des entreprises.

Au niveau de la dimension « technologique », ce dernier apparaît à l'inverse des trois premiers comme relativement homogène dans la mesure où le dénominateur commun aux trois éléments précités se trouve être l'environnement « numérique ». En effet, le développement du numérique depuis le milieu des années 1990 a considérablement modifié la gestion quotidienne de l'ensemble des établissements d'enseignement supérieurs. Dans le même temps, le développement des techniques numériques permet aujourd'hui d'envisager le développement de l'offre de formations à distance qui dépasse largement les possibilités d'interaction que proposait initialement l'enseignement par correspondance qui existait jusqu'à présent. Pour terminer, la propagation du COVID 19 a bouleversé considérablement les méthodes d'enseignement en présentiel vers un basculement partiel ou total en distanciel, toutes les universités du globe ont été obligées de s'adapter relativement vite et la rapidité d'adaptation a pu constituer un élément de différenciation positive<sup>7</sup>.

La dimension « juridique » comporte plusieurs sous-dimensions, respectivement : le statut juridique des universités et le statut des personnels des établissements d'enseignement supérieur. Concernant le statut juridique, les multiples établissements de l'enseignement supérieur ont des statuts juridiques différents qui varient beaucoup en fonction de la législation des pays, on peut trouver des universités qui ont le statut d'association comme les universités catholiques françaises ou au contraire des universités privées. Les différences de statuts juridiques peuvent influencer considérablement sur la mise en œuvre de la stratégie des universités. Le deuxième élément a pour cadre le statut des personnels de l'enseignement supérieur qui ont des statuts différents suivant qu'ils évoluent dans des établissements privés ou publiques, dans le premier cas, les salariés sont assimilés à des salariés du secteur privé comme n'importe salariés des entreprises, dans le deuxième cas, ils sont assimilés à des fonctionnaires.

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<sup>7</sup> L'auteur du présent article ayant été confronté directement à ce type de situation en étant dans l'obligation d'assurer tous ces cours à distance à partir d'Octobre 2020 peut témoigner de la satisfaction des étudiants face à la volonté de l'Université d'assurer la continuité pédagogique.

La dernière dimension « environnementale » peut également se subdiviser en deux sous-parties: la prise en compte des problèmes écologiques par la population d'une part ; la prise en compte des principes du développement durable et de la RSE d'autre part.

La prise en compte par la population des problèmes écologiques se rencontrent aujourd'hui dans la plupart des pays du Globe et la sensibilisation aux problèmes de réchauffement climatique devient omniprésent. De par les nombreuses interactions, les universités européennes ne peuvent ignorer cette dimension. Dans la logique du rapport « Brundtland » paru en 1987<sup>8</sup>, la plupart des universités ont transposé dans leurs stratégies les principes du développement durable en axant principalement leurs efforts sur la minimisation des activités sur le développement durable. Dans le même temps, la dimension sociale mais aussi la dimension « gouvernance » se retrouve dans l'application par de nombreuses universités des principes de la responsabilité sociale et environnementale des entreprises.

Ayant procédé à l'analyse du macroenvironnement, il convient à présent de nous focaliser sur la prise en compte des relations qu'une université entretient quotidiennement avec un certain nombre d'acteurs, ce que l'on nomme la méso-environnement, tel est l'objet de la théorie des parties prenantes.

## § 2. LA THEORIE DES PARTIES PRENANTES

Le modèle des parties prenantes est un concept abondamment utilisé dans la littérature des sciences de gestion, de nombreux articles lui sont consacrés mais c'est l'ouvrage de Freeman(1984)<sup>9</sup> qui en fait une synthèse assez complète. Ayadi (2003)<sup>10</sup> pour sa part, nous indique que le concept de « parties prenantes » se réfère à la littérature anglo-saxonne qui distingue souvent les *shareholders* (actionnaires) et les autres *stakeholders* (les parties prenantes). On ne peut véritablement comprendre ce concept qu'en effectuant un retour en arrière en se plongeant dans l'histoire de la pensée en sciences de gestion plus précisément sur celle ayant pour cadre la place de la firme et ses relations avec l'environnement. Berle et Means (1932)<sup>11</sup> mettent en évidence le développement d'une pression sociale qui s'exerce sur les dirigeants afin qu'ils reconnaissent leur responsabilité auprès de tous ceux dont les décisions de l'entreprise peuvent affecter leur bien-être. Quelques décennies plus tard, les travaux respectifs de Bowen (1953)<sup>12</sup> et d'Ansoff (1968)<sup>13</sup> viennent en quelques sortes compléter ceux précurseurs de Berle et Means. Bowen que l'on peut considérer comme l'un des pères fondateurs du concept de Responsabilité Sociale et Environnementale plus connu dans le langage courant sous l'acronyme RSE, estime que l'entreprise mais surtout ses dirigeants se doivent de prendre en considération à la fois d'un point de vue moral et social l'impact de leur décision sur des groupes externes. Ansoff reste le premier pour sa part à faire référence à la théorie des parties prenantes en arguant du fait qu'en matière d'organisation, une entreprise se doit d'orienter ses objectifs de façon à fournir à chaque parties prenantes une part équitable de satisfactions. Ansoff insiste également sur le fait que la prise en compte des parties prenantes affecte de façon plus ou

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<sup>8</sup> Gro Harlem Brundtland, *Notre avenir à tous*, Rapport de la Commission Mondiale sur l'environnement et le développement de l'ONU, Avril 1987, 349 p.

<sup>9</sup> Robert Edouard Freeman, *Strategic Management: A Stakeholder Approach*, Boston Pitman, 1984.

<sup>10</sup> Salma Damak Ayadi, *La théorie des parties prenantes, théorie empirique ou théorie normative ? in identification et maîtrise des risques : enjeux pour l'audit, la comptabilité et le contrôle de gestion*, Bruxelles, 2003.

<sup>11</sup> Adolf Berle, Gardiner Means, *The modern Corporation and The Private Property*, New York, Mac Millan, 1932.

<sup>12</sup> Howard Bowen, *Social Responsibilities of the Businessman*, Harper and Brothers, New York, 1953.

<sup>13</sup> Igor Ansoff, *Stratégies du développement de l'entreprise*, Paris, Editions Hommes et Techniques, 1968.

moins importante la stratégie d'une entreprise en renforçant de fait les contraintes dans sa gestion quotidienne<sup>14</sup>.

Dans cette optique, on peut considérer que dans le cas d'une université les parties prenantes représentent l'ensemble des individus et institutions qui entretiennent des contacts plus ou moins réguliers avec elle. Ainsi, on peut dresser une liste exhaustive de l'ensemble des parties prenantes d'une université en Europe dans le cas présent mais qui pourrait être transposée sans problème à d'autres universités dans le monde :

- les étudiants ;
- les parents ;
- les professeurs ;
- le personnel administratif ;
- les fournisseurs ;
- les entreprises ;
- les décideurs politiques locaux et nationaux ;
- les associations de riverains ;
- les autorités administratives (Rectorat d'Académie, Ministère de l'éducation nationale) ;
- les autres universités ;
- les anciens étudiants ;
- les donateurs ;
- les lycées publics et privés ;
- les étudiants des autres universités ;
- l'Union européenne ;
- les administrateurs de l'université ;
- les médias (journaux, radios et télévisions).

Le tableau 2 nous donne un aperçu des relations spécifiques que les universités européennes peuvent avoir avec chacune des parties prenantes.

**Tableau 2 :** *Les relations entre les universités européennes et leurs parties prenantes*<sup>15</sup> :

<b>Les Parties prenantes</b>	<b>Relations envisagées et influence sur la stratégie</b>
<b>Les étudiants</b>	Les étudiants constituent le cœur même de la stratégie des universités à travers les politiques de marketing, les différents services qui leur sont rendus sont de nature à assurer à l'université sa pérennité à travers leur satisfaction.
<b>Les parents</b>	A l'instar des étudiants, ils représentent une cible importante au niveau de la stratégie marketing, ce sont eux qui financent le plus souvent les études de leurs enfants, ils vont être particulièrement sensibles au rapport qualité/prix. Ils voudront par ailleurs un retour sur investissement qui sera d'autant plus fort que les coûts d'inscription apparaîtront initialement élevés.
<b>Les professeurs</b>	Ils constituent l'un des éléments essentiels de la politique d'offre, dans la mesure où leurs compétences, leurs disponibilités auprès des

<sup>14</sup> Igor Ansoff, *Stratégies du développement de l'entreprise*, Paris, Editions Hommes et Techniques, 1968.

<sup>15</sup> Le tableau numéro 2 résulte des observations de l'auteur enseignant depuis 20 ans au sein de l'Institut Catholique de Lille.

	étudiants renforcera d'autant plus la qualité du service offert à ces derniers.
<b>Le personnel administratif</b>	Bien qu'ayant une fonction liée plus généralement à ce que l'on qualifie de « Back Office », leur rôle est fondamental dans la qualité du service fourni dans la mesure où les étudiants vont les solliciter très souvent afin d'obtenir des réponses (changements de salle, date d'examen, fourniture d'un certificat, etc.).
<b>Les fournisseurs</b>	Ils peuvent influencer sur la qualité du service notamment à travers les équipements mis à disposition des étudiants, à travers la nourriture offerte dans les restaurants universitaires.
<b>Les entreprises</b>	Les relations qui s'établissent entre les entreprises et l'université sont primordiales à plus d'un titre : <ul style="list-style-type: none"> <li>- Les entreprises vont être sensibles à l'offre de formation et seront susceptibles d'accueillir les étudiants en stage qui pourront déboucher ensuite sur une embauche. Elles contribuent ainsi à faire la réputation d'une université en augmentant son taux de placement qui reste par ailleurs un indicateur fondamental dans le choix final d'une inscription ;</li> <li>- Les universités peuvent participer à l'élaboration de certains programmes en finançant des chaires, en participant à la taxe d'apprentissage ou en finançant des contrats d'études.</li> </ul>
<b>Les décideurs politiques locaux et nationaux</b>	Le fait d'entretenir de bonnes relations avec les décideurs publics locaux et nationaux contribue également à améliorer la qualité du service et cela de plusieurs manières : <ul style="list-style-type: none"> <li>- Au niveau des autorités locales (municipalités, assemblées locales), leur pouvoir d'autoriser de nouvelles constructions de bâtiments universitaires apparaît déterminant. Plus généralement, elles ont un pouvoir décisionnel en matière d'aménagements et de grosses rénovations. Pour finir, les autorités peuvent accorder des subventions par rapport à certains projets de recherche qui se traduisent par des flux financiers conséquents. Plus spécifiquement, les autorités locales de proximité comme les municipalités peuvent exercer un pouvoir de police en cas de débordements de la population estudiantine lors des soirées ;</li> <li>- Au niveau des décideurs politiques nationaux, de bonnes relations dans le cadre des pratiques de lobbying peuvent les amener à voter des lois favorables au fonctionnement des universités catholiques.</li> </ul>
<b>Les associations de riverains</b>	Avoir de bonnes relations avec les associations de riverains témoigne d'une bonne insertion de l'université dans l'environnement local en même temps qu'elle peut favoriser l'existence d'un bouche à oreille positif susceptible d'augmenter potentiellement les futures inscriptions.
<b>Les autorités administratives (Rectorat d'Académie, Ministère de l'éducation nationale)</b>	Les systèmes éducatifs étant très différents d'un pays à l'autre, il n'en demeure pas moins que les relations avec les autorités administratives peuvent influencer considérablement sur la stratégie d'une université. Ainsi le plus souvent, les autorités administratives de l'éducation nationale ont un pouvoir réglementaire important

	pouvant aller dans certains cas jusqu'à interdire l'ouverture de certaines formations conditionnant en partie la politique de produit.
<b>Les autres universités</b>	Les établissements de l'enseignement supérieur entretiennent des relations étroites avec d'autres établissements à la fois nationaux mais aussi internationaux. Ces échanges peuvent contribuer à donner une image encore plus dynamique de l'offre universitaire, par exemple à travers le programme ERASMUS.
<b>Les anciens étudiants</b>	Les anciens étudiants ont une triple mission au regard de leur ancienne université : <ul style="list-style-type: none"> <li>- Ils peuvent relayer avec bienveillance auprès de leurs relations le fait d'avoir eu une formation de qualité ;</li> <li>- Ils peuvent favoriser l'accueil de stagiaires et constituer un réseau important de nature à favoriser le plus souvent des futures embauches ;</li> <li>- Ils peuvent devenir ultérieurement des donateurs.</li> </ul>
<b>Les donateurs</b>	Entretenir de bonnes relations avec les donateurs constitue un élément essentiel de la réussite des universités lorsqu'elles relèvent du secteur privé. Ces derniers peuvent contribuer substantiellement au financement de l'activité de l'université et plus spécifiquement en participant à son plan de développement.
<b>Les lycées publics et privés</b>	Ces établissements constituent l'essence même du marché d'une université, les lycéens constituent de fait la première cible à atteindre.
<b>Les étudiants des autres universités</b>	Les étudiants des autres universités constituent également une cible de choix dans la mesure où ils peuvent choisir ensuite de s'inscrire dans les formations de second et de troisième cycle au sein de l'université.
<b>L'Union Européenne</b>	L'Union européenne de par ses multiples actions envers l'ensemble du secteur éducatif et plus particulièrement vis-à-vis de l'enseignement supérieur détient une place importante dans la stratégie des universités. La mise en place du processus de Bologne, les multiples programmes visant à promouvoir l'accès des étudiants à l'université les conduisent à avoir beaucoup de contacts avec les autorités communautaires.
<b>Les administrateurs de l'université</b>	A nouveau, la gouvernance des universités peut varier sensiblement d'un pays à l'autre mais d'une manière générale, les administrateurs ont un pouvoir très important dans l'élaboration et parfois dans l'infléchissement de certaines orientations stratégiques.
<b>Les médias (journaux, radios et télévisions).</b>	Les médias constituent un vecteur fondamental de transmission des messages dans le cadre de la politique de communication. Le plan de communication de l'université doit s'efforcer d'optimiser l'impact de la transmission des messages en direction des prospects potentiels.

## CONCLUSION

Les universités européennes quelles que soient leurs statuts, leurs tailles et leurs localisations sur le territoire européen sont de plus en plus confrontés à une forte concurrence qui les obligent à faire preuve d'innovations pour attirer toujours plus d'étudiants. Dans cette optique, à l'instar de ce que les entreprises font quotidiennement, les universités doivent élaborer des stratégies pour affronter cette concurrence. La réussite d'une stratégie passe au préalable par une prise de conscience de la part des Présidents et des Recteurs de l'environnement dans lequel évolue une université respectivement le macro-environnement matérialisé par l'utilisation du modèle PESTEL, à travers le méso-environnement ensuite à travers la prise en compte de la théorie des parties prenantes. Les multiples influences du macro-environnement mais surtout les multiples acteurs qui gravitent autour des universités qu'ils soient personnes physiques ou morales rendent extrêmement complexes la mise en place des stratégies par les universités européennes.

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# Technology in higher education in European area before Covid 19

SENIOR LECTURER DR. AURELIAN OLIMPIU SABĂU-POP

GEORGE EMIL PALADE UNIVERSITY OF MEDICINE, PHARMACY,  
SCIENCE, AND TECHNOLOGY OF TÂRGU-MUREȘ

**Abstract:** Higher education, dominated in the past by an exchange between instructor and the students in a classroom, has expanded to a variety of delivery systems. Technology can be expected to deeply affect higher educational institutions. Distance education, as a pioneer in the uses of technology, not only should adjust to the possibilities of advanced technology, but also should modify existing structures so as to enhance e-learning in education either we consider pre-university education, higher education or life-long learning. Distance education systems are expanding in pace with the development of communication and information technology.

**Key words:** Higher education, European reforms, Strategy, Technology.

## 1. EUROPEAN HIGHER EDUCATIONAL SYSTEM VS. TECHNOLOGY

The European higher education has passed through many changes in the last two decades, being included in the much broader Western and Eastern European reforms. Since the late 1990s, the rate of change has accelerated to unprecedented levels, largely on the shoulders of three key developments: the Sorbonne Declaration (1998), the Bologna Declaration (1999), and the Lisbon Strategy (2000). The Sorbonne Declaration of 1998 was the first signalled preference of major European countries (France, Germany, Italy and the UK) for a more compatible and comparable set of European higher education systems over the longstanding perspective that Europe's diversity was its strongest asset<sup>1</sup>.

The first two key development objectives was to make study programmes more compatible across the European systems. The Lisbon Strategy, including its 2005 restart New Lisbon partnership for growth and jobs, seeks to reform the continent's still fragmented systems into a more powerful and more integrated, technological - based social-economical environment. Subsequent communications from European policymakers have only strengthened the belief that higher education institutions will be crucial to Europe's future well-being and, in effect, the lynchpin that binds these major processes and strategies together.

### 1.1.Lisbon agenda

Lisbon agenda has become known through objectives that follow the transformation of the European economy as the most competitive and dynamic knowledge-based economy capable of sustainable economic growth, offering better jobs with a higher social cohesion. To achieve, by 2010, this objective, the EU should coordinate its efforts to obtain not only a radical transformation of the economy, but also to adopt an ambitious program for the modernization of the social and educational system.<sup>2</sup>

Regarding the major role of entrepreneurial education in universities there are numerous papers<sup>3</sup> published. The article Entrepreneurial Intentions of Business Students: A Benchmarking

<sup>1</sup> Vasile Puscaș, *Universitate, societate, modernizare*, Ed. Eikon, 2004

<sup>2</sup> Costea, Simion, "The Lisbon Strategy", p.200-206, in vol. *Public Policies of the European Union*, coordinators Asztalos Zsofia and Pakozdy Csaba, "Petru Maior" University Publishing House, Tîrgu-Mureș, 2008.

<sup>3</sup> Franke, B. and Luthje, Ch., "Entrepreneurial Intentions of Business Students: A Benchmarking Study", 2004, *International Journal of Innovation & Technology Management*, 1, 269-288

Study published in *International Journal of Innovation & Technology Management* indicates that “all over the world there are rapidly developing businesses based on new technologies within the small and medium sized companies, an area that needs technically specialized staff, with knowledge in the business domain, to manage the organizations and groups, so the formation education in the domain of entrepreneurship must be developed”.

### 1.2. Bologna declaration

The main objective of the Bologna process is to create a European area of higher education based on international cooperation and academic exchanges, a European area attractive to both students and teachers in Europe, as well as around the world. The creation of this European higher education space facilitates the mobility of students, graduates and academic staff, prepares students for their future careers and lives as active citizens of democratic societies, and provides support for their personal development by providing access to quality higher education.

Regarding the theme of the present article the Declaration has two principal implications.

Firstly, the emphasis on the individual choice undermines the traditional assumption that learning best takes place within an institution, within a fixed period of time defined by academic staff<sup>4</sup>.

Secondly, the focus should be on competence and general skills more than on acknowledge and the skills of reproduction of the didactic material put on the reach of the student. The restructuring of the curriculum will impose the change of teaching from subject-based teaching to student – based teaching, where the teacher is a “facilitator rather than expert”<sup>5</sup>.

The Declaration has had a major impact in the academic plan; most of the institutions of higher education have adapted the University's curricula in consonance with the principles laid down above.

Furthermore, there have been created platform that allows an easier access of the students at the bibliographic resources, the possibility of informing them about the contents of the disciplines and, in general, better information of students with all the changes that occur during the academic year.

Moreover, Informatics laboratories have been established within all the faculties regardless of the specialization, in order to prepare students and teachers with the use of electronic resources that is intended to facilitate access to the career and the acquisition of complementary skills to the specialization that they have.

### 1.3. European Recommendations

The Recommendation of the European Parliament and Council of 18 December 2006 regards key competences for lifelong learning providing an European framework of reference which covers eight key competences, defined as "knowledge, skills and attitude." Our project aims at most of these competences, especially those related to creativity, innovation, learning process, spirit of initiative and entrepreneurship, cultural awareness and expression.

Innovative capacity is closely related to creativity as a personal trait that is based on values and cultural and interpersonal skills.

In March 2007, the European Council stressed again the role of education and training as a key factor in enhancing creativity, innovation, performance and competitiveness, giving the concept

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<sup>4</sup> Trowler, P., *Academics responding to change: new higher education frameworks and academic cultures*, 1998, Society for Research into Higher Educational & Open University Press, Buckingham.

<sup>5</sup> Ensor, P., “Contesting discourses in higher education curriculum restructuring in South Africa”, 2004, *Higher Education*, 48, 339-359

of "knowledge triangle": education, research and innovation. (see Recommendation 2006/962/CE, JO L 394, 30.12.2006).

Moreover, for the period 2007-2013, the European Commission has integrated its initiatives in education and training under the umbrella of a single program of lifelong learning. This program enables European citizens, regardless of their age, to benefit from learning opportunities throughout Europe.

As the higher education system has developed, also the standards required by the society have grown. Today, higher education and research are associated with the notion of progress and innovation, both at individual and society level. In order to adapt higher education to these new orientations towards society needs, curriculum reform becomes one of the most important tools. Any effort at curriculum revision should be designed to prepare all students for effective citizenship and participation in an increasingly diverse multicultural and multiracial society. Major curriculum revisions and articulation agreements at colleges and universities should involve consultation with faculty members from other educational institutions affected by the changes.

## 2. IMPACT OF TECHNOLOGY IN EDUCATION

Traditional campus-based education is no longer the only way higher education is developed nowadays. Due to the technological developments the last decades have witnessed a significant increase in different forms of education and new educational providers as an example university have a wider impact, some of them even global<sup>6</sup>, with strong international university brands<sup>7</sup>. They include a wider range of interactions, more than just face-to-face courses:

- distance educations programs that are delivered through computer, internet, correspondence or other technological means
- degrees gained through study in more than one country as a result of agreements between institutions from different countries in joint educational programs
- virtual universities
- study abroad semester as in Erasmus projects.

Technological resources put at the hand of students consist mainly in the use of computer, use of means of distance communication, projector, or electronic data storage.

### 2.1. What students are using technology in education

Technology has removed the limitations of time and space, and as a consequence the number of students who can attend a class has increased considerably<sup>8</sup>.

A lot of students who were eliminated from college institution due to their physical inability to be present in the classroom are now able to participate in higher education due to distance education. This is the reason why American National Center for Education Statistics (2008) defined distance education as a formal educational process in which the instructor and the student are not in the same location. Thus, instruction might be synchronous or asynchronous, and it may involve communication through the use of video, audio, or computer technology, or by correspondence (which may include both written correspondence and the use of technology such as CD-Rom) reducing the in-class seat time for students.

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<sup>6</sup> Stella, A. and Gnanam, A., "Quality assurance in distance education: The challenges to be addressed", 2004, *Higher Education*, 47, 143-160

<sup>7</sup> Mihaela Daciana, Bolos "Mărcile și indicațiile geografice în sistemul relațiilor internaționale", Ed. Universul Juridic, 2013

<sup>8</sup> Lawson, N., "Questions students ask about distance education", 2007, *Distance Learning*, 4, 61-65

The students taking advantage of educational opportunities made available by new technology include<sup>9</sup> :

- students with physical disabilities
- parents with children who find it difficult to leave home
- students working full time with no flexible time schedule
- urban students for whom is easier to time-shift than space-shift
- students from rural areas
- military/diplomatic personnel serving in remote locations.

Students want the flexibility that distance delivery offers, allowing them to combine work and school demand.

Continuing education using a distance format is appealing to employers who can reduce training costs, increase productivity with less time spent away from the company office, and increase the professional knowledge for the employees<sup>10</sup>. Employers moving into new areas in their carrier can do so easier by obtaining professional certificates or a college degree online.

## 2.2. Organizational change in Universities

Since non-traditional students have different academic and social needs than traditional students, the universities have to adapt. There are important quality measures in learning that must be taken to ensure that e-learning courses are of the same quality as traditional courses<sup>11</sup>.

First step consists in the selection of appropriate faculty members for web-based delivery. The faculty members selected for this position have an advanced knowledge of technological instruments and the abilities to organize the proposed tasks.

Step two consists in providing faculty training and support for teachers. University staff and auxiliary staff should benefit from training programs in order to develop skills and competences they can use later on in the education process.

If institutions are to provide technological resources and stimulate the implementation of education technologies, it is vital to gather information about the difficulties their users may encounter<sup>12</sup>. Even if most faculty members are aware of the benefits in using technology to enhance students learning, many chose not to adopt and use available educational technologies<sup>13</sup>.

Step three consist in designing a learning environment with care. In order to ensure the quality as face-to-face courses, the new programs have to design the transition of the students to use web-based-technology. Considering these reasons, we recommend that the first course take place on site and to be trained on the web-based course management platform that will be used for the remaining part of the teaching program. Based upon the student's feedback and input the course might suffer some changes.

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<sup>9</sup> Renes, S. and Strange, A., "Using technology to enhance higher education", 2010, *Innovating Higher Education*, Springer, New York

<sup>10</sup> Appana, S., "A review of benefits and limitations of online learning in the context of the students, the instructor and the tenured faculty", 2008, *International Journal on E-learning*, 7, 5-22

<sup>11</sup> Husson, W. J. and Watterman, E. K., "Quality measures in distance learning", 2002, *Higher Education in Europe*, 27, 243-261

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### 3. CONCLUSION

Technology provides us with a great opportunity to modify our approaches to teaching and learning in a positive way. Expanding the use of this knowledge could help a lot of students who were deprived by their right to education.

Many factors contribute to the reluctance in using technology needed to develop distance education. In the Romanian system of higher education, a series of negative examples can be identified in which universities have used on a wide scale distance learning and forms of examination via the internet. These universities have used modern communication systems only in order to have an education in mass making the rebate from all the higher education's quality rules. But despite all these examples of bad omen that can be identified, there is no need to buffer the development of the Romanian education on this plan.

The assessment of clear qualitative rules and of a governmental system of control is needed in order to build qualitative standards in higher education e-learning.

We can't ignore the benefits and advantages of technology:

- students and teachers do not have to be present in the same classroom
- deliverable of content can be adapted to the needs and schedules of the students
- competition among institutions of higher education is facilitated independent of the geographical area
- courses are available easier to students with special problems such as mothers, handicapped, soldiers
- students have more control in their learning style
- content can be delivered where is needed<sup>14</sup>.

The use of technology has a number of implications in the context of education, considered somehow traditional; teachers teach students the course using powerpoint presentations that are able to attract the increased attention of students. We achieved that, a few years ago, many of the teachers were reluctant in the use of powerpoint presentations in the Universities, but recently the most of the courses are held using this formula. All in the same sense, we see a better ability and wish of using such means only by younger generations of teachers, the reluctance of elderly academics towards this innovative aspect still persisting nowadays în some Romanian universities.

Also, an application of the innovative teaching methods consists in the distribution of the course support in electronic format, or saved on electronic devices or by electronic means of distance communication. This variant also ensures a decrease in the cost of schooling and even a positive impact on the environment.

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## Was Erasmus Altogether Too European?

DR COLIN SWATRIDGE<sup>1</sup> (UK)

UNIVERSITY OF MISKOLC, HUNGARY

**Abstract:** Britain's exit from the European Union need not have meant quitting the very successful Erasmus+ scheme for student and staff exchange; but such was the enthusiasm for complete severance from European institutions following the 2016 referendum, among jubilant 'eurosceptic' Conservatives, that this was one more link that had to be broken. The Erasmus+ scheme is being replaced by the so-called Turing scheme; but in a number of ways, it is an inferior scheme, not least in that it is not truly reciprocal. What is more, it is 'global', and therefore more expensive, and more exclusive, than the scheme that it is replacing.

**Keywords:** Erasmus+, Turing scheme, 'Brexit', student testimonies, reciprocity.

**O**n the 15<sup>th</sup> of January 2020, a Scottish National Party MP addressed the British Prime Minister, Boris Johnson, in the House of Commons: he regretted that the government had decided against participating in the Erasmus scheme. He was 'heartbroken', he said. Johnson's reply was unequivocal:

"The right honourable gentleman is speaking out of the back of his neck. There is no threat to the Erasmus scheme. We will continue to participate in Erasmus. UK students will continue to be able to enjoy the benefits of exchanges with our European friends and partners, just as they will continue to benefit from the scheme."<sup>2</sup>

There was a resounding shout of "Hear! Hear!" from the Conservative benches, signalling hearty approval. Conservatism, by definition, is about leaving things that work as they are, so it was a bold Conservative, Margaret Thatcher, who attached her signature to the treaty that set up the single market with its guarantee of 'free movement'. This led to the UK's participation in Erasmus, in 1987.

It was said of the 'Brexit' Johnson government that it was the Treasury that balked at the costs involved in our continued participation in Erasmus+. It was also said that ministers, and perhaps voters in general, were under the impression that Erasmus privileged middle-class university students – that the programme gave an expensive licence to young people to have fun at taxpayers' expense. The government's expressed aim was to 'level up' UK society, not to subsidize the life-chances of the elite. Of course, it was also said that withdrawing from Erasmus was just another way in which the UK could regain its 'sovereignty', and to demonstrate that we were now a global nation.

Johnson was right to say that UK students 'enjoy the benefits' of the exchanges that the Erasmus programme has made possible. I have taught many Erasmus students at the University of Miskolc, Hungary, over the years, and all have mentioned three benefits of the programme, in particular:

1. The experience increased their self-confidence: they proved to themselves that they were capable of leaving home, travelling to, and living in, a foreign country;

<sup>1</sup> Dr Colin Swatridge (UK) was an A Level Chief Examiner in the UK, tutor for the Open University for 15 years. He has taught at a number of universities in Hungary as a visiting professor ("Pazmany Peter" Catholic University, Budapest, "Károli Gaspar" University, Budapest, University of Miskolc), as well as in Romania ("Petru Maior" University) and Poland (Krosno State College). The University of Miskolc, in Hungary has been his 'home' university for more than twenty years. He is a generalist whose fields are Central European Studies and the art of argument – and much are in between. He has taught critical thinking for some years to Erasmus students from all over Europe. He has written books about Hungary and Transylvania, published in Budapest. His most recent UK book is the *Oxford Guide to Effective Argument and Critical Thinking* (Oxford University Press, 2014).

<sup>2</sup> UK Parliament, 15/1/2020: <https://www.parliament.uk/.../prime-ministers-questions-15-january-2020>

2. They made a circle of friends from very different cultures, with many of whom they have kept in touch,

3. It improved their spoken English; they discovered that the language that they had learnt at school had utility – it was the language that they had in common with their peers.

As their teacher, I was myself impressed by the way in which Turks and Spaniards, Germans and Poles – and, yes, even Hungarians, who are ordinarily rather shy about speaking in English, lest a teacher reprove them for a grammar mistake – were heard to be speaking in English to each other in the corridors, the cafés, and the canteen. The reinforcement of English as an effective *lingua franca* was, surely, an unintended consequence of those who drew up the Erasmus programme; for me, it was a happy consequence.

But it was the first two of the above effects that I sought to draw students out about. Orsolya, a Romanian said, simply: ‘It helped me to grow’. A French girl, Marine, wrote:

My Erasmus experience was one of the best experiences of my life. It was the first time I left my home, my family and my country for such a long time. I discovered a new home where I had to manage to live by myself. I have now that curiosity and need to go deeper to understand things. At work I am not scared to make speeches in front of hundreds of people. It changed my personality, my way of seeing things, my life. I am much more open-minded than I was before.

Eva is a Hungarian who spent a semester in Finland. She was a country girl who embarked on an undergraduate course at Miskolc at the age of 28 – she was testing herself. In Finland, she said, ‘I was assured that I could cope at a foreign university, in a foreign country.’ Iwona, a Pole, was another self-confessed introvert: ‘I’ve become so much more self-confident’, she reported, ‘as an introvert I learned that stepping out of my comfort zone is not scary after all.’ She went on:

Young people have little chance of work experience, so the fact that they were brave enough to study abroad, in a foreign language, can be proof that they can quickly adapt in a new work environment and are open to new challenges.

For many, the experience of living and studying abroad in one country was the first step on the path to living and working in another. For Sabina, like Orsolya, her time in Miskolc was the first time that she had been abroad alone. ‘It gave me a taste for living abroad – I’d always wanted to do that.’ It enabled her not only to improve her English, but (as a Romanian native speaker, unlike Orsolya) her Hungarian, too. She is now living in Germany, and learning German. Irodion, a Greek, admitted that the experience, ‘affected me on a deep level: it made me determined to pursue my career outside Greece.’ He lived for almost five years in Bratislava. ‘Being in Miskolc, he said, ‘was the key factor to my working in Slovakia.’ Asked whether, if she had the chance, she would return to Miskolc, Magda, a Pole, adapted the famous saying of Heraclitus: ‘We shouldn’t step into the same river twice. If I had the opportunity, I’d choose another country’. Magda has lived and worked in Barcelona for the past ten years or so.

The real bonus of the programme is the insight it gives into other cultures: Iratxe, a Spaniard in Miskolc (who later lived and worked in Italy and Argentina), spoke of the ‘fruit cocktail’ of nationalities by whom she was suddenly surrounded in provincial Hungary: she noted a difference in attitude between students from once ‘Iron Curtain’ countries and those from Western Europe:

‘We were bolder, noisier, and the Germans were even a little arrogant. This instilled a certain knowing caution in dealing with different peoples. Living in close proximity with a veiled Turkish girl was a revelation.’

Katarzyna, a Pole, also learned that ‘Turkish students behave differently, and you can talk about it.’ It was thanks, indirectly, to Erasmus, that at least two of my respondents met their husbands-to-be: Esra, a Turk, and the above-mentioned Spaniard, Iratxe. This happy chance must certainly rank as another unintended consequence of the scheme.

If the original Erasmus scheme had been about providing for the exchange of university students, across borders within the EU, the same could not be said of Erasmus+, launched in January 2014, which brought together seven existing programmes, including Comett and Lingua. According to the latest available programme report, published in December 2020<sup>3</sup>, between 2014 and 2020, four million people benefited from participation in the scheme. To be sure, half of these were 'students', but around 650,000 were explicitly vocational education and training students, and 500,000 were young people on youth exchange schemes; 125,000 schools, vocational education, and training institutions, were involved in so-called 'strategic partnerships'.

A vocational college in Miskolc, specializing in catering and hospitality, regularly sends apprentices to partner institutions in Ireland and Germany. Marcell, an apprentice chef learned as much about Hungarians as he did about the Irish:

'My Irish boss was peaceful and helpful – this type of boss is very rare in Hungary. The Irish have a very calm mentality. They like to live, not just living life, like us. I knocked accidentally into a drunk in a bar, and he said "Sorry". That wouldn't happen in Hungary.'

Péter, an apprentice pastry-cook, and Kamilla, an apprentice waitress, agreed: 'The Irish people are very friendly and open-minded. They're all so nice and welcoming to foreign people. It's easy to make friends at work, in a shop, in the pub, even in the street.' And Bianka, an apprentice pastry chef owned up to becoming 'an open person; I can see the "new" in everything.'

Having spent a semester in Miskolc, María, a Spaniard, was placed in a small enterprise in Cork. She was disconcerted by the 'terrible weather', and the cost of living, and: 'They left many decisions to me'; but, she added, 'I realized this was the beginning of my adulthood – I was the owner of my decisions, establishing my own goals.' Natalia, a Ukrainian, had a background in commerce, but was placed in a Polish nursery: the experience opened up for her the option of a completely new profession. The associated self-development seminars steeled her to approach a stranger to ask for change on her way to the airport – something, she says, that she would have been too shy to do before.

Özge, a Turk in Romania, observed that, since students are all on social media, they already have much in common. She continued:

'Since I was raised in the Islamic culture, I was a little alien to the Christian culture. I met with Christian feasts, like Easter. To be honest, in these times, religious rituals are not important for young people. They only enjoy these ornaments and family dinners. This is much the same for a person raised in the Islamic, as in the Christian culture.'

This cultural assimilation – if Özge is right – may be yet one more unintended consequence of the Erasmus+ programme. In any event, that Scottish National Party MP had reason to be 'heartbroken' at the thought that the UK might abandon it.

In a UK Government press release<sup>4</sup>, on (of all days) 26 December 2020, and less than a year after Johnson's ringing declaration in the House of Commons, Gavin Williamson, the Education Secretary, announced the launch of the 'Turing Scheme' to replace Erasmus+. Williamson wrote:

We have designed a truly international scheme which is focused on our priorities, delivers real value for money, and forms an important part of our promise to level up the United Kingdom.

The initial budget for the scheme is just over £100 million, somewhat less than the sum of Erasmus grants to the UK of £130 million, in 2019<sup>5</sup> It is envisaged that this will provide funding for 35,000 students in universities, colleges and schools. Bids for funding opened in March 2021, and the first recipients of grants embarked on their courses in September.

<sup>3</sup> European Commission, Brussels, (undated) <https://ec.europa.eu/programmes/erasmus-plus/about/-en>

<sup>4</sup> UK Government, London, 12/03/2021: <https://www.gov.uk/government/news/new-turing-scheme-to->

<sup>5</sup> Waters, Johanna L., "Erasmus what the turning scheme must be?" *The Conversation*, London 5/1/2021: <https://theconversation.com/erasmus-what-the-turing-scheme-must-do-to-ensure-uk-students-dont-miss...>

What are the ‘priorities’ to which Williamson referred? In a later bulletin<sup>6</sup>, the government announced ‘four main objectives’:

- **Global Britain** (to enhance existing partnerships and encourage the forging of new relationships across the world)
- **Levelling up** (to widen participation, support social mobility across the UK and give equal access to all regardless of background)
- **Developing Key Skills** (to give unique career-building opportunities in hard and soft skills looked for by employers)
- **Value for UK Taxpayers** (to optimise social value in terms of costs, benefits, and risks).

Professor Dame Janet Beer, Vice-Chancellor of the University of Liverpool observed that there were ‘shortcomings’ to the Erasmus scheme: ‘Unlike Erasmus,’ she said, ‘students will not be tied to an exchange lasting a full academic year or semester’. Instead, ‘we can offer short, flexible opportunities to students from a wider range of backgrounds and academic disciplines than was possible under Erasmus.’<sup>7</sup>

In line with the first of the above objectives, Michelle Donelan, the universities minister, said the scheme would ‘open up the globe to our young people’<sup>8</sup>. Of the countries to which students might go, there are five ‘priority countries’: India, Indonesia, Saudi Arabia, Vietnam, and Nigeria. These particular countries appear to be targeted with a view to increasing the number of fee-paying international students applying to study at UK universities. It is clear that it is not exactly an ‘exchange’ that is planned: in spite of the claim by a government spokesperson that ‘UK universities will build reciprocal relationships’<sup>9</sup> with global partners, the costs of incoming students are to be covered by their own governments and institutions.

This is, perhaps, the single biggest criticism that has been levelled at the scheme: that it is unlikely to be ‘reciprocal’; there is no money in the budget to pay for international students coming to the UK. Will ‘global’ governments and institutions be minded to enter into partnerships that are one-sided? It must be asked, too, whether consideration has been given to the administrative burden that there will be, on UK universities, colleges, and schools (and perhaps especially schools), of setting up agreements with ‘global’ partners, at a time, in particular, when those institutions are only now getting back on their feet after more than a year of disruption caused by the coronavirus pandemic. Making arrangements with institutions in Vietnam and Indonesia is likely to be very different financially and otherwise from doing so with institutions in Toulouse and Vienna – to say nothing of the cost of flights (to the taxpayer and the climate) to the other side of the world.

Furthermore, as Johanna L. Walters, Professor of Human Geography at University College, London, points out<sup>10</sup>:

The Turing Scheme is intended to encourage mobility globally, but no mention has been made of how tuition fees – which vary considerably, internationally, will be covered. Under Erasmus, students paid no tuition fees to their overseas university, and received a grant for living expenses.

The UK government would seem to have excluded the costs of supporting incoming students purely to meet the above fourth of the ‘main priorities’: value for UK taxpayers. In doing so, it has ignored the fiscal benefits incoming students bring. Chatham House is a respected independent

<sup>6</sup> UK Parliament (undated): <https://researchbriefings.files.parliament.uk/documents/CBP-9141/CBP-9141.pdf>

<sup>7</sup> Hazell, Will, “Turning scheme. Erasmus students exchange placements”. *The i*, London, 06/02/2021: <https://inews.co.uk/news/education/turing-scheme-erasmus-student-exchange-placements-860600>

<sup>8</sup> *ibid.*

<sup>9</sup> Hazell, Will, London: *The i*, 6/02/2021: <https://inews.co.uk/news/education/turing-scheme-erasmus-student...>

<sup>10</sup> Water, Johanna L., *op. cit.*

policy institute: Ben Horton and Max Fras point out<sup>11</sup> that students coming to the UK are a lucrative customer base for higher education, for services of all kinds, including the hospitality sector. They report that ‘research by Universities UK suggests that UK made a net profit of £243 million per annum from participation in Erasmus.’ Whilst one might ask how such a figure can have been arrived at, there can be no question that, as a popular destination for European students (who do not come to the UK for its weather) the UK benefits greatly in terms of what the above authors call ‘cultural diplomacy and soft power’<sup>12</sup>. Moreover, to give the lie to the supposition that Erasmus is all about benefiting metropolitan, middle-class students, just one third of Erasmus+ funding is earmarked for higher education<sup>13</sup>; the rest covers vocational training opportunities, apprenticeships, adult education, volunteering and youth-work schemes – and there is protected funding for young people with special needs and disabilities<sup>14</sup>.

It is a sad fact that ‘Brexit’ has emphasized differences among the four nations of the UK. Independence is on the agenda of the ruling party in Scotland; and it is talked about even in Wales – more modestly, though, the further and higher education ministers of both nations, Richard Lochhead of Scotland, and Kirsty Williams of Wales, have explored ways in which the two nations might continue to participate in Erasmus+. Both nations, they claim, have been more active in the programme than England. They note that the £100+ million budget for Turing is only for one year in the first instance and that it is ‘puny in comparison’ with the seven-year Erasmus+ budget, at €26.2 billion<sup>15</sup>.

Hywel Ceri Jones was a Welsh pioneer of the Erasmus scheme. As EU Commission Director for Education, Training and Youth, in 1987, he is particularly exercised by the omission from the Turing Scheme of opportunities for initial and further vocational education and training abroad, including opportunities for the disabled. He points out, also, that withdrawal from Erasmus+ means the loss of interconnection between this programme and Horizon 2020, the EU’s flagship programme for research and innovation<sup>16</sup>. In the Welsh Senedd, on 6<sup>th</sup> February, First Minister Mark Drakeford echoed Jones’s complaint, calling the exclusion of Wales’s young people from Erasmus+ ‘shameful’.

Asked in a press conference how probable it is that Scotland and Wales might re-enter the Erasmus+ programme, Sonya Gospodinova for the European Commission answered: ‘in general, based on the Erasmus regulations, only countries can join the programme.’<sup>17</sup> The irony for the ‘United’ Kingdom is that students at Northern Ireland universities can continue to participate in Erasmus+ under an arrangement with the Irish government, in order that the border between Northern Ireland and the Republic (and, therefore, the EU) be not a ‘hard border’<sup>18</sup>. German Green MEP Terry Reitse asked Ursula van der Leyen, in a letter co-signed by 150 colleagues, whether special consideration might be given to Scottish and Welsh participation. Van der Leyen’s response

<sup>11</sup> Horton, Ben & Fras, Max, “Turning scheme holds lessons for global Britain” *The Royal Institution of International Affairs*, London, 13/01/2021: <https://www.chathamhouse.org/2021/01/turing-scheme-erasmus-holds-lessons-global-britain>

<sup>12</sup> Ibid.

<sup>13</sup> German Academic Exchange Service, Brussels (undated): <https://www.daad.brussels.eu/en/eu-higher-education-policy/erasmus/...>

<sup>14</sup> European Commission, Brussels (undated): <https://erasmus-plus.ec.europa.eu/opportunities/individuals/students/students-and-staff-with-mental-or-health-rel...>

<sup>15</sup> Scottish Government, Edinburgh, 26/01/2021 <https://www.gov.scot/news/erasmus-exchange-programmes/>

<sup>16</sup> Jones, Hywel Ceri, Nation Cymru, Wales, 27/01/2021: <https://nation.cymru/opinion/five-reasons-why-the-uk-governments-opportunities-decision-to-exit-erasmus-was-a...>

<sup>17</sup> Nation Cymru, Wales, 05/02/2021: <https://nation.cymru/news/european-commission-appear-to-shoot-down-Welsh-and-scottish-hopes...>

<sup>18</sup> BBC, London, 26/12/2020: <https://www.bbc.co.uk/news/uk-northern-ireland-55455532/>

was uncompromising: ‘The only possibility for the UK is to associate as a whole, or not at all.’<sup>19</sup> In a briefing to members of the European Movement in the UK on 27 January 2021, former Attorney-General Dominic Grieve explained our withdrawal from Erasmus as based on ‘a mixture of money and pique.’ He urged the movement to make re-attachment to the scheme its very first campaign. Alan Turing was very much an Englishman (with an Irish connection on his mother’s side); could it be that Erasmus, a Dutchman, was altogether too European? And is this nationalism what Grieve meant by the ‘pique’?

If Erasmus+ has had unintended consequences that have been undeniably benign, the UK government’s Turing Scheme would appear to have unintended consequences – even before it has been tested – of more significance than the ‘bumps in the road’ that ministers foresaw ‘Brexit’ would bring.

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<sup>19</sup> Morgan, Sam, Nation Cymru, Wales, 16/02/21: <https://nation.cymru/news/eu/-commission-dashes-welsh-and-scottish-erasmus-hopes-for-now/> (see also: Banks, Martin & Johnson, Brian, London: The Parliament Magazine, 17/02/2021: <https://www.theparliamentmagazine.eu/news/article/ursula-van-der-leyen>)

# EU legal framework, internal and external policies

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## Finland and the European Union

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DIOLEEN HUNDT<sup>1</sup>

TALLINN UNIVERSITY OF TECHNOLOGY, ESTONIA

**Abstract:** Finland joined the European Union in 1995 and is a member of the Eurozone. The country uses the Euro to trade as a member of the Economic and Monetary Union. This paper analysis Finland – EU relations, focusing on different fields and highlighting how the membership had influenced Finland, how the European integration process has worked and is working in case of this Nordic country.

**Keywords:** European Union, European integration, European politics, Finland.

### INTRODUCTION

The actions of the European Union (EU) in the international scene are guided by principles embedded in the international law and the United Nations Charter. The major concerns of the EU in external relations include cooperation on health, energy, environmental and climate issues, and negotiation of trade agreements. In all its dealings, the EU is concerned about promoting human rights and democracy as its key goals. Finland joined the European Union in 1995 and is a member of the Eurozone. The country uses the Euro to trade as a member of the Economic and Monetary Union. It also enjoys free travel within the Schengen region as a party to the Schengen Agreement. Through external relations with other countries, organizations, or civil societies, the EU benefits the members states by promoting social and economic development as well as fair globalization for the economies. The EU has always had an interest in building strong partnerships with all its neighbors, and Finland is one such country.<sup>2</sup>

### FINLAND INTEGRATION INTO THE EUROPEAN UNION

Finland is among the latecomers to the European Union together with Austria and Sweden. Finland's EU membership has contributed significantly to its process of re-identification on the international stage.<sup>3</sup> Prior to joining the EU, Finland's western identify was quite blurry, and joining the EU was not just a norm just like any other European country. Upon joining the EU, Finland had little time to adjust because of the tight schedules and the EU agenda that was considered very important at the time. It was also at a time when Finland was recovering from a period of economic recession hence there was an imposed strict budgetary discipline on the people. Despite the challenges posed by the EU membership, Finland has adapted well and fits in the EU fine.

Finland uses a pragmatic and constructive approach in its integration into the EU. Within a short period, the country has changed from a non-aligned country to a full EU member through

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<sup>1</sup> TalTech Law School, Tallinn University of Technology, Estonia, dioleen\_talviste@hotmail.com

<sup>2</sup> Ramiro Troitino, D., "EU enlargement to Austria, Finland, and Sweden". *MEST Journal*, 2018, 6 (1), 97–104.

<sup>3</sup> Raunio, T., Tiilikainen, T., *Finland in the European Union*, 2003.

the strategic approaches.<sup>4</sup> Finland realized early enough that to secure its place among the western European countries was one of the ways of protecting its national economic and political interests.<sup>5</sup> Thus, it has played an active role in committing to integration with the European Union. According to Hanf and Soetendorp, decision-making in the member states of the EU is fast becoming more Europeanized meaning national policy-making is highly influenced by happenings at the EU.<sup>6</sup> The member states ensure that the outcomes from the EU level align with the national interest which may sometimes be intertwined with EU interests. Therefore, every country, in developing their policies put into consideration the stake of the EU to ensure both are aligned.

## EU COOPERATION ON HEALTH IN FINLAND

Although the European Union does not directly make health policies, other policies regarding its operations affect healthcare.<sup>7</sup> While most countries within the EU like to maintain their independence in healthcare, the policy decisions made by the European Union often impact them more often in a negative manner. This has forced them to reconsider the role of the EU in healthcare of such countries. For a long time, Finland has had a Health in All Policies approach towards its healthcare systems before seeing a need to improve healthcare policies. The country developed intersectoral health policies on smoking, nutrition, accident prevention in collaboration with the World Health Organization (WHO). Upon joining the EU, Finland's national intersectoral work got complicated because of the delegation of some competencies to the EU.<sup>8</sup> The EU is majorly concerned with the economic situations of constituent countries like Finland; however, it is constitutionally mandated to protect the healthcare systems as well, hence its involvement in healthcare.

The EU has little mandate on individual health policies of countries. Although the EU wants to be seen as actively involved in health matters of its member states, it has faced constant opposition from political leaders because of the high pedestal on which healthcare is placed in individual countries. Nonetheless, the EU still makes its impact felt indirectly in healthcare systems of its member states, something Finland considers a complication of its systems. The EU encourages cooperation between the member states and offers support for their actions related to healthcare. The EU can financially support the health actions of the member states like Finland but is not allowed to interfere with the health laws in place. However, the Amsterdam Treaty of 1997 strengthened the mandate of the EU in matters relating to healthcare in the member states since it was now tasked with ensuring a high level of protection of human health. To support the EU in its mandate, Finland has shifted focus to government intersectoral programs as well as others not in the administrative sector.

The European Union legitimized the Health in All Policies (HiAP) for its healthcare approach in 2006.<sup>9</sup> After long deliberations and active efforts to streamline healthcare with other EU policies after the recognition of the fact that EU policies affect health systems. Nonetheless, implementation of the HiAP remains a challenge because the new procedures do not strengthen

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<sup>4</sup> Raunio, T., Wiberg, M., *Parliamentarizing Foreign Policy Decision-Making: Finland in the European Union*, 2001.

<sup>5</sup> Dutt, P.; Ferraro, S.; Chochia, A.; Muljar, R., *Using Patent Development, Education Policy and Research and Development Expenditure Policy to Understand Differences Between Countries – The Case of Estonia and Finland*, *Baltic Journal of European Studies*, 8 (1), 2018, 123–153.

<sup>6</sup> Hanf, K., Soetendorp, B., *Adapting to European Integration, Small States and the European Union*, 1997.

<sup>7</sup> Duncan, B., *Health policy in the European Union: how it's made and how to influence it*, 2002.

<sup>8</sup> Melkas, T., *Health in all policies as a priority in Finnish health policy: A case study on national health policy development*, 2013.

<sup>9</sup> Koivusalo, M., *The state of Health in All policies (HiAP) in the European Union: potential and pitfalls*, 2010.

the efforts of the EU to use health impact assessments for the benefit of the public and their health systems. HiAP is a broader approach to healthcare and the EU hoped narrowing down to health impact assessment (IA) would finally give them the much-needed breakthrough in health within the member states. Nonetheless, this increased push for the use of IA to push for policy decisions may undermine healthy public policy.<sup>10</sup> Thus, the involvement of the EU in healthcare matters of its constituent states still remains a complicated issue.

## FINLAND AND EU TRADE AGREEMENTS

Trade Agreements between the EU and the member states facilitate markets for the countries. Although Finland has benefited from free trade Agreements with the EU, the impact on the Finnish economy remains way below par. Globalization has played a bigger role in expanding Finland's trade affairs than the EU.<sup>11</sup> Nonetheless, there are key sectors in Finnish businesses that have greatly benefited from free trade agreements like the machinery and equipment manufacturing industry as well as the forest industry. Even greater is the indirect impact of free trade agreements on Finland through different value chains. Economic policies of the EU revolve around promoting open and predictable international trade.<sup>12</sup> To achieve this objective, the EU has free trade agreements (FTA) among its member states. Finland is a major beneficiary of these FTAs with increased exports to other countries with the FTAs.

Finland does not have an independent trade policy owing to it being an EU member state. The country, however, enjoys a stable political climate that encourages trade with other countries. The government invests a lot in infrastructure that supports Finland's engagement in trade under the EU. By virtue of being a member state of the EU, Finland shares in the Trade Agreements applicable to the EU. The EU is responsible for negotiating Trade Agreements on behalf of Finland, and once these get signed, Finland comes in to trade. The Agreements the EU has entered into are both bilateral and multilateral FTAs and always passes the same to the member states for ratification before implementation. These trade negotiations happen over a period of time, often for years, with the aim of negotiating the best deals for the member states.<sup>13</sup> Finland applies interim rules on a case-by-case basis during the trade negotiations because the terms of each negotiation differ. Finland has always held trade arrangements with foreign trading partners in high regards from way before joining the EU.<sup>14</sup> The country has had its trade framework in place from 1948 and used this to integrate and align with the trade policies of the EU. The interim rules during trade negotiations ensures the country signs up for beneficial trade terms that will boost the economy. Currently, the EU and Finland are negotiating the Trade in Services Agreement (TiSA). This will involve trade in services just like they have been trading in goods across the various trade platforms. Finland and other countries negotiating the TiSA have a high level of ambition to rise above the current liberalization level of the World Trade Organization (WTO) and encourage greater flow of trade in services.

Finland has a regulatory framework that guides its provision of financial services. The EU passporting regime where companies and banks that offer financial services have a single-license

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<sup>10</sup> Smith, K., *Is the increasing policy use of Impact Assessment in Europe likely to undermine efforts to achieve healthy public policy?* 2010.

<sup>11</sup> Hakkala, N. K., *Study: Finland has benefitted from free trade agreements but less than EU on average*, 2019.

<sup>12</sup> Hakkala, N. K., Kaitila, V., Kuusi, T., Lehmus, M., Wang, M., *The economic impact of EU free trade agreements on Finland and the EU*, 2019.

<sup>13</sup> Dobrin, S.; Chochia, A. "The Concepts of Trademark Exhaustion and Parallel Imports: A Comparative Analysis between the EU and the USA", *Baltic Journal of European Studies*, 6 (2), 2016, 28–57.

<sup>14</sup> Mettälä, K., Stahlberg, K., *Free Trade Agreements between Finland and Central and Eastern European Countries*, 1994.

principle promotes trade among EU authorized firms with minimal additional regulatory requirements. This means that as long as a firm has an EU license to trade, they can do so with any firms operating within the EU regions without requiring additional regulatory frameworks hence easing the trade process across the regions. For any entities to trade in financial services in Finland, they must have authorization from an appropriate body whether they are local or foreign entities. They can also provide the services if they are registered as service providers meaning they are subject to supervision by either the Finnish Supervisory Authority (FSA) or a foreign supervisory authority that compares to FSA. The EU has nine different passporting systems for those wishing to trade in Financial services within the member states and they are overseen by a specific directive or regulation of the EU.

Custom laws and regulations in Finland are enforced by the Finnish Customs authority. This authority is also a part of the EU customs system meaning that all the custom import and export operations in Finland form part of the larger EU customs operations. The customs are responsible for collecting custom duties, controlling imports and exports, investigating offences related to customs, and compiling statistics on foreign trade. If any legislation of Finland or the EU is violated during trade matters, then the Finnish customs is mandated to impose penalties and sanctions to that effect. Finland as a member of the EU benefits from free import and export of goods across its borders. However, for trade outside the EU membership, the EU has the European Community Common Custom Tariff applied. Although the tariff is common to all states, the EU sometimes regulates the tariffs depending on the economic sensitivity of the goods, the type, and their origin. The EU also imposes Value Added Tax (VAT) to the insurance, cost, and freight value of the goods imported. For Finland, the standard rate of VAT is 24% although medicines, books, and groceries attract lower VAT rates.

The EU legislation among its member states regulates non-tariff barriers to imports within these countries. The member states of the EU have a common foreign trade policy and this is what Finland borrows from when implementing import non-tariff barriers, although some restrictions are imposed by Finland at a national level. The EU has important requirements for imports, although these requirements have variations at national levels. For example, Finland has special requirements for public health and safety purposes on goods like alcohol, agricultural produce, nuclear and radioactive substances, waste, endangered species, and biocides and other chemicals. Sometimes traders may feel unfairly treated due to some regulations and customs decisions. There is an appeal procedure for such cases and is regulated by the Customs Act. The complainant is required to lodge a complaint to the customs office responsible for the decision in question. If not satisfied by the outcome, the decision can further be appealed at the Administrative Court of Helsinki or further to the Supreme Administrative Court.

The EU has a number of rules on trade remedies and these rules are set in the EU regulations and applicable to Finland. Both Finland and the EU are members of the WTO; and the EU has enacted several legislations to implement various Agreements with the WTO. For example, the EU has a regulation against dumping and subsidized imports from non-members of the EU. The EU has the Trade Commissioner who is responsible for conducting investigations and reviews on trade remedies. For those attempting to evade payment of conventional custom duties, the EU anti-fraud office is mandated to investigate and report to the national authorities. In this case, any traders suspected to conduct fraudulent trade activities, the European Union takes an initiative of investigating and upon confirmation, reports to the Finnish authorities to act on them. Non-compliance with export regulations set by the EU can lead to either criminal or administrative sanctions. Minor violations can pass off with warnings whereas major violations can result in custodial sentences.

## EU ENVIRONMENTAL POLICY AND FINLAND

Prior to joining the EU, Finland had various environmental policies developed in various international forums. However, these international forums for development never achieved the central position as should be until when Finland joined the EU.<sup>15</sup> The EU makes or collaborates with member countries in the making of their environmental policies. For this reason, therefore, many member states have had to adjust their policies to streamline with the requirements of the EU and at the same time project their preferred approaches on the European level. It is therefore a two-way for the policies where national policies become Europeanized and EU policies become domesticated. The policies for individual countries like Finland are so well harmonized with those of the EU that it is hard to refer to one without making a reference to the other.

Finland is a part of the EU's green bloc although it plays a passive role in environmental policy matters. Finland as a country enjoys a generally clean and great state of the environment because of clean technologies and low population density hence less pollution. However, the major challenge for the country is the cross-border pollution from the bordering member states. Finland has been a great player in the international scene on environmental matters. Finland has fairly strict environmental standards and this explains the roles allocated to it during EU negotiations. In Finland, environmental policy is managed in a similar manner to other policies. Finland has created a niche for itself in developing an Environmental policy for the European Union.

Finland has independent policies on climate with the Climate Change Act being its key pillar. This Act requires Finland to reduce its emissions of greenhouse gases by at least 80% by the year 2050. To this effect, Finland has climate objectives and well-laid out strategies to meet them. The climate policy decisions of the EU are also binding to Finland meaning that no matter the independent policies the country has, it has to abide by those set by the EU. The same way Finland has a target of reducing emissions by 80% by 2050, the EU has a target of achieving a climate neutrality by 2050.<sup>16</sup> The reduction in emissions is some of the ways through which climate neutrality can be achieved hence the two policies are aligned towards the same goal. The EU has a target of improving energy efficiency by 32.5% which it allocates as 0.8% a year to individual member states from 2021 to 2030.

Finland is highly dependent on energy from Russia, a move that is highly controversial. Some quarters argue that it is because of an impending energy threat whereas other claim it is a mutually beneficial trade relation.<sup>17</sup> Russia is known for its supply of nuclear weapons and one fuel type that is natural gas. Therefore, any trade relations that involve energy transfer are likely to raise issues, and this has been one of the major challenges the EU has to deal with. The European Union has also set a target for energy consumption for Finland at less than 290 TWh. This means that the EU ropes Finland in on its energy plan with the aim of addressing climatic changes. The EU's strategy to ensure clean, secure, and affordable energy for the European citizens is called The Energy Union.<sup>18</sup> The Union vice president in his speech congratulated Finland for making significant steps towards the achievement of energy efficiency as outlined by the EU. The EU has targets for renewable energy production, most of which have been surpassed by Finland in a bid to achieve the 2050 target. Finland imports less energy and invests in research and innovation on a wider scale as compared to the EU in general. Member states of the EU have strategies developed to help them meet the 2030

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<sup>15</sup> Lindholm, A., *Finland in EU Environmental Policy*, 2002.

<sup>16</sup> European Commission, *Assessment of Climate Change Policies in the Context of the European Semester*, 2012-2014.

<sup>17</sup> Jääskeläinen, J.J., Höysniemi, S., Syri, S., Tynkkynen, V-P., *Finland's Dependence on Russian Energy – Mutually Beneficial Trade Relations or an Energy Security Threat?* 2018.

<sup>18</sup> European Commission, *Focus on Finland: the Energy Union tour*, 2017.

energy target.<sup>19</sup> After targets are set, individual countries set out to prepare individual national plans for the European Commission and follow up on the planning processes set up by the commission. The EU has a minimum climate policy target for Finland. This means that although Finland can create individual energy policies, the EU ensures it regulates the bare minimum of the same.

## CONCLUSION

The European Union has a mandate to guide and create policies for its member states. At the same time, the EU is restricted by the UN and international law on the extent of its actions among member states and neighbouring regions. The major concerns of the EU in external relations include negotiating trade agreements, health, energy, climate, and environmental issues. While the EU plays an active role in legislation and policies regarding the environment, climate, energy, and trade issues, its powers are limited in matters relating to health. Health policies within the member states of the EU often have a political tag and are left to national legislators. Although the EU still influences health policies by extension, the major decisions are made by the governments of individual countries. There have been calls to streamline the same, but member states are hesitant about relinquishing their powers in health legislation, hence the policies remain enacted at national level. The major concern of EU for its member states is economic stability, hence its role in trade negotiations. The EU negotiates trade agreements for member states to increase their access to international markets and grow their economies. The EU aims to promote open and free trade, and this is why the member states enjoy Free Trade Agreements where they can move their goods and services freely across the member states. Although Finland has not reached its target for international trade, the FTAs signed by the EU give it the necessary boost to rise to the standards. Both Finland and the EU have a target to achieve neutral climate, reduce emissions, and increase energy efficiency by 2050. Both have strategies and policies in place to ensure they attain the set targets as part of the EU's responsibility towards the environment, energy, and climate agenda. While Finland may act independently in formulating some policies, the country highly relies on the input of the EU in aligning its policies. Being a member of the EU, the country would want to be in agreement with the other member states for a holistic approach towards integration. Finland may have joined the EU late, but it has quickly adjusted and is making strides towards achieving the agenda set forth by the EU. With proper support and leadership, the country will most likely propel the EU towards achieving its vision.

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# Assessment of the European legal framework of facial recognition technology

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MANON CAPLIER<sup>1</sup>

TALLINN UNIVERSITY OF TECHNOLOGY, ESTONIA

**Abstract:** *In an era where half of our face is hidden by a mask, facial recognition technology keeps improving. Despite the opportunities it represents in many fields, this innovative technology is far from winning unanimous support among European citizens and right advocates. Between abuses of use, security drifts and privacy breaches; many risks have been pointed out. The European Union institutions are thus increasingly aware of the importance to provide facial recognition with its own legal framework, so that it is no longer governed solely by the broader framework of data protection legislation.*

**Keywords:** *artificial intelligence; biometric data; facial recognition technology; remote biometric identification; sensitive data.*

## INTRODUCTION

**B**ack in 1975, the French philosopher and historian Michel Foucault already foresaw the electronic surveillance that is currently ongoing in our societies. In his book *Discipline and Punish*, he used the metaphor of the panopticon<sup>2</sup> – a specifically designed prison that enables the guard to monitor all the prisoners without them being able to see if they are being observed or not – to describe a modern technique of observation used in schools, factories, hospitals, and military institutions.<sup>3</sup> This is what led Gilles Deleuze to state, a few years later: “There is no need for science fiction to conceive of a control mechanism that gives the position of an element in an open environment, an animal in a reserve, a man in a company, at every moment”.<sup>4</sup> And he got it right.

Indeed, the current state of artificial intelligence technology has made it belong to the “infra-ordinary”<sup>5</sup>; more specifically facial recognition technologies (FRT) and artificial intelligence (AI) software, which are now part of our daily lives. As one all knows, it is possible to use our face to unlock your phone, pay, enter a place or even prevent tiredness while driving. And the use of facial recognition goes much further: it allows the police to identify criminals, brands to adapt their advertising to consumers’ facial reactions, universities to track students during remote exams, etc.

Faces are distinctive, difficult to alter and, in most cases, publicly visible; which make them particularly useful for identification purposes.<sup>6</sup> AI software is able to create templates of people out of the characteristics of their face (distance between the eyes, between the nose and the mouth...). Then this unique template is compared with what is available in the database of the software.

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<sup>1</sup> TalTech Law School, Tallinn University of Technology, Estonia, manon.caplier@gmail.com

<sup>2</sup> Idea theorised by the English philosopher and social theorist Jeremy Bentham in the late 18th century.

<sup>3</sup> Michel Foucault, *Surveiller et punir*, Paris, Gallimard, 1975.

<sup>4</sup> Maša Galič, Tjerk Timan and Bert-Jaap Koops, “Bentham, Deleuze and Beyond: An Overview of Surveillance Theories from the Panopticon to Participation” in *Philosophy & Technology*, vol. 30, no. 1, 2017, pp. 9-37.

<sup>5</sup> Georges Perec, *L'infra-ordinaire*, Paris, Seuil, 1989. The infra-ordinary can be seen as a contrary of the ‘extra-ordinary’. It the sphere of existence that lies beneath notice or comment, and within which “we sleep through our lives in a dreamless sleep”.

<sup>6</sup> Yana Welinder, “A Face Tells More than a Thousand Posts: Developing Face Recognition Privacy in Social Networks” in *Harvard Journal of Law and Technology*, vol. 26, no. 1, Fall 2012, p. 167.

Facial recognition technology is defined in the EU as the “automatic processing of digital images which contain the faces of individuals for identification, authentication/ verification or categorisation of those individuals”.<sup>7</sup> The data processed are thus so-called ‘biometric data’.

It is essential not to confuse authentication with identification when it comes to the purpose of facial recognition use. On the one hand, authentication is referred to as one-to-one matching. It enables the comparison of two biometric templates, in order to determine if they belong to the same individual. On the other hand, identification means that the template of a person’s facial image is compared to many other templates stored in a database to find out if his/her image is stored there. This second application of FRT can be carried out remotely, usually via video cameras (CCTV), and is commonly called ‘live facial recognition technology’ or ‘remote biometric identification’.

The expansion of this omnipresent technology is reflected in the figures: the global facial recognition market size was valued at USD 3.4 billion in 2019 and is anticipated to expand at a CAGR (Compound Annual Growth Rate) of 14.5% until 2027.<sup>8</sup>

Everything can seem to head towards a society based on the concept of “smart city”. i.e. a highly efficient system that incorporates disparate sources of data, from drones, cars, roads, tracks (etc.) into a complete and up to date network.<sup>9</sup> This is a dream world for many private companies that promise a simpler, safer, and smoother environment; an ideal shared by some governments who see it as an opportunity to strengthen security.

This innovation, although impressive, and considered by some as a technological revolution, raises many concerns in many legal aspects.<sup>10</sup> Among other issues like discrimination, ethics or accuracy, this paper will focus here on the controversies of FRT from a legal point of view. The question is not whether reasoned use of facial recognition is still possible or whether we are condemned to live in a world where anonymity has disappeared, but to understand how it is handled by the European Union in terms of legislation. The main problem being that this multifaceted technology seems to evolve faster than the rules that govern it.

This research paper seeks to assess the past, current and future legal framework of facial recognition technology in Europe. More precisely, in a first part will be discussed the evolution of this legal framework, to understand the legislation applied at present. The second part will deal with what makes FRT difficult to govern. The third and last part will attempt to provide ideas for improving the situation and overcoming the identified issues.

## 1. EVOLUTION OF FACIAL RECOGNITION TECHNOLOGY AND ITS GOVERNING RULES IN EUROPE

### 1.1 First attempts to regulate the processing of biometric data

At the dawn of the 21<sup>st</sup> century, as information and communication technologies were taking off, European institutions began to address the issue of how the personal data of European citizens were being handled. It is in this perspective that the Article 29 Working Party (WP) was launched in

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<sup>7</sup> Opinion 02/2012 on facial recognition in online and mobile services, Article 29 Working Party, 2012, p. 2.

<sup>8</sup> Market Analysis Report entitled “Facial Recognition Market Size, Share & Trends Analysis Report By Technology, By Application, By End Use And Segment Forecasts, 2020 – 2028”. Summary retrieved from: <https://www.grandviewresearch.com/industry-analysis/facial-recognition-market>

<sup>9</sup> G. B. Praveen and Dakala Jayachandra, “Face Recognition: Challenges and Issues in Smart City/Environments” in *12<sup>th</sup> International Conference on Communication Systems & Networks (COMSNETS)*, 2020, pp. 791-793.

<sup>10</sup> On contract-law matters raised by algorithm-based decision-making see Thomas Hoffmann, „The Impact of Digital Autonomous Tools on Private Autonomy”, *Baltic Yearbook of International Law Online*, vol 18, 2020, pp. 18–31; On legal and ethical concerns when applying AI solutions for people with disabilities, please see e.g. Joamets, K.; Chochia, A. (2021). Access to Artificial Intelligence for Persons with Disabilities: Legal and Ethical Questions Concerning the Application of Trustworthy AI. *Acta Baltica Historiae et Philosophiae Scientiarum*, 9 (1), 51–66.

1996, to deal with issues relating to the protection of privacy and personal data.<sup>11</sup> At the same period, the Council of Europe was adopting its Convention No.108<sup>12</sup> that was one of the first legally binding international instrument in the data protection field. In the course of the various opinions and reports published in the following years, it has been highlighted that biometric data should be considered as “sensitive” data that presents risks because it contains information about racial and ethnic origin or health.<sup>13</sup> Special safeguards<sup>14</sup> were therefore recommended to be applied in addition to the general data protection principles of the 95/46/EC Directive as well as to assess the sensitivity of data processed by biometric systems, taking into account the context of the processing.

Despite the risks identified, the general data protection framework and most national legislation did not contain specific binding provisions on the use and processing of biometric data, and guidelines remained limited while these technologies were expanding. Nevertheless, some national supervisory authorities have attempted to overcome this, for example by applying the principle of proportionality to determine whether the use of biometrics is proportionate to the legitimate objective sought.<sup>15</sup>

It was not until 2016 that a definition of the term was provided in a legally binding EU act. ‘Biometric data’ then means “personal data resulting from specific technical processing relating to the physical, physiological or behavioural characteristics of a natural person, which allow or confirm the unique identification of that natural person, such as facial images or dactyloscopic data”.<sup>16</sup>

## 1.2 The slow emergence of specific regulations on FRT

Most of the legal texts on the protection of personal data mentioned above refer to artificial intelligence or FRT at some point. For instance, Article 29 Working Party provides a non-exhaustive list of biometric technologies that can be considered as mature technologies, which includes facial recognition (Opinion 3/2012, 4.2). However, very few acts – if not any – specific to facial recognition itself have emerged yet. One can only mention the focus paper issued by the EU Agency for Fundamental Rights (FRA) in 2019 which rather deals with the fundamental rights implications of relying on live FRT rather than how to regulate it from a legal point of view.<sup>17</sup>

The White Paper on Artificial Intelligence published by the European Commission in February 2020 is more relevant as it makes some interesting comments on our topic.<sup>18</sup> According to the commissioners, some AI applications have to be considered as “high-risk” as such (i.e. without any need of “risk-based” assessment<sup>19</sup>) and require the application of some specific requirements in addition to already existing legislation. Among these exceptional instances, one can find the AI applications for purposes of remote biometric identification. The facial recognition technology is

<sup>11</sup> The composition and purpose of Article 29 WP was set out in Art.29 of the Data Protection Directive 95/46/EC. Since the entry into force of the GDPR in 2018, it was replaced by the European Data Protection Board (EDPB).

<sup>12</sup> Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (CETS No. 108), opened for signature on 28 January 1981. Even if the Council of Europe is distinct from the European Union, it is relevant to take its work into account as part of this research paper.

<sup>13</sup> Opinion 3/2012 on developments in biometric technologies, Article 29 WP, 27 April 2012, p. 3 and “Progress Report on the Application of the Principles of Convention 108 to the Collection and Processing of Biometric Data” commissioned by the Council of Europe, 2005, p.6.

<sup>14</sup> Provided by article 8 of the Data Protection Directive 95/46/EC.

<sup>15</sup> Els Kindt, “A First Attempt at Regulating Biometric Data in the European Union”, chapter 4 of the compendium “Regulating Biometrics: Global Approaches and Urgent Questions” in *AI Now Institute*, 2020, p.63.

<sup>16</sup> Article 4(14) of the General Data Protection Regulation 2016/679 (GDPR) and Article 3(13) of the Directive 2016/680.

<sup>17</sup> FRA Focus, “Facial recognition technology: fundamental rights considerations in the context of law enforcement”, 27 November 2019.

<sup>18</sup> White Paper on Artificial Intelligence, “A European approach to excellence and trust”, COM/2020/65.

<sup>19</sup> *Ibid.* p.17. A risk-based assessment should be carried out to differentiate between the different AI applications, in order to check whether they are ‘high-risk’ or not.

therefore part of it, as it deals with the gathering of biometric identifiers (facial images) of multiple persons at a distance, in a public space and in a continuous or ongoing manner and the check of these features against data stored in a database.<sup>20</sup>

At the end of January 2021, the Council of Europe published guidelines on facial recognition addressed to governments, developers, manufacturers, service providers and "entities using FRT".<sup>21</sup> The document is well-detailed and sheds light on the implementation of principles enshrined in European Union law. Although they are not binding, these guidelines help rekindle the debate on the multiple applications of facial recognition and underline the complexity of the subject.

### 1.3 Current legal framework applicable to the FRT

As facial recognition technology deals with the processing of personal data, it is governed by the current EU data protection rules, namely the GDPR and its law enforcement Directive.<sup>22</sup> The Regulation officially entered into force on 25 May 2018 and the Member States had until 6 May 2018 to transpose the provisions of the directive into their national legislation.

According to the letter of the Regulation, "processing of biometric data for the purpose of uniquely identifying a natural person [...] shall be prohibited".<sup>23</sup> This general prohibition is subject to some ten exceptions, exhaustively listed in Article 9(2).

First, processing such a sensitive category of personal data can be lawful when the data subject has given its "explicit consent" to it "for a specific purpose".<sup>24</sup> The notion of consent is defined and clarified several times throughout the text, its main characteristics being that it must be freely given, informed and unambiguous.<sup>25</sup> Recital 43 lays down a relevant exception: it states that consent will be presumed not to have been freely given "in a case where there is a clear imbalance between the data subject and the controller". Even if the provision lacks precision, one can understand that the consent given by an ordinary citizen to a public authority therefore not provides a valid legal basis for the processing of the citizen's data, given the manifest balance of power between the actors involved.

Another main legal ground is when processing is "necessary for reasons of substantial public interest".<sup>26</sup> In this case, it must take place on the basis of Community or national law and be subject to the requirements of proportionality, respect for the essence of the right to data protection and appropriate safeguards such as the possibility to collect those data only in connection with other data on the natural person concerned, the possibility to secure the data collected adequately, stricter rules on the access of staff of the competent authority to the data and the prohibition of transmission of those data.<sup>27</sup>

Finally, there are some further exceptions including the protection of "the vital interests of the data subject"<sup>28</sup> or "where the where such processing relates to data which are manifestly made public

<sup>20</sup> *Ibid.* p.18. Definition of 'remote biometric identification' given by the White Paper. It should be distinguished from "biometric authentication" which is a security process that relies on the unique biological characteristics of an individual to verify that he/she is who he/she says he/she is.

<sup>21</sup> "Guidelines on facial recognition" from the Consultative committee of the Convention for the protection of individuals with regard to automatic processing of personal data, 28 January 2021.

<sup>22</sup> "Directive 2016/680 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data", OJ L 119, 4.5.2016.

<sup>23</sup> GDPR Article 9(1).

<sup>24</sup> GDPR Article 9(2) a).

<sup>25</sup> GDPR Recitals 32 & 43 ; Article 4 (11).

<sup>26</sup> GDPR Article 9(2) g).

<sup>27</sup> Directive 2016/680, Recital 37.

<sup>28</sup> GDPR Article 9(2) c) and Directive 2016/680 Article 10 b).

by the data subject”<sup>29</sup>, for example social networks’ posts. The latter raises the issue of the origin of the images contained in the databases used to compare and identify facial images obtained through AI technologies. This issue, along with others, will be discussed in the second part of the paper.

All in all, one can argue that the legal framework for FRT seems quite clear so far, based on an initial prohibition coupled with limited exceptions. Any entity wishing to use this technology must therefore carefully justify the legal ground to rely from in order to process sensitive data lawfully. But we will see that these rules actually show shortcomings and that there is room for improvement, especially by creating a text specifically dedicated to facial recognition, or AI in general.

## 2. A TECHNOLOGY THAT EU LAW STRUGGLES TO HANDLE

### 2.1 The issue of facial recognition databases

It should be borne in mind that the GDPR was first and foremost created to deal with the constantly evolving state of technology, as well as its attendant risks. Many people believe that Snowden’s disclosures on global surveillance had a huge influence on the drafting and content of the text, as studies showed that some EU member states were also the scene of the large-scale surveillance practices.<sup>30</sup> Since this scandal, and all the similar cases that are now part of our daily lives, it is not surprising that artificial intelligence systems, and especially facial recognition, frighten many people about their privacy.

One of the biggest concerns in the context of FRT being used for identification purposes is the origin of the images contained in the softwares databases. Not when public authorities refer to official national files but when private entities collect data from social networks in order to create their own facial recognition database. That is what the controversial company Clearview did: over the years, the firm has collected no less than 3 billion images of individuals, retrieved from Twitter, Facebook, Youtube, and other accounts, using the technique of data scraping<sup>31</sup>. The aim was to create an application that gives access to all the images and information related to a specific person, using a simple uploaded picture and a face analysis.

An article from the NY Times revealed in January 2020 that the tech company sold this tool to over 600 law enforcement agencies across the United States, which were using it to solve cases. Facing numerous lawsuits, the startup had to back down, promising to stop selling its technology to private companies and to cancel the subscriptions of non-law enforcement entities.

At the EU level, a question about the lawfulness of this data scraping was referred to the European Commission, which replied that the involvement of Member States authorities or the processing of EU citizens’ data has not been confirmed.<sup>32</sup> The commissioner thus merely recalled the rules concerning data protection and privacy. Nevertheless, it is obvious that the latter are deeply incompatible with the facts of the case, which have led the company to shelve its plans for European expansion.

The only legal ground on which Clearview could have relied on in the event of a trial before a European court is that the personal data retrieved have been made publicly available by the data subject (Article 9(2) e) of the GDPR). However, this is not a sufficient justification for data scraping, which is in fact a practice manifestly prohibited by Facebook and other social media in their terms

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<sup>29</sup> GDPR Article 9(2) e) and Directive 2016/680 Article 10 c).

<sup>30</sup> Didier Bigo *et al.*, “Mass Surveillance of Personal Data by EU Member States and its Compatibility with EU Law” in *Liberty and Security in Europe Papers*, No. 62, November 2013 ; referenced in: Hallie Coyne, “The Untold Story of Edward Snowden’s Impact on the GDPR” in *The Cyber Defense Review*, vol. 4, no.2, 2019, p.70.

<sup>31</sup> Scraping: practice which consists of using a software program to extract a whole bunch of data from websites automatically, with the aim of recovering it and using it, often for profit.

<sup>32</sup> Answer given by Ms Johansson on behalf of the European Commission (17.07.2020) - question E-000507/20.

of service.<sup>33</sup> Especially since Clearview acted without obtaining any authorization or consent from the users. And more importantly, the company provided its customers with a large number of immediately available facial images of citizens who might never be in situations that could lead to criminal proceedings.<sup>34</sup> Clearview's methods could therefore only have been condemned by the European Union.

If a tool, such as the one developed by Clearview, is able to recognise people, it is thanks to the work done by social media users who have been tagging themselves on pictures for years. All the mainstream social networks use this type of feature for years now, enabling people who post pictures to tag everyone who appears on it. That is how AI software can then put together several pictures of the same individual and come up with precise patterns, thereby increasing the accuracy of identification algorithms. This is similar to how the human brain recognises and remembers facial images.<sup>35</sup>

Facebook went one step further by introducing in December 2010 a new feature called “Photo Tag Suggest”, which uses face recognition technology. This tool is able to let users know when they appear in photos or videos without having been tagged and to suggest them to tag people in the new photos they add to their profile. In 2012, Facebook’s photo collection already contained around 220 billion images and was increasing by up to 300 million per day.<sup>36</sup>

## 2.2 The rise of mistrust due to abuses in the use of FRT

Nowadays, biometric identification is increasingly used in public space for surveillance and security purposes. Police forces, for instance, use facial recognition devices in crowded places like stadiums or concert halls to detect potential terrorists among spectators. At first glance, this situation seems to offer much benefits, both to citizens who feel safer and to law-enforcement organizations who see their work simplified. On second thought, it turns out that the risks of infringements on individual civil rights are huge. The fear that these security-oriented systems will reduce our freedom is growing, and legitimate.

In China, a programme called “Sharp Eye” was launched to strengthen the national security system in rural areas. With nearly 300 million cameras equipped with facial recognition software, the Chinese population is constantly being observed. This “Big Brother” can now be found at the entrance to places of worship and enables the population's religious beliefs to be monitored.<sup>37</sup> That is how the Chinese government tracks the Uighurs and constantly watches where they come and go, contributing to their ongoing oppression.

The example of China is obviously extreme and cannot be compared with the situation in European countries, but it does show what kind of drift can happen when it comes to crossing the line between hyper-security and mass surveillance. Because even if installing this type of cameras does not, strictly speaking, reduce freedoms. As we have seen with the example of the panopticon, the feeling of being watched can lead to a form of self-censorship on the part of citizens, particularly

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<sup>33</sup> See <https://www.nytimes.com/2020/01/18/technology/clearview-privacy-facial-recognition.html>  
Accessed: 27.03.2021

<sup>34</sup> Isadora Neroni Rezende, “Facial recognition in police hands: Assessing the ‘Clearview case’ from a European perspective” in *New Journal of European Criminal Law*, vol. 11, no. 3, 2020, p.389.

<sup>35</sup> Christopher S. Milligan, “Facial recognition technology, video surveillance, and privacy” in *Southern California Interdisciplinary Law Journal*, vol. 9, no. 1, winter 1999, p. 304.

<sup>36</sup> Yana Welinder, *op. cit.*, p. 173.

<sup>37</sup> See <https://www.washingtonpost.com/news/world/wp/2018/01/07/feature/in-china-facial-recognition-is-sharp-end-of-a-drive-for-total-surveillance/> Accessed: 03.03.2021

with regard to their participation in public life and, more broadly, the exercise of their fundamental freedoms.<sup>38</sup>

It is therefore not surprising that citizens' distrust in the FRT is reflected in the public consultation about artificial intelligence launched by the European Commission in February 2020.<sup>39</sup> Respondents to the online survey published along with the White Paper voiced doubts on the public use of remote biometric identification systems: 28% were in favour of its general ban while another 29% required a specific EU guideline or legislation before such systems may be used in publicly accessible spaces.<sup>40</sup> In the final report, it was noted that civil society is aware that biometric identification threatens fundamental rights, endangers privacy, enables mass surveillance and leads to imbalances in power. Citizens also argued that biometric surveillance can interfere with the freedom of movement, expression and assembly.

### 3. PROSPECTIVE SOLUTIONS TO SHAPE A BETTER REGULATORY FRAMEWORK TO FRT

#### 3.1 The pressing need to set up a specific framework for facial recognition

As we have seen in this article, facial recognition technology is definitely evolving faster than the legislation that regulates it. Moreover, it deals with such a specific category of data that it calls for the application of a much tighter regime. But above all, in the absence of a common European framework, Member States are developing their own legal systems on the matter, which is likely to cause fragmentation in the internal market.

The European institutions seem to have understood this need, as shown by their latest publications on the topic; notably the online consultation introduced by the European Commission, which was presented as being part of a broader stakeholder consultation process that will contribute to the preparation of various regulatory options. Following an in-depth analysis of the consultation results as well as a detailed impact assessment, a regulatory proposal on artificial intelligence should be presented. A spokesperson for the EU executive interviewed said that the Commission is considering introducing specific provisions on facial recognition.<sup>41</sup>

##### 3.1.1 *The content of such future system*

The guidelines on facial recognition published by the Council of Europe at the end of January 2021 provide a good overview of the main measures to be implemented for a more appropriate framework for the use of FRT. It gives recommendations to decision-makers as well as developers and manufacturers.

Firstly, the Council recommends legislating by category of use. It specifies that any legal framework must include a detailed explanation of the intended use and purpose, the minimum reliability and accuracy of the algorithm used, the length of time the photos used are kept, the possibility of auditing these criteria, the traceability of the process and safeguards (p.4). The legislator should also indicate the different phases of the use of facial recognition technologies (including the creation of databases and deployment phases), the sectors in which these technologies are used and the intrusive nature of some of them, while providing clear guidance on lawfulness (p.5).

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<sup>38</sup> Jameson Spivack and Clare Garvie “A Taxonomy of Legislative Approaches to Face Recognition”, Chapter 7 of the compendium “Regulating Biometrics: Global Approaches and Urgent Questions” in *AI Now Institute*, 2020, p.88.

<sup>39</sup> Public consultation towards a European approach for excellence and trust Consultation on the White Paper on Artificial Intelligence, European Commission White Paper on Artificial Intelligence.

<sup>40</sup> Consultation’s Final Report, November 2020, see <https://ec.europa.eu/digital-single-market/en/news/white-paper-artificial-intelligence-public-consultation-towards-european-approach-excellence> Accessed 03.03.2021

<sup>41</sup> See <https://www.euractiv.fr/section/economie/news/after-clearview-ai-scandal-commission-in-close-contact-with-eu-data-authorities/> Accessed: 06.03.2021

The guidelines also stress the need to systematically consult the supervisory authorities before initiating any project (p.6) and encourage the use of certification mechanisms (p.7).

With respect to the different actors of the facial recognition industry, the document introduces some obligations. For developers, manufacturers and service providers, the emphasis is placed on the need to ensure the quality of data and algorithms, to guarantee the reliability of the tools used as well as data security, and to raise awareness among users. For "user entities", i.e. data controllers and processors (p. 10), it is recalled that they are subject to compliance with the basic data protection principles: legitimacy of processing, transparency, fairness, accuracy, minimisation, limited storage time, data security, impact assessment, etc. Finally, the rights of individuals must be guaranteed. For example, in case of false matches, they should be able to request rectification (p. 15-16).

The European Commission finally published on 21 April 2021 its "Proposal for a Regulation laying down harmonised rules on artificial intelligence"<sup>42</sup>, which it introduced as "the first ever legal framework on AI, which addresses the risks of AI and positions Europe to play a leading role globally". The main challenge was to decide how to approach this technology and its heterogeneous applications. While this approach could have been sectoral (according to the industrial sector concerned) or legal (according to the branch of law concerned), the Commission favoured a third option already foreshadowed by its previous writings: a risk-based approach.<sup>43</sup> The proposal, also known as the "Artificial Intelligence Act", therefore distinguishes between unacceptable, high, limited and minimal risk.

The text refers to facial recognition already in its Title 2 on prohibited artificial intelligence practices. After carefully defining remote biometric identification system (Art. 3, 36), and distinguishing between 'real-time' analysis (Art. 3, 37) and 'post' remote biometric identification system (Art. 3, 38); Article 5 of the proposal introduces a prohibition principle on the use of real-time remote biometric identification systems in publicly accessible spaces for the purpose of law enforcement. Exceptions remain open. These are the targeted search for specific potential victims of crime, including missing children (i); the prevention of a specific, substantial and imminent threat to the life or physical safety of natural persons or of a terrorist attack; (ii); the detection, localisation, identification or prosecution of a perpetrator or suspect of a criminal offence punishable by a custodial sentence of at least three years (iii). These grounds must take account of defined assessment criteria (§ 2) and the use of such systems must be authorised by a judicial or administrative authority (§ 3), subject to prior legislation (§ 4).

On governance, the Commission proposes the creation of national competent authorities designated by each Member State to ensure enforcement of the Act. A new Artificial Intelligence Committee will be created to contribute to the effective cooperation of national supervisory authorities. Finally, the penalties are very high and can be up to €30 million or, if the offender is a company, up to 6% of its total worldwide annual turnover in the previous financial year (Articles 71 and 72).

It remains to be seen whether this model, observed all over the world, will make it through the EU legislative process.

### 3.1.2 *The scenario of a complete ban*

Given the many abuses and criticisms of the FRT, one might think that the most effective solution would be to simply ban it, or at least its most worrying use: remote biometric identification in public spaces. European citizens seem to hold this view<sup>44</sup>, as well as the Council of Europe which

<sup>42</sup> COM/2021/206 final "Proposal for a regulation of the European Parliament and of the Council laying down harmonised rules on artificial intelligence (Artificial Intelligence Act) and amending certain union legislative acts"

<sup>43</sup> Cécile Crichton, "Projet de règlement sur l'IA (II) : une approche fondée sur les risques" in *Dalloz actualité* 4 mai 2021, pp. 19.

<sup>44</sup> Public Consultation's Final Report, *loc. cit.*

advocates that private entities should not be allowed to use this technology in uncontrolled and freely accessible environments for marketing or private security purposes (guidelines p.7).

This idea, although radical, has tempted the European Commission, which let the rumour of a five-year ban on FRT in public areas spread while commissioners were drawing up the White Paper released in February 2020.<sup>45</sup> This ban, which was eventually dropped, would have given them time to assess the impacts of this technology, develop potential risk management measures and determine how to prevent abuses. It would have acted more like a moratorium than a straight ban.

However, the arguments put forward by the European institutions do not seem to convince everyone, as proven by the movement "Reclaim Your Face" which describes itself as "a European movement that brings people's voices into the discussion around biometric data used to monitor the population".<sup>46</sup> It gathers digital rights advocates of six European countries and calls for a Europe-wide ban on the use of "dangerous facial recognition". On 17 February 2021, this coalition has joined forces with the EDRi organization (European Digital Rights) to launch a petition based on the European Citizens' Initiative (ECI) mechanism<sup>47</sup>. The aim is to reach 1 million signatures during a period of 12 months, in the hope of establishing an "official" communication with the Commission in order to ask for a debate in the Parliament.

### **3.2 Temporary solutions pending the establishment of a future legal framework**

#### *3.2.1 Make facial recognition devices more GDPR compliant*

While waiting for European lawmakers to adopt and bring into effect a specific bill on facial recognition, improvements to the current system can still be considered. The first step would be to work on making the existing FRT devices more compliant with the GDPR, ensuring that their use in the public space has an appropriate legal basis and additional safeguards adapted to the risks involved and the interests to be protected.

When the processing of biometric data from live FRT is based on consent, the challenge would be to ensure that the data subject has understood the full implications of such processing. As the lack of trust in the devices is compounded by the difficulty for a user to really grasp the consequences of the collection and uses that will be made of his personal data. The objective would be to present, technically, what facial recognition is and what it is used for, but also to highlight the risks associated with it.

It is with this awareness-raising perspective that Facebook updated its "Photo Tag Suggest" feature in 2019. This update implies that users receive a notice in their News Feed with information about the face recognition setting and options to learn more about how the social network uses it. It also includes a button to turn it on or keep it off.<sup>48</sup> This is a good example of how to raise awareness among data subjects to ensure the most informed consent possible.

As regards surveillance cameras used for remote identification, time limits for the retention of recordings should also be set and transparently indicated.

#### *3.2.2 Toward a common European facial recognition database?*

In Mai 2019, in accordance with the provisions of Regulation 2019/817 establishing a framework for interoperability between EU information systems in the field of borders and visa, the European Commission has announced the creation of a common network of facial recognition

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<sup>45</sup> Chee F. Y. (2020). *EU mulls five-year ban on facial recognition tech in public areas*. Retrieved from <https://www.reuters.com/article/idUSL8N29L61I>.

<sup>46</sup> See <https://reclaimyourface.eu/the-movement/> Accessed 06.03.2021

<sup>47</sup> The European Citizens' Initiative (ECI) is a unique tool provided by the European Union mechanism to increase direct democracy by allowing citizens to participate directly in the development of EU policies. It was introduced by the Treaty of Lisbon in 2007.

<sup>48</sup> See <https://about.fb.com/news/2019/09/update-face-recognition/> Accessed: 13.03.2021

databases for European law-enforcement forces. This new system, called shared biometric matching service (shared BMS), will replace the actual five different central systems with a common platform where the data is queried and compared simultaneously.<sup>49</sup> The European Union Agency for the Operational Management of Large-Scale IT Systems in the Area of Freedom, Security and Justice (eu-LISA) has been mandated to develop the shared BMS and ensure its technical management.

By 2022, the shared BMS will be one of the largest biometric systems in the world, integrating a database of over 400 million third-country nationals with their fingerprints and facial images. Based on European biometrics technology, this new system will generate substantial benefits in terms of security, cost, maintenance and operation. Moreover, the biometric template will remain stored in one location. It promises to become the cornerstone of the protection of European borders.

This tool should help the EU to avoid scandals such as the Clearview case, when it is known that the FBI's biometric database contained four times fewer images than the one created by the company.<sup>50</sup>

#### 4. CONCLUSION

Facial recognition is an increasingly popular technology for both identification and identity verification solutions. It is now part of our daily environment, sometimes without even realising it. As it softly imposed itself in our societies, it is difficult to realize the major turning point this innovation represents for humanity. So much so that the legislators were unable to anticipate it and are now struggling to adapt to it.

The European Union has been particularly slow to grasp the challenges of this rapidly developing technology and to set the necessary steps to reduce its impact. FRT in Europe is today still governed by the broader legal framework of data protection, which appears to be not specific and clear enough to ensure an optimum control of its use. However, we know that an unsupervised use can be damaging and infringe people's rights and freedoms. Abuses of this kind have already occurred.

The most problematic area is that of remote biometric identification, as it can easily amount to a permanent identity check. Even if its use in European countries is far from being as widespread as in China for example; trials are multiplying, with the aim of gradually including it in our cities. And despite the strong reactions, nothing has yet been done to stop this progression. Neither should we claim a technological emergency, but there is indeed a real need to adopt binding laws on the matter.

One can then conclude by keeping in mind that facial recognition is both a fascinating and frightening technology that should not be underestimated. It is also clear that legislating in this area is especially hard, given all the elements at stake. The biggest challenge is thus to find the right balance between, innovation, security and privacy.

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<sup>49</sup> Regulation 2019/817, Recital 17.

<sup>50</sup> See [https://www.lexpress.fr/actualite/sciences/clearview-l-application-proscrite-par-la-france-pour-protger-notre-vie-privee\\_2115879.html](https://www.lexpress.fr/actualite/sciences/clearview-l-application-proscrite-par-la-france-pour-protger-notre-vie-privee_2115879.html) Accessed 13.03.2021

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# Law and Technology – Criminalization of Sex Robots

VIKTORIA MAZUR

VIMAZU@TALTECH.EE

TALTECH LAW SCHOOL, TALLINN UNIVERSITY OF TECHNOLOGY, ESTONIA

**Abstract:** *Influence of technology on our everyday lives, and in on our societies in general, is enormous. It is difficult to imagine life without technology, as it offers so many solutions and eases various tasks we conduct, it makes lives better. However, certain developments of technology raise concerns, ethical and legal concerns. One of such fields where technology development has been rather controversial is sex robots. This article indents to research into this field and raise several problems related to the technology development in sex robots.*

**Keywords:** *Criminalization, ethics of technology, law and technology, sex robots.*

## 1. INTRODUCTION

Sex robots are becoming extremely popular<sup>1</sup>, especially during the Covid pandemic related lockdown. The first sex robot Roxxy was invented and presented in 2010 by TrueCompanion<sup>2</sup>. Since that time robots have started looking more real and advanced in mechanics and animatronics considerably<sup>3</sup>, as well as the significant developments of the AI systems have been improved; they act more real. Sex robots are meant and created for those that are deprived of sex, some experts claim that they have therapeutic effect<sup>4</sup> of these dolls on men that suffer from unfulfilled sexual need and especially those that have unlawful (philosopher Marc Behrendt is the one that discusses therapeutic use of childbots for pedophiles) and violent sexual behavior. Nonetheless, having access to these outlets has not stopped men from raping, besides sexual violence remains at the same high level<sup>5</sup>. There is also a raise in use of childlike sex dolls, which are not yet a fully robotic or automatic machineries but rather an anatomically correct prepubescent mannequins or dolls. Although, the future may offer new technologic opportunities and childlike sex robots could be created as to the fact that there are no legal restrictions in this respect. It is a known fact that not all sexual offences against children are carried out into practice by pedophiles<sup>6</sup>, as well as not all pedophiles sexually offend children. It may be deduced that the effectiveness of childlike sex bots for pedophilic use for preventing child sexual abuse remains quite controversial<sup>7</sup>. The violent standards of conduct and behavior should be criminalized, and the reasons are discussed in further research. “If we are to criminalize a type of conduct, we must show that it falls within the public

<sup>1</sup> Bishop, K. (2020). “Sex Robots, Teledildonics, and the Rise of Technosexuals During Lockdown. Observer.” <https://observer.com/2020/10/sex-robots-teledildonics-growing-popularity-covid19/> (accessed 20.06.2020).

<sup>2</sup> TechCrunch, “True Companion Debuts Sex Robot Roxxy.”, *NSFW*, 2010 [https://techcrunch.com/2010/01/09/nsfw-true-companion-debuts-sex-robot-roxxy/?guccounter=1&guce\\_referrer=aHR0cHM6Ly93d3cuZ29vZ2xILmNvbS8&guce\\_referrer\\_sig=AQAAAMgLtBs83sEStHIRHKmryh2W1SFwPUHZz0j\\_OI\\_W\\_5ZiY2K9PDcdqJe-YQMhqoRvtL-kqk7t92F-QyKQe\\_ERAw\\_Bth4NvKRh0iKKyAcsPHkQx0MTRvPg\\_BQFzhdrJ1wEp53jBJKFxvj1axQwTfnpkgKTbA48DrgPba6GGJKaucxrN](https://techcrunch.com/2010/01/09/nsfw-true-companion-debuts-sex-robot-roxxy/?guccounter=1&guce_referrer=aHR0cHM6Ly93d3cuZ29vZ2xILmNvbS8&guce_referrer_sig=AQAAAMgLtBs83sEStHIRHKmryh2W1SFwPUHZz0j_OI_W_5ZiY2K9PDcdqJe-YQMhqoRvtL-kqk7t92F-QyKQe_ERAw_Bth4NvKRh0iKKyAcsPHkQx0MTRvPg_BQFzhdrJ1wEp53jBJKFxvj1axQwTfnpkgKTbA48DrgPba6GGJKaucxrN) (accessed 20.06.2020).

<sup>3</sup> Realdoll official website: <https://www.realdoll.com/realdoll-x/> (accessed 20.06.2020).

<sup>4</sup> Levy, D., *Love and Sex with Robots*. 3rd ed. Springer, UK, 2017

<sup>5</sup> Mlambo-Ngcuka, P. (2020). “Violence against women and girls: the shadow pandemic” *UN Women*.

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realm, the civic enterprise, and that it is therefore of proper interest to all citizens in virtue of their participation in that enterprise”<sup>8</sup>. To ensure the well-being of public a sound moral character should be built, moral harms may ruin well-being<sup>9</sup>.

## 2. ROBOTS AND RAPE

Childlike sex dolls have appeared several years ago in Asian countries, whereas regular sex dolls have existed for a long time all over the world. Initially sex dolls were just ordinary sex toys which did not show a significant resemblance with real people, the modern dolls (RealDoll) are not only extremely human-looking creatures that have a hyper-realistic anatomically correct bodies, but they also have an Artificial Intelligence (AI) platform built into a robotic head. Such a doll is nothing but a robotic AI. They are able to form expressions, detect the touch and its intensity<sup>10</sup>, move their head, and speak. Although their bodies are not equipped with animatronic parts yet. Moreover, they can learn what their owners like and offer an emotional connection afterwards. It could be assumed that a sexual experience with such a device may feel real. Moreover, any abuse, assault, or rape could also be “felt” like real for both the offender and the victim (robot). In the University of Osaka, a robot with tactile sensors can detect pain, the research aims at developing empathy. However, hypothetically the same setting may be installed into the sex robot. It raises important ethical questions of whether such robots, which are able to “feel” and have a selection of personal features<sup>11</sup>, should be considered as any kind of personalities and should the degrading treatment of such machines be a violation of human rights?

### 2.1. Representation of rape

It is fair to mention, that from philosophical point of view, a sexual connection is a relation with human being or animal, alive substance<sup>12</sup>. Today robot is not legally defined as electronic or legal personality. According to such philosophical idea, sex with a robot should be considered as masturbation as well as ordinary sex toys. Of course, robot is not alive, it does not have emotions, it is not identified with legal means and therefore it is not capable of giving consent. But even if the robot is not a real human, the representation of rape is real<sup>13</sup>. Some may say that films, video games, pornography also have scenes that represent rape, but the scenarios of violence are played by actors or avatars and they are completely fictional, yet causing moral harm as well, but not considered in this research. Though, in terms of sex robots the person involved is real (there is no or insufficient mental distance) and the function which may turn on scenario of rape which robot would play - at least morally problematic<sup>14</sup>. If a hyper-realistic woman-looking robot would deny the sexual intercourse, would cry and at the same time would “feel” the pain, then the violence will be directly associated with pleasure. In the future, if sex with robots will not require consent or will play a “raping scenario” it may become misleading and give the appearance of the fact that women should not give their consent and are always available for sex. Nevertheless, it is important to mention that some people might have different motivation to purchase a sex robot.

<sup>8</sup> Duff, R. A., “Towards a Modest Legal Moralism”, *Criminal Law and Philosophy*, vol. 8, 2014, 217–235.

<sup>9</sup> Wall, S. (2013). Enforcing Morality – *Criminal Law and Philosophy*, vol. 7, 455–471.

<sup>10</sup> Rahman, A., Walia, S., Naznee, S., Taha, M., Nirantar, S., Rahman, F., Bhaskaran, M., Sriram, S., “Artificial Somatosensors: Feedback Receptors for Electronic Skins”, *Wiley-VCH GmbH*, vol. 2000094, 2020 1-10.

<sup>11</sup> Video uploaded on YouTube: [https://www.youtube.com/watch?v=Ff\\_NRSf4s20&t=619s](https://www.youtube.com/watch?v=Ff_NRSf4s20&t=619s)

<sup>12</sup> Goldman, A. H., “Plain sex” *Philosophy and Public Affairs*, vol. 6, no. 3, 1977, 267–287.

<sup>13</sup> Sparrow, R., “Robots, Rape, and Representation”, *International Journal of Social Robotics*, vol. 9, 2017, 465–477.

<sup>14</sup> Danaher, J., “Robotic Rape and Robotic Child Sexual Abuse: Should They be Criminalised?”, *Criminal Law and Philosophy*, vol. 11, 2017, 71–95.

## 2.2. Replacing human relationship

The innovation of sex robot technology is one of the biggest trends in the industry which also affects the psychology of people. There is a new sexual preference called digisexuality<sup>15</sup>. In 2018, a Japanese man married a hologram, such a movement of “closer relationship with technology” is becoming very popular. However, “the deception involved in designing robots to encourage users to falsely attribute thoughts and emotions to them is morally problematic”<sup>16</sup>. Nowadays technologies and the level of robot’s development or, more precisely being able to keep the conversation, to express “emotions” and in some nearest future being able to empathize, and having the hyper-realistic appearance, may lead to replacing human relationships with sex robots<sup>17</sup>.

## 3. CHILDLIKE SEX “ROBOTS” AND ABUSE

In Japan, childlike sex dolls have been manufactured by company, created by Shin Takagi (a self-confessed pedophile<sup>18</sup>) directly for pedophiles<sup>19</sup> and meant to simulate the experience of raping a child. It is believed that pedophilia is not a sexual orientation but rather a psychological disorder triggered by early childhood trauma, which cannot be cured; and the possession of such devices may help these people to lead a better life. Some experts say that childlike sex dolls help pedophiles channel and control their sexual urges and they can be used to keep pedophiles away from child molestation. There are childlike sex dolls on the market, and they have been sold through mainstream online retailers like Amazon, Ebay, Aliexpress and Wish *sub voce* as mannequin. In light of the fact, that adult sex robots already exist, it is just a matter of time when the AI system will be installed to childlike robots as well. But what if such an approach may encourage the demand, allow to fully enjoy, and develop the sexual and psychological bent, which will motivate pedophiles to go on abuse on child? However, in this paper psychological aspects of an issue are not the point of discussion, but rather a lack of legal framework for such dolls and consequently sex robots of any kind of appearance in the UK.

Sexual intercourse is legal starting from certain age (according to national Penal Codes) only if both sides gave their consent without using the force and threat, otherwise it is considered as rape. If it is a sexual intercourse with a robot, should the setting of “consent” be also installed? No robot can be raped unless it will be designed in a way that it can refuse the sexual connection, such a setting of different repertoires of sexual abuse may be installed into the AI’s system. In the mentioned company TrueCompanion there was a sex robot called “Frigid Farah”. In the article written by John Danaher it was mentioned that “if you touched her in a private area, more than likely, she will not be to[o] appreciative of your advance”<sup>20</sup>. Such a behavior represents a non-consent or rape scenario. Furthermore, if sex robots are deprived of consent they might be considered as sex slaves, which at the same time could perpetuate gender inequality and enhances misogyny, because sexual

<sup>15</sup> McArthur, N., “The rise of digisexuality: therapeutic challenges and possibilities”, *Special Issue on sex and technology*, vol. 32, 2017, 1-12.

<sup>16</sup> De Graaf, M. M. A., “An Ethical Evaluation of Human-Robot Relationships” *International Journal of Social Robotics*, vol. 8, 2016, 589–598.

<sup>17</sup> Sulins, J. P., “Robots, Love, and Sex: The Ethics of Building a Love Machine”, *IEEE TRANSACTIONS ON AFFECTIVE COMPUTING*, vol. 3, no. 4, 2012, 398–409.

<sup>18</sup> McCrum, K., “Lifelike child sex dolls created to 'stop paedophiles committing crimes'”, *Irish Mirror*, 2016 <https://www.irishmirror.ie/news/world-news/lifelike-child-sex-dolls-created-7177869> (accessed 20.06.2020).

<sup>19</sup> Osborne, S., “Japanese company manufactures lifelike child sex dolls for paedophiles”, *Independent*, 2016 <https://www.independent.co.uk/news/world/asia/japanese-company-manufactures-lifelike-child-sex-dolls-paedophiles-a6811046.html> (accessed 20.06.2020).

<sup>20</sup> Danaher, J., “Robotic Rape and Robotic Child Sexual Abuse: Should They be Criminalised?”, *Criminal Law and Philosophy*, vol. 11, 2017, 71–95.

preferences of men would be placed before the rights of women and girls. Mostly such dolls and robots are of women or girls' appearances, consequently men are the owners of such toys. Throughout the centuries and today women have been fighting for equal rights, but woman-looking sex "slaves" will not defuse a conflict between feminists and sexists<sup>21</sup>. According to Joanna Bryson, "the appropriate metaphor for the relationship between humans and robots is that of master and slave"<sup>22</sup>. Leslie Green is raising the question of morality, she believes, that law should improve the morality in the context of sex and consent<sup>23</sup>. Current "sexual morality" is limiting women to the extent that "they feel obliged to avoid certain places, to be careful going out at certain times, to give thought to how their dress and manner will be received—in general, to remain unwillingly vigilant. Few men have experiences that are remotely similar." Also, a minimum age of the robot's appearance should be set, prepubescent bodies should not be used. Although, if experts would find enough evidence for the therapeutic approach then childlike sex robots should be made available to pedophiles under a range of conditions or at least under a medical diagnosis. Whereas in contrast, qualified majority of population should not get access to these robots, also a legal framework should be provided to cover this issue and provide for punishment in the event of illegal distributing and use. The limited access of these robots may be compared with license of marijuana for medical purposes.

In some countries the pornography, images etc. are considered as harmful to children (physically or/and psychologically), because the real children are supposed to feature on child-exploitation material. In Portugal, pornographic material with a realistic representation of underage individuals is a typified crime even though there are no children involved. For the purposes of creation of these dolls no children were harmed directly. On the other hand, the picture of a child could be used for the prototype of the doll's face, which is sure enough to be considered as harmful towards children. Moreover, childlike sex dolls harm children through legitimising and normalising their sexual use. There is an obvious and very common link between possessing a childlike sex doll and a child-abuse material. In the number of cases in UK and Australia, majority of offenders possessing sex dolls also had child pornography, or child-exploitation images. Nevertheless, the purpose of this paper is not to assess the therapeutic approach or to cover psychological or moral part of the issue, though it should be noted that robots are not human beings, even as childlike sex robots are not real children. Yet, without proper regulation these robots, created for good, may lead to real harm to children. Child pornography is a crime, but is it a crime if adult is performing sexual activity with childlike robot? If not controlled, Porn websites may be overflowed with porn where featuring childlike robots.

### 3.1. Legal framework

Development of technology has raised several legal and ethical concerns, promoting countries and organization to introduce new ethical regulations, as well as often legal solutions.<sup>24</sup> In 2018, the European Commission has released a European approach to boost investment and set ethical

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<sup>21</sup> Moeckli, D., Shah, S., Sivakumaran, S., *International Human Rights Law*. 2nd Ed. Ch. 16., 2017, Oxford University Press, UK

<sup>22</sup> Frank, L., Nyholm, S., "Robot sex and consent: Is consent to sex between a robot and a human conceivable, possible, and desirable?" *Artificial Intelligence and Law*, vol. 25, 2017, 305–323.

<sup>23</sup> Green, L., "Should law improve morality?", *University of Oxford Legal Research Paper Series*, vol. 73, 2013, 1–38.

<sup>24</sup> Kerikmäe, T.; Hoffmann, T.; Chochia, A. (2018), "Legal Technology for Law Firms: Determining Roadmaps for Innovation" *Croatian International Relations Review*, 24 (81), 2018, 91–112; Kerikmäe, T.; Mürsepp, P.; Särav, S.; Chochia, A., "Ethical Lawyer or Moral Computer – Historical and Contemporary Discourse on Incredulity between the Human and a Machine", *Вісник Національної академії правових наук України*, 2 (89), 2017, 27–42.

guidelines. It was then clear that development of AI could raise new ethical issues.<sup>25</sup> Some steps have been done since then. In 2018, European Group on Ethics in Science and New Technologies presented Artificial Intelligence, Robotics and 'Autonomous' Systems, which discusses important moral and ethical questions. In 2019, High-Level Expert Group on AI presented Ethics Guidelines for Trustworthy Artificial Intelligence. Nowadays, there are nine main areas that shape the discussion of AI ethics. Yet, none of these legal issues are covered by a special AI legal framework (there is, though, an existing or forthcoming EU legislation), whereas legal personhood of AI is covered neither by EU secondary law relating specially to AI systems<sup>26</sup>. Should AI systems be deemed subjects of law? Today this question cannot be answered as the discussions about legal personality and electronic personality are still held. European civil law rules in robotics is today one of the fullest and exhaustive legal documents on robotics based on several research taken within years. According to these rules a robot will soon be provided with common definition.

Under Section 10 of Sexual Offences Act (SOA) 2003 of England, it is prohibited to cause a child to engage in sexual activity, while it does not relate to a robot that represents a child. Under Section 1 of The Protection of Children Act (POCA) 1978 of England, it is forbidden "to take, or permit to be taken [or to make], any indecent photograph [ or pseudophotograph] of a child [...]", when a meaning of pseudophotograph is vague and its connection to sex robot is controversial as well, unless the picture of a real child would be used in the design of robot's appearance. Under Section 1(2) of The Obscene Publications Act (OPA) 1959 of England, distribution, circulation, sale, hiring, giving, lending, offering for sale or for letting on hire of any obscene article (wide, not limited meaning) should be prohibited. However, the Act covers the sale and distribution of the dolls but "fails to address bare possession"<sup>27</sup>. Under Section 42 of Customs Consolidation Act of 1876 of England, the list of goods is prohibited or restricted to be imported into UK. The "list" of the following section was amended in 2008 with the Statute Law (Repeals) Act: "All articles bearing or having affixed to them any stamp, name, writing, or other device implying or tending to imply any sanction or guarantee by the Customs or by any other Department of the Government." At the moment, in UK there is no existing framework that would cover directly the possession of childlike sex robots. In 2017, in the United States of America, there was adopted an act named as Curbing Realistic Exploitative Electronic Pedophilic Robots (CREEPER) Act that aims to ban the importation and transportation of child sex dolls and does not address to possession as well. By "Child sex dolls" it is meant any child-looking, anatomically correct mannequin or robot that can be used for sexual purposes. Congress finds that "the dolls and robots not only lead to rape, but they make rape easier by teaching the rapist about how to overcome resistance and subdue the victim".

Under Section 1 of Criminal Attempts Act 1981 of England and Wales even the attempt to commit a crime is considered as crime. Moreover, even if it is impossible to commit a crime, the person should be found guilty. It is considered that an intent or will to commit a crime should be punished. In *Regina v. Shivpuri*<sup>28</sup> judgement, Lord Bridge of Harwich stated that "Putting the hand in the pocket is the guilty act, the intent to steal is the guilty mind, the offence is appropriately dealt with as an attempt, and the impossibility of committing the full offence for want of anything in the pocket to steal is declared by [subsection (2)] to be no obstacle to conviction". In terms of sex robots,

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<sup>25</sup> Joamets, K.; Chochia, A., "Access to Artificial Intelligence for Persons with Disabilities: Legal and Ethical Questions Concerning the Application of Trustworthy AI", *Acta Baltica Historiae et Philosophiae Scientiarum*, 9 (1), 2021, 51–66; Joamets, K.; Chochia, A., "Artificial Intelligence and its Impact on Labour Relations in Estonia", *Slovak Journal of Political Sciences*, 20 (2), 2020, 255–277.

<sup>26</sup> SIENNA D "Analysis of the legal and human rights requirements for AI and robotics in and outside the EU.", 4.2. (2019).

<sup>27</sup> Chatterjee, B. B., "Child sex dolls and robots: challenging the boundaries of the child protection framework" *International Review Of Law, Computers & Technology*, vol. 34, no. 1, 2020, 22–43.

<sup>28</sup> R v Shivpuri [1986] UKHL 2 (15 May 1986).

it can also be approached following the logics this way: if there is an intent and belief that person rapes a woman or sexually abuses a child, which are represented by robots then such person should be guilty of intent and desire to commit a crime. However, currently the fact of having got robot mixed up with a human seem doubtful and implausible.

### 3.2. Case study

The majority of cases, where childlike sex dolls have been used in sexual purposes accrue to Australia<sup>29</sup> and United Kingdom<sup>30</sup>. The number of men in the UK who appear to show an active interest in the are connected to child sexual abuse is very high. Andrew Dobson<sup>31</sup> was one of the first people jailed for child sexual abuse. He pleaded guilty importing an indecent object, possessing indecent images of children making indecent images of children<sup>32</sup>. David Turner<sup>33</sup> have also admitted importing indecent object, possessing 34,000 obscene images, making indecent images, and possessing extreme pornographic images<sup>34</sup>. According to Section 50 of Customs and Excise Management Act of 1979 another man was jailed in 2018, Sean Doel<sup>35</sup> was accused of importing prohibited goods<sup>36</sup>. He did not possess any indecent images of a child, though. The conclusion must be driven from the cases considered that importing childlike sex doll or robot is a criminal offence. No precedent was provided where sex doll was manufactured or 3D-printed in UK. But acknowledging the legislation it could be claimed that possession of childlike sex doll is not illegal.

## CONCLUSION

The childlike sex dolls and sex robots have already been sold, possessed and used in several countries in the world. In the UK the legislation is still not prepared for the issues arising from the rape, assault or sexual abuse of robotic AI. Considering existing law in UK, none of Acts may fully cover the childlike sex robots. Punishing measures may be applied only to those cases, where the image of a child is used in manufacturing under POCA and SOA, criminalization is justified because such use constitutes a secondary harm to a child. Whereas OPA might cover import and transfer of such dolls and robots. Although the possession of such doll and consequently childlike sex robots is not prohibited under existing law. The future harm can be validly interpreted to justify the criminalisation of childlike sex robots and sex robots that are designed to play different “rape scenarios”, because it promotes a damaging culture of the sexualisation of children and represents women in sexist way.

<sup>29</sup> Molloy, S. (2020). “Australian Border Force seizes large number of lifelike child sex dolls” *NZ Herald*. <https://www.nzherald.co.nz/world/australian-border-force-seizes-large-number-of-lifelike-child-sex-dolls/4BJN34ARDIMLP4KF2JRJVFGDGA/> (accessed 20.06.2020).

<sup>30</sup> Dearden, L. (2019). “Hundreds of child sex dolls seized at UK borders, sparking legal crackdown”, *Independent*. <https://www.independent.co.uk/news/uk/crime/child-sex-dolls-uk-paedophiles-seized-borders-jail-prosecutions-a8844406.html> (accessed 20.06.2020).

<sup>31</sup> R v Dobson (2017).

<sup>32</sup> BBC, “Andrew Dobson jailed for 'child-like' sex doll import bid” 2017, *BBC*, <https://www.bbc.com/news/uk-england-stoke-staffordshire-40383627> (accessed 20.06.2020).

<sup>33</sup> R v Turner (2017).

<sup>34</sup> BBC (2017). Ex-school governor who imported child sex doll is jailed. *BBC*. <https://www.bbc.com/news/uk-41203239> (accessed 20.06.2020).

<sup>35</sup> R v Doel (2018).

<sup>36</sup> Blair, A. (2018). Brit man, 45, in court for 'importing CHILD sex doll from China'. *Daily Star*. <https://www.dailystar.co.uk/news/latest-news/sean-doel-child-sex-doll-16851771> (accessed 20.06.2020).

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# EU Foreign and Security Policy: Overview and challenges

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LIISA MARGIT PAATS<sup>1</sup>

TALLINN UNIVERSITY OF TECHNOLOGY, ESTONIA

**Abstract:** *This paper focuses on the European Union Common Foreign and Security Policy (CFSP), its evolution, changes brought about the Treaty of Lisbon and the EU's capacity to act within this area. The report provides an overview of the CFSP and brings out the main internal and external challenges the Common Foreign and Security Policy faces today.*

**Keywords:** *Common Foreign and Security Policy (CFSP), European integration, the Treaty of Lisbon*

## INTRODUCTION

**A**lthough the European Union Common Foreign and Security Policy (CFSP) in the context known today was launched by adoption of the Treaty of Maastricht in 1993 and was strengthened through the following treaties, the roots of coordination in the foreign policy areas between the Member States date back already to the 1970s of the European Political Cooperation<sup>2</sup>. What began only as information exchange, has evolved into much broader and closer cooperation between the EU Member States and institutions covering several policies of European Commission such as neighbourhood and development coordination policies, treaties concluded by the European Council and the Council, and foreign policies adopted by the Member States of the Union<sup>3</sup>. In despite of this, while most policy areas and the EU itself have experienced ever-closer integration and have taken up supranational policy characteristics, it has been claimed that the CFSP is not fully part of this as the EU's capacity to act within this area is rather limited and the necessity of consensus generation has led to a conclusion that the final decision-making power regarding foreign policy issues has remained to rest with the Member States<sup>4</sup>.

The aim of this paper is to give overview of the CFSP of the EU and introduce its relevant challenges. For doing this, the article focuses on the Common Foreign and Security Policy of the EU by first providing the general overview of the emergence of this policy area through relevant treaties and introducing its aims and importance in the Union. After that, the changes brought about by the Treaty of Lisbon will be more closely examined through first examining the alterations in the general governance framework and then the institutional set-up. The final part of the article brings out the main internal and external challenges the Common Foreign and Security Policy faces today.

## COMMON FOREIGN AND SECURITY POLICY OF EU

While it is generally understood that the EU Common Foreign and Security Policy covers only the normative policies falling under the legal and institutional framework such as fundamental values and norms of the Union, there is also much broader view incorporating all cross-border

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<sup>1</sup> *TalTech Law School, Tallinn University of Technology, Estonia, liisa.paats@taltech.ee*

<sup>2</sup> <https://www.auswaertiges-amt.de/en/aussenpolitik/europa/aussenpolitik/gasp/-/228306>

<sup>3</sup> Annegret Bendiek, „European Realism in the EU's Common Foreign and Security Policy“ Edited by Dr Paul James Cardwell. *EU External Relations Law and Policy in the Post-Lisbon Era*, Hague, T.M.C. Asser Press, 2012, pp. 35-58.

<sup>4</sup> Uwe Puetter, „The Latest Attempt at Institutional Engineering: The Treaty of Lisbon and Deliberative Intergovernmentalism in EU Foreign and Security Policy Coordination“ Edited by Dr Paul James Cardwell. *EU External Relations Law and Policy in the Post-Lisbon Era*, Hague, T.M.C. Asser Press, 2012, pp. 17-34.

communications of the EU institutions and the Member States between third countries<sup>5</sup>. In spite of the contesting perspectives, it can be agreed that the CFSP relates to Union's core values and aims to improve and promote international peace and security, democracy, rule of law, effective multilateralism, and respect for human rights and fundamental freedoms<sup>6</sup>. The entire external action of the EU however, covers a wider spectrum of areas including the European Neighbourhood Policy (ENP), trade and development policy issues, pre-accession treaties for candidate countries, Common Security and Defence Policy (CSDP), crisis response and prevention, and peacebuilding missions<sup>7</sup>.

In determining the power limits of the European Union, it is clear that the Union can act only within the competences its Member States have conferred upon it as stipulated in the Article 5(2) of the Treaty on the European Union<sup>8</sup>. When it comes to the CFSP, this policy area cannot be distinguished neither as exclusive, nor shared or supportive competences as it falls under a special category with different rules and specific procedures<sup>9</sup>. Due to national security and sovereignty issues, the Member States have been reluctant in terms of giving the EU ultimate decision-making power in the foreign and security policy area. As a consequence of this, the EU lacks legislative competences in CFSP, in most cases there is the unanimity requirement (in very exceptional issues QMV is allowed), decisions are taken through loyalty clause, Member States cannot be sanctioned for non-compliance officially, the flexibility clause of Article 352 of TFEU does not apply, the Court of Justice of the EU does not have jurisdiction and the European Commission and European Parliament powers are very limited<sup>10</sup>. In this policy area the main two legislative bodies – the European Parliament and the Commission have been deprived the legislative powers and have some control only through the right to be informed, supportive role and budgetary issues<sup>11</sup>.

When identifying the greatest players of the EU in the CFSP, it has been claimed that the European Council due to having the power of determining the strategic direction, general guidelines and principles of the policy and ensuring its effective implementation in accordance with Article 22 TEU, is the key institution<sup>12</sup>. The logic behind this is that because of the sensitivity of the issues in this area and national interests, only the heads of state and government can agree on common policy and its future direction<sup>13</sup>. The main decision-making body in the EU in this area is the External Relations Council which is composed by the foreign ministers of the Member States chaired by the High Representative and makes its decision on the bases of the guidelines and direction suggestions made by the European Council<sup>14</sup>. Other players in the EU's CFSP that should be mentioned are the

<sup>5</sup> Annegret Bendiek, „European Realism in the EU's Common Foreign and Security Policy“ Edited by Dr Paul James Cardwell. *EU External Relations Law and Policy in the Post-Lisbon Era*, Hague, T.M.C. Asser Press, 2012, pp. 35-58.

<sup>6</sup> <https://www.europarl.europa.eu/factsheets/en/sheet/158/foreign-policy-aims-instruments-and-achievements>

<sup>7</sup> <https://www.auswaertiges-amt.de/en/aussenpolitik/europa/aussenpolitik/gasp/-/228304>

<sup>8</sup> Consolidated versions of the Treaty on European Union (TEU) and the Treaty on the Functioning of the European Union (TFEU), <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A12016ME%2FTXT>, Accessed: 21.05.2021

<sup>9</sup> Marise Cremona, *Implementation of the Lisbon, Improving Functioning of the EU: Foreign Affairs, In-depth analysis for the AFCO committee*, Brussels, Publications Office of the European Union, 2015, 34 pages.

<sup>10</sup> Uwe Puetter, „The Latest Attempt at Institutional Engineering: The Treaty of Lisbon and Deliberative Intergovernmentalism in EU Foreign and Security Policy Coordination“, Edited by Dr Paul James Cardwell, *EU External Relations Law and Policy in the Post-Lisbon Era*, Hague, T.M.C. Asser Press, 2012, pp. 17-34.

<sup>11</sup> Marise Cremona, *Implementation of the Lisbon, Improving Functioning of the EU: Foreign Affairs, In-depth analysis for the AFCO committee*, Brussels, Publications Office of the European Union, 2015, 34 pages.; Kaniok, P. and Komínková, M., „Parliamentary Questions: Expressions of Opposition(s) within the European Parliament?“ *TalTech Journal of European Studies*, Vol.9 (Issue 1), 2019, pp. 33-56.

<sup>12</sup> Marise Cremona, *Implementation of the Lisbon, Improving Functioning of the EU: Foreign Affairs, In-depth analysis for the AFCO committee*, Brussels, Publications Office of the European Union, 2015, 34 pages.

<sup>13</sup> Ramiro Troitiño, D; Kerikmäe, T; De la Guardia, R. M; Perez, G. A. (2020). *The EU in the 21st Century. Challenges and Opportunities for the European Integration Process*. Springer.

<sup>14</sup> <https://www.auswaertiges-amt.de/en/aussenpolitik/europa/aussenpolitik/gasp/-/228308>

Permanent Representatives Committee, the Political and Security Committee, the working groups of the Council, the High Representative, and the European External Actions Service (EEAS).

The EU is equipped with several tools and instruments for in the area of foreign and security policy area. One of the most important instruments is decision of the Council which before the Treaty of Lisbon used to be separated into the Joint Action and the Common Position. The European Council decisions require always unanimity and are sent out at this level only in case serious issues and when the message has to be strong. Besides that, there are also restrictive measures – the sanctions, which also adopted unanimously and have to fall under the general objectives of the policy area. Other instruments in the Common Foreign and Security Policy are statements, demarches, political dialogues (between the EU and third countries), and proposals made by special representatives<sup>15</sup>.

### EMERGENCE OF THE EU'S CFSP

The necessity for acting together at the EU level in the foreign and security policy issues was brought by ever-changing and globalising world and notion that the security problems had become too great, cross-border, and complex for the member states to solve them on their own<sup>16</sup>. Besides that, it was understood that only facing collectively the new international challenges and developing common policies can enable the member states to respond to these issues in a stronger and more coherent manner and have a greater say over this area internationally<sup>17</sup>.

In the foreign and security policy issues, the cooperation between the EU Members States started in 1970 in the framework of the European Political Cooperation which was mainly about the information exchange and was incorporated into the treaties by the Single European Act I 1986<sup>18</sup>. The European Union's Common Foreign and Security Policy in the more current form was established through the adoption of the Maastricht Treaty in 1993 and added into the second pillar. The Treaty of Amsterdam (entered into force in 1997) introduced the new role of High Representative for the Common Foreign and Security Policy and established the possibility for deal with crisis management and humanitarian aid the Western European Union<sup>19</sup>. The Treaty of Nice in 2003 brought further changes by establishing the European Security and Defence Policy as an independent policy area and creating Political and Security Committee for better management of civil and military crisis<sup>20</sup>. The Treaty of Lisbon amongst of other important adjustments outlined the legal basis for the policy area which is covered by Articles 21-46 of TEU and Articles 205-222 of the TFEU and created the External Actions Service.

### CHANGES BROUGHT BY THE TREATY OF LISBON

The Treaty of Lisbon, which entered into force in December 2009, led to many rational structure, governance and institutional framework and decision-making process changes, abolished the three-pillar system, codified the case-law of the EU Court of Justice, and gave the EU legal personality and under the Articles 3(5) ad 21(1) TEU external mandate for entering into treaties. In terms of the CFSP, the Lisbon Treaty has some very ambitious targets such as giving the EU single

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<sup>15</sup> <https://www.auswaertiges-amt.de/en/aussenpolitik/europa/aussenpolitik/gasp/-/228310>

<sup>16</sup> Javier Solana, "European Foreign Policy and Its Challenges in the Current Context", in *The Search for Europe. Contrasting Approaches (BBVA)*, Madrid, 2015, pp. 422-439.

<sup>17</sup> <https://www.auswaertiges-amt.de/en/aussenpolitik/europa/aussenpolitik/gasp/-/228304>

<sup>18</sup> <https://www.auswaertiges-amt.de/en/aussenpolitik/europa/aussenpolitik/gasp/-/228306>

<sup>19</sup> <https://www.auswaertiges-amt.de/en/aussenpolitik/europa/aussenpolitik/gasp/-/228306>

<sup>20</sup> <https://www.europarl.europa.eu/factsheets/en/sheet/158/foreign-policy-aims-instruments-and-achievements>

voice regarding foreign policy, equipping it with necessary tools for implementing more coherent and effective actions, and making it the contact person for the whole Union in this area – some of these achieved today only partially<sup>21</sup>. However, taking into account all the aims the Lisbon Treaty had in general, it is not surprising that not all have been fully achieved<sup>22</sup>.

#### CHANGES BROUGHT BY THE TREATY OF LISBON: CHANGES IN GOVERNANCE AND DECISION-MAKING

It has been claimed that in terms of governance and decision-making framework, the Lisbon Treaty brought about fairly little or in partially no changes since the governance architecture and policy processes remained largely the same<sup>23</sup>. The Treaty of Lisbon did not change the decentralised decision-making process, requirement of unanimity, also it did not extend the powers of the Commission nor the Parliament and refrained from giving the Court jurisdiction in this area. The CFSP remained the major exception in the EU treaty-making as the Commission has no right to initiative in this area and the European Parliament does not have co-legislative nor consent requirement powers<sup>24</sup>. In despite of this, it has been stated that the treaty had a positive impact on the negotiation setting improving the consensus seeking and dialogue between the Member States and the EU institutions and made the formation of the external strategy obligatory<sup>25</sup>. Besides that, according to the Article 24 of TEU, the Member States are bound to support the EU's foreign policies and required not to conclude actions going against its interests<sup>26</sup>.

#### CHANGES BROUGHT BY THE TREATY OF LISBON: CHANGES IN INSTITUTIONAL SET-UP

In the level of institutional set-up, the adoption of Treaty of Lisbon increased the importance of the mandate of the High Representative of the Union for Foreign and Security Policy (created by the Treaty of Amsterdam in 1999) and established the European External Action Service (EEAS) with a task of representing the Union abroad<sup>27</sup>. Previously, the main task of the High Representative had been supporting the Council and its rotational presidency. The Treaty terminated the rotational presidency of the Council in the CFSP area and under the Articles 24(1) and 26(2) of TEU gave the High Representative central role and responsibility together with the Council and the Member States of carrying out CFSP, ensuring compliance in regards of fundamental principles, and securing the effectiveness, coherence and continuity of Union's actions in these issues<sup>28</sup>. Besides that, the High Representative was granted dual Vice-President role in the Commission, has the right to conduct political dialogue with third partners, make policy proposals to the Council, call extraordinary meetings, and is considered in general the representative of the European Union in the Common

<sup>21</sup> Annegret Bendiek, „European Realism in the EU's Common Foreign and Security Policy“ Edited by Dr Paul James Cardwell. *EU External Relations Law and Policy in the Post-Lisbon Era*, Hague, T.M.C. Asser Press, 2012, pp. 35-58.

<sup>22</sup> Marise Cremona, *Implementation of the Lisbon, Improving Functioning of the EU: Foreign Affairs, In-depth analysis for the AFCO committee*, Brussels, Publications Office of the European Union, 2015, 34 pages.

<sup>23</sup> Uwe Puetter, „The Latest Attempt at Institutional Engineering: The Treaty of Lisbon and Deliberative Intergovernmentalism in EU Foreign and Security Policy Coordination“ Edited by Dr Paul James Cardwell. *EU External Relations Law and Policy in the Post-Lisbon Era*, Hague, T.M.C. Asser Press, 2012, pp. 17-34.

<sup>24</sup> Marise Cremona, *Implementation of the Lisbon, Improving Functioning of the EU: Foreign Affairs, In-depth analysis for the AFCO committee*, Brussels, Publications Office of the European Union, 2015, 34 pages.

<sup>25</sup> Uwe Puetter, *op. cit.* pp. 17-34.

<sup>26</sup> <https://www.auswaertiges-amt.de/en/aussenpolitik/europa/aussenpolitik/gasp/-/228304>

<sup>27</sup> Javier Solana, "European Foreign Policy and Its Challenges in the Current Context", in *The Search for Europe. Contrasting Approaches (BBVA)*, Madrid, 2015, pp. 422-439.

<sup>28</sup> Uwe Puetter, *op. cit.*, pp. 17-34.

Foreign and Security area<sup>29</sup>. However, there have been claims that the power of the High Representative is still rather weak as he/she can make suggestions and act on the basis of the policies which have been previously accepted between and by the Member States<sup>30</sup>.

The Lisbon Treaty also created a new separate European Institution – the External Action Service under the position of High Representative set-up with the Commission and Council's General Secretariat officials and diplomats from the Member States. The tasks of this institution include supporting the High Representative, the Commission and the President of European Council in the issues connected with EU external relations, and cooperating with the Member States' diplomatic services and administrating the EU delegations abroad<sup>31</sup>.

### THE MAIN CHALLENGES: INTERNAL CHALLENGES

In terms of internal challenges for the Common Foreign and Security Policy, the decentralised decision-making process requiring in most cases generation of consensus, and veto power of the Member States can be claimed to pose the greatest obstacle for effective policy implementation in this area<sup>32</sup>. The problem here is that due to different historical, linguistic and cultural backgrounds, geographical location, memberships in international organisations, independent views on possible security threats, and national foreign and security concerns make it very complicated to reach to a common interest and consensus necessary for adoption of EU foreign policy agenda<sup>33</sup>. One example of might be the debate between the so-called western and eastern member States as one side sees the biggest threat in the possible actions and policies of Russia and the other the conflicts in the Middle-East and massive influx of refugees in the Mediterranean<sup>34</sup>. The consensus-based decision making process also complicates adopting the decisions which are inconvenient for some of the Member States (for instance sanctions) or go against their national strategies, and gives the Union very limited tools for achieving its interests abroad<sup>35</sup>.

### THE MAIN CHALLENGES: EXTERNAL CHALLENGES

The external challenges mainly originate from the multi-polar ever-changing globalised world in which many of the threats to the security and sovereignty have transnational nature, and as a result of that, require closer cooperation and cannot be efficiently dealt anymore individually at nation state level<sup>36</sup>. Javier Solana, the former High Representative for CFSP has divided the external threats into

<sup>29</sup> <https://www.auswaertiges-amt.de/en/aussenpolitik/europa/aussenpolitik/gasp/-/228308>

<sup>30</sup> Annegret Bendiek, „European Realism in the EU's Common Foreign and Security Policy“ Edited by Dr Paul James Cardwell. *EU External Relations Law and Policy in the Post-Lisbon Era*, Hague, T.M.C. Asser Press, 2012, pp. 35-58.

<sup>31</sup> <https://www.auswaertiges-amt.de/en/aussenpolitik/europa/aussenpolitik/gasp/-/228308>

<sup>32</sup> Uwe Puetter, *op. cit.*, pp. 17-34.; Jakubowski, J., “Euro-scepticism in a Pro-European State on the Basis of Media Content Analysis” *TalTech Journal of European Studies*, Vol.9 (Issue 4), 2019, pp. 218-236.

<sup>33</sup> Javier Solana, "European Foreign Policy and Its Challenges in the Current Context", in *The Search for Europe. Contrasting Approaches (BBVA)*, Madrid, 2015, pp. 422-439.

<sup>34</sup> Javier Solana, "European Foreign Policy and Its Challenges in the Current Context", in *The Search for Europe. Contrasting Approaches (BBVA)*, Madrid, 2015, pp. 422-439.

<sup>35</sup> Annegret Bendiek, „European Realism in the EU's Common Foreign and Security Policy“ Edited by Dr Paul James Cardwell. *EU External Relations Law and Policy in the Post-Lisbon Era*, Hague, T.M.C. Asser Press, 2012, pp. 35-58.

<sup>36</sup> See e.g. Siljak, D. and Nagy, S., „Do Transition Countries Converge towards the European Union?“ *TalTech Journal of European Studies*, Vol.9 (Issue 1) 2019, pp. 115-139.; Ramiro Troitiño, D; Kerikmäe, T; Chochia, A, „Foreign Affairs of the European Union: How to Become an Independent and Dominant Power in the International Arena“ In: Ramiro Troitiño, D; Kerikmäe, T; de la Guardia, R.M; Pérez Sánchez, G.A (Ed.), *The EU in the 21st Century Challenges and Opportunities for the European Integration* (209–230), Springer, 2020.

challenges related to foreign policy (such as Russian actions in Georgia<sup>37</sup> and Ukraine<sup>38</sup> leading to tense EU-Russia relations<sup>39</sup>, situation in Belarus, and conflicts in the Middle East and North Africa resulting in increased number of asylum seekers and fundamentalist terrorist reaching to Europe), global challenges (mostly linked with climate change, terrorism and cyber threats), and new shift of power from western countries to Asia and possible conflicts around South China Sea<sup>40</sup>.

## CONCLUSION

This report focused on the Common Foreign and Security Policy of the European Union, tried to provide general overview of this policy area and introduce the internal and external challenges it faces today. In the first part the concept and powers of the Union in this area was studied. Then the creation of necessity of Member States acting together in foreign policy issues and consequently the emergence of the CFSP was examined. After that the paper brought out the most important changes introduced in the area by the adoption of the Treaty of Lisbon in 2009 and looked into the challenges the EU has in these issues today.

While it was established that the CFSP is an integral part of the EU, it differs from other policy areas due to its non-communitarised nature and decentralised decision-making and governance methods. The Treaty of Lisbon which introduced many rational structure, governance and institutional framework and decision-making process changes, expanded the importance of the role of High Representative and created External Action Service, did not brought about significant adjustments in terms of policy making in the area of CFSP which still falls much under the realm of the Member States. Currently, there are many challenges for the Union's CFSP. When it comes to internal affairs, the main restriction for effective and coherent decision making and policy implementation is the requirement of consensus of the Member States which can be rather difficult to achieve due to different backgrounds, security concerns and national policies. The external challenges are mainly caused by the globalised ever-changing world, threatening behaviour of other countries, crisis situations and shift of power.

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<sup>37</sup> For more on Georgia, please see Chochia A. and Kerikmäe T., „Georgia on its path to Europeanisation: Academic Cooperation“, *TalTech Journal of European Studies*, Vol.10 (Issue 2), 2020, pp. 3-6.; And on EaP please see Kerikmäe, T.; Chochia, A. (Eds.), *Political and Legal Perspectives of the EU Eastern Partnership Policy*, Springer International Publishing, 2016

<sup>38</sup> For more on Ukraine please see Kerikmäe, T. and Chochia, A., „Ukraine's Endeavour: Drawing Near(er) to the European Union“ *TalTech Journal of European Studies*, Vol.8 (Issue 1), 2018, pp. 1-2.

<sup>39</sup> Please see Hoffmann, T.; Chochia, A., „The Institution of Citizenship and Practices of Passportization in Russia's European Neighborhood Policies“ In: A. Makarychev, T. Hoffmann (Ed.). *Russia and the EU Spaces of Interaction* (223–237). Routledge, Taylor&Francis Group., 2018

<sup>40</sup> Javier Solana, "European Foreign Policy and Its Challenges in the Current Context", in *The Search for Europe. Contrasting Approaches* (BBVA), Madrid, 2015, pp. 422-439.

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## EU external relations with Africa

TEELE NÄSSI<sup>1</sup>

TALLINN UNIVERSITY OF TECHNOLOGY, ESTONIA

**Abstract:** Europe and Africa have historically strong relations, covering peace and security, democracy, human rights, development, sustainable economic growth and trade. The two parties have made several agreements and the two main agreements that governs the European Union and Africa relations are Cotonou Partnership Agreement and the 2007 Joint Africa-EU Strategy. Both of those include political, economic and development dimensions. Although agreements about equality have been made, there is still some indications that European Union reserves the donor part of the relationships and African Union is left behind as a recipient. This paper seeks to understand the reasons behind their relationships and wishes to find out, are the EU and AU now considered equal partners.

**Keywords:** Cotonou Agreement, JAES, Sub-Saharan Africa, EU External relations.

### INTRODUCTION

**O**n the European Union (EU) side, the Treaty on the Functioning of the European Union (TFEU)<sup>2</sup> Article 220 provides that the Union shall maintain „relations as are appropriate with other international organisations“. Article 220 (2) elaborates, that “the High Representative of the Union for Foreign Affairs and Security Policy and the Commission shall implement this Article”. On the African Union (AU) side, Executive Council decision 195(VII) of July 2005 lays out the criteria for granting observer status and accreditation of NGOs, non-African states, international organizations and regional integration organizations (such as the EU).<sup>3</sup>

According to the European Parliament<sup>4</sup> the EU is working actively to promote peace and security in Africa and engages with the AU in various policy dialogues, including on democracy and human rights, following the plan to become more active on international arena.<sup>5</sup> Migration has emerged as a core element of Africa-EU relations.<sup>6</sup>

The two main agreement that governs the EU and Africa relations are the 2000 Cotonou Partnership Agreement<sup>7</sup> (also referred as Cotonou agreement) and the 2007 Joint Africa-EU Strategy<sup>8</sup> (JAES), both of which include political, economic and development dimensions.

In the following paper, the author will be focusing on EU relations with sub-Saharan Africa, while relations with other regions of Africa is only mentioned in a few points. The purpose of this paper is to understand, whether the Africa-EU relations are truly a partnership of equals.

<sup>1</sup> TalTech Law School, Tallinn University of Technology, Estonia teele1985@gmail.com teenas@taltech.ee

<sup>2</sup> Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union 2012/C 326/01.

<sup>3</sup> Anna-Luise Chane, Magnus Killander “EU cooperation with regional organizations in Africa.” in *Leuven Centre for Global Governance Studies Working Paper* No. 197, 2018, p. 10.

<sup>4</sup> European Parliament factsheets – Africa, webpage.

<sup>5</sup> Ramiro Troitiño, D; Kerikmäe, T; Chochia, A, “Foreign Affairs of the European Union: How to Become an Independent and Dominant Power in the International Arena” In: Ramiro Troitiño, D; Kerikmäe, T; de la Guardia, R.M; Pérez Sánchez, G.A (Ed.). *The EU in the 21st Century Challenges and Opportunities for the European Integration* (209–230), Springer, 2020

<sup>6</sup> Ramiro Troitiño, D; Kerikmäe, T; De la Guardia, R. M; Perez, G. A., *The EU in the 21st Century. Challenges and Opportunities for the European Integration Process*. Springer, 2020

<sup>7</sup> Partnership agreement, (EC) 2000/483.

<sup>8</sup> European Commission COM(2007) 357.

This paper is divided in three main paragraph and provides an overview of the relations and a short presentation of the two main agreements. In the paper the author will collect and compare the different scholars' opinions and draw conclusions by giving my own opinion on the subject.

## OVERVIEW OF EU-AFRICA EXTERNAL RELATIONS

The EU is considered to be a largest trading partner of sub-Saharan Africa.<sup>9</sup> As African states gained independence, the EU developed a number of different frameworks for its trade, aid, and later political cooperation with African partners, resulting in the fragmentation of EU-Africa relations.<sup>10</sup>

As Jan Orbie has stated: “the EU has long been a pivotal actor in the shaping of Africa’s trade regimes with the rest of the world”<sup>11</sup> and so the outcome of negotiations between the EU and African states has strongly influenced other external economic relations.<sup>12</sup>

In their working paper A.-L. Chane and M. Killander argue, that: “Over the past century, the relationships between Europe and Africa have gradually shifted from those between colonizers and colonized, to donor-recipient relations and more recently to an increasingly multilateral ‘partnership of equals’.”<sup>13</sup>

The formation of the AU has in part relied on the sharing and using of universal norms and the organisational templates from the EU.<sup>14</sup> The AU does not constitute a model of the EU in the sense understood by EU integration scholars. Indeed, the local dynamics within Africa, with its many challenges and the previous regional integration trajectory, prevent the adoption of the EU model.<sup>15</sup> Suh I has indicated: “The EU–Africa relationship is governed by regimes that represent strategic and binding expectations defined in partnership agreements.”<sup>16</sup> Some of those agreements include peace and security, democracy, good governance and human rights, human development, sustainable and inclusive development growth and continental integration, global and emerging issues. According to European Commission<sup>17</sup> the EU is a major trading partner for ACP countries, representing more than 21% of their trade with the world. The EU is Sub-Saharan Africa’s second-biggest trading partner after China. The EU is also the main destination for agricultural and transformed goods from ACP partners (more than €33 billion in 2019).

## HISTORY OF EU-AFRICA RELATIONS

History has taught that for some 500 years, beginning from the 15th century with the practice of transatlantic slave trade to the mid–20th century with the end of colonialism, Africa has always been in European domination.<sup>18</sup> According to Chane and Killander: “From the beginning, Africa has

<sup>9</sup> John Kotsopoulos, Frank Mattheis, “A Contextualisation of EU–Africa Relations: Trends and Drivers from a Reciprocal Perspective.” in *South African Journal of International Affairs*, 25 (4), 2018, p. 448.

<sup>10</sup> Anna-Luise Chane, Magnus Killander (2018), *supra nota 2*, p. 19.

<sup>11</sup> Jan Orbie, “The European Union & the Commodity Debate: From Trade to Aid.” in *Review of African Political Economy*, 34(112), 2007, p. 299.

<sup>12</sup> Duncan Money, Hans Otto Frøland, Tshepo Gwatiwa, “Africa–EU relations and natural resource governance: understanding African agency in historical and contemporary perspective.” in *Review of African Political Economy*, 47 (166), 2020, p. 586.

<sup>13</sup> Anna-Luise Chane, Magnus Killander (2018), *supra nota 2*, p. 4.

<sup>14</sup> Toni Haastrup, “EU as Mentor? Promoting Regionalism as External Relations Practice in EU–Africa Relations.” in *Journal of European Integration*, 35 (7), 2013, p. 797.

<sup>15</sup> *Ibid.*

<sup>16</sup> Fru Norbert Suh I, “International Regime Complexity in EU–Africa.” in *The Journal of Territorial and Maritime Studies*, 7 (2), 2020, p. 32.

<sup>17</sup> European Commission, Economic Partnerships, webpage.

<sup>18</sup> Fru Norbert Suh I, (2020), *supra nota 13*, p. 37.

held a special place in EU foreign relations. Instead of pursuing a comprehensive intercontinental approach, however, EU Africa policy quickly fragmented into parallel frameworks – for sub-Saharan and Northern Africa respectively – which co-exist until today.”<sup>19</sup>

Initially, relations between the European Economic Community (EEC) and overseas colonial countries and territories (most of which were African) were governed by the Rome Treaty<sup>20</sup>, which provided for the association of these territories with the EEC in order to promote economic and social development and establish closer economic ties. Treaty of Rome also established a free trade area, rights of establishment for citizens and firms, and creating the European Development Fund.

EEC and the 18 sub-Saharan African states have signed the Yaoundé Convention<sup>21</sup> in 1963 and the Yaoundé II-Convention<sup>22</sup> and the Arusha Convention in 1969<sup>23</sup>. The Conventions focused on trade and financial and technical coordination and still largely retained the hierarchical relationship of the past.<sup>24</sup> In 1975 this first generation of treaties was replaced by the Lomé Convention<sup>25</sup>, with the newly formed African, Caribbean and Pacific Group of States (ACP)<sup>26</sup>.

An early EU position in relation to Africa was taken when Gaston Thom, the President of the Council of Ministers, made a statement condemning the policy of apartheid in South Africa on 23 February 1976.<sup>27</sup> This resulted in the implementation of a foreign policy initiative by the EU.<sup>28</sup>

After an initially exclusive focus on trade and development, EU-ACP relations have included a political dimension since Lomé IV (1990)<sup>29</sup> with the launch of a political dialogue and a stronger focus on the respect for human rights, democracy and the rule of law.

In 2000, the Lomé Agreement was replaced with the Cotonou Partnership Agreement, which based on the fundamental principle of “equality of the partners and ownership of the development strategies”.<sup>30</sup> And since 2002, the EU also negotiated Economic Partnership Agreements (EPA) with regional groupings of ACP states, which were to ultimately replace the trade regime under the Cotonou Partnership Agreement.<sup>31</sup>

Until the year 2000, the EU-Africa relations were largely divided along geographical lines, between sub-Saharan Africa (the ACP group) and North Africa (the Mediterranean region). However in the first EU–Africa Summit in Cairo in 2000 all the Heads of State of the EU and the

<sup>19</sup> Anna-Luise Chane, Magnus Killander (2018), *supra nota 2*, p. 4.

<sup>20</sup> Treaty establishing the European Economic Community, art 131-136.

<sup>21</sup> Convention of Association between the European Economic Community and Associated African States, with related Agreements.

<sup>22</sup> Convention of Association between the European Economic Community and the African States and Madagascar associated with the Community.

<sup>23</sup> Agreement Establishing an Association between the European Economic Community and the United Republic of Tanzania, the Republic of Uganda and the Republic of Kenya.

<sup>24</sup> Annemarie Peen Rodt, Jide Martyns Okeke, “AU-EU “Strategic Partnership”: Strengthening Policy Convergence and Regime Efficacy in the African Peace and Security Complex?” in *African security* 6 (3-4), 2013, p. 215.

<sup>25</sup> EEC-ACP Convention of Lomé.

<sup>26</sup> The ACP Group includes 79 states (48 African, 16 Caribbean and 15 Pacific) who were all signatories of the Cotonou Agreement, except for Cuba. Since 5 April 2020, the name of this group was officially changed to the Organisation of African, Caribbean and Pacific States (OACPS).

<sup>27</sup> Martin Holland, *The European Community and South Africa: European Political Co-operation under Strain*. London: Pinter, 1988, p. 31.

<sup>28</sup> Stephen R. Hurt, *The European Union’s external relations with Africa after the Cold War. Aspects of continuity and change*, 2004, p. 168.

<sup>29</sup> Lomé IV Convention

<sup>30</sup> Cotonou Agreement, article 2.

<sup>31</sup> Anna-Luise Chane, Magnus Killander (2018), *supra nota 2*, p. 5.

African were included.<sup>32</sup> According to the Cairo Declaration parties proclaimed there, that the EU relations with Africa will be revived “in a spirit of equality, respect, alliance and co-operation.”<sup>33</sup> But in 2005, when European Commission adopted an EU Strategy for Africa<sup>34</sup>, there were practically no participation from African actors, which again raised a lot of doubts regarding the actual partnership discourse that was agreed earlier.<sup>35</sup>

## THE COTONOU AGREEMENT

The Cotonou Agreement was signed on 23 June 2000 and entered into force on 1 April 2003. It governs EU relations with the African, Caribbean and Pacific (ACP) countries, most of whom are former colonies of one or other of the EU member states<sup>36</sup> and it recognizes the AU as an actor of cooperation, as a partner for political dialogue, and emphasizes its role for peace building and conflict prevention in the region.<sup>37</sup>

Scholars elaborate that: “The implications of the Cotonou agreement can be grouped into three main categories: trade and the related issues regarding regionalization within the ACP group, aid, and the future role of non-state actors and local government”<sup>38</sup> and: “The Cotonou Agreement promises that finances will be made available to ensure ACP countries’ fair entry into globalized markets.”<sup>39</sup> Brkan argues: “One of the goals of the agreement was to reduce trafficking and the accumulation of small arms and light weapons.”<sup>40</sup> Hurt continues: “It marks a substantial shift in the development policy of the EU with its increasing adoption of neoliberal values.”<sup>41</sup>

Cotonou Agreement is considered to be a close partnership agreement and it includes, among other, a comprehensive political dialogue on national, regional and global issues, promoting human rights and democratic principles, developing peace-building policies, conflict prevention and resolution and addressing migration issues and security issues which include the fight against terrorism and countering the proliferation of weapons of mass destruction. The Cotonou agreement offers EU and ACP countries the opportunity to negotiate development-oriented free trade arrangements – EPAs.<sup>42</sup>

According to Hurt: “Trade in goods between the EU and Sub-Saharan Africa has become relatively less significant for the latter since the signing of the Cotonou Agreement”.<sup>43</sup> This indicates that African countries are more focused in evolving in other subjects rather than trade.

Since Cotonou Agreement expired in 2020, formal negotiations towards a new partnership agreement between the EU and ACP states began in September 2018. The signing of the post-Cotonou agreement will hopefully take place by the end of 2021. European Commission, in its

<sup>32</sup> Karen Del Biondo, “Moving beyond a donor-recipient relationship? Assessing the principle of partnership in the joint Africa–EU strategy.” in *Journal of Contemporary African Studies*, 38 (2), 2020, p. 316.

<sup>33</sup> European Commission Conseil/00/901.

<sup>34</sup> European Commission SEC(2005)1255.

<sup>35</sup> Karen Del Biondo, (2020), *supra nota* 29, p. 317.

<sup>36</sup> Maria O’Neill, *Eu-North Africa Relations in Cross-Border Law Enforcement: New Legal Challenges for the EU in the Post-Lisbon and Post-Stockholm Era*, 2012, p. 243.

<sup>37</sup> Cotonou Partnership Agreement as amended in 2010, articles 6, 8, 11.

<sup>38</sup> Stephen R. Hurt, (2004) *supra nota* 25, p. 164.

<sup>39</sup> Mark Langan, Sophia Price, “Imperialisms Past and Present in EU Economic Relations with North Africa.” in *Interventions*, 22 (6), 2020, p. 710.

<sup>40</sup> Maja Brkan, “The Role of the European Court of Justice in the Field of Common Foreign and Security Policy After the Treaty of Lisbon: New Challenges for the Future”, 2012, p. 102.

<sup>41</sup> Stephen R. Hurt, (2004) *supra nota* 25, p. 164.

<sup>42</sup> European Commission, *supra nota* 14.

<sup>43</sup> Stephen R. Hurt, “African Agency and EU-ACP relations beyond the Cotonou Agreement.” in *Journal of Contemporary European Research*, 16 (2), 2020, p. 150.

proposals to the Council and the European Parliament, noted that the post-Cotonou negotiations are “an opportunity to make the partnership fit for purpose in light of today’s challenges in a changed world”.<sup>44</sup>

Although the Cotonou Agreement was meant to be the cornerstone of the equal relations between European Union and Africa, it is still argued by many scholars, that the equality of the relationship and the use of the term “partnership” are only rhetorical.<sup>45</sup> Hopefully the post-Cotonou Agreement will engage both parties equally and provides cooperation in a higher level.

## JOINT AFRICA- EU STRATEGY

During the lifetime of the Cotonou Agreement there has been a development of the Joint Africa-EU Strategy (JAES), which is reflective of an ongoing shift towards the EU working more directly with the AU.<sup>46</sup> The Strategy recognizes the AU as a “natural interlocutor for the EU on continental issues and as the most important institutional partner for the EU”.<sup>47</sup>

The JAES was set to improve the Africa-AU political partnership by promoting peace, security, democratic governance and human rights; basic freedoms, gender equality; sustainable economic development, including industrialisation; regional and continental integration and ensuring that all the Millennium Development Goals are met in all African countries by 2015.<sup>48</sup>

Del Biondo acknowledges that JAES aimed to break with the traditional donor-recipient relationship between the EU and Africa to develop a true partnership.<sup>49</sup> Many other scholars agree and demonstrate in their research, that this is in fact the case.

JAES was adopted in Lisbon in 2007 and according to Chane and Killander: “For the first time in EU-Africa relations, both sides agreed on a common strategy to tackle common challenges. Based on the principles of equality, mutual respect and local ownership, it marked a ‘watershed moment’ in the history of both regions and a final step away from the hierarchical donor-recipient relationships of the past towards a partnership of equals.”<sup>50</sup> They continue: “it also has laid the foundation for a strategic partnership between both continents, complementing and adding value to the existing frameworks.”<sup>51</sup>

Fru Norbert Suh I also states, that „The discourse on partnership in the JAES reflects a broader trend in EU and AU foreign policy. Partnership is determined by shared values, equality and trust”.<sup>52</sup> He also elaborates: “Human rights are one of the cardinal principles enshrined in the JAES agreement, but it is not exclusive to it. The notion of EU–Africa solidarity around the principle of human rights is porous, because human rights is an opportunistic notion that is only applied circumstantially. Africans have invoked other institutions to undermine human rights. Diplomacy of solidarity has been used to support regimes that are not committed to human rights.”<sup>53</sup>

<sup>44</sup> European Commission JOIN(2016) 52 final.

<sup>45</sup> Stephen Hurt “Co-operation and Coercion? The Cotonou Agreement between the European Union and ACP States and the End of the Lomé Convention.” in *Third World Quarterly*, 24 (1), 2003, p. 165; Kunibert Raffer, “Cotonou: Slowly Undoing Lomé’s Concept of Partnership.” in *Journal für Entwicklungspolitik*, 18 (2), 2001, p. 181; Nicolas Van de Walle, “Aid’s Crisis of Legitimacy: Current Proposals and Future Prospects.” in *African Affairs*, 98, 1999, p. 348; Anna-Luise Chane, Magnus Killander (2018), *supra nota* 2, p. 4.

<sup>46</sup> Stephen, R. Hurt, (2020), *supra nota* 40, pp. 146-147.

<sup>47</sup> JAES, paragraph 98.

<sup>48</sup> European Union External Action Service, webpage.

<sup>49</sup> Karen Del Biondo, (2020), *supra nota* 29, p. 310.

<sup>50</sup> Anna-Luise Chane, Magnus Killander. (2018), *supra nota* 2, p. 8.

<sup>51</sup> *Ibid.*, p. 19.

<sup>52</sup> Fru Norbert Suh I, (2020), *supra nota* 13, p. 35.

<sup>53</sup> *Ibid.*, p. 40.

According to Hurt: “the official portrayal of the JAES is that it provides an opportunity for a more balanced, less-dependent, relationship between Europe and Africa. It also signals an acknowledgement by the EU of the heightened status of the AU as an institution.”<sup>54</sup>

European Union External Action service explains that since 2007, the Africa-EU partnership has extended the parties political dialogue and cooperation. The result of this was the establishment of the EU Delegation to the African Union.<sup>55</sup>

## EU REPRESENTATION IN AFRICA

Since January 2008 EU has a Delegation in the African Union, based in Addis Abab. It represents the EU vis-a-vis the AU bodies and coordinates with the EU Member States.<sup>56</sup> The EU also has Delegations accredited to the different Regional Economic Communities (RECs). For example, the EU Delegation to Nigeria is accredited to Economic Community of West African States.<sup>57</sup>

Delegations overall purpose is to contribute to enhancing the unique Partnership that exists between the two Unions. The EU Delegation operates in an environment which includes 55 AU Member States, regional and pan-African organizations and institutions, such as the AU Commission, and international partners. The Delegation deals with a wide range of topics, including both dialogue on political issues of mutual concern as they arise, as well as longer-term cooperation and institution building.<sup>58</sup>

## CONCLUSION

As indicated in the chapters above, Europa and Africa have historically strong relations, covering peace and security, democracy, human rights, development, sustainable economic growth and trade.

Like many researched scholars have indicated, the EU-African relations have been of European domination.<sup>59</sup> They have criticised the possibility of a partnership between donors and recipients given the completely different history, culture, traditions, and interests.

Although the two parties have had many serious negotiations and agreed in many forms the equality of the two, it seems that the EU still somewhat has the donor part in this relationship. Africa largely relies on Europe's aid and guidance, although they have wished for a long time that they are an equal partner not a recipient.

And although Rutazimba explains that “Compared to previous documents on EU–Africa relations, words like ‘partnership’, ‘common’, ‘shared’, ‘unity’ and ‘joint’ figured more prominently in the documents of the JAES”<sup>60</sup>, there still are areas where Africa is following European lead.

The parties have both stated in their agreements and agendas, that their priorities have been set jointly, but as it showed in Del Biondo's research<sup>61</sup>, in some cases, it was the opposite, the African interviewees complained about not having an equal say and it was also noted that the African partners

<sup>54</sup> Stephen R. Hurt, (2020), *supra nota* 40, p. 147.

<sup>55</sup> European Union External Action Service, webpage.

<sup>56</sup> Anna-Luise Chane, Magnus Killander (2018), *supra nota* 2, p. 11.

<sup>57</sup> *Ibid.*

<sup>58</sup> Delegation of the European Union to the African Union, webpage.

<sup>59</sup> See for example Suh I and Del Biondo.

<sup>60</sup> Olivia U. Rutazibwa, “The Problematics of the EU's Ethical (Self)Image in Africa: The EU as an ‘Ethical Intervener’ and the 2007 Joint Africa-EU Strategy.” in *Journal of Contemporary European Studies*, 18 (2), 2010, p. 216.

<sup>61</sup> Karen Del Biondo, (2020), *supra nota* 29.

interpreted ownership quite literally by hardly involving the EU altogether. This indicates that even if EU and AU are as equals, they still need more work to be done to clearly state their priorities and goals in their cooperation.

In her research Del Biondo concluded that AU had many donors keen on supporting it, so the EU was not the only one and although “EU is willing to take ownership seriously”<sup>62</sup> it was clear that EU did not force its own ideas in the agenda, on the contrary, it was AU, that put the sensitive issues on the table. Although the EU and AU have so different history and “their divergences are rooted in religious and cultural differences”<sup>63</sup>, the parties must work together in order to keep their relations strong. By cooperating as equals they can prove that their intentions are good and the decisions they do, are done in the best interest of the two States.

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<sup>62</sup> Karen Del Biondo, (2020), *supra nota* 29, p. 324.

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## External relations between EU and China

KATRIN VIRGEBAU

KVIRGEBAU88@GMAIL

TALTECH LAW SCHOOL, TALLINN UNIVERSITY OF TECHNOLOGY, ESTONIA

**Abstract:** Paper attempts to give an understanding about EU's external relations and in particular part that includes EU and China's relationship. With comparing the two giants and their functioning it might help to uncover the mystery of a dysfunctional relationship of two strong powers in an international arena, whose common history dates back hundreds of years. It can also be a learning material for other countries to have an example of transferring world view, core values, political views, etc. from one country to another. And what are the benefits, obstacles and consequences of this kind of transfer. Paper concludes with a result that the EU has failed to persuade China to integrate a liberal order and China continues to prefer autocracy.

**Key words:** Autocracy, China, EU, External relations, Liberalism

### INTRODUCTION

In recent times, the regulatory framework and decision-making processes of the EU's external relations have been the subject of heated debate in the Member States, the European institutions and in the public generally. There seem to be differences in politicizing and challenging individual areas of the EU's external relations. Using a theoretical approach, we can explore the link between EU external policy and policy in third countries and how it affects EU foreign policy.<sup>64</sup> what are the benefits and obstacles in an attempt to transfer visions and worldview from one country to another<sup>65</sup>. And what could be the consequences of such actions. Political dialogues between different governments or intergovernmental organizations such as the EU, are neither new nor special. In some cases, the motive for governments to do so is to find new ideas, and in some cases the motive is to share their values in order to expand strategic relations with other countries<sup>66</sup>. Because, in general, for stronger and better cooperation, countries prefer other countries with the same core values, visions and worldviews. This pattern of behavior has also been used by the EU in imposing conditions on acceding countries, for example on human rights and the rule of law.<sup>67</sup>

Although the transfer of political elements and universal values from one country to another may also be driven by basic national needs, such a process may not be successful in the long run. Despite the fact that opposites attract, it is not easy or maybe not even possible to change fundamental values that one side or another have long acted. The ups and downs of relations between China and the EU over the years are a good example to illustrate the transfer of political views, core values, etc., and the pros and cons of the whole process<sup>68</sup>. Relations between these two parties is a very good example precisely because the two parties could not be more different with their views, actions and

<sup>64</sup> Padgett, S., "Between synthesis and emulation: EU policy transfer in the power sector" *Journal of European Public Policy*, 10(2), 2003, 227-245.

<sup>65</sup> Dąbrowski, M., Musiałkowska, I., & Polverari, L., "EU-China and EU-Brazil policy transfer in regional policy" *Regional Studies*, 52(9), 2018, p. 1169-1180.

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<sup>68</sup> Maher, R., The elusive EU–China strategic partnership. *International Affairs*, 92(4), 2016, pp. 959-976.

principles<sup>69</sup>. While the EU has enshrined its values and principles in the Treaties and has remained true to them for a long time, China on the other hand, honors authoritarian rule and despises all the values that are important to the West. The parties seem to be on the opposite opinion in almost every important issue.

## PREHISTORY

Already in the 17th century long before the existence of the European Community there were states located in Europe who had relations with dynasty located in China. Historically China has rather preferred relations with giant powerful countries, but the mutual interest started to grow as European Union was established and mutual understanding about cooperation benefits increased. At some point European countries were not just some tiny individuals but a set of countries that functioned as a single whole in almost everything.

For more than a decade now, discussions have taken place among various EU professionals and officials in an attempt to define the content of EU and China relations, emphasizing the mutual benefits as well as the overall international benefits. Cooperation and political dialogues between the two countries has also been highlighted as the key cooperation on issues such as climate change and non-proliferation. Coordinated strategic cooperation between major powers is getting more essential as the global challenges become more and more complex.

Opposites attract but usually relations between two contrary sides will not last long and tend to end with catastrophe if unlucky enough. Non-functioning relations between China and the EU over the years are a good example, where two very opposing parties can go along with the game for a long time but ultimately stick to their principles. Unfortunately, contrary to all expectations and stable relations, the last decade has shown that the priorities and interests of the EU and China differ on a number of important issues. According to the EU's vision, views on important issues should converge over time, but in reality, the differences between the EU and China have just been well masked and hidden because of beneficial motives.

Exploring the different values and views of both parties on important issues such as ideology, geopolitical priorities and political values, etc. we might become to realize the reasons and disagreements that have prevented the EU and China from achieving better relations over the last decade. And also, why relations between these two huge powers have been dysfunctional since the very beginning.

## CONTROVERSIAL VIEWS

From the very beginning, both countries have had very different views on the world organization, governance and other values. While the EU has enshrined its values and principles in the Treaties and has remained true to them for a long time, China on the other hand, honors authoritarian rule and despises all the values that are important to the West. China is repressing all initiatives that do not coincide with the vision of the political elite and the leaders of the country<sup>70</sup>. It is not difficult to understand why the EU and other countries have been highly motivated to improve relations with China. China's development into an economic giant has been a very important geopolitical development and also a very impressive development, if taking into account from where China started its development. China's influence and role in the context of world politics is

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<sup>69</sup>Holslag, J., The Elusive Axis: Assessing the EU-China Strategic Partnership. *Jcms-Journal Of Common Market Studies*, 49(2), 2011, pp.293-313.

<sup>70</sup> Blanchard, J., "The People's Republic of China Leadership Transition and its External Relations: Still Searching for Definitive Answers" *Journal of Chinese Political Science*, 20(1), 2015,1-16.

becoming increasingly important and is likely to grow as it sets an example for other countries.<sup>71</sup> But not always as a good example if we are looking into human rights and democracy issues relevant in China.

Cooperation between the EU and China intensified greatly following the signing of the Diplomatic Agreement in 1985<sup>72</sup>. The parties have had summits since 1998 and have established more than 50 dialogues on relations between the parties in key areas such as the environment, trade, civil society, etc. In addition, the Parties also launched higher-level forums to expand cooperation, one focusing on the economy and trade and the other on climate change and non-proliferation. Geopolitical interests were part of an attempt to take EU's and China's relationship to the next level. China was interested in balancing power globally, and the EU was interested in making China more similar to EU with democratic and transparency through closer cooperation. As both had the same vision and understanding of the United States, the future of cooperation seemed successful. Among other interests, the EU wanted to work with China to prove its credibility to the world and to advance its global interests.

Since the announcement of the EU and China Strategic Partnership in 2003, much of the motivation to strengthen relations has disappeared as world politics have changed dramatically since 2003. China has become much more powerful, and the EU has had to focus more on domestic problems. Lack of common understanding between Member States in relations with Beijing and differing EU and Chinese interests in global politics continue to hamper relations and old unresolved differences are compounded by new ones, such as China's cyber-attacks on EU computer systems. As can be seen, EU and China relations are a complex combination of cooperation and conflict.

## DEVELOPMENTS

Differences in political values and ideologies have hindered and will continue to hinder the expansion of relations between China and the EU. While the EU declares its values to be an independent media, the rule of law and Western constitutional democracy, China rejects these values, silencing pro-democracy activists and imprisoning dissidents. The EU and China's relationship has been like a test of the EU's identity, which is centered on human rights and democracy. The EU's efforts to pass the test positively for itself have been a long-standing dilemma and a subject of debate for European policymakers.<sup>73</sup>

Despite developments in China's political system in recent decades, it has not encountered more democratic and open system and China remains committed to the practices of an authoritarian state and is not interested in liberalizing the country. Although China's economy has become more dependent on the world, expectations of liberalization of China's political system have not materialized, and China continues to see Western values as a threat to itself. China is also one of the few countries to have a political system in which appointments are made in a top-down party structure and elections are strictly controlled by officials. Among other things, China's and other Western countries' perceptions of human rights and state power have always differed greatly. Authorities use a variety of tools to suppress dissent and intimidate dissidents and encourage police to arbitrarily punish anyone who could jeopardize the authority of power. Instead of developing an independent judiciary to protect the human rights of its citizens, the state has stepped up its efforts to

<sup>71</sup> See e.g. Charaia, V.; Chochia, A.; Lashkhi, M., "Caucasus 3 plus Baltic 3 and Economic Cooperation with China", *Baltic Journal of European Studies*, 8 (2), 2018, pp. 44–64.

<sup>72</sup> Voituriez, T., & Wang, X., "Real challenges behind the EU-China PV trade dispute settlement", *Climate Policy*, 15(5), 2015, pp. 670–677.

<sup>73</sup> Ramiro Troitiño, D.; Kerikmäe, T.; De la Guardia, R. M.; Perez, G. A., *The EU in the 21st Century. Challenges and Opportunities for the European Integration Process*, Springer, 2020

quell disagreements. In addition, the authorities have used large amounts of resources for propaganda, censorship and the police to maintain control and retention among the other things.

China has been for a long time undoubtedly the biggest dilemma in EU foreign policy. Being, on the one hand, a key player in the Beijing<sup>74</sup> issue and, on the other, an ever-increasing power on a global scale. But on the other hand, by representing a totalitarian regime and insulting the principles and ideals respected by Europeans<sup>75</sup>. China's attitude towards human rights and democracy hinders the development of the China and EU partnership in a number of ways. The EU considers human rights to be part of its identity and treats them as universal values<sup>76</sup>, while China violates all these values by violating its human rights at the national level. In addition, Europe has been perhaps one of the few parts of the world where the rule of law, democracy, security and human rights have been respected until now. Adherence to these values are also a precondition for EU membership to countries wishing to join the Union.

The arms embargo imposed on China by the EU in 1989 is more symbolic today but was also the result of one of China's many human rights violations. Regardless of its original purpose, the embargo has not hindered trade in military technology between the EU and China, and China has become one of the largest arms producers and suppliers. This contradictory behavior on the part of the EU has damaged the EU's credibility. Credibility has also been undermined by the general increase in trade between Member States and China, at a time when Beijing was experiencing the biggest repression of dissidents in decades. For some, such EU behavior is a sign of double standards and hypocrisy, where economic benefits take precedence over human rights. The EU's loud criticism of China's human rights has only resulted in a Chinese ban on the EU interfering in China's internal affairs. Criticism from the EU could also undermine cooperation on other important issues where the EU and China have a common understanding. Differences in values and principles between the EU and China prevent China from becoming a strategic partner of the EU and build mutual trust.

From a geopolitical point of view, the EU's and China's priorities on strategic and security issues are increasingly divergent. China has focused on expanding power in the Pacific, and the EU's main concerns have been the migration crisis and Russia's aggression. It seems that neither China nor the EU is willing to help each other with their concerns, and that the EU's and China's approach and preferences on important issues have diverged. In some cases, China's intentions remain unclear, but as power increases, it is quite likely that China's intention in the long run is to expand control and influence in its region.

At least in the past China has also been worried that North Korea would collapse, flooding China with refugees, straining China's resources and jeopardizing China's political stability, as the United States and South Korea could take advantage of the situation. At the same time, the EU is seeking to strengthen trade relations with Taiwan, as China is interested in taking control of South China's main shipping lane. Strengthening EU and Taiwan relations could also be useful in helping to prevent Taiwan's hostile integration with China. EU's geopolitical concerns include the situation in Ukraine and the aggression of Russia.<sup>77</sup> And here, too, the principles and values of the EU and China tend to diverge. While the EU is trying to punish Russia, China has strengthened its relations with Russia and has refrained from criticizing Russia's actions. China's reluctance to help the EU

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<sup>74</sup> Oriol Costa, "After Kyoto, Beijing: The EU and the new climate negotiations" *Revista CIDOB D'afers Internacionals*, (108), 2014, pp. 23-41.

<sup>75</sup> Isar, Y., "Culture in EU external relations: An idea whose time has come?" *International Journal Of Cultural Policy*, 21(4), 2015, pp. 494-508.

<sup>76</sup> Dabrell, P. J., "Mapping out democracy promotion in the EU's external relations", *European Foreign Affairs Review*, 16(1), 2011, pp. 21-40.

<sup>77</sup> See e.g. HOFFMANN, T.; CHOCHIA, A., "The Institution of Citizenship and Practices of Passportization in Russia's European Neighborhood Policies" in: A. Makarychev, T. Hoffmann (Ed.). *Russia and the EU Spaces of Interaction* (223-237). Routledge, Taylor&Francis Group, 2018

with its migration crisis and other concerns was highlighted at the 2015 EU and China Summit, when China avoided any discussion of a migration crisis at all costs. From all this, it turns out that both the EU and China intentionally or unintentionally are not extremely helpful to each other's concerns.

The informal friendship between Russia and China has more than once created a situation in which China provides Russia with diplomatic cover by blocking Western proposals, for example on the Syrian issue<sup>78</sup>. With regard to China's behavior on the Syrian side, it was realized that a common understanding had emerged between China and Russia to counter EU aspirations. The EU's and China's differing visions of the international order, national sovereignty and human rights collide on all key issues. Over the next decade, it may become clear whether or not China is trying to change or replace today's international order and policy, and whether it will accept the order in the world, which is very different from China's own organizational system. China is very confident in its principles not to interfere in the internal affairs and sovereignty of other countries, while the EU considers it mandatory in some cases when, for example, human rights are at stake. The EU also considers it right to provide humanitarian aid to countries in need, but China sees this as a threat to its domestic system. China's adherence to its principles stems, on the one hand, from historical reasons when Western countries occupied China, and, on the other hand, neutrality deprives other countries of the opportunity to interfere in China's own internal affairs. China in this case has more materialistic motives as China needs access to gas, oil and other raw materials, it is more likely to work with countries with different political regimes from the West to secure export markets.

There are also important differences between EU and China's conclusion of agreements. While the EU incorporates its values and principles into trade agreements, China has maintained its position that politics and business do not interfere<sup>79</sup>. This tactic from the EU has so far been one of the most effective tools in policy, as the EU market has been very profitable and attractive to other countries. China's growing strength was accompanied by China becoming a major economic donor. While the EU imposed conditions on aid and agreements<sup>80</sup>, China overcame the EU in favor of countries, and as a result has offered very much competition to the EU in both the distribution of economic aid and the conclusion of trade agreements. China's expanding economic interests could pose a serious threat to its neutrality if, at some point, China has to make decisions that will inevitably interfere with other countries' internal affairs, such as Afghanistan<sup>81</sup>. Despite the fact that the EU's and China's approach to things began to resemble each other at some point, it does not necessarily mean that friendships have strengthened. If two giants with such different lines of government have already shown that they do not agree on important issues, then these differences will probably arise in the future as well. On the one hand, Europe has been a promoter of the liberal order, but on the other, Europe has also been the biggest beneficiary of all this. In the institutions shaped by the EU, through which economic and political agreements are managed, European countries have the necessary power to influence.

Although China has expressed its desire to be part of these institutions and has proposed a fairer redistribution of power, it would be very difficult to integrate a country as large and with such a different worldview as China into the liberal world order. Although China has experienced rapid economic growth and development in recent decades, its role in the world's leading lending

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<sup>78</sup> Fung, C., "Global South solidarity? China, regional organisations and intervention in the Libyan and Syrian civil wars", *Third World Quarterly*, 37(1), 2016, pp. 33-50.

<sup>79</sup> O'Dolan, C., & Rye, T., "An insight into policy transfer processes within an EU project and implications for future project design", *Transport Policy*, 24, 2012, pp. 273-283.

<sup>80</sup> Hackenesch, C., Bergmann, J., & Orbie, J., "Development Policy under Fire? The Politicization of European External Relations\*" *JCMS: Journal of Common Market Studies*, 59(1), 2021, 3-19.

<sup>81</sup> Spornbauer, M., "EU peacebuilding in Kosovo and Afghanistan: Legality and accountability" *Studies in EU External Relations*, 7, 2014, pp. 1-452.

institutions remains disproportionate. Since the inception of the World Bank, both the United States and Japan have had greater voting rights, and Western European countries have taken the lead in the institutions. The G20 summit in 2010 tried to carry out a reform in this area, but it failed. Liberal methods among western countries already began to triumph after the collapse of the Soviet Union, but China's economic success with the opposite order has set an example for many countries to find opportunities and alternatives to a liberal society.

## CONCLUSION

Political dialogues between governments and intergovernmental organizations have been going on for a long time. When governments face difficulties, it has become a common practice to look for ideas in the success stories of other countries. But one can also look for motives for promoting and sharing countries' own visions. And sometimes political dialogues take place between countries because of the national need of cooperation. Whether it is related to economical issues, environment or just to eradicate poverty and learn from successful countries.

EU and China relations exist today and are likely to continue to do so in the future, but their relations will remain limited rather than as the EU originally hoped. The differences in values, interests and the controversial view of the world order between the EU and China over the years are too different and contradictory to facilitate a warmer relationship. Whereas initially China's motivation to cooperate with the EU was quite high, today China no longer considers the EU to be serious enough. In the years following the creation of the EU, the EU's influence was considerable in the world, but today it is only a remnant of its full potential, and China is taking advantage of the EU's weakening by splitting Europe's political divide with its attitude. In addition, China has helped uncover the EU's weaknesses. For example, different standpoint inside EU over Beijing and the desire to conclude trade agreements contrary to EU values and principles. Although China has made great strides in recent decades in favor of expanding EU and China relations in terms of economic interdependence, the EU has failed to persuade China to integrate a liberal order. Despite the EU's efforts to make China more respectful of human rights, free media and democracy, China continues to be more respectful of autocracy and uses all means to remove dissidents who threaten its power. The people of China must continue to be careful if their views do not coincide with those of the ruling authorities and the country continues to violate most human rights. Silencing, imprisoning and suppressing dissidents continues to be part of China's governance.

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## NATO, Turkey and Kremlin in international context

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### Weakening transatlantic links? Re-assessing Turkey-NATO relations in the context of the Covid-19 pandemic

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DR. AUREL LAZĂR<sup>1</sup>

SNSPA - NATIONAL UNIVERSITY OF POLITICAL STUDIES AND PUBLIC ADMINISTRATION

**Abstract:** *The aim of this paper is an in-depth contextualization, focusing on the main events that marked the relationship between Turkey and NATO after the Cold War, prior to investigating the new coordinates of the relationship between Ankara and NATO that followed the outbreak of the COVID-19 pandemic. The analysis is focused on the very recent developments that took place between March 2020 and March 2021, with the intention to identify the new objectives of the Turkish foreign policy and their impact on the ties with NATO. In the theoretical section I present the implications of the implementation by the political establishment in Ankara of the so-called 'Neo-Ottoman' ideology. This section will highlight the implications that this ideology has on the Ankara-NATO relationship. The study relies mainly on qualitative data including document analysis and official statements issued by the Turkish Government and NATO member states officials during analysed period.*

**Keywords:** *Turkey, NATO, COVID-19, foreign policy, tensions, crisis.*

#### INTRODUCTION

Turkey's accession to NATO in 1952 has been mainly driven by an increasing Soviet threat to the Turkish state that required containment. The security umbrella provided by NATO to Turkey prompted the Kremlin to moderate its aggressive rhetoric against Ankara, an approach that favored a stable regional security climate. The context favored a steady improvement in the Ankara-Moscow bilateral relations, both in the 1952-1991 period and after the dissolution of the Soviet Union. These developments, corroborated with the new post-Cold War world order, have led to a deterioration of the relationship between NATO and Turkey and to the emergence of tensions between the two sides on a series of regional geopolitical dossiers.

After the end of the cold War, the Russian Federation, the successor of the USSR, a former strategic enemy of Turkey, no longer posed a threat to the security of the Turkish state. Moreover, with few exceptions, the new global order and the regional security climate gave Turkey the opportunity to get involved in collaborative projects with the Russian Federation, the successor to the USSR. Still under NATO's security umbrella, after the end of the Cold War, the economic power of the Turkish state increased considerably. Following the takeover of political power by the Justice and Development Party (AKP), in 2002, Turkey's interest in increasing influence in the former regions controlled by the Ottoman Empire has grown considerably. Under such conditions, the actions and policies of the political establishment in Ankara often contradicted those of NATO, which led to escalating tensions between Ankara and its allies.

The research concentrates on the process that alienated Turkey and determined the country's leadership to challenge some NATO policies and interests in recent decades. The main assumption

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<sup>1</sup> Dr. Aurel LAZĂR has made his PhD thesis at the SNSPA - National University of Political Studies and Public Administration, Bucharest, Romania, e-mail: lazar.a.aurel@gmail.com .

of our argument is that the tensions between NATO and Turkey have been mainly generated by the neo-Ottoman policies promoted by the political establishment in Ankara and as a result of the intensification of cooperation in strategic areas with the Russian Federation. The research highlights the main elements that led to the deterioration of the relationship between Turkey and NATO after the end of the Cold War. However, the focus of the study is on the changes in relations between Ankara and the Alliance in the context of the outbreak of the Covid-19 pandemic, between March 2020 and March 2021.

The first section of the article will deal with a short literature review regarding the so-called 'Neo-Ottoman' ideology and how Turkey's foreign policy was discussed in scholarly debates. In this section I will present the evolution of the concept throughout history and the way it impacted the transatlantic links.

The second section aims at developing the main arguments and bringing evidence to test the theoretical model. It is divided into two parts – firstly, it presents in a chronological approach the main political actions that generated tensions between NATO and Turkey, secondly, it analyses the main foreign policy decisions of the Turkish state in the context of the outbreak of the Covid-19 pandemic and how they affected the relationship between Ankara and NATO. The goal is thus to show whether there are elements of continuity between previous tendencies of conflict among Turkey and its NATO allies, to there are new challenges brought by the pandemic and its political outcomes in particular. the goal is thus to show whether there are elements of continuity between previous tendencies of conflict among Turkey and its NATO allies, to there are new challenges brought by the pandemic and its political outcomes in particular.

The final section of the article will refer to the evidence discussed, with the main focus on formulating a set of policy recommendations on overcoming the challenges that have the potential to alter the ties between Turkey and NATO.

## 1. THEORETICAL FRAMEWORK AND METHODOLOGY

In this section, I intend to highlight the implications of neo-Ottomanism in Turkey's domestic and foreign policy. I will present the consequences of the support provided by the Turkish elites and people for this ideology. I will pay particular attention to how these developments have impacted the foreign policy of the Turkish state, highlighting the processes that have led to the departure of Ankara's political establishment from NATO policies and interests. In order to understand the extent and implications that Neo-Ottomanism currently has in Turkey's foreign policy, I will briefly present the underlying principles of the ideology, the elements that represented the foundation of it and how it has evolved over time.

Especially in the last decade, neo-Ottomanism was the main concept used to explain developments in the foreign policy of the Turkish state. After the Justice and Development Party (AKP) took over power in Turkey in 2002, an increasing number of international relations specialist considered Turkish state domestic politics as one with neo-Ottoman attributes. In the last decade, the conceptual of neo-Ottomanism has been studied both by academia and specialists from other fields. A relatively small number of analysts stressed out that the concept was born long before the AKP took power. However, most specialists associated the neo-Ottoman foreign policy of the Turkish state with the decisions taken by the Erdogan-Davutoglu tandem.

Ömer Taspınar believes that in some respects Turkish foreign policy is neo-Ottoman. However, the author argues Ankara uses very different instruments and practices compared to those used by the Ottoman Empire. Furthermore, Taspınar points out that neo-Ottomanism is only a means by which Turkey seeks to strengthen its political, hegemonic and

cultural hegemon status in the region<sup>2</sup>. Rasim Özgür Dönmez believes that neo-Ottomanism in Turkish foreign policy is aimed at promoting Islamic solidarity and creating an alternative to the global order of Western origin. Dönmez also emphasizes Islam and the Islamic world are key elements that favor consolidation of the idea that Turkey plays a civilizational role in global politics<sup>3</sup>. Soner Cagaptay also argues that a thorough analysis of the foreign policy of Ankara's political establishment reveals its Islamist guidelines. Meanwhile, Cagaptay imagines the Ottoman Empire as a liberal rather than an Islamist-oriented entity. At the same time, the author believes the AKP's foreign policy is not neo-Ottoman and only Islamist<sup>4</sup>.

According to Edward Wastnidge, in the weak version Neo-Ottomanism as Islamism is seen as an antidote to excesses of Kemalism, with its militant secularism, nationalism, and Westernization. Neo-Ottomanism thus is seen as a corrective to these excesses, emphasizing and positively valuing Turkey's position between East and West. Thus, Turkey's foreign policy re-orientation away from Europe and toward the Middle East and North Africa is portrayed not as a 'turning away' from the 'West,' but as an appropriate re-balancing of its historical responsibilities and contemporary regional interests<sup>5</sup>.

Neo-Ottomanism is a concept born from the official ideologies and practices of the Ottoman Empire<sup>6</sup>. According to M. Hakan Yavuz, Neo-Ottomanism resorts to a wide, profound complex of stylistic connotations conducive to the project of memory and nostalgia. It is a term that is designed to comprise a set of ideas and norms about the self of Turkey and its world view. Thus neo-Ottomanism does not simply regulate Turkey's foreign and domestic politics as a set of ideals, values, ethics, and norms; more importantly, the holistic set constitutes the essential definition of how Turkey defines itself. Neo-Ottomanism is about constructing a new 'national' identity and translating it into foreign policy by using historical, cultural, and religious ties to former Ottoman territories. The purpose of neo-Ottomanism in foreign policy is to eliminate economic borders between the Balkan states, the Caucasus and the Middle East, in order to facilitate the exchange of goods, ideas and intensify the movement of people<sup>7</sup>.

Neo-Ottomanism gained supporters immediately after World War II, a period in which secular nationalist ideology promoted by Mustafa Kemal Atatürk began to have fewer and fewer adherents. On the other hand, there has been observed a revival of Islam and the beginning of the re-Islamization of Turkey and Turkish society. However, Neo-Ottomanism emerged as an ideology and political practice during the 1980s, one of the Turkish political leaders who contributed to the assertion of ideology being Turgut Özal, former prime minister and president of the Turkish state. During Turgut

<sup>2</sup> Ömer Taspinar, "Between Neo-Ottomanism and Kemalism, Turkey's Middle East Policies", *Carnegie Papers*, September 2008, pp. 1-3, accessed March 26, 2021, online available at [https://carnegieendowment.org/files/cmec10\\_taspinar\\_final.pdf](https://carnegieendowment.org/files/cmec10_taspinar_final.pdf).

<sup>3</sup> Rasim Özgür Dönmez, "Nationalism in Turkey under Justice and Development Party Rule: The Logic of Masculinist Protection", *Turkish Studies*, 2015, pp. 554-571.

<sup>4</sup> Soner Cagaptay, "The AKP's Foreign Policy: The Misnomer of 'Neo-Ottomanism'", *Washington Institute for Near East Policy*, accessed March 26, 2021, online available at <https://www.washingtoninstitute.org/policy-analysis/akps-foreign-policy-misnomer-neo-ottomanism>.

<sup>5</sup> Edward Wastnidge, "Imperial Grandeur and Selective Memory: Re-assessing Neo-Ottomanism in Turkish Foreign and Domestic Politics", *Middle East Critique*, Open University, UK, 28(1) pp. 7-28.

<sup>6</sup> Ivaylo Hristov, "Neo-Ottomanism – Emergence, Ideology and Political Doctrine", *Social Evolution & History*, Vol. 18 No. 1, 'Uchitel' Publishing House accessed, March 2019, accessed March 26, 2021, online available at [https://www.researchgate.net/publication/333342321\\_Neo-Ottomanism\\_-\\_Emergence\\_Ideology\\_and\\_Political\\_Doctrine](https://www.researchgate.net/publication/333342321_Neo-Ottomanism_-_Emergence_Ideology_and_Political_Doctrine), pp. 140-148.

<sup>7</sup> M. Hakan Yavuz, "Social and Intellectual Origins of Neo-Ottomanism: Searching for a Post-National Vision", *Die Welt des Islams*, November 2016, pp. 442-454, accessed March 26, 2021, online available at [https://www.researchgate.net/publication/311927268\\_Social\\_and\\_Intellectual\\_Origins\\_of\\_Neo-Ottomanism\\_Searching\\_for\\_a\\_Post-National\\_Vision](https://www.researchgate.net/publication/311927268_Social_and_Intellectual_Origins_of_Neo-Ottomanism_Searching_for_a_Post-National_Vision).

Özal's term as president, the Turkish intelligentsia launched a debate on the need for Ankara to increase its involvement in resolving issues of Muslim minorities in the former territories controlled by the Ottoman Empire. simultaneously with this approach, Turgut Özal promoted the Westward orientation of Turkey's domestic and foreign policy<sup>8</sup>.

Necmettin Erbakan, a former Prime Minister of Turkey also played a significant role in promoting Neo-Ottomanism. Erbakan founded in 1983 the Welfare Party, which was one of the main ideological platforms for promoting Islam in Turkey. It should be mentioned that Recep Tayyip Erdoğan began his political career as a member of the Welfare Party and having a political approach similar to that of Erbakan. The 1995 municipal elections represented a turning point in the Islamisation of society and the state. The pro-Islamic WP's successes (Erdoğan was then elected as the mayor of Istanbul), and the eventual forming of a coalition government, redirected the country from the path of the Kemalist system to the work-in-progress project of the New Turkey. As a result of his radical Islamist attitudes and his incitement to religious hatred, in 1999 Erdoğan was imprisoned for a period of 10 months. Despite this fact, in 2001, the current president of Turkey founded the Justice and Development Party, a moderately conservative political party, whose leadership later supported him to become president<sup>9</sup>.

During 2001, Ahmet Davutoğlu, one of Erdoğan's main confidants, published the book 'Stratejik Derinlik' (Strategic Depth), a work that unofficially became 'the Bible' of neo-Ottomanism.<sup>10</sup> In the book earlier mentioned (having the subheading 'Turkey's place in international relations'), Ahmet Davutoğlu summarized the essence of the large-scale geopolitical strategy of the Turkish state. As Erdoğan's long-term foreign policy advisor, Ahmet Davutoğlu advocated diversifying Turkey's geopolitical options by creating Turkish zones of influence in the Balkans, the Caucasus, Central Asia, and the Middle East. On the day of his appointment Davutoglu asserted that Turkey's influence in "its region" will continue to grow: Turkey had an "order-instituting role" in the Middle East, the Balkans and the Caucasus, he declared, quite apart from its links with the West<sup>11</sup>. In his book, Davutoğlu asserted that Turkey has become a key country, emerging from its position of serving as a forward base for NATO during the Cold War. By using its geopolitical and geostrategic position, Turkey can become a regional as well as a global actor. As part of this vision, the government has pursued a policy of ending its long-term hostilities with its neighbors, mainly in the Middle East, which the Ottoman Turks had once ruled<sup>12</sup>. According to Ivaylo Hristov, even though Turkey has so far adhered to the global policy of the United States and NATO, the country has set its own strategic goals alongside the promotion of its Euro-Atlantic interests. The emergence of Neo-Ottomanism in Turkey after the Cold War was due to the fact that Turkey's real economic and military power was disproportionate to the country's negligible rights to decision-making in the event of international conflicts. It was before Ahmet Davutoglu wrote 'Strategic Depth' that the Turkish political elite showed signs it would no longer submit to its subordinate role<sup>13</sup>.

*For Ahmet Davutoğlu, "Turkey's road to progress lies in its past." As the Turkish foreign minister, he spoke openly about the reorientation of his country's foreign policy in a November 2009*

<sup>8</sup> Ivaylo Hristov, *op. cit.*, pp. 140-148.

<sup>9</sup> M. Hakan Yavru *op. cit.*, pp. 457.

<sup>10</sup> Ivaylo Hristov, *op. cit.*, pp. 145-149.

<sup>11</sup> Srdja Trifkovic, "Turkey as a Regional Power: Neo-Ottomanism in action", p. 83, *Politeia*, January 2011, pp. 83, accessed March 31, 2021, online available at [https://www.researchgate.net/publication/315649301\\_Turkey\\_as\\_a\\_regional\\_power\\_Neo-Ottomanism\\_in\\_action](https://www.researchgate.net/publication/315649301_Turkey_as_a_regional_power_Neo-Ottomanism_in_action).

<sup>12</sup> Lale Sariibrahimoglu, "Davutoglu Promoting "Strategic Depth" in Turkish Foreign Policy", *Eurasia Daily Monitor* Volume: 6 Issue: 89, May 08, 2009, accessed March 31, 2021, online available at <https://jamestown.org/program/davutoglu-promoting-strategic-depth-in-turkish-foreign-policy/>.

<sup>13</sup> Ivaylo Hristov, *op.cit.* pp. 145-146.

*speech to AKP members: The Ottoman Empire left a legacy. They call us 'neo-Ottomans'. Yes, we are 'new Ottomans'. We are forced to deal with neighboring countries. And we even go to Africa. The great powers are dismayed by that. His name became synonymous with neo-Ottomanism*<sup>14</sup>.

The shift from the USA and its European allies, interpreted as 'Neo-Ottomanist policy' by the West, has been more visible especially after the Arab Spring. Moreover, starting from 2014 Turkey's foreign policy started to resemble a policy of 'splendid isolation' in reaction to mounting regional problems. AKP foreign policy is more pro-Islamic and pro-Arab, signaling a shift from its traditional western orientation<sup>15</sup>. Since the AKP came to power the Army has been neutered, confirming the old warning of the Turkish top brass that 'democratization' would mean Islamization. To the dismay of its Westernized secular elite, Turkey has reasserted its Ottoman and Muslim legacy with a vengeance<sup>16</sup>.

President Erdoğan contends that Turkey should become a key player in the international arena for its geostrategic location and also for its historical significance as the successor of the Ottoman Empire. He seeks to apply cultural and religious affinities and the past common history of the Ottoman Empire to the Balkans, the Caucasus and the Middle East in order to promote Turkey's influence. Despite the fact that its critics labeled the new vision of Turkey's foreign policy as the 'Neo-Ottomanism', Erdoğan and his party in a reply to his critics always said that his policy is not to restore the past but to consolidate the current position for the purpose for a new collective goal and which is 'New Turkey' and not 'Neo-Ottomanism'. In June 2020, President Erdoğan stated that Turkey has the right to protect its national interests and the current circumstances (such as the Libya Crisis, border disputes with Syria and Iraq, Kurdish insurgencies, presence of foreign forces in the Mediterranean and the Black Sea, volatility in the Arabian Peninsula and deterioration of relations with Israel on Palestine and Syrian issues and future of 3.5 million Syrian refugees in Southern Turkey), all have forced Turkey to be assertive as a regional power.<sup>17</sup>

Key reasons that favored the emergence of the Neo-Ottomanism in Turkey are: the ideological transformation in the Turkish society; the gradual collapse of the bi-polar political system; the revival of the Cyprus crisis and aggression from Greece; the refusal of Turkey's membership application in the EU; European indifference shown to the ethnic cleansing of Bosnian Muslims and Kurdish rise in South-East Turkey. For the last four years, Turkey has consolidated its position to successfully face relatively current volatile international circumstances and its internal developments such as growing economy; large population; military strength; strong state tradition; active diplomacy and national identity<sup>18</sup>. According to Srdja Trifkovic, Today's Turkey is a regional power of considerable importance which bases its strategy on the concept of neo-Ottomanism, while denying its existence. Neo-Ottoman Turkey's interests and aspirations no longer coincide with those of the US or Europe,

<sup>14</sup> M. Hakan Yavuz, "Social and Intellectual Origins of Neo-Ottomanism: Searching for a Post-National Vision", *Die Welt des Islams*, November 2016, pp. 451, accessed March 26, 2021, online available at [https://www.researchgate.net/publication/311927268\\_Social\\_and\\_Intellectual\\_Origins\\_of\\_Neo-Ottomanism\\_Searching\\_for\\_a\\_Post-National\\_Vision](https://www.researchgate.net/publication/311927268_Social_and_Intellectual_Origins_of_Neo-Ottomanism_Searching_for_a_Post-National_Vision).

<sup>15</sup> *Ibidem*, pp. 459.

<sup>16</sup> Srdja Trifkovic, "Turkey as a Regional Power: Neo-Ottomanism in action", *Politeia*, January 2011, pp. 83, accessed March 31, 2021, online available at [https://www.researchgate.net/publication/315649301\\_Turkey\\_as\\_a\\_regional\\_power\\_Neo-Ottomanism\\_in\\_action](https://www.researchgate.net/publication/315649301_Turkey_as_a_regional_power_Neo-Ottomanism_in_action).

<sup>17</sup> Mohammad Iqbal, *The Emergence of Turkey as a Regional Power and the Neo-Ottomanism*, RMIT University, Melbourne, Australia, August 25, 2020, pp. 15-17, accessed March 27, 2021, online available at [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3680333](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3680333).

<sup>18</sup> Mohammad Iqbal, *The Emergence of Turkey as a Regional Power and the Neo-Ottomanism*, RMIT University, Melbourne, Australia, August 25, 2020, pp. 13-16, accessed March 27, 2021, online available at [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3680333](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3680333).

and they are diametrically opposed to the interests of the traditionally Orthodox Christian nations in the Balkans<sup>19</sup>.

In terms of methodology, taking into consideration that we perform a chronological analysis, the data used are mainly qualitative and include official documents and statements analysis. This research aims to analyze the main foreign policy decisions of the Turkish state after the dissolution of the Soviet Union, which I placed them in antithesis with the foreign policy decisions taken by the political establishment in Ankara after the outbreak of the Covid-19 pandemic.

## 2. THE DYNAMICS OF TURKEY-NATO DURING AKP REGIME

After the end of the Cold War, which led to the dissolution of the Soviet Union, the Kremlin posed a much lower threat to Turkey's national security. These developments, coupled with Turkey's growing regional aspirations and desire for strategic autonomy, have led Ankara's political establishment to gradually distance itself from the West. The most pressing issue for Turkey's national security is the Kurdish issue, a subject that is often causing tension between Ankara and Washington, as a result of US the support for the Kurdish Movement.

The first notable differences between Turkey and the West in terms of foreign policy were visible in 2003, in the context of the Iraq War, when the Turkish Parliament refused to allow the US Armed Forces to use Turkish bases and transit Turkish territory with about 60,000 troops<sup>20</sup>. Similarly, during the 2008 Russian-Georgian War, Turkey banned two US hospital ships, the USNS Comfort and the Mercy, from entering the Black Sea basin through the Bosphorus Strait. Ankara officials say they have resorted to such a decision in order not to favor the escalation of tensions between NATO and the Russian Federation. Another subsidiary reason for making this decision was the Turkish political establishment's desire to increase Turkey's regional influence by acting as a mediator in the Russian-Georgian conflict<sup>21</sup>. The NATO-Turkey relationship has been tested again after the accession of the Republic of Cyprus to the EU, following the fact that Ankara, as a NATO member, refused to exchange strategic information with the EU. Moreover, Ankara blocked the participation of the Republic of Cyprus in the EU missions which involved the use of NATO's military infrastructure. The combative attitude of the Turkish political establishment led to further complications, as the Republic of Cyprus blocked the EU - Turkey Security Agreement on the exchange of classified material as well as Turkey's accession to the European Defense Agency. As a result of these developments, the EU-NATO cooperation has been slowed down, especially in matters related to the defense field<sup>22</sup>.

Through its NATO membership, Turkey constitutes a veto player in the inter-institutional relations between the EU and NATO and engages in boundary-testing strategy using active diplomacy, entangling diplomacy, and issue-linkage bargaining. Turkey engages in boundary challenging through strategic non-cooperation and inter-institutional balancing against the EU. The veto gives Turkey a voice against the EU and helps Turkey pursue long-term interests, such as

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<sup>19</sup> Srdja Trifkovic, *op. cit.*, p. 95.

<sup>20</sup> *Turkey rejects U.S. troop proposal*, March 2, 2003, accessed April 05, 2021, online available at <https://edition.cnn.com/2003/WORLD/meast/03/01/sprj.irq.main/>.

<sup>21</sup> *Russia and Turkey in the Black Sea and the South Caucasus*, International Crisis Group, Europe Report N°250, June 28, 2018, pp. 14, accessed April 05, 2021, online available at <https://www.crisisgroup.org/europe-central-asia/western-europemediterranean/turkey/250-russia-and-turkey-black-sea-and-south-caucasus>.

<sup>22</sup> *Turkey blocked EU-NATO partnership programs*, Nordic Monitor, January 07, 2020, accessed April 05, 2021, online available at <https://nordicmonitor.com/2020/01/turkey-blocked-eu-nato-partnership-programs/>.

increasing its leverage against the EU in its accession negotiations, resolving the Cyprus problem to its advantage<sup>23</sup>.

Since 2009, the tensions between Turkey and the West have intensified, especially as a result of the different ways of perceiving regional threats. The relationship between the West and Turkey deteriorated amid differences of opinion on subjects like the Arab Spring and the Syrian conflict. The AKP leadership has repeatedly denounced the destabilizing nature of US operations in the vicinity of Turkish territory, especially the Obama administration's support for the YPG/PYD in Syria. Moreover, the insecurity of the AKP regime has been augmented by the anti-governmental large-scale protests organised on the Turkish territory and by the failed coup attempt of July 2016. All these developments, both internal and external, led to a 'radical reset' in Turkish foreign policy. Davutoğlu's 'win-win' approach has been replaced by a security-oriented vision<sup>24</sup>. Despite the fact that over time NATO policies and strategies have been the backbone of the Turkish state's foreign policy, in recent years a considerable part of the Turkish society and elites manifests attitudes opposable to the NATO policies and interests. In the context of differences in the approach of the regional threats in the case of Turkey and other NATO countries, the support expressed by the Turkish population for NATO has decreased considerably. The attitude of Turkish elites and citizens was influenced by the dissonant attitudes shown by the Ankara political establishment towards NATO. Although the Turkish officials have shown their devotion to NATO, they have often resorted to prioritizing national interests in the region, to the detriment of transatlantic interests. Simultaneously, the Turkish political establishment made efforts to increase Turkey's influence in NATO and to determine the strategic agenda of the Alliance.<sup>25</sup>

*The "Turkish Foreign Policy Public Perceptions" survey conducted by Istanbul's Kadir Has University in April 2020 found that 70 percent of the Turkish respondents see the US as a threat to Turkey's security. Meanwhile, just 55% of the respondents see the Russian Federation as a threat to Turkey's security<sup>26</sup>.*

A factor that contributed in a substantial way to the deterioration of the relations between Ankara and between Ankara and the Euro-Atlantic partners was the positioning of the American establishment in the context of the failed coup attempt of July 2016. The AKP leadership has accused the Euro-Atlantic partners for not showing their support for the Erdoğan regime and for reacting reacted late to the events that took place in Turkey. The AKP leadership also accused the Obama administration of backing the US-based cleric Fethullah Gülen who was denounced by Turkey as the mastermind of the July 2016 coup attempt<sup>27</sup>. In opposition to the West, the Kremlin has expressed support for the Erdoğan regime and the Russian publications, including The Moscow Times, have published articles stating that the Russian state has provided Turkish armed forces with information

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<sup>23</sup> Oya Dursun-Özkanca, "The Turkish Veto over the EU–NATO Security Exchange", in *Turkey–West Relations: The Politics of Intra-alliance Opposition*, Cambridge University Press, Cambridge, 2019, pp. 63-82.

<sup>24</sup> Didem Buhari Gulmez, "The resilience of the US–Turkey alliance: divergent threat perceptions and worldviews", *Contemporary Politics*, June 09, 2020, pp. 481, accessed April 05, 2020, online available at <https://www.tandfonline.com/doi/full/10.1080/13569775.2020.1777038?scroll=top&needAccess=true>.

<sup>25</sup> Saban Kardas, "Turkey on NATO's Role in the MENA: Perspectives from a "Central Country"", *Carnegie Europe*, 2012, pp. 2, accessed April 05, 2021, online available at [https://carnegieendowment.org/files/Kardas\\_Brief.pdf](https://carnegieendowment.org/files/Kardas_Brief.pdf).

<sup>26</sup> Turkish Foreign Policy Public Perceptions Survey 2020 Results Announced, June 17, 2020, accessed April 05, 2021, online available at <https://www.khas.edu.tr/en/node/6098>.

<sup>27</sup> William Hale, "The Turkish Military in Politics, and the Attempted Coup of 15-16 July 2016", *Contemporary Research in Economics and Social Sciences* Vol.: 2 Issue: 1, Year: 2018, pp. 07-41, accessed April 09, 2021, online available at <https://dergipark.org.tr/en/download/article-file/515869>.

about the ongoing coup<sup>28</sup>. The Kremlin's support for the Erdoğan regime has contributed considerably to the rapprochement between the Russian Federation and Turkey and to the intensification of the bilateral ties, which reached an all-time low following the military downing of a Russian Sukhoi Su-24 fighter jet in November 2015. The resumption of bilateral relations between the Russian Federation and Turkey has contributed to a considerable extent to the intensification of negotiations in the military field, which led to Turkey's decision to purchase the S-400 Triumph air defense system produced by the Russian Federation<sup>29</sup>. Turkey's decision was motivated by the fact that the US did not agree to provide the Turkish army with the Patriot defense system, as the conditions imposed by Ankara, including technology transfer, were not feasible<sup>30</sup>.

The tensions that characterized the relationship between Turkey and NATO after the July 2016 coup attempt and intensifying Russian-Turkish bilateral cooperation determined the Turkish political establishment to resort to decisions in opposition to NATO policies and interests. Specifically, Ankara has expressed opposition to Allied efforts to block the Russian Federation's actions in Ukraine and to strengthen the security of the Eastern Flank of NATO. The rapprochement between Turkey and the Russian Federation since the end of June 2016 made the creation of the Black Sea Flotilla difficult, because Ankara did not agree with the US proposal. The lack of interest manifested by the Turkish leaders on this matter is one of the reasons why the declaration of the NATO Summit in Warsaw (2016) did not refer to the creation of the Black Sea Flotilla. The text of the declaration was limited to emphasizing the strategic importance of the Black Sea and the need to strengthen NATO's presence in the Black Sea<sup>31</sup>.

During 2017, tensions between Turkey and NATO erupted again, amid the decision of Germany and the Netherlands not to allow the participation of Turkish President Recep Tayyip Erdoğan in electoral rallies on their national. The purpose of the meetings to be carried out by the Turkish President on European territory was to persuade the Turkish communities in Germany and the Netherlands to take part in a referendum designed to confer more prerogatives to the President of Turkey<sup>32</sup>. Amid diplomatic disputes with Germany and the Netherlands, the Turkish officials have resorted to blocking military exercises and other types of activities that NATO supposed to carry out with Austria<sup>33</sup>.

It is worth mentioning that Turkey also blocked other NATO initiatives. For example, Turkey was the only NATO member state to block the Eagle Defender plan during the NATO Summit in London (2019). Turkey's move was of major gravity, as the Eagle Defender plan was designed to defend Poland, Latvia, Lithuania and Estonia in the event of military aggression planned by the

<sup>28</sup> Russia Warned, "Turkish Government About Imminent Coup – Reports", *The Moscow Times*, July 21, 2016, accessed April 05, 2021, online available at <https://www.themoscowtimes.com/2016/07/21/russia-warned-turkey-about-imminent-coup-a54674>.

<sup>29</sup> Tuvan Gumrukcu and Ece Toksabay, *Turkey, Russia sign deal on supply of S-400 missiles*, December 29, 2017, accessed April 22, 2021, online available at <https://www.reuters.com/article/us-russia-turkey-missiles-idUSKBN1EN0T5>.

<sup>30</sup> Selcan Hacaoglu and Firat Kozok, *Turkey Rejects Latest U.S. Offer to Sell Patriot Missiles*, March 01, 2019, accessed April 22, 2021, online available at <https://www.bloomberg.com/news/articles/2019-03-01/turkey-said-to-reject-latest-u-s-offer-to-sell-patriot-missiles>.

<sup>31</sup> Samir Puri, *Romania: Black Sea Security and NATO's South-Eastern Frontline*, King's College London, Department of War Studies, pp. 9, accessed 06 April 2021, online available at <https://www.spf.org/projects/upload/Romania%20%20Black%20Sea%20Security%20and%20NATO%E2%80%99s%20South-Eastern%20Frontline%20%28Puri%29.pdf>.

<sup>32</sup> Turkey rallies row: Germany and Netherlands harden stance, March 12, 2017, accessed April 05, 2021, online available at <https://www.bbc.com/news/world-europe-39251216>.

<sup>33</sup> Tom Korkemeier and Shadia Nasralla, *Turkey blocks some cooperation with NATO partners as EU row escalates*, March 15, 2017, accessed April 09, 2021, online available at <https://www.reuters.com/article/us-turkey-referendum-nato-idUSKBN16M2OR>.

Russian Federation. Ankara has expressed its readiness to vote the Eagle Defender plan only if NATO would have recognized YPG as a terrorist organization. Despite the fact that the Eagle Defender plan had no implications for Ankara's strategies in Syria, but for the security of NATO borders, Turkish officials agreed to vote on the implementation of the plan only during 2020, after difficult and lengthy discussions with representatives of the NATO Member States<sup>34</sup>.

Since 2019, the tensions between NATO and Turkey have intensified, following Turkey's reception of the S-400 Triumph air defense system. NATO member states, led by the United States, have expressed their concerns about the risks that the Russian-made system could pose to the military installations of the Alliance. Washington has vehemently protested against the Turkish state's decision, drawing attention to the fact that through the S-400 Triumph system the Russian Federation could be able to collect information about NATO military installations and generate security risks. In this context, the US excluded Turkey from the F-35 fighter jet program and refused to deliver this type of aircraft to the Turkish air forces<sup>35</sup>.

The examples presented in this section highlight a gradual increase in tensions between NATO and Turkey after the dissolution of the Soviet Union. This tendency has been favored in particular by the diminishing danger posed by the Russian state, the successor to the Soviet Union, and by the growing interests of the Ankara establishment in strengthening its regional and global influence. Under the auspices of the NATO security umbrella and as a member state of the Alliance, Turkey has exploited the veto power held within the organization to influence strategic decisions. By blocking certain NATO initiatives, many of them with no implications for the security of the Turkish state, the Turkish politicians tried to promote their own agenda, aiming to persuade member states to support other projects of interest to Ankara.

It is important to note that the tensions between NATO and Turkey have intensified especially after the AKP took power in Turkey, a political party aimed at strengthening Recep Tayyip Erdoğan's power. The controversial policies of the AKP and the difficult cooperation of the party leadership with the US and the EU have contributed to a substantial extent to the strained relations between Ankara and NATO.

Based on the chronological analysis of the dynamics of relations between Turkey and NATO, in the following sections of this article, I will investigate the main domestic and foreign policy decisions of the Turkish state taken in the context of the Covid-19 pandemic. The analysis will focus on investigating how the political establishment in Ankara built its domestic and foreign policy strategy and to which extent it caused tensions in the relationship between Ankara and NATO.

### **3. THE TURKISH GOVERNMENT IS EXPLOITING THE CRISIS GENERATED BY THE COVID-19 PANDEMIC TO STRENGTHEN ITS INFLUENCE INTERNALLY AND EXTERNALLY**

The outbreak of the Covid-19 pandemic favored a plethora of challenges for a large number of states around the globe. The impact of the crisis and its repercussions vary from country to country, depending to a substantial extent on how the authorities react<sup>36</sup>. Ranked 8th in the world<sup>37</sup>, Turkey

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<sup>34</sup> NATO puts defense plan for Poland, Baltics into action, officials say, July 02, 2020, accessed January 11, 2021, online available at <https://www.reuters.com/article/us-nato-baltics-turkey-idUSKBN24320B>.

<sup>35</sup> U.S. removing Turkey from F-35 program after its Russian missile defense purchase, July 17, 2019, accessed April 11, 2021, online available at <https://www.reuters.com/article/us-usa-turkey-security-f35-idUSKCN1UC2GL>.

<sup>36</sup> Mihaela Daciana Natea, Mihai Daniel Aniței, "Reshaping European and national security in a post COVID – 19 context", *Acta Marisiensis, Seria Oeconomica*, 2019, vol II, pp. 49-64

<sup>37</sup> Coronavirus Cases, Worldometer, accessed April 10, 2021, online available at <https://www.worldometers.info/coronavirus/>.

is among the states most affected by the pandemic, totaling about 3.7 million infections and 33,500 deaths since the beginning of the crisis. In this context, Turkish public opinion has criticized the AKP government for its handling of the crisis. Amid declining popularity of political party led by Recep Tayyip Erdoğan, the AKP leadership has sought to exploit the pandemic crisis to increase its popularity among the electorate and to promote its regional expansion and hegemonic agendas. In order to materialize these objectives, the political establishment in Ankara resorted to a plethora of tools and strategies. For example, Ankara resorted to the so-called 'aid diplomacy', which consisted in providing medical equipment to some states affected by the pandemic. However, at the same time Turkey took some disruptive actions, which had the character of damaging the relationship with the Euro-Atlantic partners: (1) the Turkish Government deliberately favored a new migrant crisis in order to force Euro-Atlantic partners to provide military support to Turkish armed forces deployed in Syria; (2) Ankara launched military operations against the Kurds located in the northern part of Syria; (3) Turkey signed a controversial energy deal with Libya under which it has (4) resorted to maritime exploration in the territorial waters of Greece and Cyprus<sup>38</sup>.

Concerning the 'aid diplomacy', in the early days of the pandemic, the Turkish government sent medical equipment to several states affected by the medical crisis. The humanitarian action targeted two categories of states and was launched under the slogan 'Humanity first'. The first category includes states in which Turkey intends to consolidate its influence (Serbia, Kosovo, Bosnia-Herzegovina, Montenegro, North Macedonia, South Africa, Afghanistan etc.). The second category includes states with which Turkey intended to improve its bilateral relationship (Israel, US, United Kingdom, Spain, Italy, Bulgaria etc.). The humanitarian action launched by Turkey was aimed at promoting the hegemonic agenda and improving the relationship with the West. Nevertheless, it was also an initiative that came at a time when Ankara's world-wide reputation is quite low. It was part of the narrative which targeted the domestic audience by reinforcing the claim that Turkey handled the crisis better than many advanced countries. Simultaneously, it was intending to enhance the country's public image and prestige globally, thus reconstructing the 'soft power'<sup>39</sup>. During the humanitarian action, Turkey has sent humanitarian aid to more than 150 states<sup>40</sup>.

Despite humanitarian action aimed at improving relations with Euro-Atlantic partners during the Covid-19 pandemic, disruptive actions to which Ankara resorted near its borders has deteriorated the relations with NATO member states. A first example is an inappropriate way in which Turkey has approached the conflict in Syria. At the beginning of 2020, tensions between the Turkish and Russian armed forces deployed in northwestern Syria escalated and the Russian attacks resulted in the killing of 33 Turkish soldiers<sup>41</sup>. In this context, Recep Tayyip Erdoğan stated that 'Ankara expects concrete support from all its allies in the fight that Turkey has been carrying out alone'. Moreover, the Turkish President asked NATO to provide support to Turkey on the battlefield, sending a list of 10 requests, among them greater air support on the Turkish-Syrian border, more reconnaissance aircraft, surveillance drones, more ships in the eastern Mediterranean etc.<sup>42</sup>

<sup>38</sup> Noora Al-Habsi, "The Covid-19 impact on Turkey's domestic & foreign policies", *TRENDS Research & Advisory*, June 09, 2020, accessed April 10, 2021, online available at <https://trendsresearch.org/insight/3206/>.

<sup>39</sup> E. Gülseven, "Nationalism and the Response of Turkey to COVID-19 Pandemic", *Chin. Polit. Sci. Rev.* 6, 2021, pp. 40–62, accessed April 22, 2021, online available at <https://link.springer.com/article/10.1007/s41111-020-00166-x#citeas>.

<sup>40</sup> Eralp Yazar, "Turkey's medical aid campaign during pandemic embodies humanitarian foreign policy", *News Analysis*, Istanbul, December 31, 2020, accessed April 12, 2021, online available at <https://www.dailysabah.com/politics/news-analysis/turkeys-medical-aid-campaign-during-pandemic-embodies-humanitarian-foreign-policy>.

<sup>41</sup> Jonathan Marcus, *Syria war: Alarm after 33 Turkish soldiers killed in attack in Idlib*, February 28, 2020, accessed April 04, 2021, online available at <https://www.bbc.com/news/world-middle-east-51667717>.

<sup>42</sup> Erdogan demands 'concrete support' from EU, NATO over Syria, Al Jazeera, News Agencies, March 09, 2020, accessed April 14, 2021, online available at <https://www.aljazeera.com/news/2020/3/9/erdogan-demands-concrete-support-from-eu-nato-over-syria>.

Moreover, in order to persuade the Allies to provide military support to the Turkish state in Syria, the Turkish authorities facilitated the movement of several thousand Syrian refugees to the borders with Greece, ignoring the risk posed by the possibility of Covid-19 spreading. In this context, several news agencies in Turkey exaggerated the exodus of Syrian refugees to the Greek border. The purpose of the media operation was to create an augmented image of the phenomenon and to create the impression that the new migrant crisis is comparable to that of 2015.<sup>43</sup>

Another relevant topic in the economics of the relationship between Turkey and NATO is how the two sides handle the Kurdish question. Although it has been launched shortly before the outbreak of the Covid-19 pandemic, the Turkish military offensive against the Kurds in northwestern Syria has strained relations between Ankara and NATO. In this context, Washington, the main partner and provider of logistical support to the Kurds, has vehemently protested the Turkish offensive and threatened to impose economic sanctions on Turkey. As retaliation, during NATO 2019 London Summit, Turkey was the only NATO member state that blocked the Eagle Defender plan, designed to defend Poland, Lithuania, Latvia and Estonia in the event of a Russian attack. Ankara instructed its NATO envoy not to sign off on the plan, demanding the alliance recognize the YPG as a terrorist organization. The plan for the Baltic States and Poland, drawn up at their request after Russian Federation annexed Crimea from Ukraine in 2014, had no direct bearing on Turkey's strategy in Syria. Turkey approved the Eagle Defender plan in July 2020, but it has not allowed NATO military chiefs to put it into action.<sup>44</sup>

Simultaneously with the ongoing operations in Syria, during 2020 Turkey resorted to disruptive actions aimed at capturing energy resources in the Eastern Mediterranean, which led to strained relations with Greece and the Republic of Cyprus, but also with NATO states such as France or regional actors like Egypt.

The genesis of the Greco-Turkish maritime disputes dates as far back as the founding periods of the two states and has traditionally taken the form of a frozen conflict, with occasional flare-ups. Maritime disputes between the two states are mainly generated by three topics: the disagreement over the territorial waters of Greece and the ownership of some Aegean islands and islets; the boundaries of the Exclusive Economic Zones (EEZ) of Turkey and Greece in the Eastern Mediterranean; the unresolved nature of the Cyprus crisis. The conflict between Turkey and Greece has re-ignited in the context of the signing by the Ankara Government of a memorandum of understanding in the energy field with Libya's U.N.-recognized Government of National Agreement (GNA). The above-mentioned agreement, named the Delimitation of Maritime Jurisdiction Areas in the Mediterranean Sea and signed in November 2019, was aimed to demarcate the maritime borders between Turkey and Libya. By the above-mentioned agreement, the two states established the EEZ perimeter between them, a process in which Greece's sovereignty was blatantly violated. The Turkish-Libyan agreement did not consider several Greek territories, including the Crete and Rhodes islands, whose EEZ overlaps with the EEZ established by Turkey and Libya. In retaliation, in August 2020 Greece signed an agreement with Egypt to delimit the EEZ between their countries<sup>45</sup>.

In addition to these actions, in 2020 Ankara sent maritime research vessels into the EEZ of Greece and Cyprus, which further strained relations between Ankara and Athens<sup>46</sup>. Turkey's

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<sup>43</sup> Matina Stevis-Gridneff and Patrick Kingsley, *Turkey, Pressing E.U. for Help in Syria, Threatens to Open Borders to Refugees*, February 28, 2020, accessed April 14, 2021, online available at <https://www.nytimes.com/2020/02/28/world/europe/turkey-refugees-Greece-erdogan.html>.

<sup>44</sup> Robin Emmott and John Irish, *Turkey still blocking defence plan for Poland, Baltics, NATO envoys say*, June 17, 2020, accessed 14 April, 2020, online available at <https://www.reuters.com/article/us-nato-france-turkey-plans-idUSKBN23O1TN>.

<sup>45</sup> Hacer Baser, "Egypt, Greece sign maritime demarcation deal", *Anadolu Agency*, August 06, 2020, accessed April 16, 2021, online available at <https://www.aa.com.tr/en/middle-east/egypt-greece-sign-maritime-demarcation-deal/1933927>.

<sup>46</sup> It was formed in the context of the 1974 Turkish invasion of the island of Cyprus.

assertive actions in Eastern Mediterranean have taken the form of a geopolitical confrontation that has drawn into conflict states such as Egypt, France and the United Arab Emirates. By redefining maritime boundaries through a deal with Libya's Government of National Accord and by conducting gas drilling operations in contested areas off Cyprus and Greece, Turkey is challenging the Eastern Mediterranean order. Moreover, Ankara is seeking to negotiate new rules in the region on the basis of one fait accompli after another. In this context, the Turkish Foreign Minister Mevlüt Çavuşoğlu stated in May 2020: "Turkey is here. You have to work with Turkey."<sup>47</sup>

As a form of protest against Turkey's decision to send exploration ships in the Eastern Mediterranean, in August 2020 Greece and the United Arab Emirates conducted military drills on the island of Crete<sup>48</sup>. Moreover, Turkey's actions in the eastern Mediterranean and the conflict between Ankara and Athens have prompted other NATO and EU member states to intervene in the conflict. Thus, in the context of escalating tensions between Greece and Turkey and the possibility of Ankara resorting to military action, France has increased its military presence in the Eastern Mediterranean<sup>49</sup>. Moreover, French President Emmanuel Macron called on Turkey to halt oil and gas exploration in the disputed waters in that area. France has become the most vocal European power supporting the Greek-Cypriot position, the attitude is also caused by the tensions between Ankara and Paris in Libya, where the two states support different sides and have divergent interests<sup>50</sup>. It is also worth mentioning that the aggressive attitude of Turkey in the Eastern Mediterranean has caused concern among other states in the region. Thus, during November and December 2020, the United Arab Emirates, Greece, the Republic of Cyprus, Egypt and France participated for the first time in history to the MEDUSA military drills, organized mainly to persuade Turkey to abandon its aggressive attitudes<sup>51</sup>.

Another controversial decision taken by the Turkish government in 2020 is to transform the Hagia Sophia mosque from the museum into a Muslim place of worship. The Hagia Sophia was built as a cathedral during the Christian Byzantine Empire and converted into a mosque after the Ottoman conquest of Constantinople in 1453. In 1934, modern Turkey's founder Mustafa Kemal Atatürk ordered it be turned into a museum. However, during June 2020 Turkey's highest administrative court, the Council of State, cancelled Atatürk's decision, arguing that the building had been registered as a mosque in its property deeds. Experts see Erdogan's move to turn Hagia Sophia back into a mosque as an attempt to galvanize his conservative and nationalist base amid economic uncertainty exacerbated by the Covid-19 pandemic<sup>52</sup>. On July 24, 2020, Muslim prayers have been held in the iconic Hagia Sophia for the first time in 86 years. It should be noted that president

<sup>47</sup> Marc Pierini, "Emerging From the Pandemic, Turkey Rolls Out a More Assertive Foreign Policy", June 03, 2020, *Carnegie Europe*, accessed April 16, 2021, online available at <https://carnegieeurope.eu/2020/06/03/emerging-from-pandemic-turkey-rolls-out-more-assertive-foreign-policy-pub-81963>.

<sup>48</sup> "UAE to send F-16s to Crete for training with Greek military amid tensions with Turkey", *Al-Monitor*, August 21, 2020, accessed April 16, 2021, online available at <https://www.al-monitor.com/originals/2020/08/uae-f16-crete-greece-turkey-eastern-mediterranean.html>.

<sup>49</sup> "Turkey threatens Greece over disputed Mediterranean territorial claims", *Deutsche Welle*, September 05, 2020, accessed April 19, 2021, online available at <https://www.dw.com/en/turkey-threatens-greece-over-disputed-mediterranean-territorial-claims/a-54828554>.

<sup>50</sup> France sends jets and ships to tense east Mediterranean, August 13, 2020, accessed April 19, 2021, online available at <https://www.bbc.com/news/world-europe-53767792>.

<sup>51</sup> "Egypt, Greece, Cyprus launch Medusa 10 training exercise in Mediterranean", *Egypt State Information Service*, December 02, 2020, accessed April 19, 2021, online available at <https://www.sis.gov.eg/Story/153226/Egypt%2C-Greece%2C-Cyprus-launch-Medusa-10-training-exercise-in-Mediterranean?lang=en-us>.

<sup>52</sup> Burcin Gercek and Gokan Gunes, *As Erdogan joins Hagia Sophia Muslim prayers, '2nd conquest of Istanbul' hailed*, July 26, 2020, accessed April 19, 2021, online available at: <https://www.timesofisrael.com/as-erdogan-joins-hagia-sophia-muslim-prayers-2nd-conquest-of-istanbul-hailed/>.

Erdogan, accompanied by cabinet minister and other top officials, attended to the religious ceremony<sup>53</sup>.

In Karabekir Akkoyunlu's<sup>54</sup> understanding, the Turkish government's decision to turn Hagia Sophia into a Muslim place of worship and President Erdogan's participation in the first religious ceremony is tantamount to a second symbolic conquest of Constantinople. The date chosen for the religious ceremony is not a coincidental one, because represents the 97th anniversary of the Treaty of Laussane, an agreement that according to in Erdogan's understanding should be amended. In addition to the territorial losses suffered by Turkey since the 1923 Treaty of Laussane was signed, the agreement was the document that allowed the Ataturk regime to turn Hagia Sophia into a museum. It should also be noted that the day of the religious ceremony coincided with the anniversary of the Ottoman Constitutional Revolution of 1908, which marked the short-lived victory of Ottomanism against the absolutist rule of Sultan Abdulhamid II, the tragic hero of Turkey's Islamists<sup>55</sup>.

In the aftermath of Erdogan regime's decision to reconvert Hagia Sophia into a Muslim place of worship, the Geneva-based World Council of Churches, representing more than 500 million Christians, urged Turkey's President reverse his move<sup>56</sup>. The leader of Russia's Orthodox Church, Patriarch Kirill, also reacted and declared that calls to convert Istanbul's Hagia Sophia into a mosque posed a threat to Christianity<sup>57</sup>. Moreover, the United States and Greece and Christian church leaders urged Turkey to maintain Hagia Sophia's status as a museum. For its part, Pope Francis declared he was hurt by Turkey's decision to make Istanbul's Hagia Sophia museum a mosque, the head of the Catholic Church being the latest religious leader to condemn the move<sup>58</sup>. According to UNESCO, countries must notify the United Nation's cultural body of any changes in the status of a site, triggering a review by its World Heritage Committee if need be. Given that Turkey did not act accordingly, UNESCO stated its World Heritage Committee would review Hagia Sophia's status after Turkish President Tayyip Erdogan declared the ancient monument in Istanbul a mosque again. UNESCO said that decision raised questions about the impact on its universal value as a site of importance transcending borders and generations, which is necessary to be included on its coveted list of World Heritage sites<sup>59</sup>.

The European Union also reacted in the context of Ankara's decision to alter the status of Hagia Sophia. According to Josep Borrell, the High Representative of the European Union, the 27 EU foreign ministers declared that they "condemned the decision to convert such an emblematic monument as the Hagia Sophia". The EU's foreign affairs chief also stated that "Turkey's decision will inevitably fuel the mistrust, promote renewed division between religious communities and undermine our efforts at dialogue and cooperation"<sup>60</sup>. Erdogan rejects global criticism over Hagia

<sup>53</sup> Muslim prayers in Hagia Sophia for first time in 86 years, July 24, 2020, accessed April 19, 2021, online available at <https://www.aljazeera.com/news/2020/7/24/muslim-prayers-in-hagia-sophia-for-first-time-in-86-years>.

<sup>54</sup> Karabekir Akkoyunlu is a visiting scholar at the International Relations Institute, University of São Paulo, and a research associate of the Centre for Southeast European Studies, University of Graz.

<sup>55</sup> Karabekir Akkoyunlu, *The defeat of the 'real' neo-Ottomanists*, Open Democracy, August 05, 2020, accessed April 19, 2021, online available at <https://www.opendemocracy.net/en/can-europe-make-it/defeat-real-neo-ottomanists/>.

<sup>56</sup> Hagia Sophia: World Council of Churches appeals to Turkey on mosque decision, July 11, 2020, accessed April 19, 2021, online available at <https://www.bbc.com/news/world-europe-53375739>.

<sup>57</sup> Russian church leader says calls to turn Hagia Sophia into mosque threaten Christianity, July 06, 2020, accessed April 19, 2021, online available at <https://www.reuters.com/article/us-turkey-museum-russia-idUSKBN2471C7>.

<sup>58</sup> Pope 'very pained' by decision to turn Istanbul's Hagia Sophia museum into mosque, July 12, 2020, accessed April 19, 2021, online available at <https://www.reuters.com/article/us-turkey-museum-verdict-pope-idUSKCN24D0CG>.

<sup>59</sup> UNESCO statement on Hagia Sophia, Istanbul, July 10, 2020, accessed April 19, 2021, online available at <https://en.unesco.org/news/unesco-statement-hagia-sophia-istanbul>.

<sup>60</sup> EU ministers chide Turkey over Hagia Sophia, July 13, 2020, accessed April 19, 2020, online available at <https://www.dw.com/en/turkey-hagia-sofia-european-union/a-54165074>.

Sophia decision, saying it represented his country's will to use its "sovereign rights". The president went ahead with the plan despite appeals from NATO ally the United States and from Russia, with which Ankara has forged close relations in recent years. Amid the loss of political capital in the context of the mismanagement of the Covid-19 pandemic, the decision on Hagia Sofia has helped increase popular support for the Erdogan regime. As Ozgur Unluhisarcikli (Ankara director of the German Marshall Fund) emphasized, the move would win hearts and minds at home as most Turks favor such a decision for religious or nationalist sentiments<sup>61</sup>.

#### 4. TURKEY IS BUYING ANTI-COVID 19 VACCINES FROM THE RUSSIAN FEDERATION AND CHINA, NATO'S STRATEGIC ENEMIES

The Covid-19 pandemic has created a series of challenges for all countries of the world, the way the authorities are applying the measures to combat and limit the spread of the virus is vital for the protection of society. Despite the major health crisis, there is no common strategy for vaccination policy worldwide. In this context, the Russian Federation and China are working to strengthen global influence by selling or donating vaccines to several categories of states. In general, states that accept vaccines produced in the Russian Federation and China have a close relationship with the political establishment in Moscow and Beijing. Given the global coverage of Russian and Chinese vaccine exports, the vaccine diplomacy strategy performed by the two countries is meant to undermine the West's influence and provide an alternative to it<sup>62</sup>. The majority of the political leaders have chosen vaccine providers based on the strategic interests of their states. At the same time, given that Western vaccine suppliers did not honor orders in a timely manner, several states shifted to Russian and Chinese suppliers.

As for the case of Turkey, as I mentioned earlier, this state is among the most affected countries in the world by the Covid-19 pandemic. Despite the fact that Turkey is a NATO member state and EU candidate state, Ankara has concluded several agreements with China and the Russian Federation for the acquisition and domestic production of vaccines against Covid-19. Meanwhile, the number of vaccines ordered from Western suppliers is in negligible amount. Turkey has ordered 50 million doses of CoronaVac from China, a vaccine against Covid-19 produced by the Chinese company Sinovac<sup>63</sup>.

Turkey also cooperates in the health field with the Russian Federation. Turkish company VisCoran İlac Sanayii AS Turkey signed an agreement with the Russian side in August 2020 to start the transfer procedures for the production of Sputnik V vaccine on Turkish territory.<sup>64</sup> While the Ankara political establishment has signed substantial contracts with China and the Russian Federation, the numbers of vaccines ordered from Western companies are relatively modest, with Ankara ordering 4.5 million doses of Pfizer-BioNTech vaccine.<sup>65</sup> It should be noted that Turkey is not the only NATO member state that has purchased vaccines against Covid-19 from China and the

<sup>61</sup> Erdogan rejects global criticism over Hagia Sophia decision, July 11, 2020, accessed April 20, 2021, online available at <https://www.aljazeera.com/features/2020/7/11/erdogan-rejects-global-criticism-over-hagia-sophia-decision>.

<sup>62</sup> Alexander Smith, *Russia and China are beating the U.S. at vaccine diplomacy, experts say*, April 02, 2021, accessed April 19, 2021, online available at <https://www.nbcnews.com/news/world/russia-china-are-beating-u-s-vaccine-diplomacy-experts-say-n1262742>.

<sup>63</sup> Turkey says it aims to produce Russia's Sputnik V vaccine at home, December 29, 2020, accessed April 20, 2021, online available at <https://www.reuters.com/article/health-coronavirus-turkey-russia-int-idUSKBN2930YU>.

<sup>64</sup> Murat Birinci, *Firm signs deal to produce Sputnik V vaccine in Turkey*, January 26, 2021, accessed April 20, 2021, online available at <https://www.aa.com.tr/en/world/firm-signs-deal-to-produce-sputnik-v-vaccine-in-turkey/2122770>.

<sup>65</sup> Gözde Bayar, *Turkey to receive 4.5M doses of Pfizer vaccine this month*, March 18, 2021, accessed April 20, 2021, online available at <https://www.aa.com.tr/en/latest-on-coronavirus-outbreak/turkey-to-receive-45m-doses-of-pfizer-vaccine-this-month/2179702>.

Russian Federation. Due to the inability of Western companies to deliver the promised vaccine quantities on time, NATO countries such as Hungary, the Czech Republic and Slovakia have opted for vaccines produced in China and the Russian Federation<sup>66</sup>, despite the fact that these types of vaccine have not been approved by the European Medicines Agency.

The diplomacy of the vaccine used by the Russian Federation and China is a considerable challenge for NATO unity, given that the Allies do not resort to unitary policies in times of crisis. Although vaccine diplomacy is not considered a major threat to NATO security, it is worth mentioning that this is just one of a plethora of strategies used by China and the Russian Federation to generate cleavages among NATO Member States. Moscow and Beijing are exploiting all situations that have the potential to cause ruptures within the Alliance, these not being limited only to the medical field. The strategies also aimed at initiating projects and offering alternatives to the Western initiatives in the military and energy fields. As for the case of Turkey, is eloquent the interest of the Russian Federation to offer the Turkish state alternatives to NATO, especially in the military field.

The topic of increased co-operation of Turkey with the Russian Federation and China, is being discussed by a large number of international relations specialists. However, this issue risks taking up public attention, as it does not pay attention to topics such as the Turkish adventurism in the Middle East, North Africa, and Eastern Mediterranean. Turkey's increasingly reckless foreign policy is on full display - from weaponizing refugees to extort the European Union to exporting mercenary Jihadist fighters to Libya. These are hardly the actions of a responsible regional power, much less a key member of the NATO alliance<sup>67</sup>.

## 5. THE DECISION MADE BY THE TURKISH GOVERNMENT TO BUY THE RUSSIAN-MADE S-400 TRIUMPH MISSILES DEFENSE SYSTEM AND THE CONTROVERSIES REGARDING THE ACTIVATION OF THE SYSTEM

Turkey's decision to purchase a Russian-made S-400 Triumph air defense system and the delivery of the first two batteries in 2019 has strained relations between Ankara and NATO. The Allies expressed their concern about the security risks posed by the S-400 Triumph to the NATO military installations, in particular the fact that Moscow could use the system to collect intelligence about NATO equipment and activities.<sup>68</sup> At the same time, the NATO Member States emphasized that there is no possibility to integrate the S-400 Triumph system into NATO's military infrastructure. From all the NATO member states, the US was the most disturbed by Russian-Turkish military cooperation. Turkey's decision to acquire the S-400 triumph system led the US government to exclude in July 2019 Turkey from the F-35 Lightning II jet program and to impose economic sanctions<sup>69</sup>.

Although Turkey was supposed to activate the S-400 Triumph in April 2020, the political establishment in Ankara has delayed the decision, claiming that this is not possible due to the Covid-19 pandemic. Despite the fact that Ankara postponed the activation of the S-400 Triumph system,

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<sup>66</sup> Tim Gosling, "Russia and China Are Exploiting Europe's Vaccine Shortfalls", *Foreign Policy*, March 31, 2021, accessed April 20, 2021, online available at <https://foreignpolicy.com/2021/03/31/russia-china-vaccine-diplomacy-slovakia-europe-eu-slow-rollout/>.

<sup>67</sup> Marwa Maziad and Jake Sotiriadis, *Turkey's Dangerous New Exports: Pan-Islamist, Neo-Ottoman Visions and Regional Instability*, April 21, 2020, accessed April 20, 2021, online available at <https://www.mei.edu/publications/turkeys-dangerous-new-exports-pan-islamist-neo-ottoman-visions-and-regional>.

<sup>68</sup> Amanda Macias, *U.S. sanctions Turkey over purchase of Russian S-400 missile system*, December 14, 2020, accessed April 20, 2020, online available at <https://www.cnn.com/2020/12/14/us-sanctions-turkey-over-russian-s400.html>.

<sup>69</sup> Keşvelioğlu Abdullah et. al., *Turkey's Procurement of the S-400 System: An Explainer*, Trt World Research Centre, London, August 2019.

the US government triggered in December 2020 the 231 section of the CAATSA sanctions mechanism (Countering America's Adversaries Through Sanctions Act), imposing sanctions on the Turkish Presidency of Defense Industries<sup>70</sup>. The sanctions are imposed on any person determined to have knowingly engaged in a significant transaction with a person that is a part of, or operates for or on behalf of, the defense or intelligence sectors of the Government of the Russian Federation. The US decision to sanction Turkey has a precedent, with Washington imposing similar sanctions against China in 2018, following Beijing's acquisition of the Russian S-400 Triumph system and another military equipment of Russian origin.

It should be noted that following the US activation of the 231 section of the CAATSA mechanism, there has been a change of rhetoric among the Turkish establishment. Turkish officials have agreed not to permanently activate the Russian-origin system, in order to avoid jeopardizing relations with Washington. In this regard, Turkish Defense Minister Hulusi Akar stated that Turkey is not planning to integrate S-400s into the NATO military infrastructure. At the same time, the Turkish official stressed that his country is willing to activate the S-400 Triumph system only in the event that the Turkish territory is in danger. Hulusi Akar made an analogy with the situation in Greece, which has the Russian air defense system S-300, but which is activated only in case of imminent danger<sup>71</sup>. However, the decision of the Turkish political establishment to postpone the activation of the system and the desire to resume talks with the US is based on the following reasons: (1) the air defense provided by the Russian S-400 Triumph system is limited, because it does not cover the entire Turkish territory; (2) a possible US decision to impose additional economic sanctions would destabilize Turkey's economy, given that it is already severely affected by the Covid-19 pandemic; (3) the activation by the US of the 231 section of the CAATSA sanctions mechanism affects the Turkish armaments industry, because the US no longer supplies spare parts for military equipment of American origin. This affects Turkey's combat capability in the conflict in Syria; (4) the concern that Washington will provide additional support for the YPG in Syria.

It is important to note that Turkish officials were the ones who took the initiative to contact Washington to resolve the crisis generated by Turkey's acquisition of the Russian S-400 Triumph system. However, the Biden administration ignored Ankara's demands. Despite Ankara's openness to dialogue and determination to resolve the S-400 affair, Turkish Defense Minister Hulusi Akar said this is only possible if the US refuses to support YPG. The fact that the Biden administration intends to put even more pressure on Turkey is evidenced by the controversy over the US political establishment's recourse to formal recognition of the Armenian Genocide<sup>72</sup>.

## CONCLUDING REMARKS AND RECOMMENDATIONS

As historical events show, the foreign policy of the Turkish state and its relationship with NATO has been profoundly influenced by the global order and regional security climate. Despite the fact that Mustafa Kemal Atatürk, the founding father of the Republic of Turkey, promoted secularism and a pro-Western attitude, the neo-Ottoman ideology began to have more and more

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<sup>70</sup> CAATSA Section 231 "Imposition of Sanctions on Turkish Presidency of Defense Industries", U.S. Embassy & Consulate in Greece, Fact Sheet, Office of the Spokesperson, December 14, 2020, accessed April 20, 2021, online available at <https://gr.usembassy.gov/caatsa-section-231-imposition-of-sanctions-on-turkish-presidency-of-defense-industries/>.

<sup>71</sup> Umut Uras, *Analysis: Turkey's new S-400 proposal offers olive branch to US*, February 10, 2021, accessed April 21, 2021, online available at <https://www.aljazeera.com/news/2021/2/10/turkey-proposes-model-to-resolve-s-400-dispute-with-us>.

<sup>72</sup> Humeyra Pamuk, Trevor Hunnicutt and Arshad Mohammed, *Biden expected to recognize massacre of Armenians as genocide*, April 22, 2021, accessed April 23, 2021, online available at <https://www.reuters.com/world/middle-east/biden-expected-recognize-massacre-armenians-genocide-wsj-2021-04-22/>.

sympathizers, especially after World War II. However, the political establishment in Ankara tried to keep neo-Ottoman ideas off the spectrum of foreign policy, but after the coming to power of AKP this rhetoric changed substantially. In the AKP regime Turkey's foreign policy has undergone substantial changes, which has led to a gradual strain on relations between Ankara and NATO. Regarding the nature of the relationship between Turkey and NATO in the context of the COVID-19 pandemic, the general conclusion that emerges from the events analyzed is that Turkey has exploited the context to promote its hegemonic and expansionist agenda. Turkey's attitude has led to strained relations with the several NATO Member States, which have resorted to reprisals against the Turkish state: imposing economic sanctions, organizing military exercises in the vicinity of Turkish territory, concluding agreements against Turkish interests some of the Mediterranean riparian countries etc. In order to stabilize relations between Turkey and NATO, I assume that the following decisions must be taken:

**(1) *Turkey's abandonment of exploration and drilling activities in the continental shelf of the Mediterranean Sea***

Given that the Turkish economy is in dire need of hydrocarbon resources for domestic and industrial consumption, it is unlikely that Turkey will give up its disruptive actions in the Eastern Mediterranean. However, if the dialogue between Ankara and Athens will be maintained at acceptable levels, the adjudication before the International Court of Justice would be the optimal decision for the resolution of the Greek-Turkish conflict. As evidenced by the existing casuistry, the international law of the sea could be as flexible as necessary to reach agreements.

**(2) *The US acceptance of Ankara's proposals to discuss the S-400 affair***

Turkey's decision to postpone the activation of the S-400 Triumph system and its openness to dialogue with Washington may help ease tensions between Ankara and NATO over the S-400 affair. However, there is a possibility that Turkey's openness to dialogue to be relatively tardy, as the Biden administration has initiated several mechanisms to put pressure on the Ankara government. However, the crisis between Turkey and NATO can be resolved if the NATO Member States accept that Turkey will only temporarily activate the system, just in the event of imminent threats to the security of the Turkish state. Such a solution is not unprecedented, being applied to the S-300 air defense system owned by Greece. At the same time, the identification of a compromise solution and the supplementation by NATO of the airspace defense systems of Turkey could lead in the long run to the decrease of Ankara's interest in the military installations of the Russian Federation.

**(3) *Finding a common solution by the US and Turkey to manage the conflict in Syria***

The Kurdish issue is a matter of terrorist importance to Turkey, both in terms of territorial integrity and the danger posed by the terrorist threat. Thus, it is very unlikely that Turkey will abandon its actions against the YPG in Syria. The US mediation of negotiations between Ankara and the representatives of the Kurds, culminating in the establishment of red lines could lead to a de-escalation of the situation.

As for the tensions between Turkey and the Russian Federation, a possible involvement of Washington in supporting Turkey would lead to an increased NATO influence in the region and to avoidance of a new exodus of war refugees to Europe's borders.

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# Turkey between NATO and Kremlin. The impact of Russian-Turkish cooperation on the relationship between Ankara and NATO

DR AUREL LAZĂR\*

SNSPA

**Abstract:** *In this article, we investigate the evolutions that marked the bilateral relations between the Russian Federation and Turkey after 2016. The main question to be tackled is: Did military and energy cooperation between the Russian Federation and Turkey favor the manifestation of Complex Interdependence and the distancing of Ankara from NATO? The study will tackle the following topics: TurkStream and Akkuyu Nuclear Power Plant (NPP) role in shaping Russo-Turkish strategic cooperation, S-400 Triumph missile system affair – more security for Turkey new threats for NATO. The bilateral relationship between the Russian Federation and Turkey will be assessed using the neoliberal analysis framework proposed by Robert Keohane and Joseph Nye. The study relies mainly on qualitative data including document analysis and official statements issued by the Turkish Government and NATO member states officials. The main conclusion is Russia-Turkey cooperation affects the strategic foreign policy decisions of the Turkish state.*

**Keywords:** *NATO, Russian Federation, S-400 Triumph, Turkey, TurkStream.*

## INTRODUCTION

Turkey joined NATO in 1952 to defend its national security threatened by the Soviet Union. Under the auspices of the security umbrella provided by the Alliance, the Turkish state had the opportunity to consolidate its economy and ensure its prosperity. Moreover, as a member of NATO, Turkey signed multiple contracts in the economy field with Moscow, without fearing that the Russian side could resort to actions aimed at undermining the national security of the Turkish state or the territorial integrity of Turkey. Due to the fact that the dissolution of the Soviet Union led to the disappearance of the most representative security threat for the Turkish state, the new regional and global context fostered the bilateral cooperation between Ankara and Moscow. Although the new world order that emerged after the post-Cold War facilitated strategic cooperation between the Russian Federation and Turkey, meanwhile the relationship between Ankara and the West deteriorated substantially. Ankara's intentions and perseverance to strengthen its influence in the Middle East and its efforts to reduce its strategic dependence on NATO have contributed in particular to the deterioration of relations between Ankara and NATO. The above mentioned radical changes in the conduct of the Turkish state's foreign policy intensified especially after 2002 when the Justice and Development Party (AKP) took power in Turkey.

In the last period, Turkey and the US/NATO have defined the “threat” notion in a different manner, having a contrasting approach towards the Kurdistan Workers' Party (PKK) actions. Moreover, the Turkish state's political and economic ambitions in the Middle East contributed to the increased tensions between Ankara and the West. Turkish officials display a considerable lack of confidence in the NATO security guarantees, while more and more NATO member states are questioning the real intentions of the Turkish state and its future strategic aspirations. Among the main NATO member states concern are: the hegemonic ambitions of the Turkish state and the revival of ideologies like neo-Ottomanism; Ankara's policy towards the Kurdish minority in Turkey

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\* Dr. Aurel LAZĂR finalized his PhD thesis at SNSPA – the National University of Political Studies and Public Administration, Bucharest, Romania, e-mail: lazar.a.aurel@gmail.com .

and the Middle East; Russian Federation-Turkey intensified cooperation and their development of strategic projects in the military and energy fields<sup>1</sup>.

The peak of the tensions between Ankara and the West has been reached during the failed coup attempt of July 2016, when Turkish officials accused NATO and the EU of not showing support for the Ankara government during the hostilities. In return, the Russian Federation supported the views of Turkish officials and condemned those involved in orchestrating the failed coup. Against this background, the cooperation between Turkey and the Russian Federation has seen a reversal that has favored the acceleration of negotiations on the strategic energy projects (TurkStream pipeline and Akkuyu Nuclear Power Plant) and military cooperation (S-400 affair).

The aim of this article is to highlight the most important evolutions that marked the bilateral relations between the Russian Federation and Turkey after 2016. The study attempts to answer two research questions: 1. Did military and energy cooperation between the Russian Federation and Turkey favor the manifestation of Complex Interdependence and the distancing of Ankara from NATO? 2. Did the cooperation between Moscow and Ankara influence the cooperation between the Turkish state and NATO?

In terms of methodology, we used in our study mainly qualitative data on the basis of which we performed a qualitative and historical analysis. In this regard, we have started with the descriptive approach, so we presented the main events which marked the Russian-Turkish relationship in the long run. In this study, we analyzed official documents and communiqués, scientific papers, articles, publications that have an impact on the chosen field of study and that have been published by reputable scholars and experts. However, we do not assume the merit of advancing a geopolitical explanation for the identified transformations.

## 1. THEORETICAL FRAMEWORK

The analytical construct of the Complex Interdependence Theory has been proposed for the first time in 1977 by Robert Keohane and Joseph Nye. The two authors formulated a critique against the precepts promoted by the political realism. Keohane and Nye challenge the realist arguments that claim the following: the states are the main actors of the international system; force is a usable and effective political tool; international policy themes follow a precise hierarchy. According to Keohane and Nye, the Complex Interdependence is placed in opposition with the realism precepts, and it's based on three main assumptions: multiple channels of contact among society, lack of clear hierarchies of issues, and irrelevance of military force<sup>2</sup>.

1. Multiple channels connect societies, including informal ties between governmental elites as well as formal foreign office arrangements; informal ties among nongovernmental elites (face-to-face and through telecommunications); and transnational organizations (such as multinational banks or corporations),

2. The agenda of interstate relationships consists of multiple issues that are not arranged in a clear or consistent hierarchy,

3. Military force is not used by governments toward other governments within the region, or on the issues, when complex interdependence prevails<sup>3</sup>.

Keohane and Nye point out that the interdependence between actors does not imply the existence of a perfect balance of power, which leads to unequal dependence. Under these conditions,

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<sup>1</sup> Nilsu Goren, "Nuclear Energy Developments, Climate Change and Security in Turkey", *Council on Strategic Risks*, No. 7, April 27, 2020, accessed May 01, 2021, online available at: [https://councilonstrategicrisks.org/wp-content/uploads/2020/04/Nuclear-Energy-Climate-Change-and-Security-in-Turkey\\_BRIEFER-7\\_2020\\_4\\_27-1.pdf](https://councilonstrategicrisks.org/wp-content/uploads/2020/04/Nuclear-Energy-Climate-Change-and-Security-in-Turkey_BRIEFER-7_2020_4_27-1.pdf).

<sup>2</sup> Robert O. Keohane, Joseph S. Nye, *Power and Interdependence*, Longman, Boston, 2012, pp. 19-25.

<sup>3</sup> *Ibidem*.

the less dependent and more influential actor has the ability to use the interdependence relationship as a source of power and as a tool of influence in negotiations with the less dependent actor<sup>4</sup>. At the same time, the two authors consider that in conditions of Complex Interdependence between actors, the conflict is not absent. Moreover, Keohane and Nye believe that the conflict can coexist with cooperation<sup>5</sup>.

In 1996, Marc Genest defined Complex Interdependence as “a trans-nationalist concept arguing that the states are not the only major players in the international relations scene and that the well-being of society occupies the same central place on the global agenda as security issues”. At the same time, Genest argues that cooperation has a place as important at the level of international politics as the one occupied by the theme of the conflict. According to Genest, in conditions of interdependence, states cooperate because interests are common and produce benefits on both sides<sup>6</sup>.

Concerning the faults of the theory, Keohane and Nye do not argue that Complex Interdependence faithfully reflects world political reality. Quite the contrary, the two authors highlight both it and the realist portrait are ideal types. They also emphasize that most situations will fall somewhere between these two extremes. Sometimes, realist assumptions will be accurate, or largely accurate, but frequently complex interdependence will provide a better portrayal of reality. Before one decides what explanatory model to apply to a situation or problem, one will need to understand the degree to which realist or Complex Interdependence assumptions correspond to a certain situation<sup>7</sup>.

Regarding the criticisms formulated by the realism adepts, Robert Powell considers that Complex Interdependence is applicable in conditions where there is a relatively safe climate between states<sup>8</sup>. Subsequently, Powell's idea was taken over and refined by John Mearsheimer, who stressed that the relevance of Complex Interdependence decreases if there is conflict, and mutual gains diminish considerably. Based on Mearsheimer's assumptions, Mohammed Nuruzzaman argued in 2006 that Complex Interdependence lends itself much better to explain developments in the fields of political economy and the environment<sup>9</sup>.

## 2. LITERATURE REVIEW

Despite the existence of several conflicting dossiers that have affected the Russian-Turkish bilateral relationship, several authors have studied the relations between Moscow and Ankara to determine whether the existing cooperation favors the manifestation of Complex Interdependence. Şaban Kardaş argues that between the Russian Federation and Turkey there is an incipient form of Complex Interdependence, generated mainly by cooperation in areas such as construction, tourism and energy. The author emphasizes that Turkish interest groups and

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<sup>4</sup> *Ibidem*, p. 10-11.

<sup>5</sup> Robert Keohane și Joseph Nye, „Power and Interdependence Revisited”, *International Organization*, Vol. 41, No. 4, 1987, The Mit Press, pp. 730, accessed April 28, 2021, online available at: <https://www.jstor.org/stable/2706764?origin=JSTOR-pdf&seq=1>.

<sup>6</sup> Marc A. Genest, *Conflict and Cooperation: Evolving Theories of International Relations*, Thomson & Wadsworth, Belmont, 1996, pp. 133-140.

<sup>7</sup> Robert O. Keohane, Joseph S. Nye, *Power and Interdependence*, Longman, Boston, 2012, pp. 20.

<sup>8</sup> Robert Powell, “Absolute and Relative Gains in International Relations Theory”, *The American Political Science Review*, Vol. 85, No. 4, American Political Science Association, December 1991, pp. 1303-1320, accessed April 28, 2021, online available at: <https://www.jstor.org/stable/1963947?origin=JSTOR-pdf&seq=1>.

<sup>9</sup> Mohammed Nuruzzaman, *Liberal Institutionalism and Cooperation in the Post-9/11 World*, 2006, accessed April 28, 2021, online available at: <https://www.cpsa-acsp.ca/papers-2006/Nuruzzaman.pdf>.

companies with pro-Russian sympathies influence to a considerable extent the foreign policy of the Turkish state<sup>10</sup>.

On the other hand, Seçkin Köstem claims that economic relations between Moscow and Ankara are characterized by asymmetric interdependence, with the Russian Federation having an ascendancy over Turkey. The author also stresses that Turkey's sensitivity and vulnerability to the Russian Federation's actions are greater than vice versa, with Ankara having less room for maneuver in the bilateral relationship<sup>11</sup>. Nargiz Hajiyeva emphasizes that the energy projects jointly developed by the Russian Federation and Turkey intensify the interdependence between the two states, including from a strategic point of view. Nargiz Hajiyeva believes that the Turkish political establishment's appetite for Eurasianisms will impact Turkey's foreign policy and will determine Turkish officials to join projects in strategic areas formulated by the Russian Federation<sup>12</sup>.

According to the above mentioned authors, the bilateral relationship between the Russian Federation and Turkey is unbalanced, especially in the economic field, with the Kremlin's gains surpassing those of Ankara. For this reason, the interdependence between the two states is rather asymmetrical. However, more and more authors believe that the intensification of cooperation in the energy field has the potential to create a framework for Complex Interdependence. At the same time, cooperation in the economic field favors cooperation in other fields as well. For example, the intensification of the Russian-Turkish bilateral relations since 2016 has also led to the intensification of cooperation in the military field, the S-400 Triumph affair being the result of this process. Despite the mutual benefits resulted from Russian-Turkish cooperation, projects like the S-400 Triumph affair, have the potential to alter the bilateral relationship between Ankara and NATO.

Mehmet Yegin also highlights the changes occurred in the formulation of Turkish foreign policy following the acquisition of the Russian S-400 Triumph system. The author points out that Ankara used the subject to persuade the West to deliver sophisticated weapons to Turkey, the main stake being the Patriot missile defense system. Mehmet Yegin also emphasizes that the acquisition and operationalization by the Turkish army of sophisticated weapons systems of Russian origin have the potential to put at risk the national security of the Turkish state and NATO countries and to favor the increase of Ankara's dependence on Moscow<sup>13</sup>.

Furthermore, Timur Akhmetov argues that cooperation between Turkey and the Russian Federation gives the Kremlin strategic advantages in its competition with NATO. Against this background, the political elites of the Russian Federation intend to generate as sharp cleavages as possible between Turkey and the West<sup>14</sup>.

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<sup>10</sup> Şaban Kardaş, *Turkey's S400 vs. F35 Conundrum and its Deepening Strategic Partnership with Russia*, German Marshall Fund of the United States (on Turkey), May 28, 2019, pp. 1-11, accessed April 29, 2021, online available at: <https://www.gmfus.org/publications/turkeys-s400-vs-f35-conundrum-and-its-deepening-strategic-partnership-russia>.

<sup>11</sup> Seçkin Köstem, *The Political Economy of Turkish-Russian Relations: Dynamics of Asymmetric Interdependence*, in Center for Strategic Research of the Ministry of Foreign Affairs of the Republic of Turkey Report nr. 41/2019, Moscow, 2019, pp. 11-13.

<sup>12</sup> Hajiyeva Nargiz, *Russia-Turkey: The Interdependent Relationship Shaped by Energy or a Deeper Friendship?*, April 04, 2018, accessed April 29, 2021, online available at: <https://modern diplomacy.eu/2018/04/04/russia-turkey-the-interdependent-relationship-shaped-by-energy-or-a-deeper-friendship/>.

<sup>13</sup> Mehmet Yegin, „Turkey's S-400 Purchase and Implications for Turkish Relations with NATO”, in *Turkey between NATO and Russia: The Failed Balance*, German Institute for International and Security Affairs nr. 30, June 2019, pp. 1-4.

<sup>14</sup> Timur Akhmetov, „It Is Time to Revise Russia–Turkey Relations for a More Stable Future, Russian”, *International Affairs Council*, October 02, 2020, accessed April 30, 2021, online available at: [https://russiancouncil.ru/en/analytcs-and-comments/analytcs/it-is-time-to-revise-russia-turkey-relations-for-a-more-stable-future/?sphrase\\_id=72816862](https://russiancouncil.ru/en/analytcs-and-comments/analytcs/it-is-time-to-revise-russia-turkey-relations-for-a-more-stable-future/?sphrase_id=72816862).

### 3. COOPERATION IN THE FIELD OF STRATEGIC ENERGY PROJECTS

#### 3.1. TurkStream project

Given the acute need for energy resources for industrial and domestic consumption, Ankara has concluded several energy partnerships in recent years with suppliers situated in the vicinity of Turkey, among them the Russian Federation. The turkis state opted for Russian gas because of the advantageous price charged by the Russian side and due to the fact Moscow is a reliable supplier. Turkey also intends to become a regional energy hub, and having as many suppliers as possible is gainful. To increase the amount of natural gas imported from the Russian Federation, in 2017 Turkey signed with Gazprom the TurkStream pipeline contract. The two parallel lines of TurkStream are crossing the Turkish territory and supply natural gas to Turkey and to states situated in southern and southeastern Europe. TurkStream is one of the most significant energy projects Turkey has undertaken in recent years. It is also a catalyst that is fostering the improvement and intensification of the relationship with Moscow. Despite criticism from the EU and NATO, Turkish officials have not suspended the project, omitting that Turkey is a NATO member and EU candidate<sup>15</sup>.

For example, the European Commission raised some objections against TurkStream 2 (the second line of TurkStream) and made it clear that the project would be carefully checked, to verify that it adheres to Internal Energy Market rules<sup>16</sup>. Brussels has also stated that the project would be approved if Bulgaria can secure gas supplies from three different sources<sup>17</sup>. The United States has also criticized the TurkStream 2 project. In December of 2019, President Trump signed the 2020 National Defense Authorization Act (NDAA) and included sanctions against companies involved in building the Russian-sponsored natural gas pipelines to Europe, namely TurkStream and Nord Stream 2<sup>18</sup>. Later on, in July of 2020, Secretary of State Mike Pompeo announced US administration is ending grandfather clauses that had spared firms previously involved in the pipelines' construction from sanctions authorized by the Countering America's Adversaries Through Sanctions Act (CAATSA).

The law is aimed at punishing Russia for interference in U.S. elections and other matters. The move opens the door for U.S. economic and financial penalties to be imposed on any European or other foreign company over the Nord Stream 2 and TurkStream projects, including those that had been working on the pipelines before the passage of CAATSA and had been previously exempted from the penalties. Mike Pompeo also took aim at the pipeline projects (TurkStream 2 and Nord Stream 2), calling them "the Kremlin's key tools to exploit and expand European dependence on Russian energy supplies" that "ultimately undermine transatlantic security"<sup>19</sup>. In these circumstances, in September of 2020, the world's largest shippers' insurance group, International

<sup>15</sup> Dimitar Bechev, *Russia's Pipe Dreams Are Europe's Nightmare*, March 12, 2019, accessed May 01, 2021, online available at: <https://foreignpolicy.com/2019/03/12/russia-turkstream-oil-pipeline/>.

<sup>16</sup> Martin Jirušek, *TurkStream is South Stream 2.0—has the EU done its homework this time?*, February 19, 2020, accessed May 01, 2021, online available at: <https://www.atlanticcouncil.org/blogs/energysource/turkstream-is-south-stream-2-0-has-the-eu-done-its-homework-this-time/>.

<sup>17</sup> Margarita Assenova, *TurkStream: Triumph or Failure for Russia?*, January 16, 2020, accessed May 02, 2021, online available at: <https://jamestown.org/program/turkstream-triumph-or-failure-for-russia/>.

<sup>18</sup> Gloria Shkurti Özdemir, Turkstream, "The U.S. Opposition And The Reasons Behind It", *SETA Analysis*, Istanbul, August 2020, NO.68, accessed May 12, 2021, online available at: <https://www.setav.org/en/russia-turkey-us-energy-triangle-success-of-turkstream/>.

<sup>19</sup> Matthew Lee, *US warns firms about sanctions for work on Russian pipelines*, July 15, 2020, accessed May 05, 2021, online available at: [https://www.washingtonpost.com/business/us-toughens-stance-against-2-russian-gas-pipelines-to-europe/2020/07/15/e932ebcc-c6aa-11ea-a825-8722004e4150\\_story.html](https://www.washingtonpost.com/business/us-toughens-stance-against-2-russian-gas-pipelines-to-europe/2020/07/15/e932ebcc-c6aa-11ea-a825-8722004e4150_story.html).

Group of P&I Clubs, announced that it would not insure vessels involved in the Russian-led Nord Stream 2 and TurkStream gas pipeline projects because of the existing threat of U.S. sanctions<sup>20</sup>.

Given the above-mentioned legal statements and actions, it is clear that Washington's reaction to the TurkStream 2 project is much more vocal than that of the EU. The US claims that TurkStream 2 is a geopolitical project that will increase the EU's dependence on Russian gas and Moscow's influence in the region. One of the main fears of the US government is that once the TurkStream 2 and Nord Stream 2 pipelines are finalized, Moscow will suspend the gas exports to Ukraine, as it did in 2006 and 2009, putting the Ukrainian state in difficulty. At the same time, the operationalization of TurkStream 2 and Nord Stream 2 allows the Russian Federation to intensify subversive actions in eastern Ukraine because protecting the gas transmission network will not be a priority. Moscow's finding of alternative routes for exporting natural gas will not only deprive the Ukrainian state of gas of Russian origin but will also lead to a decrease in the amounts obtained from the transit taxes of the gas that the Russian state pays.

The US opposition to the TurkStream 2 gas pipeline has both economic and geopolitical implications. On the one hand, the Russian-Turkish project is a competitor for the USA, whose strategies aim to increase the quantities of liquefied natural gas exported to European countries. In other words, TurkStream 2 offers considerable advantages to the Kremlin in its fight with the US to control the European gas market. On the other hand, the Washington administration is concerned that the TurkStream 2 project will provide the Russian Federation with strategic advantages through which it will strengthen its levers of influence in Europe to the detriment of American interests. Despite Washington's opposition to TurkStream 2 and allegations of alienating the Western path of the Turkish state, the Ankara political establishment did not cancel the project, saying it was in line with Turkey's national interest. According to Ankara officials, the TurkStream project will increase the country's energy security and will improve the bilateral relationship with the Russian Federation. They also claim that TurkStream pipeline will contribute to the process of transforming Turkey into an energy hub<sup>21</sup>.

Speaking at the ceremony for the completion of the offshore section of the TurkStream Project, President Erdoğan underscored: "The TurkStream is a project of historic proportions for our bilateral relations and for the energy geopolitics in our region, on which we have exerted great efforts with our Russian friends." President Erdoğan continued his speech as follows: "The TurkStream Project, which will transport 31.5 billion-cubic-meter natural gas annually, has many advantages not only for our country and nation but also for our neighbors and the environment. We plan to transfer at least half of the natural gas, transported through here, to Europe". In the context of the West's criticism towards the TurkStream project and the intensification of relations with the Russian Federation, President Erdoğan stated: "We have never defined the framework of our bilateral relations with Russia according to other countries' demands or impositions"<sup>22</sup>. All these statements make it very clear that TurkStream is more than an economic project for Turkey.

Through TurkStream, both Turkey and the Russian Federation have achieved their strategic and economic interests. On the one hand, the Russian Federation managed to increase the volumes of natural gas sold on the European market. On the other hand, Turkey managed to secure substantial

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<sup>20</sup> Anton Kolodyazhnyy, *Citing U.S. Sanctions, Insurers Won't Cover Ships For Russia, Turkey Pipelines Projects*, September 23, 2020, accessed May 05, 2020, online available at: <https://www.insurancejournal.com/news/international/2020/09/23/583772.htm>.

<sup>21</sup> Gloria Shkurti Özdemir, "Russia-Turkey-US energy triangle: Success of TurkStream", *SETA Foundation for Political, Economic and Social Research*, January 13, 2021, accessed May 14, 2021, online available at: <https://www.setav.org/en/russia-turkey-us-energy-triangle-success-of-turkstream/>.

<sup>22</sup> Presidency of the Republic of Turkey, "*The TurkStream is a project of historic proportions for the energy geopolitics in our region*" November 19, 2021, accessed May 14, 2021, online available at: <https://www.tccb.gov.tr/en/news/542/99695/-the-turkstream-is-a-project-of-historic-proportions-for-the-energy-geopolitics-in-our-region->.

quantities of gas for domestic consumption and become a regional energy hub. These developments have automatically led to an intensification of Russian-Turkish economic relations. The state of affairs has drawn the attention of Western observers who look with suspicion at strengthening the Russian-Turkish relationship, especially in the context in which Turkey is a NATO member and the Russian Federation the main security threat to the Alliance<sup>23</sup>.

Although Turkish officials believe that TurkStream is in Turkey's national interest and that the project does not represent a distance from the West, the pipeline favors emergencies of a long-term mutual dependence between the Russian and Turkish states<sup>24</sup>. In the last years, Turkey has made sustained efforts to diversify energy sources, which has led to lower imports of hydrocarbons from the Russian Federation. Despite these evolutions, the Russian Federation continues to be the largest exporter of natural gas to Turkey, having strategic advantages over Ankara<sup>25</sup>.

### 3.2. Akkuyu Nuclear Power Plant

Given the increase in energy consumption, the lack of domestic fossil fuel resources, and the high dependence on energy imports, nuclear energy is one of the available alternatives for Turkey. Thus, Turkish officials plan to produce domestically about 10,000 MW of electricity from nuclear sources by 2030. To achieve this goal, Turkey accepted the Russian state-owned company Rosatom's offer to build a Nuclear Power Plant in Akkuyu. The Turkish state also plans to build a second nuclear power plant in the Sinop region, in partnership with a Japanese-French consortium, and a third nuclear power plant in partnership with China<sup>26</sup>.

Akkuyu NPP is a representative project for the bilateral Russian-Turkish energy relationship. The project was launched in 2010, when Turkey signed an agreement with the Russian state-owned company Rosatom, the latter committing to build four nuclear reactors at Akkuyu with a total installed capacity of 4800 MW. Under the terms of the Agreement, on December 13, 2010, the Russian side established a project company in the territory of the Republic of Turkey – Akkuyu Nuclear Joint-Stock Company (Akkuyu Nükleer Anonim Şirketi). The Akkuyu NPP construction project in Turkey is the first-ever NPP project implemented according to the BOO model (Build - Own - Operate). Under the long-term contract, the Russian company provides the design, construction, maintenance, operation, and decommissioning of the NPP. The stake of Rosatom State Corporation in the project is 99.2% and the total project cost is estimated at 20 billion US dollars. According to the official website of Akkuyu NPP, the project is "the biggest one in the history of Russian-Turkish relations" and "it opens new vistas for cooperation between Russian and Turkey and provides opportunities for exchange of technologies and experience"<sup>27</sup>.

During the launching ceremony of the Akkuyu NPP project, the then Turkish Energy Minister Taner Yıldız underlined that "Economic development cannot take place in a country without nuclear energy". The minister also mentioned that "If the Akkuyu plant had been built a decade ago, Turkey would have saved \$14 billion in natural gas purchases and nuclear power would today cover 28% of

<sup>23</sup> Hilal Köylü, *Turkey and Russia: TurkStream pipeline not a fix for bilateral woes*, July 01, 2020, accessed May 14, 2021, online available at: <https://www.dw.com/en/turkey-and-russia-turkstream-pipeline-not-a-fix-for-bilateral-woes/a-51923019>.

<sup>24</sup> Galip Dalay, „After the S-400 Purchase: Where Are Turkish-Russian Relations Heading?“, *German Institute for International and Security Affairs*, September 03, 2019, accessed May 15, 2021, online available at: <https://www.swp-berlin.org/en/publication/after-the-s-400-purchase-where-are-turkish-russian-relations-heading>.

<sup>25</sup> Nuran Erkul Kaya, *Turkey's gas imports from Iran see sharp fall in 2020*, February 26, 2021, accessed May 15, 2021, online available at: <https://www.aa.com.tr/en/energy/energy-diplomacy/turkeys-gas-imports-from-iran-see-sharp-fall-in-2020/31999>.

<sup>26</sup> Huseyin Erdogan, *Turkey to build 3rd nuclear plant with China: Erdogan*, June 19, 2018, accessed May 16, 2021, online available at: <https://www.aa.com.tr/en/energy/nuclear/turkey-to-build-3rd-nuclear-plant-with-china-erdogan/20544>.

<sup>27</sup> Akkuyu Nuclear Rosatom, accessed May 15, 2021, online available at: <http://www.akkunpp.com/index.php?lang=en>.

the electricity demand”<sup>28</sup>. According to calculations made by the Turkish Ministry of Energy and Natural Resources, if Akkuyu NPP were to start functioning, then it alone would provide electricity to a large city with a population of 15 million, such as Istanbul<sup>29</sup>.

The construction of the Akkuyu nuclear power plant is a complex process, which facilitates the intensification of cooperation between the Russian Federation and Turkey. Russian and Turkish specialists from several fields cooperate and work together to complete the project<sup>30</sup>. As part of an agreement between the two governments, students from Turkish universities, mostly engineers, have been enrolling in training programs in Russia since 2011 to take jobs afterward at the Akkuyu Nuclear Plant, which is being constructed in the Mediterranean province of Mersin<sup>31</sup>. In March 2018, took place the first graduation of Turkish students trained in the nuclear energy field at the leading specialized university – National Research Nuclear University (MEPhI).

35 Turkish young professionals successfully completed a 6.5 long year training course with a degree in “Nuclear power plants: design, operation and engineering”. All of them received higher education diplomas in Russia and were hired by Akkuyu Nuclear Jsc to implement the project of the first nuclear power plant in Turkey. In 2019, another 53 young specialists from Turkey who received higher specialized education at MEPhI were hired by the company. In February 2020, 54 graduates of MEPhI received their diplomas, followed by job offers to join the Akkuyu project<sup>32</sup>.

Although the specific activities carried out to build the NPP facilitate the bilateral cooperation between the Russian Federation and Turkey, the project is still challenging, especially for the Turkish state. Given that the Russian Federation builds, owns, and operates the Akkuyu NPP, Moscow has a dominant position compared to Turkey. At the same time, in addition to the economic advantages obtained by the Russian Federation following the implementation of the project, the Russian state also gains a series of strategic advantages, Akkuyu NPP being the only nuclear power plant built and controlled by the Russian Federation in a NATO state. Although the Akkuyu NPP is an energy project with economic implications for the Russian Federation and Turkey, it can also have strategic and security implications. The Russian state is known for using energy diplomacy in an offensive manner, which is why Moscow will be able to use the Akkuyu energy project to exert pressure and influence the decisions of the political establishment in Ankara, especially during a crisis. Akkuyu NPP is the first nuclear power plant created according to the BOO model (Build - Own - Operate), which means maintaining long-term favorable relations in the Russian and Turkish states. The fact that the Russian Federation will own the Akkuyu nuclear power plant for about 60 years, with an extension period of 20 years, will have a considerable impact on Russian-Turkish relations. The situation favors the asymmetric nature of the interdependence between the Russian Federation and Turkey. Turkey will depend on the Russian Federation to ensure technology, nuclear fuel, skilled labor, know-how etc<sup>33</sup>.

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<sup>28</sup> Ground broken for Turkey's first nuclear power plant, April 15, 2015, accessed May 16, 2021, online available at: <https://www.world-nuclear-news.org/NN-Ground-broken-for-Turkeys-first-nuclear-power-plant-1541501.html>.

<sup>29</sup> Akkuyu Nuclear Rosatom, *Economic Effect, Expected project effect for the region*, accessed May 16, 2021, online available at: <http://www.akkuyu.com/economic-effect>.

<sup>30</sup> Tuncay Babali, “The Role Of Energy In Turkey’s Relations With Russia And Iran”, *The Economic Policy Research Foundation of Turkey*, Ankara, March 29, 2012, p. 4.

<sup>31</sup> Mithat Yurdakul, *Turkish engineers trained in Russia take jobs at country’s first nuclear plant*, April 13, 2021, accessed May 16, 2021, online available at: <https://www.hurriyetdailynews.com/turkish-engineers-trained-in-russia-take-jobs-at-countrys-first-nuclear-plant-163893>.

<sup>32</sup> Akkuyu Nuclear Rosatom, *op. cit.*

<sup>33</sup> Turkey, Russia lay foundation for third unit of Akkuyu NPP, Daily Sabah, Istanbul, March 10, 2021, accessed May 17, 2021, online available at: <https://www.dailysabah.com/business/energy/turkey-russia-lay-foundation-for-third-unit-of-akkuyu-npp>.

Despite the substantial economic benefits that the Akkuyu NPP will bring to Turkey, the Turkish officials' decision to cooperate with the Russian Federation represents a paradox. Even though Turkey resorted to several strategies designed to reduce its dependence on Russian gas, Ankara is deepening its cooperation with the Russian Federation in the nuclear field. In other words, Turkey's dependence on the Russian federation's energy resources is maintained. Moreover, the degree of complexity in energy relations between the two states will increase. The Akkuyu project has suffered criticism from the Union of Chambers of Turkish Engineers and Architects, which in 2019 issued a written report and warned that electricity generated from Akkuyu “would increase Turkey's dependence” on foreign countries. The report also states that “the energy generated in Akkuyu will be sold by the Russian side to the Turkish state at 275 percent higher prices than general energy costs in Turkey. Income from this will be sent abroad in the form of foreign currency”<sup>34</sup>. It should be noted that for 15 years there is a purchasing guarantee for 70% of the electricity produced by the first two units and 30% from the third and fourth reactors at an average price of 12.35 cents / kWh. At the end of the 15 years, the prices will be settled by the market<sup>35</sup>.

Regarding the geopolitical dimension of the Akkuyu NPP, Jamelle Bal underlines that the project is part of the Russian Federation's strategy to finance nuclear energy programs in the Middle East. According to Ball, the outcome of Akkuyu NPP is not just economic. In his opinion, Russian Federation and Turkey intend to increase their regional influence in opposition to US interests<sup>36</sup>. It is important to note that in August 2016, after a meeting between President Erdoğan and Russian President Vladimir Putin, Turkish Prime Minister Binali Yıldırım designated Akkuyu as a strategic investment<sup>37</sup>. The Akkuyu project is essential for the Kremlin, especially for ensuring and increasing the credibility of its nuclear reactors under the conditions of the competitive reactor market<sup>38</sup>.

Akkuyu NPP favors the intensification of cooperation between the Russian Federation and Turkey in the nuclear energy field. Moreover, the complexity of the project favors the intensification of cooperation in other domains. Akkuyu NPP generates benefits for Moscow and Ankara, but it deepens Turkey's dependence on the Russian Federation. The Russian state will be the de-facto owner of the Akkuyu NPP, even though the project is being built on Turkish ground. Moreover, given that Turkey will depend on the expertise, nuclear material, and decommissioning provided by the Russian Federation, Moscow will have a new level of control over the political establishment in Ankara.

Moreover, the Akkuyu NPP is the only nuclear project built and owned by the Russian Federation in a NATO member state, and Moscow has the opportunity to jeopardize the relationship between Ankara and the Alliance by resorting to blackmailing operations. Through the Akkuyu NPP and TurkStream 2, the complexity of energy cooperation between the Russian Federation and Turkey has increased substantially, which reduces Ankara's room for maneuver in its relations with Moscow.

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<sup>34</sup> İlgin Karlıdağ and Ksenia Idrisova, *Analysis: Fears of nuclear disaster as Russia builds Turkey's first plant*, August 28, 2019, accessed May 17, 2021, online available at: <https://monitoring.bbc.co.uk/product/c2011oyk>.

<sup>35</sup> Soli Özel and Gökçe Uçar, „The Economics of Turkey-Russia relations”, *Centre for Economics and Foreign Policy Studies*, Foreign Policy and Security, NO.10, July 2019, p. 23.

<sup>36</sup> Jamelee Bal, “Turkey's pursuit of nuclear energy. A case study of the Akkuyu nuclear power plant”, *The Institute for Middle East Studies*, The Elliott School of International Affairs, The George Washington University, November 2015, p. 20-21.

<sup>37</sup> Barış Şimşek, *Akkuyu nuclear power plant turns into strategic investment*, August 11, 2016, accessed May 18, 2021, online available at: <https://www.dailysabah.com/energy/2016/08/11/akkuyu-nuclear-power-plant-turns-into-strategic-investment>.

<sup>38</sup> Nurşin Ateşoğlu Güney, “Where Does Turkey Stand in the Quest for Civilian Nuclear Energy in the Middle East?”, *Perceptions, Journal Of International Affairs*, Center for Strategic Research, Summer-Autumn 2017 Volume XXII - Number 2-3, pp. 95-96.

#### 4. S-400 TRIUMPH MISSILE SYSTEM AFFAIR – MORE SECURITY FOR TURKEY NEW THREATS FOR NATO

The Turkish-owned air defense systems and those deployed by the Allies in Turkey cannot defend the entire airspace of the Turkish state. Against this background, the political establishment in Ankara has taken steps to purchase more advanced missile defense systems from third parties. Ankara has negotiated with several NATO and non-NATO states for the delivery of such types of military hardware. For example, the political leaders in Ankara focused on the acquisition of the Patriot anti-missile system, but the US did not agree to build Patriot systems on Turkish territory and transfer technology to the Turkish army. In this context, Turkish officials decided to buy the Russian-made S-400 Triumph missile defense system. Ibrahim Kalin, the Turkish Presidential Administration spokesman, stated on April 05, 2018 that “Turkey decided to buy the Russian system to ensure its national security”. The Turkish official also mentioned that his country welcomes the statement issued by Jens Stoltenberg, NATO Secretary General, who declared that “the acquisition of the system is Turkey’s sovereign decision”. In the context of the EU and US opposition to Turkey-Russia deal, Ibrahim Kalin states that “S-400 Triumph are a system purchased to meet Turkey’s defense needs, therefore it is already out of the question for them to pose a threat to any other country”. At the same time, to contradict the rumors that the Russian Federation is an alternative to the West, Ibrahim Kalin stressed that “Turkey will be willing in the future to acquire Patriot systems in the conditions in which the American side will accept the conditions imposed by Ankara”<sup>39</sup>.

Given the lack of consensus with the US on the Patriot deal, in July of 2019, Turkey received the first components of the Russian-made S-400 Triumph system<sup>40</sup>. Moreover, by January 2020, Moscow had sent in Turkey all S-400 Triumph components<sup>41</sup>. Even though NATO Secretary-General Jens Stoltenberg declared in 2017 that “the S-400 issue is the sovereign decision of Turkey”, the US protested vehemently against the deal<sup>42</sup>. US officials have drawn attention to the fact that the Russian Federation, through the S-400 Triumph system delivered to Turkey, has the opportunity to collect information about NATO military installations deployed on and around Turkish territory. At the same time, the American side drew attention to the security risks that the S-400 Triumph system can generate. Due to the fact that Turkey has not given up the acquisition of the S-400 Triumph system, Washington has decided to exclude Ankara from the program designed to build the F-35 fighter jet, refusing to deliver this type of aircraft to the Turkish army<sup>43</sup>.

Moreover, the US government decided to impose economic sanctions against the Turkish Presidency of Defense Industries and activated the CAATSA sanctions mechanism (Countering America’s Adversaries Through Sanctions Act). The sanctions are imposed on any person determined to have knowingly engaged in a significant transaction with a person that is a part of, or

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<sup>39</sup> Statement by Presidential Spokesperson Ambassador İbrahim Kalın, April 05, 2018, accessed May 31, 2021, online available at: <https://www.tccb.gov.tr/en/spokesperson/1696/92515/statement-by-presidential-spokesperson-ambassador-ibrahim-kalin>.

<sup>40</sup> Burak Ege Bekdil, *Turkey makes deal to buy Russian-made S-400 air defense system*, Decembrie 29, 2017, Online: <https://www.defensenews.com/land/2017/12/29/turkey-russia-reportedly-sign-loan-deal-for-s-400-air-defense-system/>, Accessed: 23.09.2020.

<sup>41</sup> Can Kasapoglu, “Turkey’s Critical ‘S-400 Moment’ Has Arrived, The Jamestown Foundation”, *Eurasia Daily Monitor* Volume: 17 Issue: 61, 4 May 2020.

<sup>42</sup> Robin Emmott, *No angst over Turkey's air defense deal with Russia, says NATO chief*, October 10, 2017, accessed May 31, 2021, online available at: <https://www.reuters.com/article/us-russia-nato-turkey-idUSKBN1CF1CF>.

<sup>43</sup> U.S. removing Turkey from F-35 program after its Russian missile defense purchase, July 17, 2019, accessed April 11, 2021, online available at <https://www.reuters.com/article/us-usa-turkey-security-f35-idUSKCN1UC2GL>.

operates for or on behalf of, the defense or intelligence sectors of the Government of the Russian Federation<sup>44</sup>.

Although Turkey is one of the NATO member states that allowed the US to use its military bases, Washington contested Turkey's decision to acquire the S-400 Triumph system. The US attitude highlights the importance the US government attaches to the bilateral relationship with Turkey and the latter's actions. If until the S-400 deal the US reactions were moderate and there were critical statements against the Erdogan regime, after the delivery by the Russian Federation of the military anti-aircraft installation, a radical change of US rhetoric was observed. The exclusion of Turkey from the F-35 program and the initiation of the CAATSA sanctions mechanism is only part of the US strategy to punish Turkish officials. The Biden administration considered it appropriate for the US to increase the level of pressure on the political establishment in Ankara. On this basis, in April of 2021, Washington officially recognized the Armenian genocide, holding Turkey responsible for the events of 1915. Although the US decision has no economic implications for Turkey, it has important symbolic significance, generating dismay among Turkish political leaders<sup>45</sup>.

These developments show that there is a limited level of tolerance for others in terms of Russian-Turkish cooperation. Washington's actions to punish Turkey indicate that the US will no longer allow the Ankara settlement to exceed limits that could jeopardize the US and NATO security. In other words, the intensification of Russian-Turkish cooperation in the energy and military fields poses the potential to foster a cleavage between Turkey and NATO. Although there is no tangible evidence that the intensification of Russian-Turkish cooperation has led Ankara to act contrary to NATO's interests and policies, many of the recent Turkish state's policies raised questions about the Turkish state's intentions. It is worth mentioning that during 2019 Turkey was the only NATO state that blocked the Eagle Defender plan, a project aimed at defending Poland, Latvia, and Lithuania from possible military aggression orchestrated by the Russian Federation<sup>46</sup>.

Also, in the context of the tensions erupted between the West and Belarus, during May 2021, Ankara pushed NATO to tone down its condemnation of Minsk's grounding of a Ryanair plane and its decision to arrest a dissident journalist. In this context, NATO's 30 allies released a two-paragraph statement condemning the forcing down of a Ryanair flight to arrest journalist Roman Protasevich but did not include any punitive steps that Baltic States and Poland had pressed for. Ankara insisted that any mention of support for more Western sanctions on Belarus, and calls for the release of political prisoners there, would be left out of the statement. Turkey's insistence on a watered-down text upset several allies, particularly Poland, Lithuania, and Latvia, which had pushed for tougher wording<sup>47</sup>.

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<sup>44</sup> CAATSA Section 231 "Imposition of Sanctions on Turkish Presidency of Defense Industries", U.S. Embassy & Consulate in Greece, Fact Sheet, Office of the Spokesperson, December 14, 2020, accessed May 31, 2021, online available at <https://gr.usembassy.gov/caatsa-section-231-imposition-of-sanctions-on-turkish-presidency-of-defense-industries/>.

<sup>45</sup> *Biden's recognition of Armenian massacres as genocide is to honor victims - U.S. official*, April 24, 2021, accessed May 31, 2021, online available at: <https://www.reuters.com/world/middle-east/bidens-recognition-armenian-massacres-genocide-is-honor-victims-us-official-2021-04-24/>.

<sup>46</sup> NATO puts defense plan for Poland, Baltics into action, officials say, July 02, 2020, accessed May 29, 2021, online available at <https://www.reuters.com/article/us-nato-baltics-turkey-idUSKBN24320B>.

<sup>47</sup> Humeyra Pamuk and Robin Emmott, *Turkey pushed NATO allies into softening outrage over Belarus plane, diplomats say*, May 28, 2021, accessed May 29, 2021, online available at: <https://www.reuters.com/world/exclusive-turkey-pushed-nato-allies-into-softening-outrage-over-belarus-plane-2021-05-27/>.

## CONCLUSIONS

The 2016 rapprochement between Ankara and Moscow marked the beginning of a new stage in Russian-Turkish bilateral relations. This process accelerated the construction of the TurkStream gas pipeline and the Akkuyu NPP. At the same time, Moscow has exploited the deteriorating relationship between Turkey and the West and facilitated the cooperation process with Ankara. Thus, Moscow and Ankara extended the cooperation process from the energy field to the military one. In other words, the economic relations between the two states created a favorable framework for expanding cooperation in the military field, which led to the deepening of Russian-Turkish ties and the increasing complexity of the bilateral relationship. These developments have favored the increase in the number of contact channels between the two states, which is why we can argue that the relationship between the Russian Federation and Turkey after 2016 is in line with the first feature of Complex Interdependence – multiple channels connect societies.

After 2000, cooperation between the Russian Federation and Turkey intensified, especially in the energy field. However, starting in 2016, the bilateral relationship agendas changed substantially, being added new layers of complexity. The main characteristic of it after 2016 is the lack of a pre-established hierarchy concerning the bilateral dossiers. Thus, the evolution of the Russian-Turkish bilateral relations after 2016 is in line with the second characteristic of Complex Interdependence which stipulates that interstate relations consist of multiple issues without a clear hierarchy.

Concerning the use of military power, the high level of economic cooperation between the two states has led their leaders to exercise caution when using military capabilities. Despite divergent interests in the war in Syria, the Russian Federation and Turkey were not involved in direct fights but only through proxies. The armed forces of the Russian Federation and Turkey killed Russian and Turkish soldiers, but just accidentally. However, the policymakers from Moscow and Ankara rapidly mitigated the political tensions generated by the incidents without causing a possible escalation.

Moreover, the intensification of military cooperation between Moscow and Ankara and the Turkish state's acquisition of the Russian S-400 Triumph air defense system has considerably diminished the possibility of the Russian Federation and Turkey attacking each other. In other words, by providing an air defense system to Turkey, the Russian Federation has helped strengthen Turkey's defense capabilities. In the light of these evolutions, we can conclude that Russia-Turkey energy and military cooperation created a propitious environment for the Complex Interdependence to manifest in the bilateral relationship between the Russian Federation and Turkey.

As for the capacity of the Russo-Turkish economic and strategic partnership to impact the relationship between Ankara and NATO, the situation is nuanced, and the answer is highly complex. The Russian Federation has always agreed with Turkey's reserved attitude towards expanding NATO's military presence in the Black Sea and has used its tools to reward this approach. Thus, during the Crimean Peninsula annexation, the Kremlin granted Turkey a 6% discount for the Russian gas imports. In the same context, the Russian Federation and Turkey signed the agreement to start work on the TurkStream gas pipeline. It also should be noted that Turkey had a reserved attitude towards the annexation of the Crimean Peninsula by the Russian state and did not join the sanctions regime adopted against the Kremlin by the West. Moreover, Ankara used the crisis to increase the volume of exports of consumer goods to the Russian Federation.

As for the Akkuyu project, the Turkish officials awarded the construction of the nuclear power plant to a Russian state company even though the Turkish state's energy strategy aims to reduce its energy reliance on the Russian Federation. Furthermore, the Akkuyu NPP is the only nuclear power plant built by the Kremlin on the territory of a NATO state. Thus, Akkuyu NPP has the potential to deepen the Russia-Turkey bilateral relationship. It also facilitates the interdependence between the two states to manifest.

Similarly, Turkey's acquisition of the S-400 Triumph air defense system has increased the complexity of the Russian-Turkish bilateral relationship and thus the level of interdependence between the two states. Furthermore, the Russo-Turkish cooperation in the military field strained the Ankara-West ties, amid the security risks that the S-400 Triumph may pose to NATO's security infrastructure.

Even though the Russia-Turkey cooperation in the energy and military fields can generate security risks on NATO, the Ankara officials did not adopt a more cautious approach toward the Russian Federation. In conclusion, energy and military cooperation between Moscow and Ankara represents a factor that can lead to a change in the foreign policy priorities of the Turkish state. At the same time, the projects jointly developed by Moscow and Ankara have created the framework for the manifestation of the Complex Interdependence between the Russian Federation and Turkey, which will alter the dialogue between Ankara and the West.

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## Global issues

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# Palermo Treaty System. Towards the Universal Criminal Justice. 20 Years After

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PROF. ANIS H. BAJREKTAREVIC<sup>1</sup>

IFIMES VIENNA

CARLOS LOPEZ-VERAZA PÉREZ<sup>2</sup>

SPANISH PUBLIC PROSECUTOR

**Abstract:** 2020 marked the 20th anniversary of the Palermo Convention and its Protocols, the main instruments in the fight against transnational crime. Both authors, one as an active participant in the Palermo system treaty-making and the other as a prosecutor passionate about human rights, revisit, rethink and sum up the first 20-year period after the creation of these important international instruments on organized crime and corruption. The following lines are a brief assessment of the central institutions and instruments relevant to universal criminal justice. A due reference is made to corruption, trafficking in human beings, migrant smuggling, and terrorism. The present text appeared in 1999 for the first time (in a considerably shorter form, as the working paper dealing only with the critical similarities and differences between 'smuggling of' and 'trafficking in') before the ICMPD Steering Board – Ministerial.<sup>3</sup>

**Keywords:** JHA, diplomacy, international regime, multilateral treaties, trafficking in human beings, terrorism, UNODC, universal criminal justice

### JHA DIPLOMACY: FROM ISOLATED INSTRUMENTS TO THE SOLID INTERNATIONAL REGIME

**T**he last few decades are marking a significant breakthrough in the efforts towards the universal criminal justice. The sporadic international instruments (that accommodated expressed interests of member countries on a rather ad hoc basis) are showing – by its number and scope – a new quality: a more structured and interlinked set of rules and provisions of international law

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<sup>1</sup> Prof. Anis H. Bajrektarevic - In the 1990s, serving as the Senior Legal Officer and Permanent Representative to the UN Office in Vienna, Anis H. Bajrektarevic has been actively taking part (or/and holding the statements) at the 10<sup>th</sup> UN Congress (On the Prevention of Crime and the Treatment of Offenders – ODCCP, 10–17 April 2000); 7<sup>th</sup>, 8<sup>th</sup>, 9<sup>th</sup>, 10<sup>th</sup> annual Commission of CICP (UN Centre for International Crime Prevention and Criminal Justice); 41<sup>st</sup>, 42<sup>nd</sup>, 43<sup>rd</sup> and 44<sup>th</sup> annual (CND) Commission of UN DCP (Drugs Control Programme); at all 11 sessions of the Ad Hoc Committee on the elaboration of a Convention against Transnational Organized Crime and its three additional instruments (period 1998-2000), and at the High-level Political Signing UN Conference, Palermo 12–15 December 2000. For the past twenty years, the author has been research and teaching professor on international law. Prof. Bajrektarevic authored 8 books for the American and European publishers. On subject of international law itself, he has over 1,200 teaching hours. He still actively observes the work of the Vienna-based UN ODC (Office on Drugs and Crimes).

<sup>2</sup> Carlos López-Veraza Pérez is Spanish public prosecutor since 2012 (specialised in HR, human trafficking, the protection of persons with disabilities, and gender-based violence). Served as a lawyer at the European Court of Human Rights (secondment 2020-21). He is the author of numerous legal publications and the author of the book "Criminal Law in the Eu and the Right to a Fair Trial." He has given several lectures on human trafficking and migrant smuggling issues, both at the international and national level. He has represented the Spanish Prosecutor's Office in activities before organisations such as the OSCE or the IOM. He is currently participating as an expert in the Euromed Justice Programme organised by Eurojust.

<sup>3</sup> Remark: Present text is a 10-year-after update to the original text: JHA Diplomacy – Ten Years After authored by professor Bajrektarevic for the Addleton Academic Publishers, NY, GHIR 3 (1) 2011

(often pre-supposing the advanced development of both institutions and instruments). Therefore, we can safely say that by now these instruments are creating a (new) practice of states, which theory usually labels as The International Regime<sup>4</sup>. We are indeed witnessing a progressive development of International Criminal Justice Regime.

Among the essential instruments, some of the fundamental ones are brokered at the Office on Drugs and Crime (ODC) – a Vienna based part of the UN Secretariat that primarily deals with Crimes and (Narcotic) Drugs, including corruption and a small branch department on terrorism prevention (TPB). It operates in more than 80 countries, with 2400 UNDOC personnel globally.<sup>5</sup> The UN ODC is a guardian of the Narcotic Drugs Treaty System<sup>6</sup> as well as the Organized Crime – Corruption Treaty System.<sup>7</sup>

Since dealing with the problems of crime and narcotic drugs confronts us with clandestine, illicit and nearly always the illegal trans-border criminal activity, we have – first of all – to make an important distinction between two legal terms: (i) international crime and (ii) transnational crime:

(i) the former refers to offenses prescribed by international law, which can be prosecuted (previously by the international tribunals, including the Ad Hoc tribunals for the former YU as well as for Rwanda, and now) by the standing International Criminal Court, as the Rome Convention entered into force in July of 2002.

(ii) the later rather refers to more conventional (nationally proscribed) crimes which do involve more than one national jurisdiction, and therefore require a transnational or/and cross- border response.

When dealing with issues of transnational crime, the usual response is a treaty or (multilateral/trilateral, bilateral) agreement between the state parties as to ensure that:

- the very conduct involved is a crime proscribed by domestic law;
- each state party has adequate jurisdiction to investigate, prosecute and punish offenses which occur only partly on their territory or which have other links, such as the involvement of citizens as either offenders or victims;
- state parties agree to provide necessary forms of cooperation to each other.

These are the basic functions of the multilateral legal instruments such as the Palermo Convention and the UN Convention against Corruption.

As transnational organized crime grows, sophisticates and proliferates, there is an evident need to create a larger body of international legislation of this kind. These requests are not without controversies, as the experience with the International Criminal Court illustrates:

- it is still understood that international treaties cause certain erosion of national sovereignty and that they do hinder domestic political priorities for crime-control;
- treaties are expensive to administer and moderately effective in the monitoring of compliance mechanisms;

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<sup>4</sup> We can tentatively define the international regime as: Any set of norms of behaviour and of rules and policies, which extensively cover relevant international issue, and facilitate substantive or procedural arrangements among the States (and IOs) they address.

<sup>5</sup> UNDOC, *Untoc at 20*, Vienna, 2020, p.46

<sup>6</sup> This “system” is composed of: The Single Convention on Narcotic Drugs (1961), the Convention on Psychotropic Substances (1971) and the Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988), in force since 1990 with over 175 parties to the instrument. The UN (ODC) Commission on Narcotic Drugs (CND) also oversees the comprehensive list of precursors and chemicals frequently used in the illicit manufacturing of narcotic drugs and psychotropic substances (which are by the letter of instrument kept under international control).

<sup>7</sup> This “system” is composed of: The UN Convention against Transnational Organized Crime (known as the Palermo Convention of 2000, in force since September 2003, with 159 parties by February 2011). Attached to this main are three additional instruments: (i) Protocol to Prevent, Suppress and Punish

– finally, treaties are usually negotiated on consensus, which ensures wide agreement basis, but a “lowest common denominator” on substance – the provisions are what everyone could agree upon and often do not go as far as some state parties would like (or have domesticated in their own legislation).

However, the crime treaties will almost certainly be expanded as pressures to deal with global problems are gradually overcoming national reluctance. Consequently, it was expected that new instruments would be stipulated against varied sorts of transnational organized crime in the form of additional protocols to the Palermo Convention. Despite this, 20 years have passed, and it does not look like it will be extended for the time being. Although this does not prevent the UNTOC from adapting to new forms of organised crime. It is a flexible legal instrument, drafted in broad terms, so that it can adapt with the times, and it has established itself as a fundamental mechanism in international cooperation. Having dealt with Narcotic Drugs, Organized Crime, Terrorism Financing and Corruption related treaties, the international community is now turning its attention to forms of the private/corporate sector and of individual or non- organized crime. Let us now quickly elaborate on the current state of the International Criminal Regime (its universal and regional European bodies), with a brief overview on the peculiarities of each of its main constituting elements.

## IRREGULAR MIGRATION

Irregular migration is mainly carried out in the following ways:

A. By crossing the international border without the required travel documents (solely or by using the services of professional traffickers):

- either far away from regular border-points, via the green (land/woods), blue (river/lake/sea) or white (aboard of flying object) borders;
- or via the regular border-crossings, but hidden (in truck/car/ship/train/aircraft).

B. By crossing the international border de facto legal, although using:

- either falsified or stolen document;
- or regular document displaying a forged/falsified visa.

C. Each host-country usually issues several types of visas (entry/stay conditions) for different purposes and most of them have a time and activity limit. A person becomes illegal or undocumented by violating any of these limits:

- either by overstaying the permit-period granted to the entering individual;
- or otherwise violating the entry-conditions and visa-purpose (student visa for employment, pro form marriage, false family-reunion etc.).

## IRREGULAR MIGRATION IN FIGURES

The figures of irregular immigration and migrant smuggling can provide an idea of the magnitude of the phenomenon. It has been estimated that in 2017<sup>8</sup> there were 10.5 million people in the US living in an irregular situation and 4.8 million in the European Union<sup>9</sup>. Furthermore, while not all migrants who enter other territories irregularly are victims of migrant smuggling, many are. It has been calculated that approximately 375,000 people per year are smuggled to Europe via the three main Mediterranean routes and 735,000 to 800,000 people to North America<sup>10</sup>. According to

<sup>8</sup> IOM World Migration Report 2020 (p. 111)

<sup>9</sup> Philip Connor, Jeffrey S.Passe, *Europe's Unauthorized Immigrant Population Peaks in 2016, Then Levels Off*

<sup>10</sup> UNODC, Global Study on Smuggling of Migrants, 2018, p. 22. On 2018, the United Nations Office on Drugs and Crime published its first Global Study on Smuggling of Migrants. Available at <https://www.unodc.org/unodc/en/data-and-analysis/glosom.html> (last visit on 22 February 2021)

the first Global Study on Smuggling of migrants (2016), there is evidence that at least 2,5 million migrants were smuggled for an economic return of US 5.5 to 7 billion Euros.

#### Immigration- Building up the Policy

The European Union has moved in recent years towards a common policy in relation to immigration material. In 2011, it adopted the Global Approach to Migration and Mobility (GAMM). In May 2015, the European Commission published the European Agenda on Migration<sup>11</sup>, with the irregular immigration crisis experienced in recent years in the Mediterranean region. In 2020, the European Commission presented a new Pact on Migration and Asylum in order to establish a more European approach to managing migration and asylum.

Despite this advance in common politics, it remains a material heavily used for electoral purposes<sup>12</sup> in the various countries of the European Union. Their main overseas counterparts: the US, Canada, and Australia) take their political action on immigration entirely on the national level.

## ORGANIZED CRIME

### 1. ORGANIZED CRIME IN GENERAL

Although visibly evident on the old continent over decades, the issue of Organized Crime has attracted very little attention at higher politico-economic levels in Europe in the last decades of the 20<sup>th</sup> century. Simultaneously, the radical changes in CEE/SEE countries of the late 1980s implied growing possibilities for organized crime to carry out trans frontier operations throughout Europe. Consequently, the criminal markets became very mobile, more flexible, transnational and trans-continental, highly accumulative and increasingly aggressive. Hence, the problem has gained visibility in recent years, and international cooperation has been advanced as a way to fight new forms of organised crime.

### 2. MULTILATERAL EFFORTS IN FIGHTING ORGANIZED CRIME

Activities on a supranational and intergovernmental level to combat organized crime have actually existed since 1923 (Interpol). Present international/regional fora trying to combat transnational organized crime and to improve criminal justice are: The European Union/Commission, EUROPOL, Council of Europe; as well as the global/universal ones: Interpol-ICPO and UN ODC, formerly ODCCP (CICP and DCP).<sup>13</sup>

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<sup>11</sup>European Commission, *New Pact on Migration and Asylum*, available at [https://ec.europa.eu/info/strategy/priorities-2019-2024/promoting-our-european-way-life/new-pact-migration-and-asylum\\_en](https://ec.europa.eu/info/strategy/priorities-2019-2024/promoting-our-european-way-life/new-pact-migration-and-asylum_en) (last visit on 28 April 2021)

<sup>12</sup>Faced with aging domestic populations and following the logics of corporate expansion, the Western markets need migrants, but the ordinary citizenry does not want them. What changed in the meantime is the capacity of the society (not always in compliance with economic conjuncture) to absorb those immigrants – and closely related to that – the psychological state of domestic populations. Therefore, many European political parties extended their agendas with more restrictive immigration policies, but ignoring the golden rule of migration: “Once you cut off legal means, would-be immigrants just turn to smugglers”

<sup>13</sup> Although ABA (American Bar Association) with its CEELI (Central and Eastern European Law Initiative) is not a multilateral body, its NGO-like role in technical legal assistance to almost each of the CEE/SEE countries deserves to be highlighted. By posting its Liaison officers and other expert-staff in many CEE/SEE countries, by organizing seminars and trainings, by providing domestic legislatures with a world-wide legal expertise and assessments – all that in continuity for over decade – ABA through its CEELI program, has made a paramount effort and considerable contribution to the CEE/SEE countries’ judiciary system and criminal justice.

## EUROPEAN UNION

Before the Maastricht Treaty there was no specific EU-framework for dealing with matters related to organized crime (only informal police co-operation between Member States, initiated in the mid-1970s, which was gradually expanded to deal with organized crime – among others in the context of the TREVI group).

The Maastricht Treaty and its Third Pillar made specific provisions in the field of Justice and Home Affairs (JHA), leading to the establishment of a formal co-operation structure for Customs and Police matters, as well as for criminal and judicial issues. Within the framework of this structure, working groups on police co-operation, drugs and organized crime, corruption, money-laundering, terrorism and judicial co-operation were established. Since the Maastricht Treaty, and especially since the provisions of the Amsterdam (and Nice) Treaty entered into force at a special JHA meeting of the European Council with the EU heads of states/governments in Tampere, Finland in October 1999 (also the Seville European Council of June 2002), the European Union has further strengthened its structures as well as its cross- EU and pan-European cooperation. Currently, there are sets of legal instruments related to the fight against organized crime, such as: The JHA Action Plan/s (the first such a plan with its 30 recommendations was prepared in April 1997).

Following the meeting held in Tampere in 1999, it was stipulated that a judicial body for judicial cooperation comprising judges, prosecutors, and police should be set up. Further incentives were brought about at the EU Council summit in Nice, France, on 09th of December 2000 as it agreed to establish the EUROJUST<sup>14</sup>. Since then, Eurojust has grown steadily until the Treaty of Lisbon, which specifically established its function of support and cooperation between national authorities of severe crimes affecting two or more Member States<sup>15</sup> In December 2019, Eurojust became the EU Agency for Criminal Cooperation, and a new regulation entered into force. After the entry into force of the Lisbon Treaty in 2009, security became a shared competence between the European Union and the Member States.

A Pre-accession Pact (resting upon the Copenhagen accession criteria of 1993) on organized crime between the EU Member States and the EU candidate countries<sup>16</sup> was approved as early as 1998 (after the Amsterdam and shortly before the Nice Treaty). The main purpose of this Pact was to develop a joint annual strategy to identify the most significant measures against organized crime (including a two-way flow of information, the exchange of liaison officers, joint investigative activities and special operations carried out with Europol's support)<sup>17</sup>.

Furthermore, the European Union established in 2010 a four-year policy cycle to address the European Union's main threats (EMPACT). The European Council defines in each cycle what the priorities are, taking into account recommendations from other agencies, such as Frontex or Eurojust.

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<sup>14</sup> Article 31 of the Treaty of Nice stated: "The Council shall promote co-operation through EUROJUST by promoting support for criminal investigations in cases of serious cross-border crime, particularly organized crime, taking account, in particular, of analyzes carried out by Europol;..."

<sup>15</sup> European Union Agency for Criminal Justice Cooperation, *History*, available at <https://www.eurojust.europa.eu/about-us/history> (last visit on 15 February 2021)

<sup>16</sup> The Commission and the Council of Europe are jointly running the OCTOPUS program against corruption that is entirely designed for CEE (candidate and non-candidate) countries. Additionally, for the new EU 10+2 CEE countries, the PHARE program, managed by the Commission's Enlargement Directorate-General, also has a section devoted to JHA projects.

<sup>17</sup> In this regard the frequent visits of Mr. Costa to Brussels should be understood, where he regularly met with the Prodi's JHA Commissioner Mr. Antonio Vitorino, and later with several of Barroso's Commissioners

In the EMPACT programmes, particular emphasis is put on migrant smuggling, child abuse, environmental crimes, cybercrime, document fraud, money laundering, drug, and arms trafficking<sup>18</sup>

The recent proposal by the European Commission for a European strategy against organised crime stresses the need to promote international cooperation, break down the structures of international organisations and their methods of infiltrating economies, and combat the use of new technologies by criminals.<sup>19</sup>

In 2016, in an unprecedented development in criminal cooperation in the European Union, the member states of the European Union agreed on the creation of a European Public Prosecutor's Office, with power to investigate fraud, corruption, money laundering, and cross-border VAT Fraud and which is becoming operational in 2021<sup>20</sup>.

## EUROPOL

The Maastricht Treaty and other EU regulations created the opportunity for wider police co-operation in the field of combating (transnational) organized crime – something that has been reaffirmed in the Reform/Lisbon Treaty of 2007.

EDU (European Drug Unit), a first step towards the establishment of Europol, has been staged up by the decision of the European Council in 1993. EDU was mandated to cover: (i) illicit drugs trafficking; (ii) immigration networking; (iii) theft-vehicle trafficking, and finally in 1996, EDU got an additional mandate to cover (iv) trafficking in persons. The Europol Convention entered into force on 01 October 1998, mandating this agency to follow illegal/ illicit trafficking in nuclear and radioactive substances; in persons, vehicles and drugs, as well as the money laundering related to it. Since January 1999, Europol is additionally charged to cover terrorism, cybercrime and child pornography (eventually through SIRENE system). Over the past 20 years, Europol has carried out thousands of investigations against criminal organizations with international activities. These have included remarkable international operations against drug trafficking, terrorism, cybercrime, counterfeiting, facilitation of illegal immigration, corruption, or child sexual exploitation<sup>21</sup> Finally, Europol cooperates with countries outside the European Union and international organisations such as the Council of Europe, UN and other relevant fora.<sup>22</sup>

## COUNCIL OF EUROPE

The Council of Europe, as the single pan-European forum, has its own inter-governmental work program against crime that is channelled through the European Committee on Crime Problems (CDPC). It strengthened the co-operation between Member States in combating corruption, its links with organized crime and money laundering, and the trafficking in illicit drugs and smuggling of medical drugs (incl. all sorts of exploitation and child pornography).

Among the major outcomes of this “principal legislative machinery of Europe” (which since 1945 has brokered over 200 conventions and treaties), the Council of Europe adopted the Convention on Cybercrime 2001 and the Additional Protocol to the Convention on Cyber Crime in

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<sup>18</sup> Katrien Luyten, Sofija Voronova, *Understanding the EU response to organised crime*, European Parliamentary Research Service, September 2020, p.5, available at [http://www.europarl.europa.eu/RegData/etudes/BRIE/2020/652043/EPRS\\_BRI\(2020\)652043\\_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/BRIE/2020/652043/EPRS_BRI(2020)652043_EN.pdf). (last visit on 26 February 2021)

<sup>19</sup> Communication from the commission on the EU Strategy to tackle Organised Crime 2021-2025, Brussels, 14.4.2021

<sup>20</sup> Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office (the EPPO)

<sup>21</sup> Europol, *Europol's Most Noteworthy Operations*, available at <https://www.europol.europa.eu/about-europol/europol-20-years/europol-20-most-noteworthy-operations> (last visit on 3 March 2021)

<sup>22</sup> Europol, Strategic Agreements, <https://www.europol.europa.eu/partners-agreements/strategic-agreements> (last visit on 8 March 2021)

2002 (111<sup>th</sup> Session of the Committee of Ministers of the CoE),<sup>23</sup> the Trafficking in Human Beings Convention in 2005 and the Convention on the Prevention of Terrorism in 2006. For the past decade, the Council of Europe has continued its legislative line and adopted new conventions to prevent and combat international crimes: in 2011, the Convention on preventing and combating violence against women and domestic violence (it also addresses human trafficking and forced marriages affecting women) and the Convention on the counterfeiting of medical products and similar crimes involving threats to public health (the Medicrime Convention); in 2015, the Convention against Trafficking in Human Organs and in 2017 the Council of Europe Convention on Offences relating to Cultural Property (in the framework of the terrorism and organised crime).

### **INTERPOL – ICPO (INTERNATIONAL CRIMINAL POLICE ORGANIZATION)**

Interpol enjoys a membership of 194 countries and a world-wide telecommunication network which links each member's National Crime Bureau (NCB) by I-mail (intra-mail: closed telecom system),<sup>24</sup> and gives automated access to a centralized data base (and the basic background information) on international crime and criminal gangs. The NCBs are (as an exchange mechanism) a key element in the services Interpol provides to its member countries. The NCB serves as a link between law enforcement agencies of one country and the law enforcement agencies of other member countries. The growth and threat of criminal organizations has been elaborated in various resolutions and other deliberations adopted by the Interpol General Assembly (GA) sessions during the '70s and '80s. By the Interpol GA Resolution of 1987, a working group on Organized Crime was created in 1988. This resolution noted that "...organized crime does not limit itself to one form of criminal activity". As a result of this resolution Interpol later created the Organized Crime Branch at the General Secretariat in 1989. A subsequent Resolution adopted at the 1993 General Assembly further emphasized the need for international co-operation in combating organized crime, by recommending that "the ICPO-Interpol should continue to encourage police efforts and to intensify co-operation between countries and their police services, ...seeking to improve the exchange of information between countries, and analysis of that information, and to promote participation by all countries in the structure created within the ICPO-Interpol to deal with this subject." The long-term aim of the Organized Crime Branch was to create an extensive and comprehensive data base of organized criminal enterprises and persons who are engaged in continued, illegal activity in order to generate (illicit) profits.

The Organized Crime Branch realized that organized crime groups are increasingly active in alien smuggling and trafficking in of human beings. Therefore, in 1996, Project 'Marco Polo' was initiated to produce a study on the routes, modus operandi and organized crime groups involved in irregular migrations from any country to Western Europe.

The Marco Polo study, published in 1997, clearly showed that the largest number of non-European illegal immigrants coming to Western Europe between 1992 and 1997 had originated from either Iraq, Sri Lanka, Pakistan, India, or one of the African countries (such as Nigeria, Rwanda or Somalia). Several routes utilized in the smuggling of Chinese nationals to Western Europe were also noted in the Marco Polo study, etc.

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<sup>23</sup> The Convention particularly deals with offenses related to infringements of copyrights, computer-related fraud, child pornography and offenses connected with network security. It also covers series of procedural powers such as searches and interception of material on computer networks. Its main aim, as set out in the Preamble, is to pursue "a common criminal policy aimed at the protection of society against Cybercrime, by adopting appropriate legislation and fostering international co-operation." On the other hand, the prime focus of the Convention's Protocol follows the criminalisation of acts of racist and xenophobic nature committed through computer systems.

<sup>24</sup> It is rather the same sort of communication modus used for the Schengen related SIS and SIRENE systems within the European states, parties to the Schengen acqui.

The Organized Crime Branch is currently collecting and analysing several other, but equally important cases of illegal immigration and trafficking in human beings. Upon evaluation, Interpol intends to send its specialized officers and analysts to assist local police units during the ongoing investigations (which are of relevance at the international level).

The current intention of Interpol is to provide its member countries with a better insight into the linkage between organized crime groups, on the one hand, and the illegal immigration and trafficking in human beings on the other hand (description of groups, their membership, ordinary routes, methods and means of transportation, location of safe houses, identity of escorts, suppliers of forged documents, as well as visa fraud methods). Special emphasis will be put on the collection and dissemination of information related to the post-smuggling/trafficking networking of organized crime groups (involving trafficked persons into activities such as: forced labour, organized begging, pick-pocketing, prostitution, pornography, terrorism, etc.).

As for refocusing attention on the Public and Private sector, the ICPCO organized several international meetings, bringing together experts, public and private organisations from all over the world on issues such as the fight against terrorism and human trafficking<sup>25</sup>. In recent years, Interpol has focused its work on the need to recover the proceeds of crime, fight corruption that diminishes trust in governments and institutions, cooperate actively with the private sector and break the business model of criminal organisations.<sup>26</sup>

## UNITED NATIONS

The United Nations and its Vienna-based Office for Drugs and Crimes (ODC), formerly ODCCP; including the Drug Control Program – UNDCP, and the Centre for International Crime Prevention and Criminal Justice – CICP,<sup>27</sup> play a significant global role in combating organized crime and in strengthening criminal justice. As a result of the recent restructuring of the work of the United Nations Office in Vienna, a new Director-General was appointed in February 2020<sup>28</sup>.

The first important step, with regard to the relevant United Nations activities, was the 1988 UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances which contains provisions requiring the development of international co-operation in the fields of extradition, asset forfeiture, mutual legal assistance, co-operation among the law enforcement agencies of Member States, control of precursors, essential chemicals and crop eradication.

In order to better address the problem of the internationalization and sophistication of criminal groups, UN Member States adopted the Naples Political Declaration and the Global Action Plan against Organized Transnational Crime<sup>29</sup> (at the World Ministerial Conference on Organized Transnational Crime held in Naples in 1994). The Naples Action Plan lays emphasis on the member states' national combating capacities as well as on international co-operation against transnational organized crime and its effective prevention.

<sup>25</sup> Interpol, *5th Interpol Global Conference on Trafficking in Human Beings and Smuggling of Migrants*, available at <https://www.interpol.int/fr/Actualites-et-evenements/Evenements/2017/5th-INTERPOL-Global-Conference-on-Trafficking-in-Human-Beings-and-Smuggling-of-Migrants> (accessed 23 March 2021)

<sup>26</sup> Interpol, *Shaping a global response to corruption*, available at <https://www.interpol.int/News-and-Events/News/2019/Shaping-a-global-response-to-corruption> (last visit on 15 March 2021)

<sup>27</sup> TPB- A special division "Terrorism Prevention Branch" is attached to the CICP/ODC UN Vienna Office

<sup>28</sup> Ghada Fathi Waly is the Director-General/Executive Director of the United Nations Office at Vienna (UNOV)/United Nations Office on Drugs and Crime (UNODC) since 1 February 2020, following her appointment by Secretary-General António Guterres. She holds the rank of Under-Secretary-General of the United Nations.

<sup>29</sup> About the same recommendations were adopted at the 9th UN Congress in Cairo in 1995 as well as at the 10th UN Congress held in Vienna, in April 2000 (including the Vienna Declaration on Crime and Justice as the biggest outcome of the Congress, chaired by South Africa's Justice Minister, Mr. P.M. Maduna).

Moreover, the UN CICP was requested (by the resolution of the UN GA 53/111, December 1998) to further its tasks by preparing and conducting an open-end Intergovernmental Ad-Hoc Committee(s) on Elaboration of a comprehensive International Convention against Transnational Organized Crime and three additional instruments, to which Poland made a first draft in 1998. Between January 1999 and the end of October 2000, as many as 11 Ad Hoc meetings (minimum two-week duration each) were held in Vienna, with an average participation of 140 delegations of states and organizations.

Thus, a final text of the Convention was verified on the closing day of the 10<sup>th</sup> Session of the Ad Hoc Committee (its 177<sup>th</sup> meeting), on 28<sup>th</sup> of July 2000<sup>30</sup>.

Additional instruments include: (i) Protocol to prevent, suppress and punish Trafficking in persons, especially Women and Children, supplementing the United Nations Convention against Transnational Organized crime (to which Argentina and the US took the initiative); (ii) Protocol against the Smuggling of migrants by Land, Air and Sea, supplementing the same Convention (to which Austria and Italy took the initiative); and finally (iii) Protocol against the Illicit Manufacturing of and Trafficking in Firearms, their Parts and Components, and Ammunition supplementing the same Convention.

The High-level Political Signing conference was scheduled for December 11–15, 2000 (UN GA Res. 54/129), following September's Millennium Assembly Convention approval. So far, over 190 countries have signed the Convention, 178 the protocol to prevent, suppress and punish trafficking in persons, and 150 the Protocol against Smuggling of migrants. Consequently, the Convention and the two protocols entered into force between late 2003 and early 2004. The only exception was the "Firearms" protocol, entering into force as late as mid 2005 (with currently 119 parties).

To ensure compliance with the Convention and its protocols, up to 10 sessions have been held by UNTOC member states since 2020.<sup>31</sup> In 2018, it was established a review mechanism for the implementation of the Convention (Resolution 9/1). Of particular interest was the session held in 2020, which adopted the self-assessment questionnaires for a review of the implantation of the Convention and the Protocols (resolution 10/1), the guidelines for conducting the country reviews. It was also adopted a series of resolutions aimed at promoting international cooperation against arms trafficking (resolution 10/2), or implementation measures in the fight against trafficking in human beings. In this regard, it encourages the private sector to establish proper due diligences to end human trafficking in production chains (resolution 10/3). Finally, it also recommends that efforts be focused on other highly topical crimes, such as the misappropriation of medical products (resolution 10/5),

<sup>30</sup> The issues covered by the Palermo Convention (many covered globally for the first time) are as follows: (i) Statement of purpose; (ii) Use of terms; (iii) Scope of (the Convention's) application; (iv) Protection of sovereignty; (v) Criminalization of participation in an Organized Crime Group; (vi) Criminalization of the Laundering of proceeds of crime; (vii) Measures to combat Money-laundering; (viii) Criminalization of corruption; (ix) Measures against corruption; (x) Liability of Legal persons; (xi) Prosecution, adjudication and sanctions; (xii) Confiscation and Seizure; (xiii) Intl. co-operation for purpose of confiscation; (xiv) Disposal of confiscated proceeds of crime or property; (xv) Jurisdiction; (xvi) Extradition; (xvii) Transfer of sentenced person; (xviii) Mutual legal assistance; (xix) Joint investigation & special investigative techniques; (xx) Transfer of criminal proceedings; (xxi) Establishment of criminal record; (xxii) Criminalization of obstruction of justice; (xxiii) Protection of witnesses and victims; (xxiv) Measures to enhance co-operation with legal enforcement authorities; (xxv) Collection, exchange and information analysis on the nature of Organized Crime; (xxvi) Training and technical assistance; (xxvii) Other measures: economic development and technical assistance; (xxviii) Prevention; (xxix) Conference of the Parties to the Convention; (xxx) Implementation of Convention; (xxxii) Relation with Protocols; (xxxii) Final Provisions; and conclusively: Travaux Préparatoires (Interpretative Notes).

<sup>31</sup> UNDOC, *Conference of the Parties to the United Nations Convention against Transnational Organized Crime*, <https://www.unodc.org/unodc/en/treaties/CTOC/resolutions-and-decisions-conference-of-the-parties-to-the-united-nations-convention-against-transnational-organized-crime.html#COP5> (last visit on 23 March 2021)

or those that affect the environment and are carried out by international criminal organisations (resolution 10/6).

### CORRUPTION IN THE FOCUS OF UN ODC – UNCAC

In its resolution 54/128, the General Assembly asked the Ad Hoc Committee (which was still negotiating the Palermo Convention at the time) to consider whether a further instrument elaborating solely corruption was desirable (prior to or parallel with the Expert group on Explosives) or not. Upon the extensive consultations, the Committee expressed that a separate instrument is needed because much of the corruption-related problems felt by member states were not covered by the forthcoming Palermo Convention. It was subsequently reported back to the General Assembly (A/AC/254/25), which resulted in the UN GA resolution 55/61 deciding to create a further instrument and to establish an expert group to consider terms of reference. The Expert group convened in 2002 in Vienna, and produced draft terms of reference, which were then transmitted to the GA, via the CICP (Crime Commission) and the ECOSOC. The General Assembly has adopted these terms of reference, clarifying the issues under negotiation, with its resolution UN GA 56/260. This text appeared before the Ad Hoc Committee at its second meeting.

As stipulated by the Resolution, the Ad Hoc Committee was about to resolve many critical issues in all together seven sessions producing the final text of the Convention by the end of 2003. Among the most tantalizing were the following two issues: (i) the very definition of corruption – determining the basic scope of application of the forthcoming instrument (whether to include private-sector corruption or not, etc.); and (ii) the political and legal implications of the “grand corruption” cases involving the high level officials (mostly from third world countries such as Nigeria, Philippines, etc.)

That time, a newly arrived Executive Director Mr. Costa and his ODC secretariat had managed to close the Corruption Convention with astonishing speed – it still remains one of the fastest concluded UN conventions ever. However and regrettably enough, the Corruption instrument did not include the private sector corruption at all, and therefore should be regarded as an instrument of rather partial success. Some of the most influential countries were not supportive of the idea to tackle both private and public sector corruption by a single instrument (?!). Therefore, member states got an exception and the Secretariat gained a speed – compromise resulting in rather weak and incomplete instrument.

As the UNCAC does not provide for a definition of corruption at all (be it private or public sector, or both), and as there is no comprehensive (and at the same time simple) definition of corruption available, one of the Authors (prof. Bajrektarevic) operates for decades with his own definition: **tacit and simingly victimless exchange between influence and gain.**<sup>32</sup>

However, in conformity with Article 2 of the UN Charter, UNCAC provides in its Article 4 for the protection of national sovereignty of the States Parties.

In April 2002 the CICP (Commission on Crime Prevention and Criminal Justice) at its 11<sup>th</sup> annual session in Vienna, welcomed the offer made by the Government of Mexico to host a high-level Political Conference for the purpose of signing the UN Convention against Corruption. Endorsed by the GA, it was adopted in Merida, Mexico (31 X 2003) soon after. Talking about the

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<sup>32</sup> Interestingly enough, some critical terms used in the UNCAC are defined in conformity with the previous conventions and some appeared anew (e.g. ‘public official’, ‘foreign public official’, and ‘official of a public international organization’). The very body of instrument is organized in the following way: (i) General Provisions (Chapter I, Articles 1-4); (ii) Preventive Measures (Chapter II, Articles 5-14); (iii) Criminalization and Law Enforcement (Chapter III, Articles 15-44); (iv) International Cooperation (Chapter IV, Articles 43-49); (v) Asset Recovery (Chapter V, Articles 51-59); (vi) Technical Assistance and Information Exchange (Chapter VI, Articles 60-62); (vii) Mechanisms for Implementation (Chapter VII, Articles 63-64), and (viii) Final Provisions (Chapter VIII, arts.65-71)

main deliberations, the 11<sup>th</sup> CICIP Commission additionally accepted the offer of Thailand to hold the 11<sup>th</sup> UN Congress on Crime Prevention and Criminal Justice in Thailand in 2005 (with the theme: "Synergies and responses: strategic alliances in crime prevention and criminal justice"). Following the ODC recommendation, the UN General Assembly (res. 62/173 of 18 December 2007) accepted the offer of Brazil to host the 12<sup>th</sup> Congress in April 2010 (with the theme: "Comprehensive strategies for global challenges: crime prevention and criminal justice systems and their development in a changing world").

In 2009 (Doha, Qatar), a review mechanism of the UNCAC to assist states in its implementation (resolution 3/1)<sup>33</sup>, with UNODC as the secretariat was launched. In an innovative system, each state party must be reviewed once and must conduct a review of between 1 and 3 other states<sup>34</sup>. In this context, the first cycle between 2010 and 2015 addressed criminalisation and law enforcement as well as international cooperation. The cycle from 2015 to 2020 covered prevention and asset recovery measures<sup>35</sup>. It is remarkable that numerous states have taken action and made legislative changes as a result of the observations made during the review process

### 3. DEFINING ORGANIZED CRIME

The Palermo Convention does not define transnational organised crime, but it provides the characteristics that should portray every organised criminal group. According to Article 2 of the Convention, it must be formed by a group of three or more persons that was not randomly formed; existing for a period of time: acting in concert with the aim of committing at least one crime punishable at least for years' incarceration; in order to obtain, directly or indirectly, a financial or other material benefit.

For their part, the European Commission and the Council of Europe's Expert Group on Organised Crime have been considering that a series of requirements must be met such as (i) collaboration of three or more persons; (ii) for a prolonged or indefinite period of time; (iii) suspected or convicted of committing serious criminal offenses; and finally (iv) with the objective of pursuing profit and/or power.

Among the optional criteria (eventually) are: (v) having a specific task or role for each participant; (vi) using a form of internal discipline and control; (vii) using violence or other means suitable for intimidation; (viii) exerting influence on politics, the media, public administration, law enforcement, the administration of justice or the economy by corruption or using other means; (ix) using commercial or business-like structures; (x) engagement in money laundering; and (xi) operating on an international level.

Both the UN 1994 Naples Political Declaration and Global Action Plan specified the following six characteristics of organized crime (which might be transnational: point 5 and 6): (i) there has to be group organization to commit crime; (ii) hierarchical links or personal relations which enable leaders to control the group; (iii) the use of violence, intimidation and corruption to earn profits or control territories or markets; (iv) the laundering of illicit proceeds to further criminal activity and to infiltrate the legitimate economy; (v) a potential for expansion into any new activity beyond national borders; and finally (vi) co-operation with other Organized Transnational criminal groups.

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<sup>33</sup> UNDOC, *Third session of the Conference of the State Parties to the United Nations Convention against Corruption*, available at <https://www.unodc.org/unodc/en/corruption/COSP/session3-resolutions.html> (last visit on 28 March 2021)

<sup>34</sup> UNDOC, *Implementation Review Mechanism*, available at <https://www.unodc.org/unodc/es/corruption/implementation-review-mechanism.html> (last visit on 29 March 2021)

<sup>35</sup> United Nations Information Service, *Real change generated by the Implementation Review Mechanism for the anti-corruption Convention*, available at <https://unis.unvienna.org/unis/en/pressrels/2019/uniscp1089.html> (last visit on 3 April 2021)

However, there is still no global definition, although the requirements can give us an exact approximation of the concept.

#### 4. TRAFFICKING IN/SMUGGLING OF PERSONS ON THE AGENDA OF ORGANIZED CRIME

Trafficking in human beings and migrant smuggling remains a serious worldwide threat. Criminal organisations continue to see both phenomena as significant business opportunities incorporating the 'Trafficking in' and 'Smuggling of' persons in their agendas, as it turns out to be:

(i) minimum investment undertaking, (ii) maximum profit gained, (iii) lenient punishment (e.g. compared to drug trafficking, the penalties for trafficking in and smuggling of persons are considerably lower or even non-existent in many countries).

#### 5. THE DISTINCTION BETWEEN *SMUGGLING OF* AND *TRAFFICKING IN* PERSONS

The two phenomena are often confused, and while it is true that they are interconnected, there are apparent differences between them. The main distinction is that while trafficking in human beings is a crime that affects the fundamental rights of individuals, migrant smuggling is in principle a crime against the immigration rules of states. However, the commonly accepted distinction is not always straightforward, requiring a more detailed analysis of both offences.

##### **Trafficking in Persons**

The English legal term "trafficking" means trade or illicit trade. Thus, Trafficking in Persons is a form of trade in human beings which occurs illicitly.

Notion of Trafficking in Persons:

(i) an intermediary, a trafficker, who provides the necessary services facilitating migration;  
 (ii) the traffickers are paid under long-term arrangements;  
 (iii) in most of the cases crossing of border is either illegal or seemingly legal (well established legal structures within the host-countries, such as language summer schools or vocational institutes, that actually cover their real (illegal) intentions); although trafficking can occur within the same state, it is more common for victims of trafficking to be trafficked to another state.

(iv) upon their arrival in a host-country the migrants – with or without their consent – are introduced into illegal activities or criminal circles;

(v) the profit in trafficking business comes (not solely from a transportation fee but) from long-term exploitation;

(vi) in most cases trafficked persons actually make a seemingly free choice to enter or stay in a country illegally.

##### **Smuggling of persons**

The English legal term "smuggling" means an illicit/illegal import or export. Consequently, Smuggling of Persons means illegal transportation of human beings from the source country (export) to the country of destination or the host-country (import).

Features of the Smuggling of Persons:

(i) an intermediary, a smuggler, who facilitates the border crossing, but the clients are not provided with further extensive services as in the trafficking business;

(ii) crossing of border is either illegal or seemingly legal;

(iii) smuggling does not include a component of extended exploitation (the escort-fee is always paid under short-term arrangements).

**Four differentiating elements that separate Trafficking in from Smuggling of Persons are:**

- (i) an exploitation and usage of the trafficked person over a long period of time;
- (ii) inter-dependency that forms a strong (brothers-in-arms like) linkage, between trafficked victim and organized crime groupings;
- (iii) eligibility for further networking (recruitment for criminal purpose);
- (iv) very often trafficking itself is not a voluntary movement, but in the case of smuggled persons it always occurs voluntarily.

## 6. LINKAGES AND INTERDEPENDENCIES

Organized crime groups are vertically (hierarchically) and horizontally structured in such a manner that different sub-groups (chambers) are specialized in specific activities. The level of diversification of tasks inside the criminal organization is sufficiently high. It aims to meet both demands: higher specialization and sophistication as well as better protection from the police ride or sting operations (a compartmentalized, ship-chamber like inner system).

In the business of Trafficking in Persons (long-lasting horizontal inter-dependency is very high), organized crime groups yield a profit from both (i) the trafficking escort service itself, and (ii) from the subsequent exploitation of the trafficked persons as manpower, that are upon the transfer, basically recruited for criminal purposes. This double use makes the business of Trafficking in Persons competitive to Drug Smuggling and other speedy and highly (lucrative) accumulative criminal activities. Finally, that explains why even the biggest and most structured organized crime groups (especially transnational) have incorporated Trafficking in Persons into their core activities.

Transnational expansion requires permanent networking of the organization. In order to set up a new or to improve the existing network additional recruitment has to be done repeatedly. Therefore, in most cases, not the trafficked person but the organized crime groups make the final decision about: (i) how many people to traffic, (ii) which ethnicity, gender, skills or profile to traffic, and finally (iii) to which destination(s) – one or several countries. It has been already noticed that after the need for recruitment of a certain profile or gender in one country is successfully met, the traffickers will not traffic in but rather smuggle more people (driven only by a one-off financial gain without further recruiting and networking).

Nowadays, the organized criminal groups actually regulate illegal flows to a great extent. As a strong horizontal interdependency remains between the trafficked persons and the group behind it, it is safe to say that illegal migration, further contributes to organized crime as well.

## 7. NATURE OF THE BUSINESS OF *TRAFFICKING IN AND SMUGGLING OF PERSONS*

Organized crime groups basically function as any legal economic entity.<sup>36</sup> Consequently, the ultimate goal of organized crime is similar to that of an ordinary commercial enterprise: to gain profit. As any profit depends on the market, criminal groups are strengthening their productivity, efficiency, sophistication and organization, cutting costs and risks, widening their territory, and trying to set up an exclusive monopoly in certain fields and/or on certain territory in order to maintain and to

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<sup>36</sup> In his speech to the World Summit on Sustainable Development held in Johannesburg (South Africa in September 2002), the Executive Director of UN ODC at that time, Mr. Costa, warned the delegates: "...We at ODC believe there cannot be sustainable development unless the concerns which are at the heart of our mandate – crime, corruption, narcotics, terrorism, trafficking in human beings – are also well addressed..."

optimize their profits.<sup>37</sup> In the process of profit-making and cost-cutting can put the lives of trafficked or smuggled persons at higher risk. Furthermore, in the face of growing demand, internal competition among organized criminal groups is rising and leading to increased violence which is exercised on both levels: internally (towards its own members) and externally (towards other gangs as well as towards the wider society).

Wishing to cover their illegal activities in trafficking and smuggling, as well as to launder generated assets afterwards, the organized crime groups often expand their activities into legitimate businesses (such as: newspapers/print house, travel agencies, language summer or seasonal schools, vocational institutes, shipping companies; non-governmental humanitarian and other illicit or converted charities, and other sorts of non-profit organizations). Therefore, it becomes very hard to distinguish overt from covert activities of those groups. By doing so, the organized crime groups are fulfilling several ultimate goals: (i) better protection from eventual raid and coverage for their illegal activity (risk spreading/burden-sharing); (ii) money laundering; (iii) gradual legalization and respectability; (iv) more prominent and powerful positioning within the given society.

Finally, the lasting achievement of any parallel structure (parallel society) which organized crime tends to be (when phases of accumulation, stabilization, expansion and monopolization are successfully met), is to legalize itself.

In order to do so, the organized crime group will use all means that are at its disposal (ranging from hard means such as: blackmailing, extortion, assassination, kidnapping, denunciation, intimidation and racketeering; to soft means, like: corruption, humanitarian contributions, sponsorship and voluntary donations for political and other societal campaigns, and the like).

## 8. NEW TENDENCIES

Facing increasing competition, the organized crime groups are forced to undergo certain specialization, or/and diversification as well as company-like fusions/synergies. Specialization, diversification and fusions are creating a higher vertical line (along with a wider horizontal line). Apart from enlarging their market and profit shares it allows the Organization for (i) better damage control possibilities, and (ii) to minimize risk of law enforcement.

Together with operational, organizational and management mobility, transferability, adaptability and flexibility are what make the organized crime groups so successful and (if ever penetrable) almost non-detectable in their full scope as a corporate mechanism.

## 9. STRUCTURES OF CRIME RINGS

These rings range from single individuals to smaller or larger networks composed of family members (or of persons from the same region, of shared language or religion), up to strictly organized, hierarchically structured and trans-continently tied organized Crime Rings. The majority of the operating groups are of the same ethnic origin either in their core staff or entirely. Functionally, these groups are horizontally structured from several sub-units that are specialized in a particular part or sequence of the smuggling/trafficking operation. In many cases, victims are recruited and trafficked by their own compatriots and even by their relatives. On many occasions, it may also be the victims themselves who recruit the new victims.

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<sup>37</sup> The Money Laundering component is of crucial importance here for the very outcome; or as the play-writer Bertolt Brecht effectively says in his *The Threepenny Opera* (staged in 1928) – “What is the bank robbery in comparison with the foundation of a new bank”.

## 10. DIVERSIFICATION AND SOPHISTICATION

The tasks are diversified, the organization clustered of different units or elements, which then independently carry out their particular criminal sequences. Each unit or element consists of one or more persons that are highly specialized, independent and with little knowledge about other parts of their own organization (in most cases, vertically they know only their direct supervisor whereas their horizontal knowledge is practically non-existent).

A typical criminal organization involved in the business of Trafficking in and Smuggling of Persons is comprised of the following elements or units (cells):

**A. Recruitment unit** (common for both Traffickers and Smugglers)

Advertises the organization and recruits new clients by using informal exchange of information (locals, friends, relatives, countrymen), up to announcements in the press or on the internet, including various kinds of overt agencies (travel agencies, summer schools, etc.); In recent years, the processes of recruitment and deception through the internet and new technologies have intensified, in cases of human trafficking such as the lover boy cases.

**B. Escort unit** (common for both Traffickers and Smugglers)

Deals with transport by land, air or waterways and takes care of every particular stage of the transportation phase (from the sending country, throughout transiting country/ies and to the destination – a host country). Very often this unit has sub-units which further specialize in particular sub-tasks; territory or means of transportation;

**C. Corrupted Officials** (common for both Traffickers and Smugglers)

These officials, although not necessarily interconnected or known to each other, are basically acting as an integral (corrupted) unit together with members of the organized crime ring that are corrupting them. Co-operation of local officials plays a critically important role in setting up, maintaining and further permanent networking of the trafficking/smuggling structure. Hence, bribed officials in the sending-, transiting- or/and host-country are essential for the safe transfer of illegal migrants. As in other fields of **organized criminal activity, corruption is an elementary part**<sup>38</sup> of the trafficking/smuggling business;

**D. Guiding/navigation unit** (common for both Traffickers and Smugglers)

Mostly comprised of local agents and informants who know very little about the organization and each other. This in turn minimizes the risk of law enforcement gaining access on the organization and its activities. The higher compartmentalization the better damage control possibility – a ship-chamber like inner structure is a preventive damage control measure against any deep and total raid or penetration);

**E. Supporting/Logistics unit** (common for both Traffickers and Smugglers)

The task of this unit is to provide all the supporting services (safe shelter, accommodation, food, etc.). This is to prevent the illegal migrants from having any contact to the ordinary society (keeping them totally at the mercy of their traffickers). By doing so, both of these aims will be fulfilled: (i) protection of the operation from any police interception and eventual information leakage; as well as (ii) creating interdependency at an early stage between those trafficked and the traffickers thus enabling further long-term exploitation;

**F. Debt collecting unit** (common for both Traffickers and Smugglers)

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<sup>38</sup> Corruption as a societal phenomenon represents a deviant relationship within or between government, citizenry and businesses that seriously departs from generally accepted legal or/and moral social conduct. From the legal point of view corruption can be defined as a clandestine trade-off between the influence and (material or in-kind/intangible favour) gain that is seemingly victimless. (Both def. – A.B.)

This unit is responsible for keeping illegal migrants in the safe houses and collecting the transportation fees. Unlike the Smuggling of Persons– business in which this unit collects a one-off escort service fee from smuggled persons, in the business of trafficking in persons the unit is permanently collecting revenue from all illegal (or overt) businesses that the trafficked persons are recruited for. Usually, the debt rate is purposely set high which then transforms into a debt-bondage that proves to be the most effective control mechanism (creating additionally strong dependency between the trafficked and the traffickers);

**G. Exploiting unit(s)** (Traffickers only)

The number of units or sub-units depends on the number of activities that any particular organization is involved in (such as: exploitation of prostitution, drugs and organ smuggling, shop-window restaurants/cafes/gambling houses for money laundering, pick-pocketing, car theft, forging, begging, etc.). Naturally, this unit operates entirely within the host-country/ies;

**H. Re-escort unit** (Traffickers only)

As mentioned before, most of the victims of trafficking are re-escorted to several countries, irrespective of their will. This is especially evident in cases of exploitation of prostitution, cybercrime, terrorism-related espionage and drug smuggling.

**I. Management/Supervising unit** (common for both Traffickers and Smugglers)

This is the single vertical unit in the explained structure, whereas all others (from A to H) are horizontal. This unit drafts, plans, finances, manages, chains and supervises the whole operation and maintains a criminal structure that is both operable and profitable in its covert and overt segments. This unit is rarely known to the horizontal units and is hardly visible to or penetrable from the outside world (very often camouflaged by the well-established legal business, or/and protected by the prominent public figures).

**Channels and Routes**

There are several channels and routes for Trafficking in and Smuggling of Persons in Europe<sup>39</sup>. The routing/re-routing is permanently changing or oscillating according to several factors such as: geographical position, distance between countries of departure and destination, political and economic situation, law enforcement efforts in different areas, and an achieved degree of corruption. Organized crime groups are flexible and adaptable to any change of circumstances (sometimes changing their routes from one day to another) – e.g. when the authorities in one country improve their fight against both crimes, or intensify their legal enforcement, the Groups move to another territory where they can act with greater impunity.

When expanding into new criminal areas, the new activities are often channelled through the old and already tested routes (e.g. routes used for drug trafficking are now further being used for Trafficking in and Smuggling of Persons or human organs, or lately by the terrorist cells).

By doing so, the Trafficking and Smuggling organizations are directly influencing both: (i) the direction as well as (ii) the intensity and patterns of general criminal flows.

As far as trafficking in human beings is concerned, there are multiple routes, although it is impossible to know all of them or to give an accurate picture due to the very secrecy and invisibility of the crime. However, given the places of origin of the victims of trafficking in human beings detected in recent years, it allows us to indicate the main routes used by traffickers. A first one, which goes from sub-Saharan Africa, North Africa, and the Middle East towards Europe via southern countries such as Spain, Italy, and Greece. 2015 saw an unprecedented increase in the number of migrants across the sea and overland towards the European Union, mainly fleeing armed conflicts

<sup>39</sup> UNODC, *Global Report on Trafficking in Persons 2018*, United Nations publication, Sales No.E.19.IV.2, p.42. available at [https://www.unodc.org/documents/data-and-analysis/glotip/2018/GLOTiP\\_2018\\_BOOK\\_web\\_small.pdf](https://www.unodc.org/documents/data-and-analysis/glotip/2018/GLOTiP_2018_BOOK_web_small.pdf). (last visit on 8 April 2021)

in the Middle East. Subsequently, intensified controls and agreements between the EU and Turkey led many migrants and refugees to use smugglers to reach the EU, increasing the risk of human trafficking.<sup>40</sup> Routes have also been detected from East Asia, South Asia, and the Pacific to both North America and Europe, either via Eastern Europe or via the Middle East. And finally, a route from South America to Central and North America.

For their part, migrant smuggling routes are numerous and carried out in a variety of ways<sup>41</sup>. The most common cases are between countries in the Mekong sub-region and other parts of Central Asia on land borders. Also, in Spain, at the borders of Morocco with the Spanish cities of Ceuta and Melilla, migrants have to jump over metal fences. Another major land route is between Mexico and the US. Smugglers are also active between numerous African, Eastern European, and Central Asian borders. Particularly dangerous are borders that include jungles such as in Southeast Asia, the deserts of Africa, and the Americas. As for sea routes, the most relevant smuggling passages involving sea crossings are those across the Mediterranean Sea to southern Europe, from the Horn of Africa to the Arabian peninsula, and across the Andaman Sea to South-East Asia. Less relevant than in the recent past are sea smuggling routes to Australia from South-East Asia.

## 11. GOING TRANSCONTINENTAL

The political developments and the socio-economic conditions on the European continent in the last decades have led to the fact that, in addition to more traditional organized criminal rings (such as Italian and Asian syndicates or the Latin American Drugs cartels), there are several new transnational organized criminal structures that are present and operable in Europe (such as groups from the former Soviet Union, from the Central Eastern European /CEE/, South Eastern European /SEE/ countries and Africa).

There are clear traces that the criminal syndicates from Afghanistan, China (Triads), Iran, Kosovo, Thailand, Nigeria, Pakistan, Columbia, Turkey (mostly Kurdish rings), and Japan (Yakuza) have been involved in the following: the drugs and precursors, firearms and explosives, human organs, radiological and illicit bio-chemical materials, and stolen car trafficking as well as in Smuggling of Persons into Europe and overseas.

Moreover, non-European organized crime groups have already established their branches in Europe (or have made connections/synergies with the existing European groups in Italy, Greece, Ireland, CEE/SEE, Germany, France etc.), sometimes through networks of illicit or converted charities, 'investment' banks, offshore firms, and the like. That was a new impetus in dealing with illicit drugs and narcotics, firearms, vehicle theft, black labour, fraud, false documents and credit-card manufacturing, counterfeiting, money laundering (partially through legally established chains of gambling houses), and extortion. Some of these groups are connected to (or even formed by) the political radicals, and therefore also involved in terrorism, (politically motivated) blackmailing, kidnapping, assassinations, sabotages and diversions, etc.

Pre-empting the EU enlargement and subsequent accession in 2004 and in 2007, many of these non-European clan-cartels (particularly the bigger and more sophisticated ones) have established their 'legal' businesses by registering companies in CEE/SEE countries (as well as in Macao prior to its authority-transfer from Portugal to China), or/and laundering money by participating in the

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<sup>40</sup> The relationship between human trafficking and migratory movements has been analysed by the Greta Group in its fifth General Report as well as in the Global Report on Trafficking in Persons 2016. Migrants and refugees are potential victims of human trafficking, and their vulnerability is exploited by traffickers. It is essential that the capacity to detect victims of human trafficking in the area of immigration and refugees is enhanced.

<sup>41</sup> Ibid., *Global Study on Smuggling of Migrants*, 2018

privatization and the foreign investment process in CEE/SEE countries and in the post-Soviet republics.

#### **ANNEX I: List of the Core International Instruments**

- 1904 International agreement for the Suppression of the White Slave Traffic
- 1910 International Convention for the Suppression of the White Slave Traffic
- 1921 International Convention (Suppression of the Traffic in Women and Children)
- 1926 Slavery Convention
- 1930 ILO Convention No. 29 concerning Forced Labor
- 1933 International Convention (Suppression of the Traffic in Women of Full Age) 1945 United Nation Charter and Statute of the International Court of Justice
- 1947 Protocol to amend the Convention for the Suppression of the Traffic in Women and Children and the Convention for the Suppression of the Traffic in Women of Full Age (a/m conventions No. 3 and 6)
- 1948 Universal Declaration of Human Rights
- 1949 Protocol amending the International Agreement for the Suppression of the White Slave Traffic and the International Convention for the Suppression of the White Slave Trade (a/m conventions No. 1 and No. 2)
- 1950 Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others
- 1950 Final Protocol to the Convention for the Suppression of the Traffic of Persons and of the Exploitation of the Prostitution of Others
- 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms
- 1951 Protocol amending the Slavery Convention of 1926
- 1951 The Convention relating to the Status of Refugees (the Geneva Convention)
- 1956 Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery
- 1957 European Convention on Extradition
- 1959 European Convention on Mutual Assistance in Criminal Matters
- 1966 The International Covenant on Civil and Political Rights (ICCPR)
- 1972 Protocol relating to the Status of refugees (NY Protocol to the Geneva Convention) 1972 European Convention on the Transfer of Proceedings in Criminal Matters
- 1977 Additional Protocol to the Geneva Convention relating to the Protection of Victims of Non-International Armed Conflicts
- 1977 European Convention on the Suppression of Terrorism
- 1979 Convention on the Elimination of All Forms of Discrimination against Women
- 1979 International Convention against the Taking of Hostages
- 1981 European Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data
- 1988 UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances
- 1989 Convention on the Rights of the Child
- 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families
- 1990 European Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crim
- 1990 European Convention on the Implementation of the Schengen Agreement (including the related provisions of the Maastricht treaty of 1993 and of Tampere Provisions of the Amsterdam treaty of 1999; of the Nice of 2000 and of the Seville of 2002) 1995 EUROPOL Convention
- 1995 Implementation of the Naples Political Declaration and Global Action Plan against Organized Transnational Crime, report of the UN Secretary-General
- 1997 EU Convention on the fight against Corruption
- 1999 UN General Assembly: Guidelines for Reporting by governments on the implementation of the Global program of Action 2003 – 2008, UNOV/CND
- 1999 Council of Europe Criminal Law Convention on Corruption

- 2000 Vienna Declaration on Crime and Justice of the 10<sup>th</sup> UN Congress on the Prevention of Crime and the Treatment of Offenders
- 2000 UN (International Palermo) Convention against Transnational Organized Crime (and additional instruments/protocols)
- 2001 Council of Europe (Budapest) Convention on Cyber Crime (23 XI 2001)
- 2003 Council of Europe additional Protocol to the Convention on Cyber Crime
- 2003 Council of Europe Protocol amending the European Convention of the Suppression of Terrorism
- 2003 UN Anti-Corruption Convention
- 2005 UN International Convention for the Suppression of Acts of Nuclear Terrorism
- 2005 Council of Europe Convention on the Prevention of Terrorism
- 2005 Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism
- 2005 Council of Europe Convention on Action Against Trafficking in Human Beings
- 2010 United Nations Global Plan of Action to Combat Trafficking in Persons
- 2011 Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention)
- 2011 Council of Europe Convention on the counterfeiting of medical products and similar crimes involving threats to public health
- 2013 Declaration of the High-Level Dialogue on International Migration and Development
- 2015 Doha Declaration on Integrating Crime Prevention and Criminal Justice
- 2015 Council of Europe Convention against Trafficking in Human Organs
- 2015 Additional Protocol to the Council of Europe Convention on the Prevention of Terrorism
- 2016 New York Declaration for Refugees and Migrants
- 2017 Council of Europe Convention of Offences relating to Cultural Property

## TERRORISM

### 1. TERRORISM IN GENERAL

The English word *terror* literally means: extreme fear. Thus, according to the Oxford dictionary *terrorism* means: the use of violence for political aims or to force a government to act, especially because of the fear it causes among the ordinary people.

Consequently, it is easy to linguistically define terrorism, but the real problem starts when terrorism as a phenomenon (including its range and scope) has to be politically and legally determined and effectively defined.

Low or high scale atrocities, domestic violence or terrorism; international terrorism; state (sponsored) terrorism; special war, secession and self-determination; armed conflict; declaration of war; social unrest, proscribed organization and undermining the constitutional order; upheaval and revolutionary movement; – all these terms, as such, are somehow defined at the national level, incorporated in and treated by the national legislations. However, to define them more universally, by achieving a wide international consensus over the scope, wording and very definition turns out to be a delicate and complex problem.

### 2. TERRORISM – STRUGGLE FOR DEFINITION

As defining terrorism in any particular case implies a political component, this very category becomes quite extensive and subject to different readings and understandings. Having permanent – primarily political – disputes over the category and scale of ‘conflict’, contemporary international community repeatedly failed over decades to agree upon a single and comprehensive but universal

instrument determining, prescribing and combating terrorism. As a consequence of these, mostly political and less legal implications, today we are confronted with two dozen international (universal and regional) instruments, which are good, but far from being standardized and harmonized.

Thus, the tentative political definition of (international) terrorism could be as follows: Terrorism is the use of violence as political means of pressuring the government and/or society into accepting a radical socio-political or/and socio-economic change (ideological or/and territorial). The word terrorist is obviously self-incriminating (demonizing and alienating), and consequently most terrorists would not apply the label to themselves<sup>42</sup>

The targets of terrorist groups are traditionally the combat forces (army and police) and high officials of the state. Lately, the tactics are aiming at undermining domestic economic capacity, destroying civil moral and calling upon the widespread civil disobedience – by assassinating public figures and/or attacking randomly population at large in public space. Terrorist groups are (or claim to be) motivated by a number of different ideologies. Thus, nationalism is a frequent cause of terrorist activity (incl. anti-colonial struggles, separatism/self-determination, irredentism); a whole spectrum of ideologies from right-wing (anti-Semitic, neo-fascist) to left-wing (Maoists, Marxist-Leninists) etc.

Although most terrorist groups, especially in Europe and Latin America, have not in fact achieved their political ends, elsewhere the situation is different. Many groups, particularly in Africa and Asia that were formerly labelled as terrorist groups, and began as opponents of colonial regimes, have legitimized themselves by forming the post-colonial government. In recent years, it was observable how the Islamic State has managed to control vast sways of Iraq and Syria, with cities as large as Raqqa and Mosul.

### 3. TERRORISM – SOME LEGAL PROVISIONS

Terrorism – the use of violence for political ends, including the use of violence for putting the public in fear. Hence, the act of terrorism defines a terrorist as a person who is or has been concerned with committing or attempting to commit any act of terrorism (such as: sabotage by explosion or fire; killing or by endangering people and/or property either by misuse of nuclear, biological, chemical materials or by conventional means and devices; hijacking of aircraft, ship or other transportation means; kidnapping or taking hostages; serious cyber- attacks) or directing, organizing, recruiting or training people for the purpose of terrorism.

Additionally, the vast majority of national legislation considers it a serious criminal offense if a person fails to disclose information which may assist the authorities in the prevention of an act of terrorism. Other criminal offenses also prescribed by law are acts of collecting information or possession of information likely to be useful to (foreign or domestic) terrorists.

### 4. TERRORISM – LINKAGES TO POLITICAL PARTIES

Without any attempt to problematize here the ‘asymmetric threats’, ‘non-state actors’ and ‘winning the hearts and minds’ theories or pre-emptive doctrines<sup>43</sup> that appeared after 9/11, let us quickly state the following: the difference between a political party and a terrorist group is in their means – these are always criminal, on the side of terrorist groups; and legitimate, constitutionally prescribed means on the side of ordinary political parties. However, the very goal is in most of the

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<sup>42</sup> Experts’ estimates claim that for every apprehended/detained terrorist another 9 remain at large (rating it to 10%). Therefore, many describe terrorism like a balloon: squeeze one end and it expands at the other.

<sup>43</sup> Around that time, the grand wiz of American geopolitics, Henry Kissinger has coined his famous and thereafter frequently quoted term: “confrontational nostalgia”.

cases identical: political influence. Political agenda is always national and aims at either ideological or territorial change on a specific, clearly defined territory and population. As there is no international political party, there is also no international terrorist group. There is a sporadic trans-national cooperation (logistics, exchange of operative information or tools), but the core ideas and members are always and only national. (Al Qaida is also a national – Moroccan and Yemeni Arab are still both Arabs. Throughout most of their history, Arabs lived within one state entity /Caliphates, the Ottomans/. Living in two-dozen states is rather a historical novelty for Arabs – a shock, which they are still absorbing. The Islamic State, although it calls itself a caliphate and claims religious authority over all Muslims, is, in fact, a terrorist organization focused on Iraq and Syria- ISIS- Islamic State of Iraq and Syria). Finally, terrorism is not an ideology per se. Eventually, it can be a method of political action – a radicalism of an (subjectively or objectively) excluded group which is justified by a projected political aim

## 5. TERRORISM – LINKAGES TO ORGANIZED CRIME GROUPS

Establishing a line of critical similarities and differences between the legitimate political party and clandestine (prescribed by law) terrorist group, we can now endorse – following the same token – the link between the criminal group and corporate entity. Thus, the essential similarity between the (trans-national) organized crime group and the legitimate business enterprise is that both are profit driven – they operate to either gain, maintain or enlarge the market and profit shares. The critical difference is in the means used. On the side of organized crime grouping the means used are always (predominantly) criminal, whereas the legitimate enterprise will operate respecting the national legal framework.

However, the lasting, ultimate ambition of any parallel structure, as are organized crime (gray economic sector) or terrorist grouping (gray political sector), will be a gradual, well-orchestrated eventual legalization. It is not only the relative strength of a particular state: capability and capacity of its judiciary and effectiveness of its legal enforcement that matters. The ability of a state to achieve and maintain the social cohesion by including all segments of society to participate coherently will also be essential.<sup>44</sup>

However, debates on the linkages between terrorism and organised crime are intensifying in last decades offering novel concepts and views (beyond elaboration in this text).

## 6. MULTILATERAL EFFORTS AND MEASURES TO ELIMINATE INTERNATIONAL TERRORISM

Since the existing international conventions against terrorism did not adequately address the issue of State responsibility to prevent and refrain from acts of terrorism all along, during the 1990s, the UN Security Council adopted the resolutions imposing sanctions on certain states accused of sponsoring terrorism several times. At that point it became evident that a legal instrument adopted by the UN General Assembly would provide a universally legitimate basis for combating international terrorism and avoid political controversies arising from unilateral or selective actions. To this end, a draft of a comprehensive convention against international terrorism appeared during

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<sup>44</sup> As the 10th UN Congress already recorded (and the 11th and 12th Congress confirmed), there are growing firm bonds and linkages between Terrorism and Organized Crime, as well as dangerous similarities between the two of them (such as: money-laundering through illicit or covered charities, covert and overt offshore banking; trafficking/smuggling of fire-arms, of human beings; kidnapping; various sorts of plundering of property, etc.) Tediously enough, unlike drugs money or any other laundering of proceeds of crime, the terrorist funds must be traced before, not after, the crime has been committed.

the 53<sup>rd</sup> session of GA. Most of the parties concerned, contributed to strengthening the global consensus on combating international terrorism.

As a result of these efforts, the UN GA reaffirmed the mandate of the Ad Hoc Committee (established by Res. 51/210) with its new resolution 53/108, to elaborate a draft international convention for the Suppression of Terrorist Financing to supplement existing international instruments on terrorism.

Finally, in December 1999, the UN Convention for the Suppression of the Financing of Terrorism was approved. This Convention expands the legal framework for international co-operation in the investigation, prosecution and extradition of persons engaged in (financing) terrorism. Additionally, elaboration of the International Convention for the Suppression of Acts of Nuclear Terrorism has successfully been closed in 2005 in Vienna – further strengthening the body of universal legislations in matters related to terrorism.

There has been considerable progress recorded on the regional level too. Thus, two new instruments appeared in 1999 alone: OAU Convention on the Prevention and Combat Terrorism (and its protocol of 2004) and the OIC Convention on Combating International Terrorism, followed by the 2002 Inter-American Convention Against Terrorism, the 2006 Council of Europe Convention on the Prevention of Terrorism, and finally the 2007 ASEAN Convention on Counter Terrorism.

In addition to the instruments adopted (or still under elaboration) on a global and regional level, there is a wide scope of measures that have been taken to suppress and eliminate international terrorism. The following is a brief overview of some of the ongoing activities.

Together with the WCO (World Customs Organization) and Interpol, IAEA (International Atomic Energy Agency) conducts a detection and response training programs for custom and other officials (programs mostly emphasized on the prevention of nuclear smuggling).

Further on, IAEA assists CEE/SEE, Central-East Asian and Pacific countries in establishing their domestic legal frameworks to comply with the intl. standards, incl. the national laws governing the safe and peaceful usage of nuclear energy (nuclear legislation & regulations, including non-proliferation and physical protection of nuclear material and facilities).

ICAO (International Civil Aviation Organization) very successfully carries on the financial, technical and material assistance to states with regard to aviation security (aircraft and airports serving international civil aviation security strengthening measures).

IMO (International Maritime Organization) organizes specially designed training programs to combat crimes connected with international terrorism (safety of maritime navigation, safety of fixed platforms, open-seas piracy, etc.).

TPB of CICIP/ODCCP (Terrorism Prevention Branch, special division, created in 1999) is a clearing-house for matters related to international terrorism. It is very active in research (e.g. the questionnaires regularly sent to each of the Institutes of UN criminal justice network). As regards the legal assistance, TPB has a well-established cooperation and permanent consultations with the UN 6<sup>th</sup> committee and UN Office of Legal Affairs in NY (particularly with a Codification Division of the LA Office, which gathers data on national laws and regulations regarding the prevention and suppression of intl. terrorism).

UN DCP, Europol, UNESCO, OAS, OIC, OAU, LAS, SAARC, EU/EC, Council of Europe and other affiliated or non-affiliated bodies, agencies and regional organizations are, also, taking their measures to prevent; detect; collect, disseminate and exchange information on; suppress; punish and eliminate international terrorism.

Example (of non-affiliated entity) includes the Naif Arab Academy for Security Studies in Riyadh, which annually offers dozens of comprehensive training courses on combating terrorism for the Arab JHA community.

Finally, in 2006, the United Nations adopted Resolution 60/288<sup>45</sup>, establishing a plan of action against terrorism, according to which member states must unequivocally condemn any act or manifestation or form of terrorism. As concrete measures to combat terrorism, the plan set out, *inter alia*, the obligation to prevent territories in member states from being used for the formation of terrorist groups; full cooperation in accordance with international standards; the prosecution and extradition of perpetrators, in accordance with international standards; the intensification of cooperation and exchange of information aimed at the prevention of terrorism; coordinating and combating other crimes that are sometimes connected, such as drug or arms trafficking; checking that asylum seekers have not been involved in terrorist activities; creating regional counter-terrorism offices; the possibility of creating an international centre for the fight against terrorism; implementing recommendations against money laundering; establishing a database of biological crimes; as well as encouraging cooperation between states and between international organisations.

## 7. INTERNATIONAL INSTRUMENTS AGAINST TERRORISM

There are several comprehensive global and regional international instruments directly or indirectly subjecting the issue of (international) terrorism:

### **Global International Instruments:**

The **1963** Convention on Offenses and Certain Other Acts Committed on Board Aircraft (including the stipulations on Jurisdiction; Powers of the Aircraft Commander; Unlawful Seizure of Aircraft; Powers and Duties of States)

- **Tokyo Convention** (September 14, 1963); applies to acts affecting in-flight safety

Status of the Convention:

Signature: 40 states; Ratification, accession or succession: 186 states

(ratification instruments deposited with the International Civil Aviation Organization).

The **1970** Convention for the Suppression of Unlawful Seizure of Aircraft - **Hague Convention** (December 16, 1970): applies to hijackings

Status of the Convention:

Signature: 76 states; Ratification, accession or succession: 185 states (ratification instruments deposited with the Governments of USSR/Russia, UK and USA).

The **1971** Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation

- **Montreal Convention** (September 23, 1971): applies to acts of aviation sabotage such as bombings aboard aircraft in flight

Status of the Convention:

Signature: 59 states; Ratification, accession or succession: 188 states (ratification instruments deposited with the Governments of USSR/Russia, UK and USA).

The **1973** Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including diplomatic agents

- **UN Convention** (NY December 14, 1973): Protects senior governmental officials and diplomats

Status of the Convention:

Signature: 25 states; Ratification, accession or succession: 180 states (ratification instruments deposited with the Secretary-General at the UN HQ in NY).

The **1979** International Convention against the Taking of Hostages

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<sup>45</sup> UNGA, *The United Nations Global Counter-Terrorism Strategy*, 2006.

- UN Convention (NY December 18, 1979): applies erga omnes  
Status of the Convention:  
Signature: 39 states; Ratification, accession or succession: 176 states (ratification instruments deposited with the Secretary-General at the UN HQ in NY).  
The **1980** Convention on the Physical Protection of Nuclear Material
  - **UN Convention** (March 3, 1980): Combats unlawful taking and use of nuclear material  
Status of the Convention:  
Signature: 45 states; Ratification, accession or succession: 155 states (ratification instruments deposited with the International Atomic Energy Agency, UNOV).  
The **1988** Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation
    - **Montreal Protocol** (February 24, 1988): Extends and supplements the Montreal 1971 Convention on air safety  
Status of the Instrument:  
Signature: 68 states; Ratification, accession or succession: 188 states (ratification instruments deposited with the Governments of USSR UK USA and with ICAO).  
The **1988** UN Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation
      - **Rome Convention** (March 10, 1988): applies to terrorist activities on ships  
Status of the Convention:  
Signature: 41/17 states; Ratification, accession or succession: 166 states (ratification instruments deposited with the Secretary-General at the UN HQ in NY).  
The **1988** Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf
        - **Rome Protocol** (March 10, '88): refers to terrorist attacks on fixed offshore platforms  
Status of the Instrument:  
Signature: 39 states; Ratification, accession or succession: 156 states (ratification instruments deposited with the Secretary-General at the UN HQ in NY).  
The **1991** Convention on the Marking of Plastic Explosives for the Purpose of Detection (including the stipulations on Plastic and High Explosives; Detection agent; Manufacturing and Marking; Duly authorized military devices; Description of Explosives, etc.)
          - **Montreal Convention** (March 1, 1991): applies to chemical marking for international identification of plastic explosives, e.g. to combat aircraft sabotage  
Status of the Convention:  
Signature: 51 states; Ratification, accession or succession: 156 states (ratification instruments deposited with the Intl. Civil Aviation Org. at HQ in Montreal).  
The **1997** International Convention for the Suppression of Terrorist Bombings (including the stipulations on state or government facility; Infrastructure facility; Explosive or other lethal device; Cause of death, serious injury or substantial material damage; Impact of toxic chemicals, biological agents or toxins, radiation or radioactive material; Military forces of a state; Place of public use; Public transportation system; Mutual legal assistance, etc.)
            - **UN Convention** (NY December 15, 1997): expands legal framework for international co-operation in the investigation, prosecution and extradition of persons who engage in terrorist bombings  
Status of the Convention:  
Signature: 58 states; Ratification, accession or succession: 170 states (ratification instruments deposited with the Secretary-General at the UN HQ in NY).

The **1999** International Convention for the Suppression of the Financing of Terrorism (including the stipulations on funds; State or governmental facility; Proceeds; Exchange of information; Extraditable offences; Mutual legal assistance, etc.)

- **UN Convention** (NY December 9, 1999): expands legal framework for international co-operation in the investigation, prosecution and extradition of persons who engage in financing terrorism

Status of the Convention:

Signature: 132 states; Ratification, accession or succession: 189 states (ratification instruments deposited with the Secretary-General at the UN HQ in NY).

The Security Council Resolution 1373 on International Cooperation to combat threats to International Peace and Security caused by Terrorist attacks (2001).

- **The 2001 SC Resolution 1373**

Status: unanimously – SC members (5+10)

The 2005 International Convention for the Suppression of Acts of Nuclear Terrorism (including the stipulations on definition of nuclear facilities and of nuclear materials; Crimes and Offenders; Proceedings and Extraditable offenses; Mutual legal assistance, etc.)

- **UN Convention** (Vienna, 2005): designated to criminalize acts of nuclear terrorism, expands legal framework for international co-operation in the prevention, investigation, prosecution and extradition of persons engaged in these acts

Status of the Convention:

Signature: 115 states; Ratification, accession or succession: 117 states (ratification instruments deposited with the IAEA, Vienna).

#### **Regional International Instruments:**

The **1971** OAS Convention to Prevent and Punish the Act of Terrorism taking the Form of Crimes against Persons and Related Extortion that are of International Significance

- **Organization of American States Convention** (Washington, February 2, 1971): expands the scope of the OAS GA Resolution on Acts of Terrorism with special regards to the Kidnapping of Persons and Extortion in connection with that Crime

Status of the Convention:

Signature: 19 states; Ratification, accession or succession: 18 states (ratification instruments deposited with the OAS General Secretariat).

The **1977** European Convention on the Suppression of Terrorism (all EU Member States agreed to the application of this convention as of December 04, 1979)

- **Council of Europe Convention** (Strasbourg, January 27, 1977): as a wider basement for the 1992 EU Maastricht Treaty and its provisions on the Justice-Home Affairs (JHA) Co-operation

Status of the Convention:

Signature: 32 states; Ratification, accession or succession: 46 states (ratification instruments deposited with the Secretary-General of the Council of Europe).

The **1987 SAARC** Regional Convention on Suppression of Terrorism

- **South Asian Association for Regional Cooperation Convention** (Kathmandu, November 4, 1987): applies only to Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan and Sri Lanka but recalls the UN Resolution 2625 (XXV) as well as the Dhaka SAARC Summit of 1985

Status of the Convention:

Signature: -- states; Ratification, accession or succession: 7 states (full) (ratification instruments deposited with the Secretary-General of SAARC). Including: The 2004 Additional Protocol to the SAARC Convention

- SAARC Additional Protocol (Islamabad, 2004): framework for regional mechanisms of implementation and information exchange relevant to the acts of terrorism (ratification instruments deposited with the Secretary-General of SAARC).

The **1998 Arab Convention on the Suppression of Terrorism**

- **League of Arab States Convention:** expands legal framework for intl. co-op. in the investigation, prosecution and extradition of persons engaged in terrorist activities Status of the Convention:

Signature: 22 states; Ratification, accession or succession: 17 states (ratification instruments deposited with the Secretary-General of LAS).

The **1999 OAU/AU<sup>46</sup> Convention on the Prevention and Combat Terrorism** (including the stipulations on Terrorist act definition; Areas of co-operation; State Jurisdiction; Extradition; Extra-territorial investigations and mutual legal assistance, Extraditable offenses, etc.)

- **Organization of African Unity Convention** (Addis Ababa, 1999): expands legal framework for prevention and combating of and international co-operation in the investigation, prosecution and extradition of persons engaged in terrorist activities

Status of the Convention:

Signature: no data; Ratification, accession or succession: no data available (ratification instruments deposited with the Secretary-General of AU/African Union).

Including:

The **2004 Protocol to the OAU Convention on the Prevention and Combating of Terrorism**

- **African Union Protocol** (Addis Ababa, 2004): legal framework for regional mechanisms of implementation, prevention and combating of acts of terrorism (ratification instruments deposited with the Secretary-General of AU).

The **1999 OIC Convention on Combating International Terrorism** (including the provisions on Contracting state; Terrorism definition; Terrorist Crime; Measures to Prevent and Combat Terrorist crimes; Exchange of Information and Expertise; Investigation; Education and Information Field; Extradition and extradition procedures; Rogatory Commission; Judicial co-operation; Seized assets and proceeds of the crime; Exchange of Evidence; Implementation Mechanisms; Protection of Witnesses and Experts)

- **Organization of the Islamic Conference Convention** (Ouagadougou, July 1, 1999): expands legal framework for intl. co-operation in the investigation, prosecution and extradition of persons engaged in terrorism within the OIC member states

Status of the Convention:

Signature: verified by the OIC Foreign Ministers at the 26<sup>th</sup> Session of Organization in Burkina Faso; Ratification, accession or succession: no data available (ratification instruments deposited with the Secretary-General of OIC).

The **2002 Inter-American Convention Against Terrorism**

(including the stipulations on Terrorist act definition; Areas of co-operation; State Jurisdiction; Joint Investigation, Extradition; Extra-territorial investigations and Mutual legal assistance, Extraditable offenses, etc.)

- **Organization of American States Convention** (Bridgetown/Barbados, 2002): sets the legal framework for prevention and combating of and regional co-operation in the investigation, prosecution and extradition of persons engaged in terrorist activities

Status of the Convention:

Signature: 33 (of 34 active); Ratification, accession or succession: 24 (ratification instruments deposited with the Secretary-General of OAS).

<sup>46</sup> Organization of African Unity (OAU) has been renamed into African Union (AU).

The 2005 Council of Europe Convention on the Prevention of Terrorism (including the stipulations on Terrorist act definition; Areas of co-operation; State Jurisdiction; Indictment and Investigation, and Exchange mechanisms; Mutual legal assistance; Extraditable offenses, etc.)

- **Council of Europe Convention** (Warsaw, 2005): expands legal framework for prevention and combating of and regional co-operation in the investigation, prosecution and extradition of persons engaged in terrorist activities

Status of the Convention:

Signature: 17; Ratification, accession or succession: 42 (opened in Warsaw, ratification instruments deposited with the CoE).

**The 2005 Council of Europe Convention** on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism. (Warsaw, 2005): Is the first international treaty covering both the prevention and the control of money laundering and the financing of terrorism.

Status of the Convention:

Signature: 10; Ratification, accession or succession: 37

The **2007 ASEAN Convention** on Counter Terrorism (including the stipulations on Terrorist offences; Strong reference on non-interference principle; Areas of co-operation; Rehabilitative programs; Political Offenses Exceptions; State Jurisdiction; Mutual legal assistance, Extraditable offenses, etc.)

- **ASEAN Convention** (Cebu/Philippines, 2007): expands legal framework for prevention and combating of terrorism; Foresees designation of Central Authorities or Coordinating structures: clearing-house mechanism

Status of the Convention:

Signature: 10; Ratification, accession or succession: 10 (ratification instruments deposited with the Secretary-General of ASEAN).<sup>33</sup>

The **2017 Additional Protocol** to the Council of Europe Convention on the Prevention of Terrorism

- **Council of Europe Convention (Riga, 2015)**. Criminalise the acts of taking part in an association or group for terrorism, receiving terrorist training, traveling abroad for terrorism, and financing or organizing travel for such purposes.

Status of the Convention:

Signature: 19; Ratification, accession or succession: 23

## CONCLUSION

Twenty years have passed since the adoption of the Palermo Convention and its protocols, and it still remains the actual international mechanism for fighting global organised crime. The UNTOC is one of the most widely ratified international treaties and has also served as a significant promoter of the fight against various criminal modalities such as human trafficking, and especially trafficking in human beings. The Palermo Convention and its protocol on preventing and combating trafficking have served as the basis for the criminalisation in many states of the so-called modern slavery. Despite this, it is sometimes under-utilized, and there is even a lack of implementation in some countries, which energetically invites all to join forces in the advancement of international justice.

As stated throughout the text, the lasting and ultimate ambition of any parallel societal structure is to legalize itself. After stages of accumulation/recruitment, stabilization, expansion, and monopolization are achieved, the parallel structure will make all necessary efforts to establish itself within the given society legitimately. This is where corruption, organized crime (including money laundering, cybercrime, and trafficking), and terrorism come to a dangerous interplay. There is no

successful transition through the phases for neither organized crime nor a terrorist group without support from a corrupted official. Corruption is used from neutralization (lowering the legal enforcement risk) to naturalization (legalization of the criminal group). Once successfully conducted, the corruption keeps presenting itself as an opportunity, almost automatically. That is the manner that corruption evolves from a sporadically attempted ad hoc condition into a systematically used, well-established, and powerful instrument, which in the long run seriously undermines, deeply penetrates, or even sometimes overtakes the state structure. In order to respond adequately to these challenges, the sub-national and national (states) level, as well as the supranational (international community) one, have to be effective and decisive, but also inclusive and cohesive.

Organised crime is becoming increasingly global, with international networks, and new types of crime appear like those targeting cultural property, the environment, or the counterfeiting of medical products. Therefore, international cooperation is essential, but also the implementation of new strategies to fight crime, such as the confiscation of the proceeds of crime or corporate liability. The fight against transnational crime must be holistic and multidisciplinary, taking into account that organised crime is nowadays a global phenomenon that affects us all. UNDOC is therefore making a major effort to adapt its policies and strategies to meet the new challenges, focusing for example on the need to recover the proceeds of crime, to include the private sector in the fight against crime, or to focus on the liability of legal persons.

In this context, the existence of an international forum is essential. Tentatively, we can describe multilateralism as a special sort of constant, refined diplomatic bargaining among states. Multilateralism is also about the fine-tuning, filtering, and clustering of interests of individual states (which are promulgating their respective national interests through the foreign policy formulation that rests upon the rational, political, and emotional element) and is about building up momentum. Finally, multilateralism is not a linear, directional, irreversible upward process of (agreed or imposed) compromise. It often suffers serious setbacks (sometimes, despite the existing solid institutional framework and its steady financial cover) but also moments of progress, and let us hope that the review mechanism for the implementation of the UNTOC and its protocols established in 2018 can serve as an impetus and a step forward in the fight against transnational crime.

The Justice and Home Affairs diplomacy keeps up its brave, silent, accorded, and sustained work towards establishing a viable, lasting, and comprehensive international regime on universal criminal justice. The human rights, freedom and liberties of individuals and groups are at stake, as well as the proper functioning of our societies. Since we borrowed from the future generations – bound by the cross-generational contract, we simply owe them.

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## The Nonaligned Movement 60 years Later: Restless asia seeking its pan-continental integration

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DR MARIA SMOTRYTSKA<sup>1</sup>

SENIOR RESEARCH FELLOW AT IFIMES/DESSA

**Abstract:** *The very creation of sub-regional international organizations is a proof that currently Asian countries are more willing to consult and cooperate with each other on the integration and creating of the zone of co-prosperity issues. Nevertheless, in Asia, there is hardly a single state which has no territorial dispute within its neighbourhood. From the Middle East, Caspian and Central Asia, Indian sub-continent, mainland Indo – China or Archipelago SEA, Tibet, South China Sea and the Far East, many countries are suffering numerous green and blue border disputes. The foundation on which Asia – Pacific countries now support regional cooperation initiatives, such as the various Indo – Pacific concepts proposed by Japan, the United States and others, as well as China’s “Belt and Road Initiative”, is built on a policy of peaceful coexistence and prevention of the emergence of a single prevailing power. This paper closer examines these trends and all-Asia future prospect.*

**Keywords:** *Asia, multilateralism, collective security, prof. Bajrektarevic, border disputes, confidence building*

**M**arking the 60<sup>th</sup> anniversary of the inaugural, Belgrade conference of the Non-aligned Movement (NaM) (Aug-Sep 1961), the International Institute for Middle East and Balkans Studies (IFIMES) conducts series of research papers and reports. Hence, the first of them:

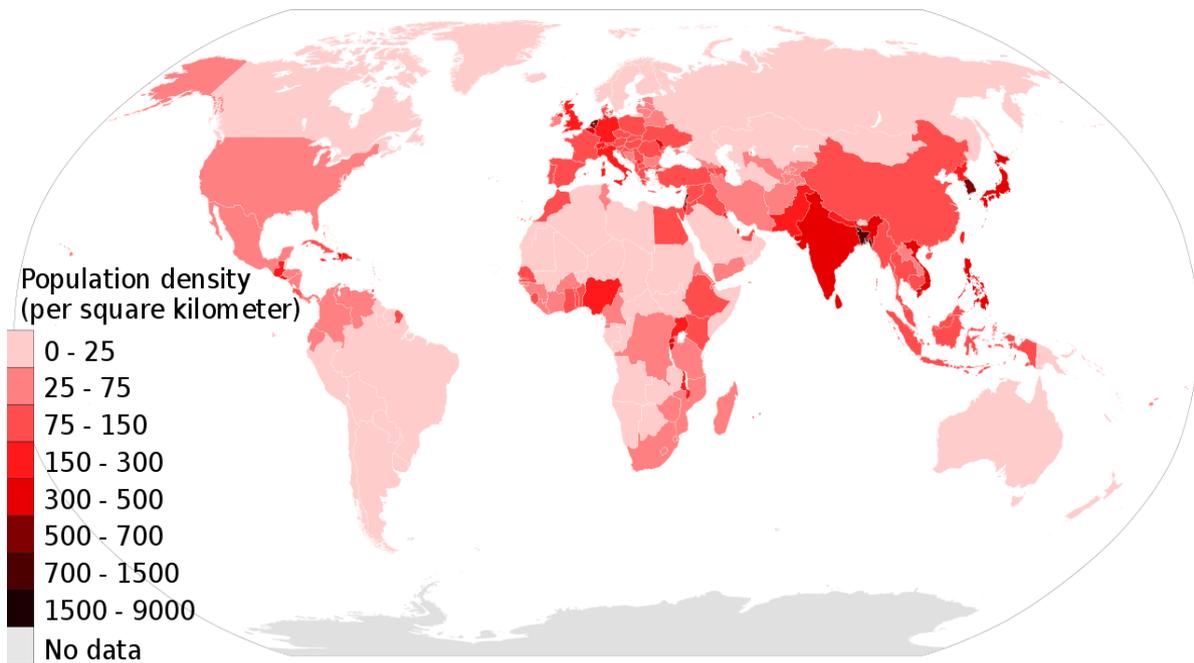
Following the famous argument of prof. Anis H. Bajrektarevic ‘No Asian century without pan-Asian multilateral settings’ which was prolifically published as policy paper and thoroughly debated among practitioners and academia in over 40 countries on all continents for the past 15 years, hereby the author is revisiting and rethinking this very argument, its validity and gravity.

Today Eurasia is the axial continent of mankind, which is home to about 75% of the world's population (**see Map 1**), produces 60% of world GDP (**see Map 2**) and stores three quarters of the world's energy resources (**see Map 3**) [Shepard, 2016]. In these open spaces, two giant poles of modern geoeconomics are being formed: European and East Asian, which are tearing the canvas of the familiar geographical concept of “Eurasia” and at the same time providing opportunities for new synthesis through the construction and connection of transcontinental transport arteries.

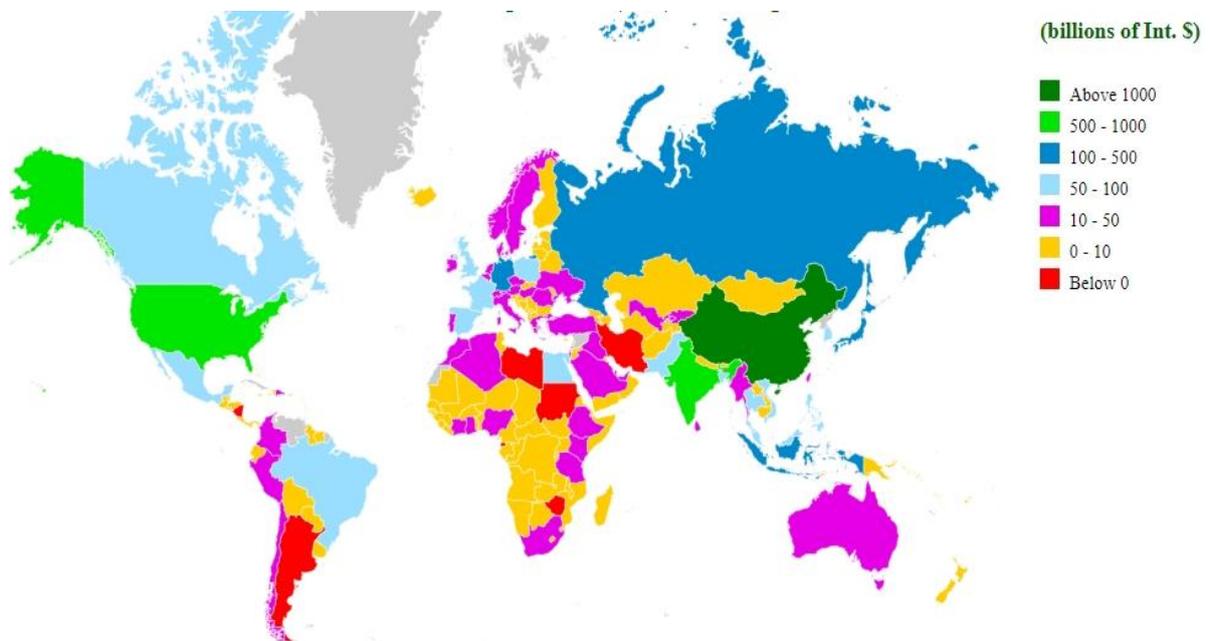
In the XX century, a united Europe was able to consolidate the power of its members and create the largest bloc that challenged the world hegemon – the United States, and the rapidly growing Asian giants – India and China. However, today the issue of the fact that the world economy is beginning to rely more and more on the East Asian pole of high technologies is being discussed more actively (**see Map 4**) [Tobny, 2019]. World geopolitics talk about the transformation of the Pacific Ocean into the same centre of business activity as the Mediterranean Sea in ancient times.

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<sup>1</sup> Dr Maria Smotrytska is senior research fellow at IFIMES/DeSSA, a research sinologist, specialized in the investment policy of China; Asian affairs; BRI-related initiatives; Sino – European ties, etc. She is distinguished member of the Ukrainian Association of Sinologists and the PORA (Project Office for Arctic Development) Expert Council. She has PhD in International politics, Central China Normal University (Wuhan, Hubei province, PR China).

**Map 1.: World's population density (per square kilometer)**

Source: WHO, 2019

**Map 2.: Global GDP Purchasing Power Parity**

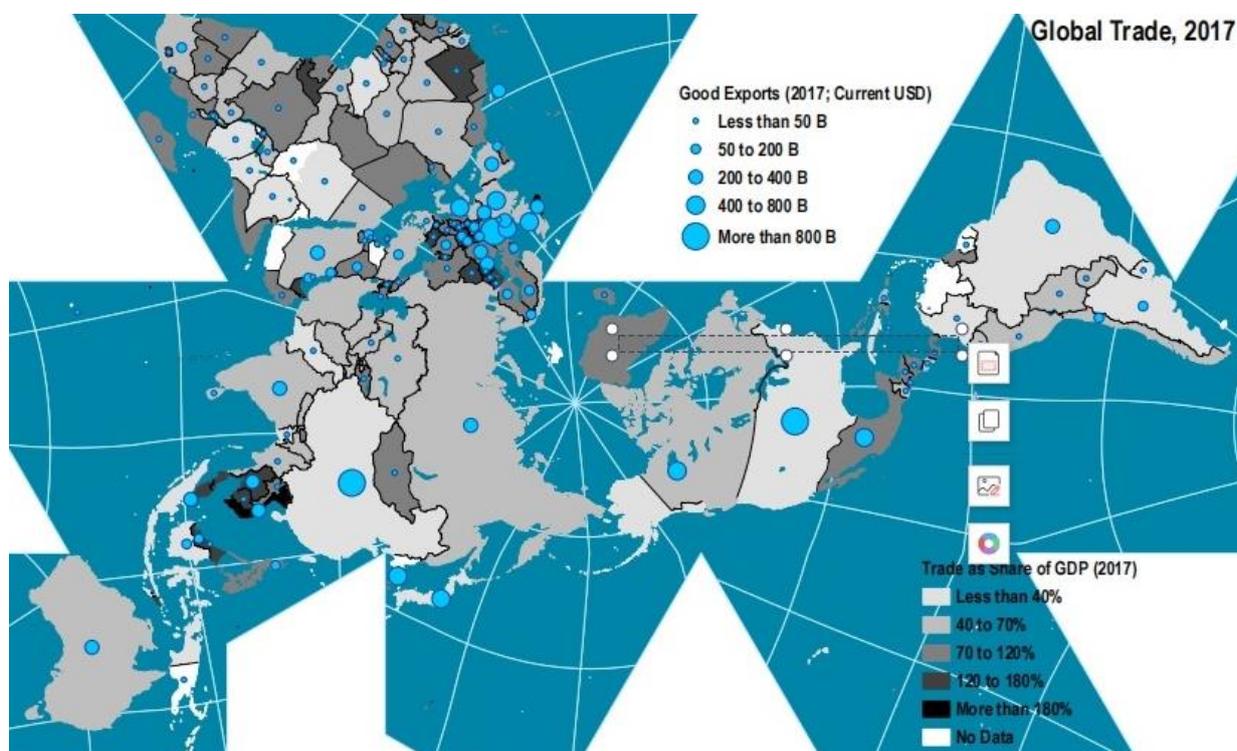
Source: International Monetary Fund World Economic Outlook, 2019

**Map 3.:** World's natural resources map



**Source:** BP Statistical Review of World Energy 2020

**Map 4.:** Global Trade, 2017



**Source:** The World Bank, 2017

At the end of the XIX century John Hay – US Secretary of State, stated: “The Mediterranean is the ocean of the past, the Atlantic is the ocean of the present, the Pacific is the ocean of the future” [Lehmann&Engammare, 2014]. Statistics show [Akhtar, 2018] that today the Asia – Pacific region (hereinafter APR) has become a powerful world theatre. Ascending Asia encompasses a vast triangle stretching from the Russian Far East and Korea in the northeast to Australia in the south and Pakistan in the west (see **Map 5**). This triangle contains many of the leading industrialized countries of the modern world – Japan, China, Australia, New Zealand, Taiwan, South Korea, Hong Kong, Singapore, which are characterized by the fastest rates of economic development [Reynolds, 2021]. In the water area of the region a new global reproduction complex is being formed, which today provides more than half of world production and world trade, almost half of the inflow of foreign direct investment (see **Map 4**).

In the XXI century, it was impossible not to notice the rapid economic growth of Asia, given that the growth rates of each of the national economies of the region exceed those of the Western countries. However, the assertion about the beginning of the Asian century is still vague.

Asia’s economic resurgence and cumulative financial strengths over the last two decades have largely contributed to the global shift of power to Asia [Medcalf, 2018], nevertheless how politically and economically stable the “dominance” of Asia? To answer this question, one need to refer to history of the region and its current geopolitical status-quo.

**Map 5.:** Political map of Eurasia



**Source:** Dept. Of Global Studies and Geography, Hofstra University, 2018

At the end of the last century and the beginning of this century, Asia flourished because the Pax Americana period after the end of World War II provided a favourable strategic context. But now the twists and turns of US – China relations are raising questions about the future of Asia and the structure of the emerging international order.

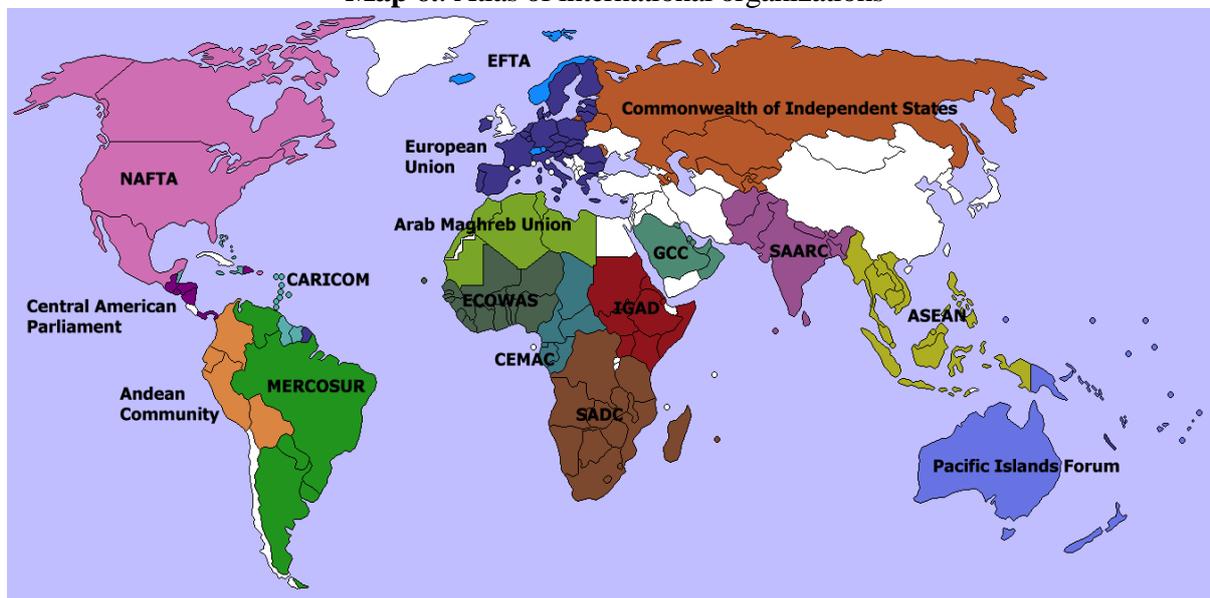
For a long time, Asian countries have taken the best of both worlds, building economic relations with China, and maintaining strong ties with the United States and other developed countries. Many Asian states for a long time have considered the United States and other developed countries as their main economic partners [Tran, 2019]. But now they are increasingly taking advantage of the opportunities created by China's rapid development [Harada, 2020].

Due to the new geopolitical situation, the countries of the East Asia region are concerned [Rsis, 2021] that, being at the intersection of the interests of major powers, they may find themselves between two fires and will be forced to make difficult choices. In this regard, countries understand that the status-quo in Asia must change. But whether the new configuration will further prosper or bring dangerous instability remains to be seen.

It is worth noting that Asian countries view the United States as a power present in the region and having vital interests there. At the same time, China and India are immediate and close reality. Asian countries don't want to choose between them. And if they face this challenge – Washington will try to contain the growth of China or Beijing will make efforts to create an exclusive sphere of influence in Asia – they will embark on the path of confrontation that will drag on for decades and jeopardize the highly-discussed Asian century.

An important element that can resolve the issue of the status-quo in the region is the fact, that the largest world's continent must consider creation of the comprehensive pan-Asian institution, as the other major theatres do have in place already for many decades [Kuo, 2018] (i.e., the Organization of American States – OAS (American continent), African Union – AU (Africa), Council of Europe and Organization for Security and Cooperation in Europe – OSCE (Europe)) (see **Map 6**).

**Map 6.:** Atlas of international organizations



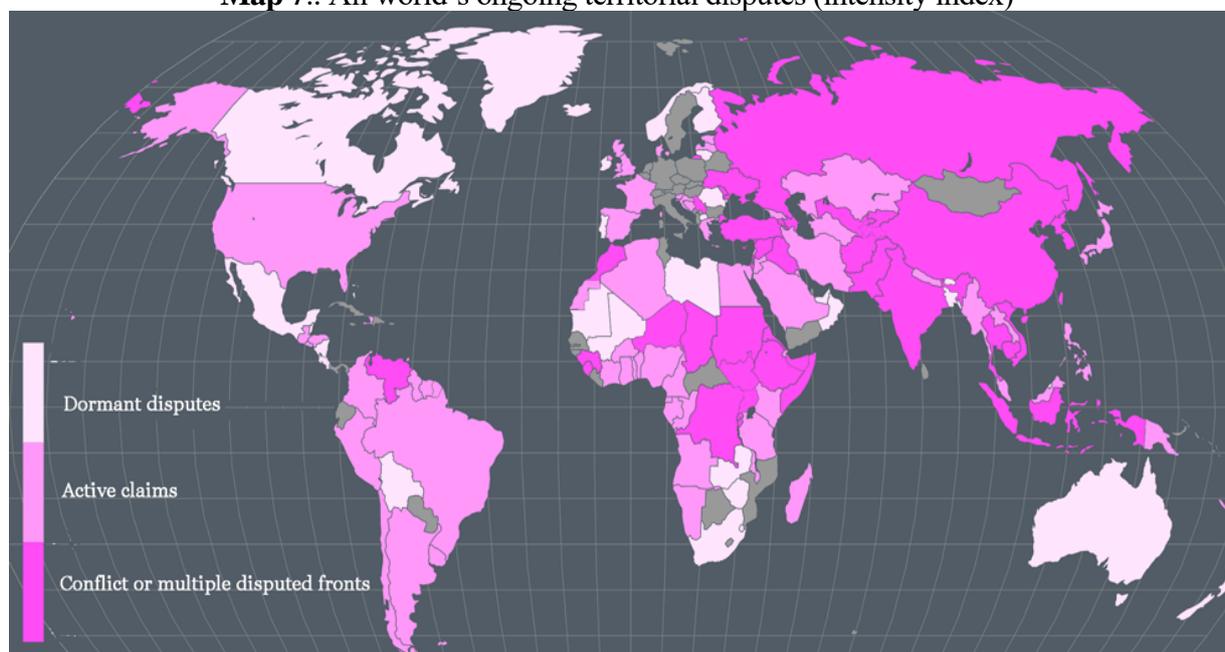
**Source:** Dept. Of Global Studies and Geography, Hofstra University, 2020

The steps taken by the countries of the leading regions of the world to create a single market and a zone of co-prosperity in recent years have given rise to a desire for consolidation among the leaders of Asian countries [Frost, 2008]. Thus, today Asia is a place of concentration of the largest integration groupings, including the Asia – Pacific Economic Cooperation (APEC), the Association of Southeast Asian Nations (ASEAN), the Shanghai Cooperation Organization (SCO), its' countries are members of large organizations: the Commonwealth of Independent States (CIS), Eurasian

Economic Community (EurAsEC), Organization for Economic Cooperation and Development (OECD), BRICS, G-20, G-8, E-7. These integration groupings are closely interconnected, widely diversified (Commonwealth of Nations) or specialized (OPEC) (see **Map 6**). Nevertheless, it is worth noting that in Asia there is still the absence of any pan-Asian security/ multilateral structure, which leaves many issues of cooperation between countries (especially in the field of security and interstate territorial disputes) unresolved [Kaisheng, 2015]. Thus, in Asia the presence of the multilateral regional settings is limited [Bajrektarevic, 2013] to a very few spots in the largest continent, and even then, they are rarely mandated with security issues in their declared scope of work (see **Map 6**).

Underlining the importance of the creation on multilateral mechanism in Asia, one need to analyse in details the conflicts' map of the region. The world's map, which is showing the world's countries involved in land or border disputes, categorizes the conflicts according to their gravity, from dormant disputes to active conflicts (countries marked in grey have none) (see **Map 7**), (see **Map 29**). Thus, Central and Western Africa, Asia and the Middle East emerge as the areas of the world with most active territorial conflicts [Conant, 2014].

**Map 7.:** All world's ongoing territorial disputes (intensity index)



**Source:** CIA World Factbook, 2020

The historical background of Asian region shows that Asia has witnessed more territorial disputes, and more armed conflicts over disputed territory, than any other region in the world (see **Map 8**) [Mancini, 2013]. In 2000, Asia also accounted for almost 40 % of all active territorial disputes worldwide [Fravel, 2014]. Thus, today territorial disputes in Asia remain a serious challenge to peace, stability, and prosperity of the countries. The geopolitical shifts, natural resources, and environmental degradation are a source of concern (see **Map 29**). The East and South China Seas are flashpoints that could lead to devastating confrontations for the region and beyond.

Dividing the region to subregional level Asia as a region includes Northern (Northeast) Asia, China & Far East (Eastern Asia), South – Eastern Asia, Western Asia, South Asia, and Central Asia (see **Map 9**). Among them Western Asia and Central Asia has higher conflict potential, which influence the interstate cooperation.

**Map 8.: Asia's Disputed Borders**



Source: Business Insider, 2020

**Map 9.: Subregions of Asia**



Source: National Geography, 2018

The subregion of **Central Asia** is west of China, south of Russia, and north of Afghanistan. The western border of this region runs along the Caspian Sea. It is politically divided into five countries: Tajikistan, Uzbekistan, Kazakhstan, Turkmenistan, and Kyrgyzstan (see **Map 10**).

Two post-Soviet Caspian Sea sub-regions – Central Asia and the South Caucasus – have experienced different conflict scenarios. The South Caucasus has been embroiled in protracted, large-scale armed conflicts, while Central Asians have managed to avert a serious armed conflict, remaining largely peaceful despite local, short-term, small-scale clashes, and the existence of factors that may have led – and still may potentially lead – to a serious military conflict (i.e., Armenia – Azerbaijan conflict (*The Nagorno-Karabakh conflict*<sup>2</sup> [Visual Explainer, 2021])). Conflict map of Central Asia (see **Map 11**) mainly describes the issue of border settlement is the problem of *ethnic enclaves* [Indeo, 2020], which is a constant factor of tension in relations between Tajikistan, Kyrgyzstan, and Uzbekistan (see **Map 29**).

**Map 10.: Central Asia Subregion**



Source: Cartarium/Shutterstock, 2019

<sup>2</sup>The Nagorno-Karabakh conflict is an ethnic and territorial conflict between Armenia and Azerbaijan over the disputed region of Nagorno-Karabakh, inhabited mostly by ethnic Armenians, and seven surrounding districts, inhabited mostly by Azerbaijanis until their expulsion during the First Nagorno-Karabakh War, which are *de facto* controlled by the self-declared Republic of Artsakh, but are internationally recognized as *de jure* part of Azerbaijan. The conflict has its origins in the early 20th century, though the present conflict began in 1988, when the Karabakh Armenians demanded that Karabakh be transferred from Soviet Azerbaijan to Soviet Armenia. The conflict escalated into a full-scale war in the early 1990s which later transformed into a low-intensity conflict following the end of the war, later escalating into another full-scale war in 2020.

Map 11.: Conflicts of Central Asia region



Source: Jacques Leclerc Research Centre, 2020

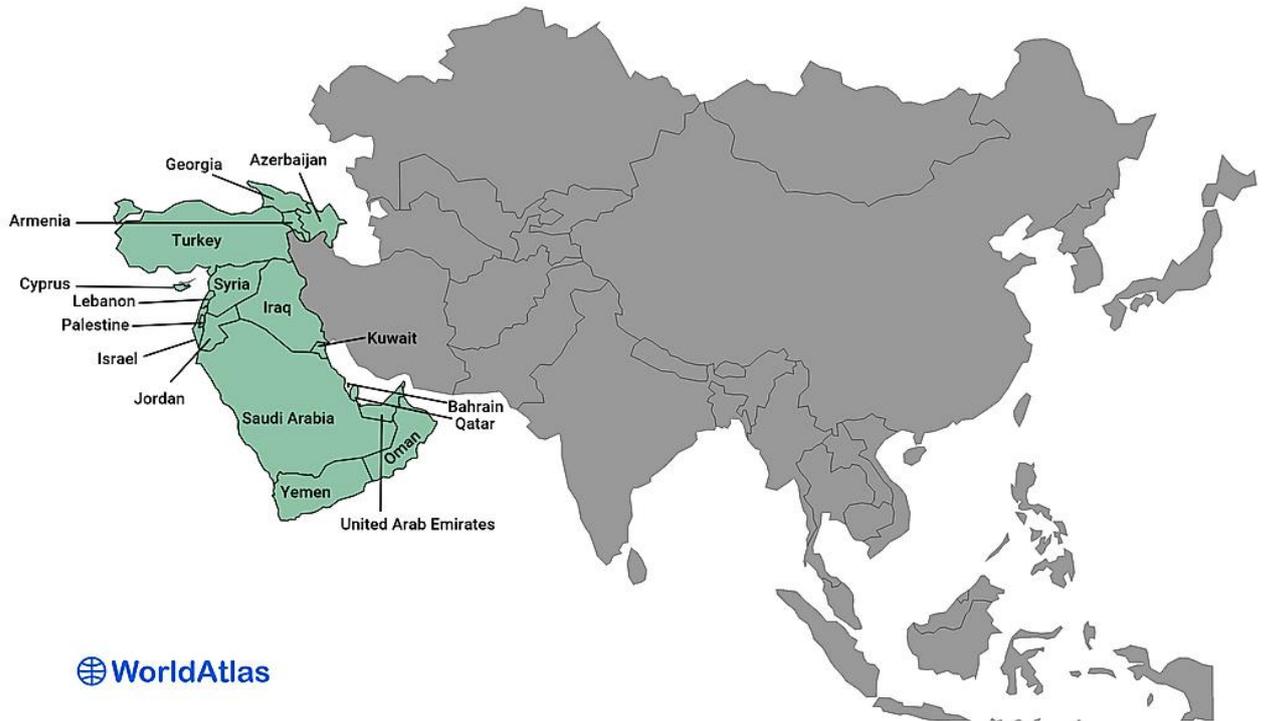
To date, of all the currently existing independent states in Central Asia, only Turkmenistan and Kazakhstan have decided to delimit their land borders with neighbouring countries [Zhunisbek, 2021]. The largest number of territorial disputes leading to border armed conflicts arose between Kyrgyzstan, Tajikistan, and Uzbekistan, which share a common border in the Ferghana Valley, where there is a difficult socio-economic situation (high density and rapid population growth, lack of farmland, lack of water resources), as well as strong positions of supporters of Islamic radicalism.

The conflicts on the borders and border areas of Kyrgyzstan, Uzbekistan and Tajikistan in recent years and months allow to characterize the current situation as unstable and tends to worsen (see Map 29).

**Western Asia** is in the area between Central Asia and Africa, south of Eastern Europe. Most of the region is often referred to as the Middle East, although it geographically excludes the mainland of Egypt (which is culturally considered a Middle Eastern country). West Asia is politically divided into 18 states: Georgia, Armenia, Azerbaijan, Turkey, Cyprus, Syria, Lebanon, Israel, Palestine, Jordan, Iraq, Kuwait, Bahrain, Qatar, Saudi Arabia, United Arab Emirates, Oman, and Yemen. Iran can also be considered as border state of the subregion. It also includes the Sinai Peninsula of Egypt (see Map 12).

The situation in (South-) Western Asia, which covers most of the Near and Middle East, has remained very complex and explosive for half a century. This is largely due to the *Palestine – Israeli confrontation* in Palestine [BBC, 2021], which escalated in the early twentieth century after the proclamation of the doctrine of creating a “people’s land” for the Jews. The *Arab – Israeli confrontation* [Boston, 2021], which began in 1948 (the state of Israel was proclaimed), remains unresolved to this day and is a hotbed of armed conflicts in the region (see Map 13).

**Map 12: Western Asia Map**



 WorldAtlas

Source: WorldAtlas, 2019.

**Map 13: Israel Palestine conflict: A map of the region**



Source: Express Politics, 2020



Tunbs, which makes these islands some of the most strategic points in the Persian Gulf. The islands are now controlled by Iran, which took control of them in 1971. The conflict between Iran and the UAE periodically flares up and turns into a phase of exchange of harsh statements.

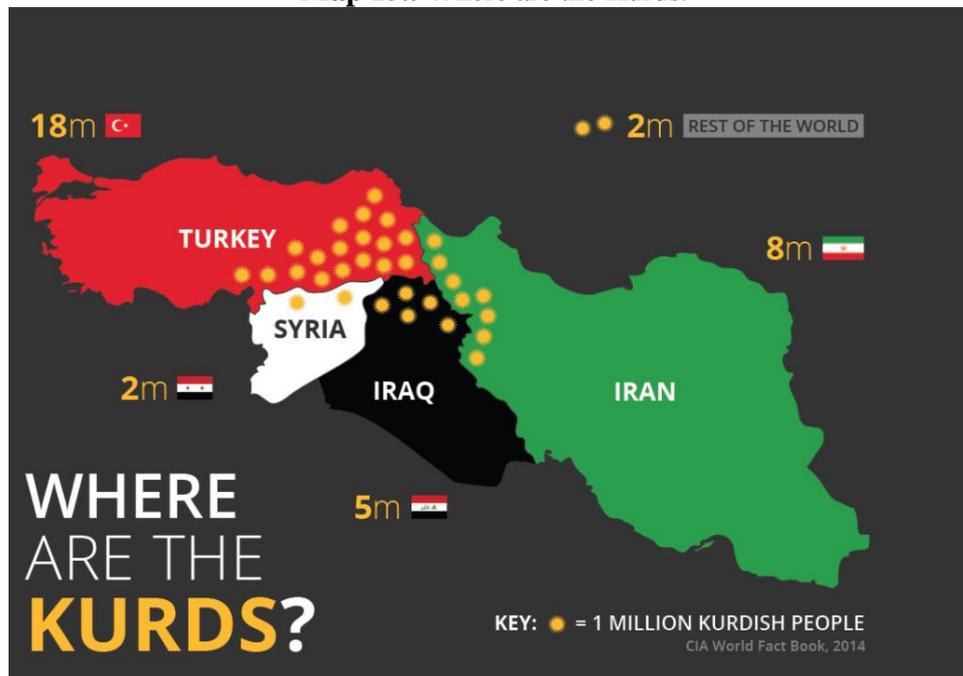
The already dangerous situation in the Persian Gulf region is fuelled by several other regional conflicts: important players in the regional political arena are concerned about the threat of Iranian expansion. The enmity between Iran and Saudi Arabia is based not only on interfaith conflict. Political leadership in the Middle East is at stake.

In addition to those listed above, the *Iraqi issue* remains a hot spot in the South – West Asia subregion [CRS, 2003]. The overthrown 2003 dictatorial regime of Saddam Hussein and the creation of new government bodies did not save the country from acute internal political conflicts.

The instability of the *Caucasus* significantly exacerbated the conflict in the region at the beginning of the 21st century: in August 2008, the situation in the region worsened sharply, which was associated with an attempt by Georgia to regain South Ossetia by military means [Lehmkuhl, 2017]. Russia's intervention in this conflict led to the proclamation of the independence of Abkhazia and South Ossetia. The conflict remains unresolved to this day.

Ethno-religious conflicts and the struggle of *the Kurds* for their statehood, which lasted throughout the entire twentieth century, are important centres of instability in the region [Khalifa&Bonsey, 2013]. The Kurds (according to estimates, at least 20 million people) are settled compactly in mountainous areas at the junction of state borders in the south-eastern part of Turkey (about 10 million people), north-western Iran (5.3 million), northern Iraq (3.0 million) and Syria (1.3 million), more than 0.5 million Kurds live in other countries, in Armenia (see **Map 15**).

**Map 15.:** Where are the Kurds.



Source: The Kurdish Project, 2018

In 1992, the Kurds proclaimed their own state on part of the territory of Iraq, the government of which was not recognized by Iraq, which offered them the preservation of their autonomy status. The “temperature” of the centres of separatism of the Islamic regional type, the greatest contribution to the formation of which was made by ethno-confessional and geopolitical factors, as well as the factor of natural boundaries, today remains relatively high. One of the bloodiest separatist conflicts,

as noted above, is the Kurdish one. Since its inception, the number of its victims has exceeded 40 thousand people.

The conflict potential of the region is aggravated by the numerous emigrations of Kurds to Western Europe (Germany, France) and the United States, whose radical groups often resort to terrorist acts. Such approaches and fierce military operations complicate the overall political climate in such a volatile region (see Map 29).

**Northern and Eastern Asia** is one of the world's most dynamic areas in terms of economic growth and significance for global trade. While China attracts most attention, Japan, South Korea, and Taiwan are all strong economies. Add Russia and the US in the mix and the importance of Northeast Asia cannot be overstated.

**Northern Asia** includes the bulk of Siberia and the North – Eastern edges of the continent and comprises Siberia and Russian Far East, which is in the Asian part of Russia and Mongolia (see Map 16).

Map 16: East Asia



Source: WorldAtlas, 2019

In the Far East and North Asia, destabilizing factors remain the Russian – Japanese territorial dispute over *the Kuril Islands* (Northern Territory) [Kaczynski, 2020], the Korean – Japanese territorial dispute over *the Dokdo Islands* (Takehima) (Liancourt Rocks dispute) [Genova, 2018] and the territorial dispute over *the Senkaku Islands* (*Diaoyutai*) between Japan and China [SCMP, 2019].

Analysing Russia – Japanese territorial dispute over *Kuril Islands* [Gorenburg, 2012], it can be emphasized that the official position of Japan is that the Kuril Islands were never part of Russia and therefore these islands belong to Japan but are currently illegally occupied by Russia (see Map 17). A peace treaty has not yet been signed due to Japan's remaining claims to the islands of Kunashir and Iturup. Russia sees no guarantees of the end of the dispute, even after the “theoretically conceivable” transfer of the four disputed islands to the Japanese side.

Japan – South Korea territorial dispute over *Liancourt Rocks* remains unresolved [Jennings, 2017] (since 1965 – the parties concluded a Basic Agreement on Relations) and mainly stems from a controversial interpretation of the fact – whether Japan's renunciation of sovereignty

over its colonies also applies to the Liancourt Islands. Due to this fact Japan recalls its claims and makes attempts to exercise its jurisdiction in the area.

**Map 17.: The Kuril Islands**



**Source:** Deutsche Welle analytics, 2016

**East Asia (China & Far East)**, one of the subregions of Asia, is including the continental part of the Russian Far East region of Siberia, the East Asian islands, Korea, and eastern and north-eastern China. It is located east of Central Asia, with its eastern border running along the East China Sea. East Asia is politically divided into eight countries and regions: China, North Korea, South Korea, Japan, Hong Kong, Taiwan, and Macau (see Map 16).

These two regions are characterised by “strategic diversity” where several unresolved territorial disputes threaten to undermine the very source of regional prosperity: maritime trade.

Of all the disputed territories in the APR, a striking example of the high potential of a formally latent territorial dispute in NEA is the *conflict over the Senkaku – Diaoyu Islands*<sup>3</sup> [European Parliament, 2021], in which Japan and China, the two largest economies and two leading foreign policy players in Northern and East Asia (NEA), are parties to the conflict (see Map 18). This conflict illustrates the essence of modern territorial disputes in the region and the essential information component of such processes.

Currently, territorial disputes over the right to own the above-mentioned region are not resolved. Both China and Japan periodically engage in military provocations.

The further development of the situation around the Senkaku – Diaoyu Islands is likely to take the form of an ongoing foreign policy conflict of moderate intensity, including the alleged periodic escalation-de-escalation. Thus, the consideration of the situation around the Senkaku-Diaoyu Islands makes it clear that this territorial conflict in modern conditions is supported mainly by information actions of its participants. A similar scenario development is typical for many other territorial contradictions in the APR today.

<sup>3</sup> Senkaku-Diaoyu Islands: the archipelago is de facto controlled by Japan and owned by private individuals (however, these islands may soon be nationalized by Japan). The Senkaku ownership dispute is seen as a potential casus belli

**Map 18.: Diaoyu/Senkaku Islands Dispute**

**Source:** Chinese Defense Ministry, EIA, Yonhap, 2015

However, other, equally intractable, disputes cannot be neglected. Among these cases are disputes between Japan and Korea over *Dokdo/Takeshima Island*<sup>4</sup> and *the Kuril Islands*<sup>5</sup> that are held by Russia but claimed by Japan (**See Map 17**). Further regional conflicts involve *Korean Peninsula*<sup>6</sup> disputes [Visual Explainer,2013], disputed fishing areas that frequently witness clashes between fishing boats and respective law enforcement agencies. No less important conflict areas of the region are Korean Peninsula and Chinese territories [Krishnankutty,2020] (namely *China – Taiwan*<sup>7</sup> [Maizland,2021], the *issue of Inner Mongolia*<sup>8</sup> [Roney,2013] the *issue of Tibet* (Tibet

<sup>4</sup> Liancourt Rocks : in 1952, South Korea declared its sovereignty over Liancourt. In 1954 and 2012, Japan offered to refer the dispute to the UN, to which South Korea refused. In 1965, the parties concluded a Basic Agreement on Relations, in which they recognized the existence of a dispute over the islands. Currently, the conflict mainly stems from a controversial interpretation of the fact — whether Japan's renunciation of sovereignty over its colonies also applies to the Liancourt Islands. From time to time, Japan recalls its claims and makes attempts to exercise its jurisdiction in the area.

<sup>5</sup> Kuril Islands: currently, the official position of Japan is that the South Kuril Islands were never part of Russia, the decisions of the Yalta Conference were not a treaty, and Japan was not a participant in this conference, and therefore these islands belong to Japan, but are currently illegally occupied by Russia. A peace treaty has not yet been signed due to Japan's remaining claims to the islands of Kunashir and Iturup. Russia sees no guarantees of the end of the dispute, even after the "theoretically conceivable" transfer of the four disputed islands to the Japanese side.

<sup>6</sup> Dispute between South and North Korea: earlier agreements were disavowed by Lee Myung-Bak in 2010 (after the incident with the sinking of the corvette "Cheonan"), and the April 2013 crisis led to the fact that the DPRK ceased to consider itself bound by the terms of not only the 1953 Agreement, but also the 1991 document. On March 8, 2013, the DPRK government annulled the peace treaty with South Korea on non-aggression. The dispute is not resolved.

<sup>7</sup> China – Taiwan: mainland China considers the island to be part of the People's Republic of China. However, the Communist Party of the People's Republic of China does not actually govern the island, Taiwan has its own government, parliament, and ruling party. Moreover, on the Chinese mainland, there is a special law that prescribes the armed seizure of Taiwan in certain cases, for example, when certain amendments to the Constitution of the island state are adopted. Therefore, the inhabitants of the island live in constant anticipation of possible military aggression from the mainland. The territory of Macclesfield Bank is located below sea level, so it cannot be a disputed territory under international law. Contested by the Republic of China.

<sup>8</sup> China – Inner Mongolia: Autonomous Region of Inner Mongolia is now one of the largest national entities in China. Now the activity of the independence movement has decreased: there are only about 18 Mongols in Inner Mongolia %

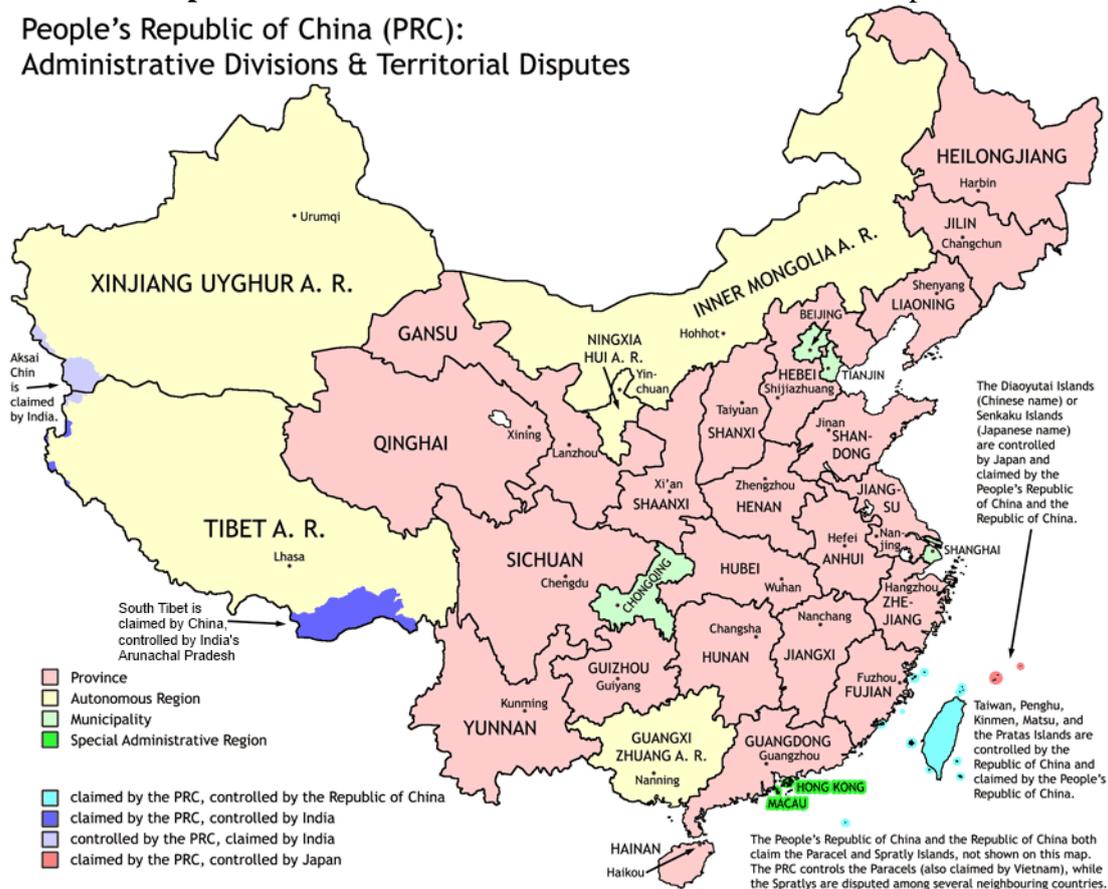
Autonomous Region)<sup>9</sup> [Shetty, 2017] and *the issue of Xinjiang Uygur Autonomous Region*) [Fuller&Starr,2003] (see Map 19).

None of the above-mentioned disputes are likely to be resolved in the foreseeable future. The worst-case scenario is that they continue to plague Japan's bilateral relations with China, South Korea, and Russia, isolating Japan in the region, and perhaps even resulting in militarized conflict. Though such conflict is unlikely in the disputes with Russia and South Korea, it remains a possibility in the dispute with China.

The recent flare-ups in all three disputes have served to harden domestic opinion on all sides, preventing the states from explicit compromises (see Map 29). But the Northern and Eastern Asia territorial disputes underline an important fact: as the disputes faded from view, public opinion softened slightly, and bilateral trade and other exchanges developed. If the states involved can recognise and pursue their long-term interests, the disputes could be shelved. Over time, if shelving agreements pertained and future flare-ups were avoided, an environment may even develop whereby both sides could reach a compromise agreement. This is perhaps the most optimistic scenario, and it requires a suppression of nationalism and revisionism that may well be impossible. Still, the alternative is a bleak future for not only the disputes, but also for Northeast Asia as a whole.

**Map 19.:** the PRC: Administrative Divisions & Territorial Disputes

People's Republic of China (PRC):  
Administrative Divisions & Territorial Disputes



**Source:** South China Morning Post, Infographics, 2019

<sup>9</sup> China – Tibet: Currently, no State recognizes the independence of Tibet, considering it part of the PRC. Fleeing from the repression, many Tibetans, led by the Dalai Lama XIV, went into exile, mainly to India. Under the leadership of the Dalai Lama, a Tibetan government-in-exile was established, the legitimate successor to the Tibetan Government that had previously operated in Lhasa.

**Southeast Asian** subregion is located north of Australia, south of East Asia, west of the Pacific Ocean, and east of the Bay of Bengal. It encompasses several island and archipelago nations that stretch between the northern and southern hemispheres, making it the only Asian region located on both sides of the equator. Southeast Asia is politically divided into 12 countries and territories: Brunei, Cambodia, Indonesia, Laos, Malaysia, Myanmar, Philippines, Singapore, Thailand, East Timor, Papua New Guinea, and Vietnam (see Map 20).

In Southeast Asia (hereinafter SEA), compared to other regions, the numbers of unresolved territorial disputes are still considered small [Jenne, 2017], and SEA is considered a relatively safe region with no violence going on due to the unresolved territorial disputes as compared to the Africa region (where the conflicts has involved 9 million people causing them to be refugees and internally displaced people (hereinafter IDP) where hundreds and thousands of people were slaughtered).

**Map 20:** Southeast Asia



**Source:** WorldAtlas, 2019

The territorial disputes in SEA consist of the following disputes: *the Philippines' Sabah Claim (The North Borneo)*<sup>10</sup>, *the Ligitan and Sipidan dispute*<sup>11</sup> [Victoria, 2019], *the Pedra Branca dispute*<sup>12</sup>

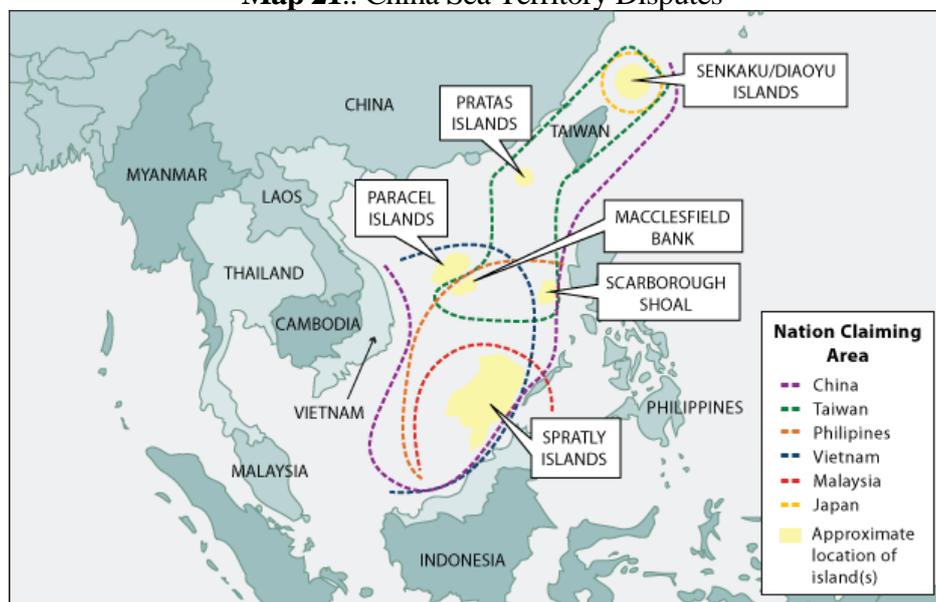
<sup>10</sup> The North Borneo (Sabah) dispute: to date, Malaysia maintains that the Sabah claim is a non-issue and non-negotiable, thereby rejecting any calls from the Philippines to resolve the matter in ICJ. Sabah authorities stated in 2009 that they see the claim made by the Philippines' Moro leader Nur Misuari to take Sabah to International Court of Justice (ICJ) as a non-issue and that they dismiss the claim

<sup>11</sup> the Ligitan and Sipidan dispute: none of Indonesia's actions are of a legislative or administrative nature; it did not follow from the fact of patrolling that Indonesia considered the islands as its own; the activities of fishermen cannot be considered as originating from the State. Malaysia's actions, on the contrary, can be regarded as suggesting a claim to sovereignty. The number of these actions is small, but they are diverse in content and cover a significant period of time. Neither Indonesia nor the Netherlands protested them during their implementation. Thus, the islands belong to Malaysia.

<sup>12</sup> The Pedra Branca dispute: on 23 May 2008, the ICJ ruled that Pedra Branca is under Singapore's sovereignty, while Middle Rocks belongs to Malaysia. As regards South Ledge, the Court noted that it falls within the apparently overlapping

[Jumrah, 2021] and the South China Sea Conflict Zone also known as *the Spratly Islands disputes*<sup>13</sup> [Moss,2016] (see Map 21), (see Map 29).

**Map 21.: China Sea Territory Disputes**



**Source:** Money Morning staff research, NPR, 2021

The country of *East Timor*, also known as Timor-Leste, which gained independence from Indonesia in 2002, only in 2018 has signed (with Australia) a historic treaty on a permanent maritime border in the Timor Sea – settling the dispute over Timor Gap. The deal ended a decade-long dispute between the neighbours over rights to the sea's rich oil and gas reserves.

The international border between Indonesia and Papua New Guinea, which divides the *island of New Guinea* in half, represents another hot spot in the region [Cooke,1984]. Tensions between Indonesia and Papua New Guinea grew, as the ongoing *West Papuan conflict*<sup>14</sup> destabilised the border region, causing flows of refugees and cross-border incursions by Indonesia's military. Ongoing Papua conflict up to date preserves dangers and high level of violence in the region. Land dispute in which 21 people died (last update as for April 2021 [Fardah,2021]) is the latest brutal conflict exacerbated by high-powered weapons, weak governance, and erosion of traditional mores.

The territorial and maritime *disputes in the South China Sea* are considered some of the most complex conflicts in the region if not worldwide [Sakomoto,2021]. The disputed areas are abundant

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territorial waters generated by mainland Malaysia, Pedra Branca and Middle Rocks. As it is a maritime feature visible only at low tide, it belongs to the state in the territorial waters of which it is located. Malaysia and Singapore have established what they have named the Joint Technical Committee to delimit the maritime boundary in the area around Pedra Branca and Middle Rocks, and to determine the ownership of South Ledge.

<sup>13</sup> the South China Sea Conflict Zone: the situation today is as follows: The PRC controls eight or nine coral reefs and rocks in the Spratly archipelago, Vietnam controls from 21 to 29 islets, the Philippines – from 8 to 10, Malaysia-5, Brunei-2. The Republic of China (Taiwan) controls one, but the largest island in the Spratly group, Taipingdao, on which the runway is built. Each of the parties concerned states that they are trying to find a peaceful solution to the conflict in the South China Sea. The incredible interweaving of geopolitical, military-strategic, economic factors, as well as national-state interests and ambitions of the parties to the dispute turn the issue of the ownership of the islands of the South China Sea into one of the most dangerous conflict situations in Southeast Asia, characterized by a very high degree of military-political tension.

<sup>14</sup> The Papua conflict (1962 – ongoing) is an ongoing conflict in Western New Guinea between Indonesia and the Free Papua Movement.

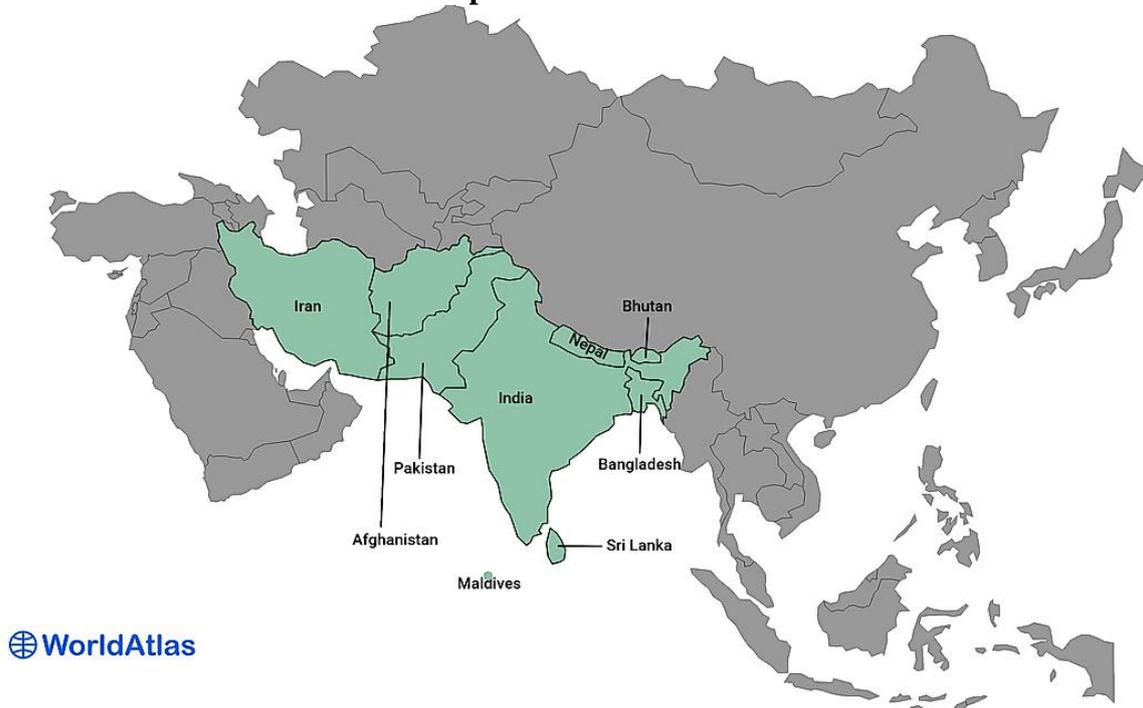
in natural resources such as gas and oil and carry strategic importance, as roughly half of the world's commercial shipping passes through them. These disputes played an important role not only in the relations among the claimants but also in the foreign policies of countries such as Japan and the United States. The disputes involve overlapping maritime, territorial, and fishing rights and claims by China, Taiwan, Brunei, the Philippines, Vietnam, Indonesia, and Malaysia (see Map 21).

However, despite the fact, that territorial disputes in SEA are related to the vagueness of colonial titles and are usually of an acute political (geopolitical) nature, they affect the interests of third States, including superpowers (namely the USA, China, India); involve the analysis of not only territorial titles, but also claims to self-determination; provoke constant tension and are fraught with armed conflicts. Their judicial resolution is usually unlikely, and the use of conciliation mechanisms is preferable.

Despite this, there is little doubt [Avis, 2020] that the conflicts in the South China Sea will dominate the region's security agenda for years, if not decades, to come. In this case, the ASEAN claimant states have decidedly stuck to their unwritten agreement that some form of settlement needs to be reached with China before any attempt is made to resolve overlapping claims amongst themselves. Thus, the intra-ASEAN disputes in the South China Sea will most likely remain dormant for a considerable time to come [Tønnesson, 2002].

**South Asia** is Asia's largest sub-region. It comprises the sub-Himalayan SAARC countries, including Afghanistan, Bangladesh, Bhutan, Maldives, Nepal, India, Pakistan, and Sri Lanka (see Map 22). The area is often referred to geologically, as the Indian Subcontinent and appears to be the area with the highest conflict intensity index in the region (see Map 23), (see Map 29).

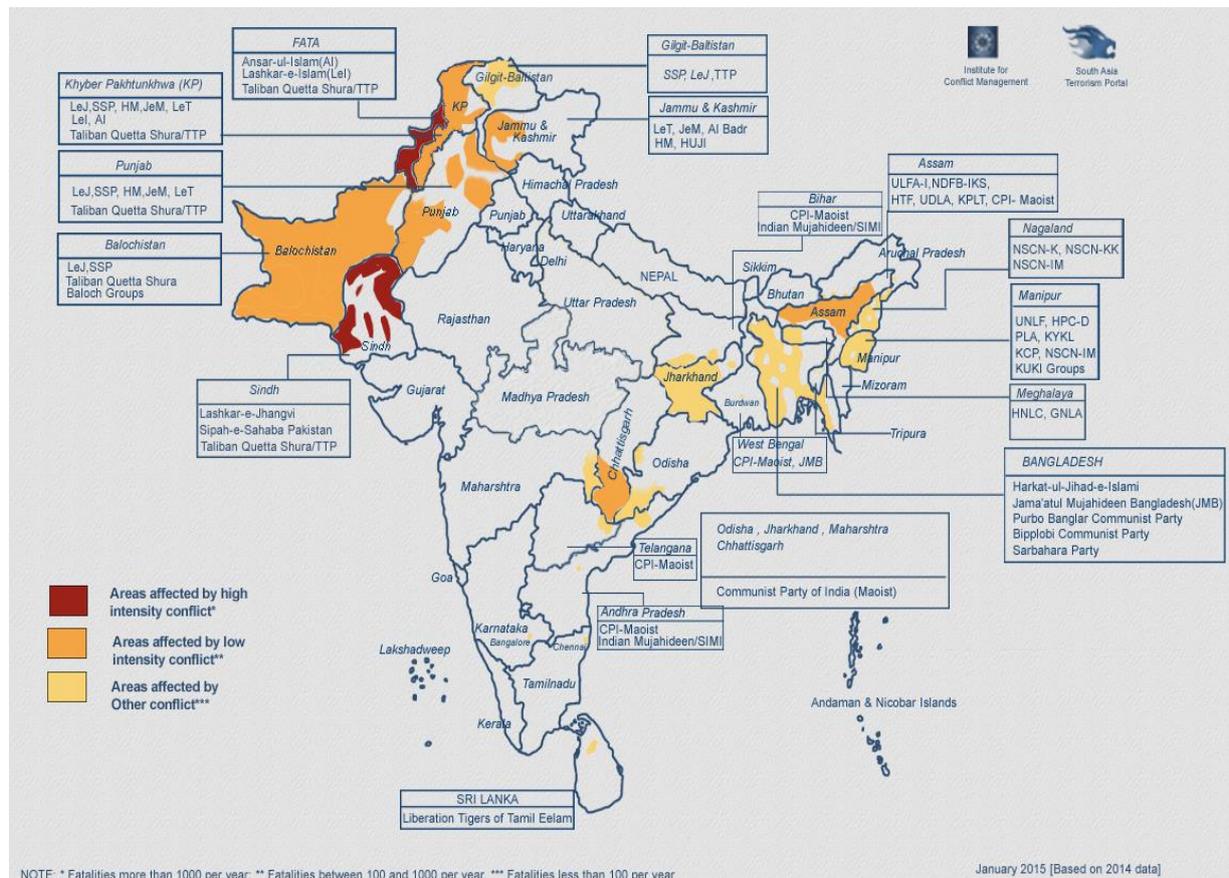
**Map 22: Southern Asia**



**Source:** WorldAtlas, 2019

The biggest country of the region – India – faces territorial issues with many of its neighbours. Over the past 70 years, it has succeeded to resolve its boundary issues only with Bangladesh and Sri Lanka. The undemarcated boundaries with Myanmar, Bhutan and lately with China, Pakistan and Nepal have often flared up into tensions [Kapoor,2020] (see Map 24).

Map 23.: South Asia Conflict Map



**Source:** Institute for Conflict Management, 2016

When analysing the stages of settlement of the minor conflicts of the region (namely *disputes over Bay of Bengal*<sup>15</sup>[Hague...,2014], *India – Myanmar dispute*<sup>16</sup>[Gilani,2020], *India – Bangladesh*<sup>17</sup>[Banerji,2021], *India – Bhutan border dispute*<sup>18</sup> [Ramachandran,2021]), it is worth noting that two disputes concerning the delimitation of the Bay of Bengal were resolved by judicial means. These disputes were of exclusively economic importance. Three disputes from the second group were resolved based on international law; in two cases, the parties used judicial mechanisms, in one – conciliation.

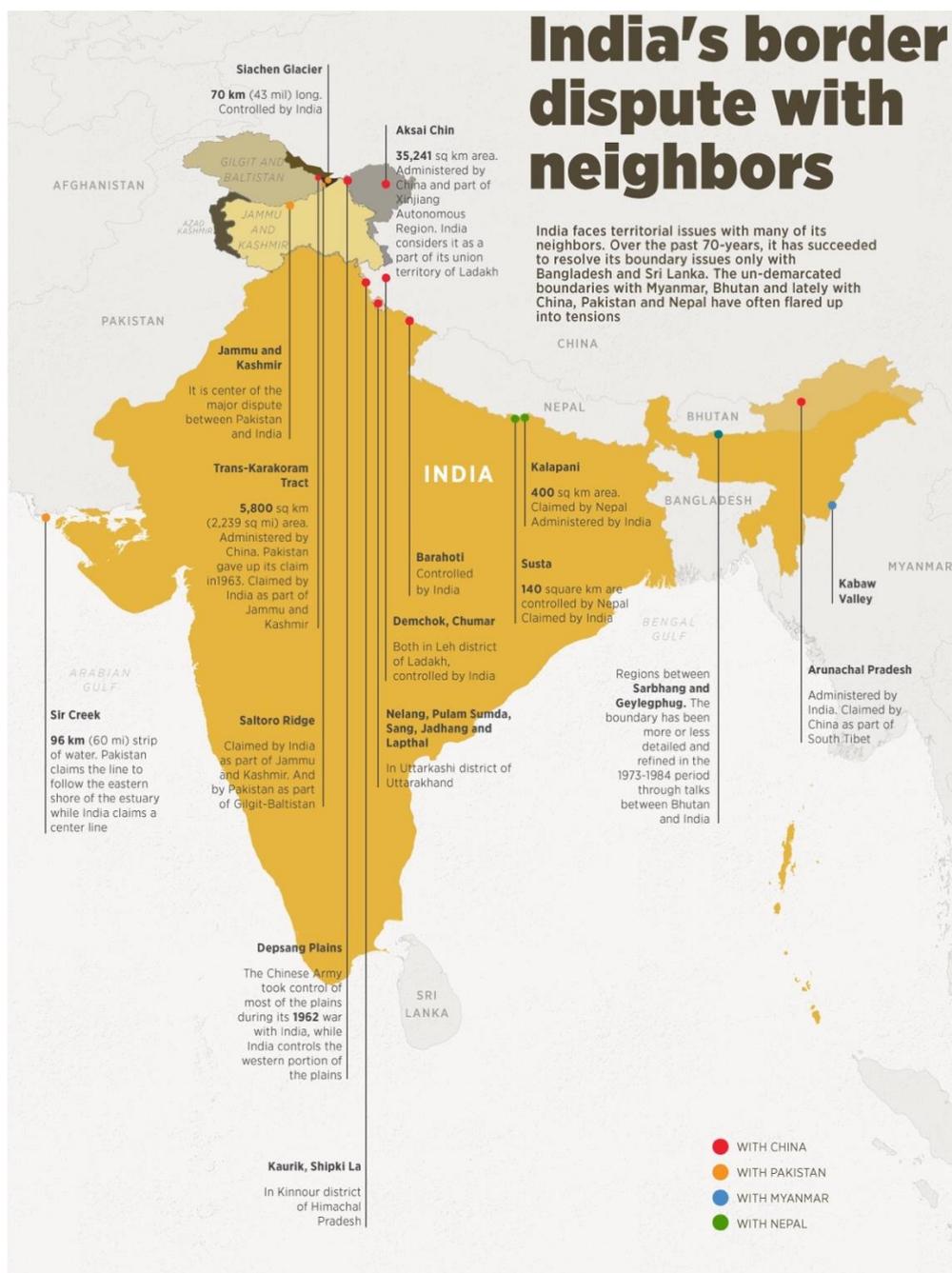
<sup>15</sup> The Bay of Bengal Dispute: The cause of the dispute is South Talpatti (as it was known internationally) or Sheikh Mujib Island (as it was called by supporters of the Bangladesh Awami League). India and Bangladesh participated in eight rounds of bilateral negotiations starting in 1974, but they remained inconclusive until 2009. In October 2009, Bangladesh notified India of the arbitration proceedings under UNCLOS.

<sup>16</sup> Dispute between the land in Kabaw Valley near Hollenphai village, Moreh of Manipur state, India and Namphalong village, Tamu of Sagaing Region, Myanmar.

<sup>17</sup> India settled its land and maritime boundaries with Bangladesh, by resolving the issue of South Talpatti Island or Bangabandhu Island -- a small uninhabited offshore sandbar landform in the Bay of Bengal, off the coast of the Ganga-Brahmaputra Delta region. After decades of strenuous negotiations, both countries also exchanged enclaves five years ago, which were in adverse possession. Inside the main part of Bangladesh, there were 111 Indian enclaves (17,160 acres), while inside the main part of India, there were 51 Bangladeshi enclaves (7,110 acres)

<sup>18</sup> The boundary has been detailed and refined in the 1973–1984 period through talks between Bhutan and India. Regions between Sarbhong and Geylegphug remain undefined. They border the Indian state of Arunachal Pradesh.

Map 24.: India's borders disputes with neighbours



Source: Anadolu Agency Research, 2020

The most problematic disputes of the region are between India and China (namely *disputes over Aksai Chin*<sup>19</sup>[Ayes,2020], *Depsang Plains*<sup>20</sup>, *Demchok, Chumar*<sup>21</sup> [Long,2020], *Kaurik*,

<sup>19</sup> Aksai Chin is in the northwestern part of the Tibetan Plateau, it is approximately 35,241 sq km in size, administered by China and part of the Xinjiang Autonomous Region. India considers it a part of its union territory of Ladakh.

<sup>20</sup> The Depsang Plains are located on the border of the union territory of Ladakh and disputed zone of Aksai Chin. The Chinese Army controlled most of the plains during its 1962 war with India, while India controls the western portion of the plains

<sup>21</sup> Demchok, Chumar: Both in the Leh district of Ladakh, controlled by India

*Shipki La*<sup>22</sup> [Bhonsale,2018], *Barahoti*<sup>23</sup>[PTI,2017], *Nelang, Pulam Sumda, Sang, Jadhang and Lapthal*<sup>24</sup>[Modi,2020], *Trans – Karakoram Tract*<sup>25</sup>, *Arunachal Pradesh*<sup>26</sup>[D'Ambrogio,2018]), which have been worsening in recent years. The two world powers are facing off against each other along their disputed border in the Himalayan region. Thus, the most recent skirmish – on 20 January 2020 – left troops on both sides injured. It took place along the border in India's Sikkim state, which is sandwiched between Bhutan and Nepal. The June 2020 clash in the Galwan Valley – fought with sticks and clubs, not guns – was the first fatal confrontation between the two sides since 1975.

India – Pakistan borders disputes (namely *disputes over Jammu and Kashmir*<sup>27</sup>[Jilani,2019], *Siachen Glacier*<sup>28</sup>, *Saltoro Ridge*<sup>29</sup>[Nair,2009], *Sir Creek*<sup>30</sup> [Dabas,2016]) are the second largest in the region. With continued violence in Kashmir and a heightened threat of terrorist activity by Pakistan-based militant groups, tensions, and concerns over a serious military confrontation between nuclear-armed neighbours India and Pakistan remain high. Thus, while analysing India – Pakistan relations, it can be concluded that, since 1947, Pakistan and India have been fighting and disagreeing, and are still set on claiming Kashmir (see **Map 25**). But until the political fate of Kashmir is fully developed, a war is always a constant threat between these two countries.

Third group of disputes, which is rising of the region's conflict potential, are India – Nepal border's disputes (namely *disputes over: Kalapani*<sup>31</sup>, *Susta*<sup>32</sup>[Drishti,2019], *Limpiyadhura and Lipulekh of Uttarakhand* [IST, (2020)] . It is worth noting that the redrawing of the map covers a relatively small region high in the Himalayas, but it has stirred simmering tensions between two of the world's biggest powers, India, and China (see **Map 26**).

<sup>22</sup> Kaurik, Shipki La: In the Kinnour district of Himachal Pradesh.

<sup>23</sup> Barahoti: In the Chamoli district of Uttarakhand whose grazing fields are disputed by China, which is also in the state of Uttarakhand and is controlled by India.

<sup>24</sup> Nelang, Pulam Sumda, Sang, Jadhang and Lapthal: In the Uttarkashi district of Uttarakhand.

<sup>25</sup> Trans-Karakoram Tract: An area of nearly 5,800 square kilometers (2,239 sq mi) along both sides of the Shaksgam River, is entirely administered by China as a part of Kargilik County in the Kashgar Prefecture of the Xinjiang Autonomous Region. It was claimed by Pakistan until 1963, and still claimed by India as part of the Jammu and Kashmir. Pakistan gave up its claim to the tract under a border agreement with China in 1963 with the proviso that the settlement was subject to the final solution of the Kashmir dispute.

<sup>26</sup> Arunachal Pradesh: Arunachal Pradesh is a state of India created on Jan. 20, 1972, and located in the far northeast. Most of the territory is claimed by China as part of South Tibet.

<sup>27</sup> Jammu and Kashmir: It is the center of the major dispute between Pakistan and India. Three wars have been fought between the two countries over Jammu and Kashmir.

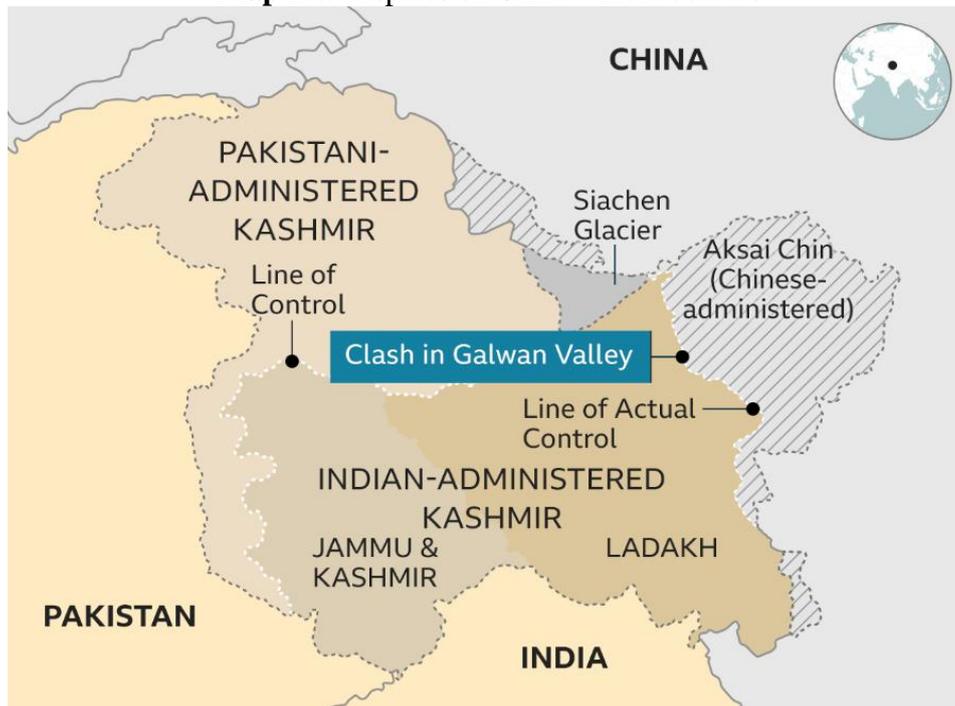
<sup>28</sup> Siachen Glacier: The Siachen Glacier is located in the eastern Karakoram in the Himalayas just east of the Actual Ground Position Line between India-Pakistan. India controls all of the Siachen Glacier itself, including all tributary glaciers. At 70 km (43 mi) long, it is the longest glacier in the Karakoram and second-longest in the world's non-polar areas.

<sup>29</sup> Saltoro Ridge: The Saltoro Mountains is a subrange of the Karakoram Heights or of Saltoro Ridge. They are located in the heart of the Karakoram, on the southwest side of the Siachen Glacier. They are claimed as part of Ladakh union territory by India and as part of Gilgit-Baltistan by Pakistan. In 1984, India assumed military control of the main peaks and passes of the range, with Pakistani forces into the glacial valleys just to the west.

<sup>30</sup> Sir Creek: The Sir Creek is a 96 km (60 mi) strip of water disputed between India and Pakistan in the Rann of Kutch marshlands. Pakistan claims the line to follow the eastern shore of the estuary while India claims a center line

<sup>31</sup> Kalapani: Kalapani is an area under territorial dispute in Darchula District of Sudurpashchim Pradesh, Nepal and Pithoragarh District of Uttarakhand, India, area 400 square km. Although claimed by Nepal, Kalapani has been administered by India's Indo-Tibetan Border Police since the 1962 border war with China. This discrepancy in locating the source of the river led to boundary disputes between India and Nepal, with each country producing maps supporting their own claims. India has now released its new political map which includes all of Kalapani in India without any consent of Nepal. Nepal in turn has issued a new national map incorporating 300 square kilometers (115 square miles) of mountainous land incorporating Lipulekh, Limpiyadhura and Kalapani, currently with India.

<sup>32</sup> Susta: Susta is an area under territorial dispute currently in Tribenisusta, Lumbini Zone, Nepal and near Nichlaul, Uttar Pradesh, India. The area under dispute totals over 14,000 hectares (140 square km) and is controlled by Nepal.

**Map 25.: Disputes on China – India borders**

Source: BBC, 2020

**Map 26.: India – Nepal border disputes**

Source: BBC, 2020

Even during this period of social distancing and public lockdown, claims and counterclaims over territories in and around the Kalapani region (located at the trijunction between northern India, western Nepal, and southern China/Tibet) have resurfaced to become an issue that has embroiled

India and Nepal in a political debate; it is now gravitating towards a confrontational trend of popular politics.

Involving of the third party (China) into the conflicts of India – Pakistan and India – Nepal is making the tension in the region even higher. China's rising presence across the Himalayas, particularly after the BRI, has forced India to readjust its policy toward Nepal and Pakistan. Delhi has started to shift the focus away from geostrategic denial and isolation toward greater economic delivery and connectivity. The situation acquires another obstacle against the backdrop of a simmering border conflict between India and China along with their de facto frontier – the Line of Actual Control (hereinafter LAC) – a frontier that remains unmarked. Besides, Nepal's ruling Communist Party administration and political circles of Pakistan have in recent years reached out to China for investment and improved connectivity, which has worried India.

The problem of *Afghanistan* is also one of the most explosive in the region [Larson,2018]. The war has been going on here for the third decade, it has claimed millions of lives and has long ceased to be an internal affair of this state. Despite the change of power in the country after the events of 2001, it was not possible to overcome the severe economic crisis, and stabilization did not come. Till August 2021 the troops of 14 NATO countries were in Afghanistan fighting the "Taliban" [USIP,2021]. Moreover, several million Afghan refugees settled in Pakistan, Iran and other countries of Asia and Europe, in the United States.

The Western world has identified South Asia as an epicentre of terrorism and religious extremism and therefore has an interest in ensuring regional stability, preventing nuclear weapons proliferation, and minimizing the potential of a nuclear war between India and Pakistan [Rosand et al.,2009].

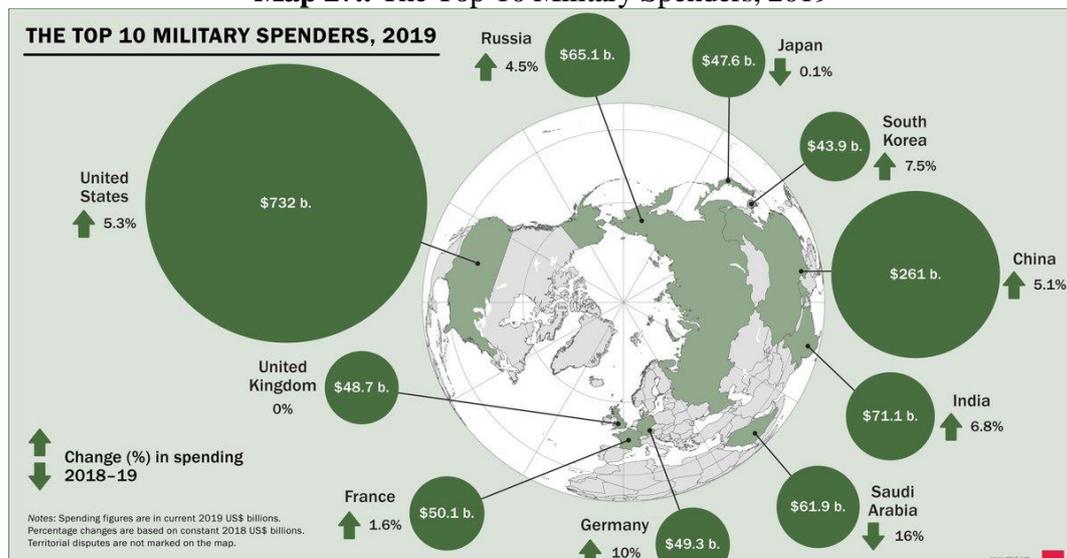
Based on the analysis of the conflict map of the region, the most significant territorial conflicts in the APR today include the situation on the Korean Peninsula, as well as such hotbeds of tension as the conflict over the Senkaku-Diaoyu Islands, the conflict between China and Vietnam over several island territories in the South China Sea (the Paracel Islands and the Spratly Islands), between Japan and South Korea over the Liancourt Islands. Russia has territorial problems in relations with Japan over the Southern Kuril Islands, as well as with the United States (on the division of shelf zones in the Bering Sea). At the same time, it is characteristic that the United States traditionally supports Japan in its territorial disputes with Russia [McDevitt&Lea,2013].

It is also important to consider that the main trend in the region is the growth of military spending (see **Map 27**). For example, according to the calculations of experts from the London-based International Institute for Strategic Studies [Tian et al.,2020] from 2001 to 2013, nominal defence spending in Asian countries increased by 23%. According to the Stockholm Peace Research Institute [SIPRI, 2021], the APR has become the region of the world with the fastest growth in military spending-both in absolute terms and as a share of GDP. The second place after the United States is occupied by China, which accounts for 12.4% of spending in the Asia – Pacific region (\$112.2 billion), and Japan closes the top three with 5.6% (\$51 billion).

Given the growing number of military expenditures of the countries of the region and the presence of many hotbeds of tension, territorial disputes of the whole Asian region is turning into one of the most complex problems and potentially explosive challenges, indirectly affecting the interests of most of the states of the Eurasia (see **Map 28**).

Up to day countries of the region did not create a stable multilateral mechanism which can help them to work out a compromise solution on the issue of legal registration of state borders and territorial claims. This issue is one of the most important, since it can guarantee the territorial integrity of states and ensure non-interference in their internal affairs, as well as represent one of the barriers to external threats to their national security, such as smuggling, international crime, extremist and terrorist movements, illegal migration.

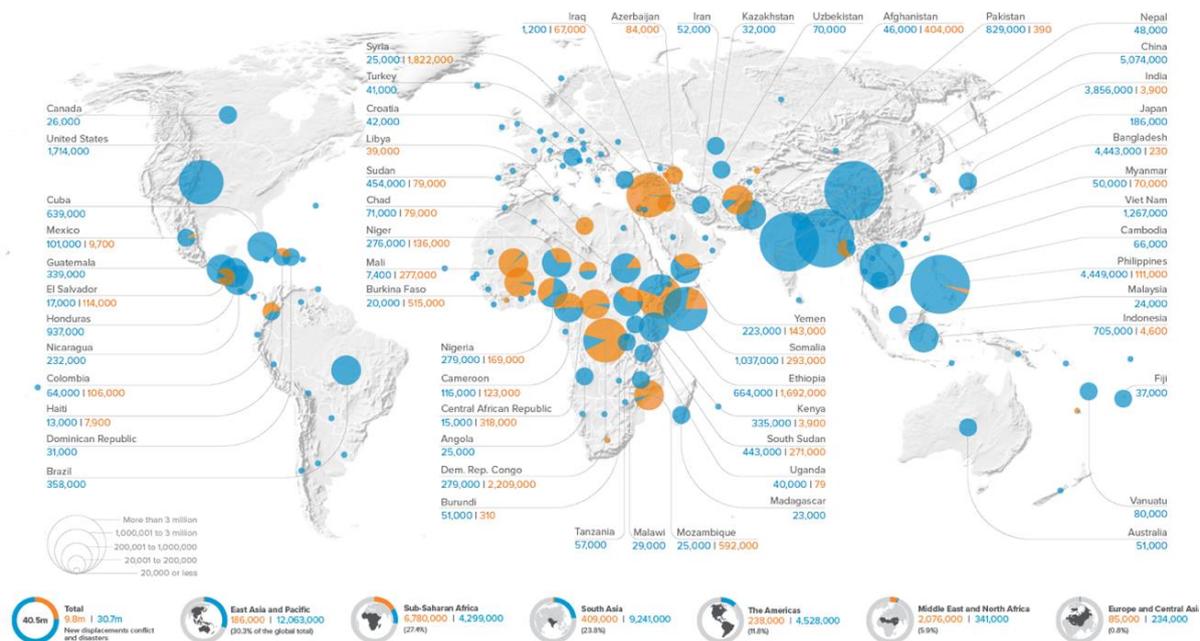
Map 27.: The Top-10 Military Spenders, 2019



Source: SIPRI Military Expenditure Database, 2020

Today, the diversity of the Asia – Pacific region, the differences in the political and economic systems of the states, determine the specifics of the formation of integration structures in the region [Ayson, 2009].

Map 28.: New displacement by conflict and disasters in 2020



The country and territory names and figures are shown only when the total new displacements value exceeds 20,000. Due to rounding, some totals may not correspond with the sum of the separate figures. The boundaries and the names shown and the designations used on this map do not imply official endorsement or acceptance by IDMC.



Source: Internal Displacement Monitoring Centre, 2021

Thus, it is necessary to note a characteristic feature of integration structures in the APR – in most cases, they are created to jointly solve economic problems, achieve economic integration in the region or sub-regions, but not to solve security issues.

Despite this, it is important to mention that the steps aimed at creating a multipolar security structure in the APR were taken even before the collapse of the bipolar system of international relations. In the mid-1980s Mikhail Gorbachev offered the first proposal when he advanced the idea of organizing an “All – Asia security Forum” in May 1985 [Anwar, 1988]. This proposal was not a isolated diplomatic show, since he further elaborated on the idea in his Vladivostok address of July 1986 and his Krasnoyarsk speech of September 1988 [Ministry Of ..,1989]. The security arrangement that he proposed was, in effect, a multilateral security system modelled on the CSCE in Europe. However, it failed to elicit positive responses from countries in the region. Most importantly, the West regarded Gorbachev’s offers chiefly as deliberate attempts to weaker its influence in Asia – Pacific security matters [Meyer,1992].

In August 1987 the Australian government came up with a similar suggestion. Foreign Minister Bill Hayden emphasized that Asia – Pacific countries should begin dialogues both bilaterally and multilaterally on major regional security issues [ANU,1987]. He especially stressed the urgent need to devise measures for improving military transparency and thereby to avert an arms race in the region. His successor, Gareth Evans [Evans,1995], was more concrete in suggesting that an Asian version of the CSCE be formed, namely the CSCA (Conference on Security and Cooperation in Asia Pacific Region) [Evans & Dibb, 1994]. This multilateral forum was intended to complement the U.S.' bilateral security relations with its Asian allies. However, this proposal did not find a positive response, as it did not specify the range of potential participants and specific areas of possible cooperation.

The Canadian Prime Minister, Joe Clark, in the early 1990s, echoed [Majumdar, 2000] his support for such a proposal, indicating that it was time for Asia – Pacific countries to embark on creating a multilateral security institution for the region.

Nevertheless, the West continued to view negatively proposals made by allies [Kraft, 1993]. Basically, the Western superpower (US) saw no reason to revise the status-quo and security order in the APR, an order founded on bilateral security ties with regional allies. From its standpoint the collapse of the USSR removed the major security threat in the region, and thus only improved the security and stability of the APR. [Solomon & Drennan,2001].

At the same time Asian countries itself were more eager to dynamize economic cooperation than to concentrate their efforts on solving certain strategic tasks.

That is why the well-known regional security structures of the APR – the Asia – Pacific Economic Cooperation (APEC – established in 1989) and the Association of Southeast Asian Nations (ASEAN – established in 1967) – set their priority task for economic cooperation aimed at trade and technological integration within the APR.

To understand the integration processes in Asia, it is necessary to consider in detail the existing integration organizations of the region:

#### **APEC**

Being an organization with the largest Asian participation, the Asia – Pacific Economic Cooperation engulfing both sides of the Pacific. While created, this forum was planned to become a mechanism for developing global rules for economic and military-political interaction between countries of the APR, but eventually organization turned into a regional integration setting of the Asia – Pacific countries, mainly involved just in economically-related issues [APEC,2021]. Even considering the shifts of the APEC towards resolving political issues (response to security threats), so far this is a forum for member economies not of sovereign nations, a sort of a prep-com for the World Trade Organization – WTO, which is not involved into the solving of security issues of the region.

### **SCO**

The Shanghai Cooperation Organization, created in 2001, was formed based on the previously existing political association of the “Shanghai Five”: Kazakhstan, China, Kyrgyzstan, Russia, and Tajikistan (**See Map 30**).

While it was mentioned that the main goals were strengthening trust between its participants in the military field, ensuring peace, security and stability in the region, criticism of the SCO [Weitz, 2014] largely concerns the failure of its activities, in the fight against terrorism and the protection of regional security. Some foreign analysts (i.e., Matthew Oresman of the American Centre for Strategic and International Studies) [Oresman, 2005] suggest that the SCO is nothing more than a discussion club, claiming something more. The same opinion is shared by the head of the Institute of Military History of the Russian Ministry of Defence A. A. Koltyukov, who claims that “the analysis of the results achieved by the SCO allows us to characterize it as a political club in which bilateral cooperation still prevails over the solution of regional and world problems. ... there is no real cooperation in these areas in countering the threats of terrorism, separatism and the fight against drug trafficking at the regional level” [Kol'tyukov, 2008].

### **SAARC**

The South Asian Association for Regional Cooperation, SAARC – economic and political organization of eight countries in South Asia is the Indian sub-continent’s grouping, created in 1985 (**See Map 30**).

The main goal of the SAARC is to develop interaction between the participating countries in the economic, socio-cultural, and scientific-technical fields, however, with the accession of Afghanistan (in 2007), the Association began to discuss issues of combating terrorism [Rosand et al., 2009].

Being an organization, which helps the integrate the region and intensify mutual collaboration between countries-participants, the SAARC is practically a hostage of mega confrontation of its two largest members, both confirmed nuclear powers: India and Pakistan. Additionally, the SAARC although internally induced is an asymmetric organization, considering the size and position of India: centrality of that country makes SAARC practically impossible to operate in any field without the direct consent of India, which is not helping the organization to resolve important security-related issues of the region.

### **OIC and NAM**

Another crosscutting integration settings of the region are the Organization of Islamic Cooperation – OIC and Non-Aligned Movement – NAM.

The development of NAM as a new trend in the system of international relations was laid by the Bandung Conference of 1955, which served as the beginning of the creation of an international organization uniting countries that proclaimed non-participation in military-political blocs and groupings as the basis of their foreign policy. The creation of the OIC in 1969 was facilitated by a series of events that shook the Islamic world, the main ones of which were the defeat in the Arab – Israeli war in 1967 and the burning of the Al-Aqsa Mosque in Jerusalem by Israeli extremists. Thus, initially the creation of these two settings had a security root.

However, as professor Anis H. Bajrektarevic elaborated in his work on “No Asian Century” [2015], they are inadequate forums as neither of the two is strictly mandated with security issues. Although both trans-continental entities do have large memberships being the 2nd and 3rd largest multilateral systems, right after the UN, neither covers the entire Asian political landscape – having important Asian countries outside the system or opposing it.

### **KEDO and the Iran-related Contact (P5 + 1, E3 + 3)**

The Korean Peninsula Energy Development Organization (KEDO), which existed in 1995 – 2006, which main goal was to implement the 1994 Framework Agreement between the United States

and North Korea and freeze the development of a local nuclear power plant in North Korea, as well as Group 5 + 1 (P5 + 1, E3 + 3) – a forum of six great powers that have united their efforts to prevent the use of the Iranian nuclear program for military purposes, were both dealing with indeed security related issues in Asia. Nevertheless, both settings were created to deter and contain a single country by the larger front of peripheral states that are opposing a particular security policy, in this case, of North Korea and of Iran.

### **BRICS and G-20**

The formation of global governance institutions began with the creation of the G7 in 1975. In 2008, the first G20 summit took place, and in 2009 – BRIC (BRICS since 2011). These informal forums, focused primarily on economic cooperation, do not fully fulfil their obligations to counter protectionism, environmental growth, food security and fairness in the labour market.

These problems exist due to the inability of both institutions to create a full-fledged accountability mechanism to ensure transparency of the processes of implementation of the decisions of the summits.

Also, the BRICS and G-20 are not providing the Asian participating states either with the more leverage in the Bretton Woods institutions or helping to tackle the indigenous Asian security problems.

### **ASEAN**

Finally, there is an ASEAN – the Association of Southeast Asian Nations – a sub-regional political and economic organization created in 1967, which includes Indonesia, Malaysia, Singapore, Thailand, the Philippines, and Brunei. The main goals of this organization are the development of economic, social, cultural, and other types of cooperation between the member countries of the Association, the establishment of peace and stability in Southeast Asia (**See Map 30**).

This organization played an important role in the social and economic development of the Southeast Asian countries, contributed to the growth of their political influence in the region, however, regional cooperation in the field of defence and security within the framework of ASEAN has not yet been activated. Today, it can be assumed that ASEAN can evolve into a “security community” in the sense that none of its members seriously consider using force against another member to resolve contentious issues [Friedrichs, 2012]. But it will not become a “defensive community” because there is no common cultural, ideological, and historical experience. More importantly, there is no threat common to all members. The successes achieved by ASEAN – relative peace, stability, and security – still do not form the basis for broader military cooperation, but rather allow each state to develop on its own way.

### **Conclusions**

Today Asian countries are more willing to consult and cooperate with each other on the integration and creating of the zone of co-prosperity issues, nevertheless in Asia, there is hardly a single state which has no territorial dispute within its neighbourhood. From the Middle East, Caspian and Central Asia, Indian sub-continent, mainland Indo – China or Archipelago SEA, Tibet, South China Sea and the Far East, many countries are suffering numerous green and blue border disputes [Mapbox, 2021], (**See Map 29**).

An equally important factor is the presence in Asia of strong global geopolitical players vying for spheres of influence in the region. Thus, China is fully involved in the integration processes in Asia [Cheng, 2014]. Every year, the Chinese Premier visits one of the ASEAN member-states to meet with the leaders of the ASEAN countries, proposing steps to strengthen Chinese cooperation with the member countries [Bisley, 2015]. As China's interest rate rises in the region, Beijing has launched its own initiatives, including the “Belt and Road” and the Asian Infrastructure Investment Bank [Smotrytska, 2021]. This helped to deepen China's interaction with its neighbours and, of course, increased its influence.

Map 29.: Green and Blue border disputes in Asia



Source: Created by Author (IFIMES, ms), 2021.

But since the regional architecture of Southeast Asia is open, Chinese influence is not the only one. The United States remains [Goh, 2008] an important player in supporting regional security and stability while strengthening its economic engagement through proposals such as the Asia Reassurance Initiative Act [CRS, 2019] and the BUILD Act [Runde, 2018].

As noted by politicians in Asia (the PRC, Xi Jinping): “The Pacific Ocean is large enough to accommodate both the United States and China” [Ministry of ...,2013]. However, this raises the question: Is the Pacific Ocean large enough for the United States and China to coexist peacefully with overlapping circles of friends and partners, or is it large enough to be divided into rival spheres of influence between the two powers?

Answering this question one should consider, that both countries cannot fully replace each other in the region: The US Seventh Fleet has maintained regional security in Southeast Asia since World War II, ensuring the security and openness of maritime communications that fuelled trade and spurred economic growth across the region. [Acharya et al., 2016]. Despite its growing military power, the PRC will not be able to assume the United States' security role. Unlike the Americans, Beijing has maritime and territorial disputes in the South China Sea with several countries in the region, which will always view China's naval presence as an attempt to enforce territorial claims.

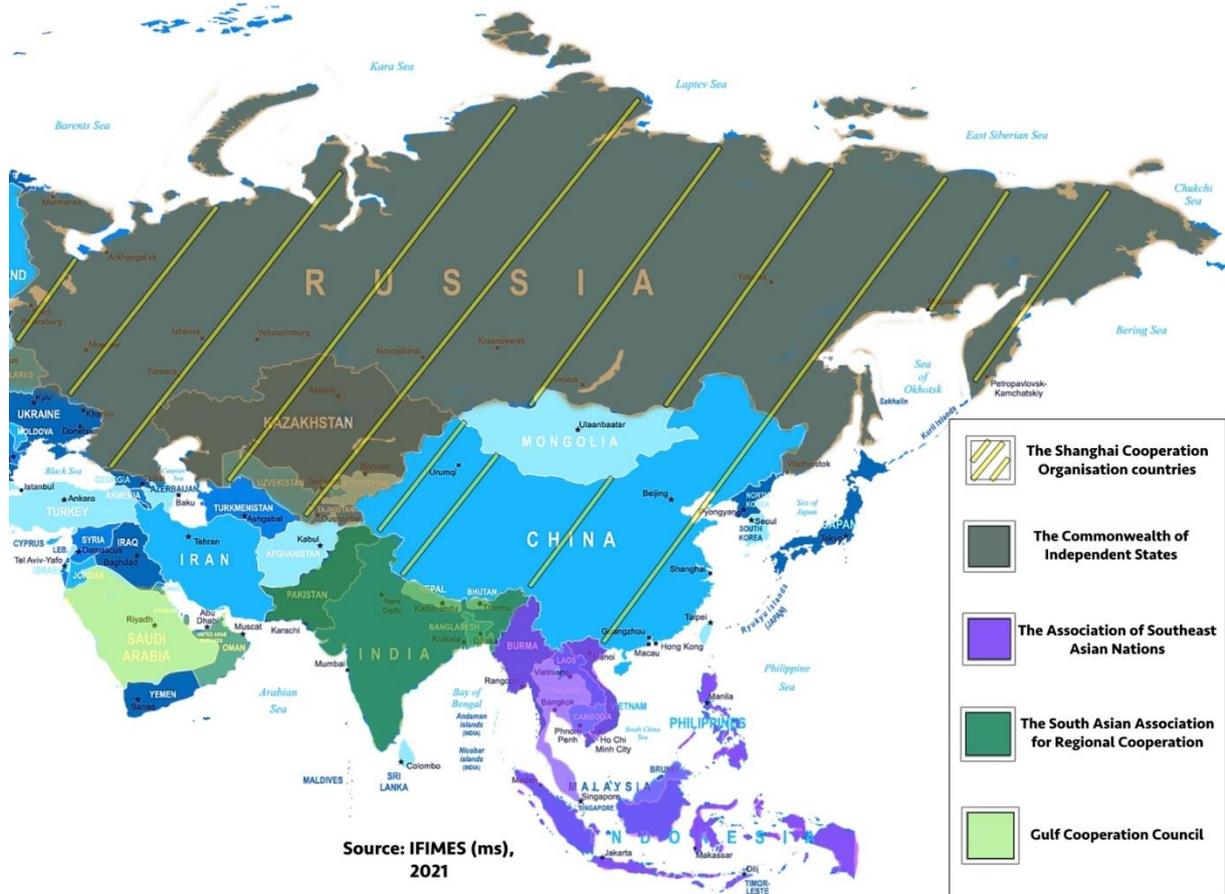
Another obstacle that would prevent China from assuming a US security role is the fact that many Southeast Asian countries have Chinese minorities, whose relations with the non-Chinese majority are often delicate [Department of ...,2015]. These countries are extremely sensitive to any

hint that China is unduly influencing their ethnic Chinese populations, especially when one considers the history of China's support for communist insurgencies in Southeast Asia up until the early 1980s. And this circumstance will also restrain China's role here in the foreseeable future.

At the same time, it is very difficult, almost impossible for the United States to replace China as the world's main supplier – just as it is unthinkable to do without the Chinese market [Ramirez, 2020], which is the third largest importer of American goods after Canada and Mexico. But the PRC cannot oust the US economy in Asia either. The global financial system is heavily dependent on American financial institutions, and the yuan will not replace the dollar as the world's reserve currency anytime soon. Although other Asian countries export more to China than to the United States, US transnational corporations continue to be the most important source of foreign investment in many countries in the Asia – Pacific region. Major Chinese companies are already beginning to invest overseas, but it will take many years before they have the same scale and complexity as those based in America that will connect global value chains, connect Asia to the global economy, and create millions of jobs.

For the same reasons, the APR countries today do not want to choose between centres of power, willing to develop good relations with all partners and at the same time ensure their security. In this regard, the question of the creation of its own comprehensive pan-Asian multilateral mechanism, with the help of which countries will be able to take an active part in the formation of a new world order and take a worthy place in it, is becoming more and more urgent (**See Map 30**).

**Map 30:** International organization in Asia



Source: Created by Author (IFIMES, ms), 2021.

The foundation on which Asia – Pacific countries now support regional cooperation initiatives, such as the various Indo – Pacific concepts proposed by Japan [Ministry of .., 2021], the United States and others [Haruko, 2020], as well as China's "Belt and Road Initiative" [Smotrytska,2021], is built on a policy of peaceful coexistence and containment of the emergence of one strongest leader in the region (many Asian countries believe that promoting the "Belt and Road" is a constructive way to control China's growing influence in the region [Smotrytska,2020]). Thus, today the behaviour of the countries of the APR region shows that the development of new regional mechanisms does not mean abandoning the existing multilateral structures. These hard-won agreements and institutions continue to provide all countries, especially small ones, a framework to work together and advance collective interests.

Nevertheless, today even ASEAN Asians (as the most multilateralized Asians) have no suitable standing organization to tackle and solve their security issues. This makes one wonder whether it is possible that the Western century will be replaced by an Asian or Asia – Pacific century? The question also remains, will one of the Asian countries lead the new "Asian century"?

It should be noted that this is not the first time in history that we see emerging markets doing well for a good number of years before a crisis stops their development. Is this time different, or will their growth suddenly stop because of an economic crisis? More importantly, the growth model that takes an economy from low income to middle-income status is different from the one that is required to take it to the next level.

It is important to understand that early growth comes from basic economic reforms, as in China after Deng Xiaoping [Kobayashi et al, 1999]. But to go beyond that, to reach levels of development of the richest economies, a major institutional change is required. This change involves a substantial integration of the Asian region or a transformation of the political and societal institutions of its' countries. This second step is harder, and we have seen economies in the past stagnating when they reach this level (i.e., the former Soviet Union, which managed to perform well until it reached a level of development that required that second step of institutional change).

Besides the ASEAN Regional Forum (ARF), there have been other emerging features of security cooperation in Asia that are not necessarily based on geographical groupings but on security concerns and capability [Pejsova, 2014]. These multidimensional developments indicate that security cooperation in Asia is far more complex today than a traditional bi-multi nexus model. The "double-track" approach is now entering into the new phase especially in the wake of various forms of multilateral security mechanisms that have been revealing in recent years in Asia – Pacific.

An analysis of the emerging alignment of forces within the international community allows us to conclude that the very formulation of the question of the Asian century suffers from unacceptable simplification and schematization that does not consider new world realities and the geopolitical structure of the region, that cannot be explained in traditional concepts and categories. And the reality is that the East has already become the supporting structure of the world community, equal in size to the West, and its' role in the coming century will increase. Moreover, in the East itself, several centres are ripening (China, Japan, India, and a numerically growing group of smaller, but very dynamic new industrial countries), capable of competing on an equal footing both with each other and with the West, if not as a whole, then with its leading powers. But to consolidate the total power of Asian countries the largest continent must consider the creation of its own comprehensive pan-Asian multilateral mechanism. Economic and demographic parts of Asia must be accorded by the new pan-continental setting. On the very institution setup, Asia can closely revisit the well-envisioned SAARC and ambitiously empowered ASEAN fora. By examining these two regional bodies, Asia will be able to find and calibrate the appropriate balance between widening and deepening of the security mandate of such future multilateral organization.

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## Protection de l'enfance et enfants privées de famille en Algérie

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**ABLA ROUAG-DJENIDI**

PROFESSEUR DE PSYCHOLOGIE  
UNIVERSITE DE CONSTANTINE. ALGERIE

**Abstract:** *The establishment of an efficace child protection system requires social policies to mobilize the resources of the populations to make them agents of change of their own situation. Social work is the most important part of all protection systems. It constitutes the responses provided in terms of services, programs and human resources that would help to attenuate risk situations, vulnerability factors and their negative impact on children and their families. The aim of this study, using documents devoted to the responses provided to childhood deprived of family in Algeria, is to summarize the mechanisms and child protection devices, the efficacy of these responses, the main difficulties encountered, and propositions concerning social work.*

**Key words:** *child protection, childhood deprived of family, social work, mechanisms, devices, Algeria.*

**Résumé :** *La mise en place d'un système efficace de protection de l'enfance nécessite des politiques sociales permettant de mobiliser les ressources des populations pour en faire les acteurs du changement de leur propre situation. Le travail social est l'élément le plus important de tous les systèmes de protection. Il constitue les réponses apportées en termes de services, programmes, ressources humaines et autres qui permettraient d'atténuer les situations à risque, les facteurs de vulnérabilité et leurs incidences négatives sur l'enfant et sur leurs familles. Il s'agit pour nous de faire ici, à partir de documents consacrés aux réponses apportées à l'enfance privée de famille, de faire une synthèse des mécanismes et dispositifs de protection, de l'efficacité de ces réponses, des principales difficultés rencontrées et des propositions en matière de travail social.*

**Mots clé :** *protection de l'enfance, enfance privée de famille, travail social, mécanismes, dispositifs, Algérie.*

### INTRODUCTION

**L**a protection de l'enfance comprise comme l'ensemble des mesures de prévention et de lutte contre la violence, l'exploitation et les mauvais traitements infligés aux enfants, y compris l'exploitation sexuelle, le travail et les pratiques préjudiciables, repose sur un ensemble de lois, de mécanismes, de financements et d'organismes constituant la réponse des gouvernements aux situations d'abus et de mauvais traitements envers les enfants.

Fondamentalement, la protection de l'enfance est garantie dans le monde par la Convention Relative aux Droits des Enfants, ainsi que par d'autres textes tels la Déclaration du millénaire (2000) qui souligne l'importance de protéger les groupes vulnérables, et surtout les enfants, à travers la ratification et la mise en œuvre intégrale de la Conventions relative aux droits de l'enfant. La Déclaration pour un monde digne des enfants<sup>1</sup> à travers ses objectifs : (1) Donner la priorité aux enfants, (2) N'oublier aucun enfant, (3) Protéger les enfants contre les sévices et l'exploitation, (4) Protéger les enfants contre la guerre est également un instrument important.

La Convention Relative aux Droits des Enfants insiste en son article 7 sur le droit à l'enregistrement de la naissance, en son article 8 sur la préservation de l'identité, de la nationalité et des relations familiales, tandis que les articles 9, 10 et 20 garantissent le droit de ne pas être séparé des parents et à une protection spéciale pour l'enfant privé de milieu familial.

La mise en place d'un système efficace de protection de l'enfance nécessite des politiques sociales permettant de mobiliser les ressources des populations pour en faire les acteurs du changement de leur propre situation. Le travail social est l'élément le plus important de tous les systèmes de protection.

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<sup>1</sup> La Déclaration pour un monde digne des enfants, 2002

Un système de protection de l'enfance efficace constitue les réponses apportées en termes de services, programmes, ressources humaines et autres qui permettraient d'atténuer les situations à risque, les facteurs de vulnérabilité et leurs incidences négatives sur l'enfant et sur leurs familles. Les droits des personnes et la justice sociale en sont les principes fondamentaux.

En Algérie, de grands efforts ont été consentis par les pouvoirs publics pour mettre en adéquation sa législation avec la Convention Relative aux Droits des Enfants et s'est dotée d'un cadre juridique cohérent avec la CIDE en matière de droits de l'enfance, et qui accorde à l'enfant une place particulière. Ces efforts se sont traduits au plan législatif par la promulgation de plusieurs textes en faveur de l'enfant notamment en matière de nationalité, d'état civil, de droit de la famille et de la justice pour mineurs.

Ainsi, le Code de l'état civil, le Code de la nationalité, la Loi relative aux relations de travail protègent l'enfant, et le Code de procédure civile et administrative, le Code de la famille révisé préservent l'intérêt supérieur de l'enfant en matière de droit de garde, de gestion des biens de l'enfant, de tutelle et de droit à l'émancipation<sup>2</sup>. Concernant les enfants victimes, le code pénal prévoit de 1 à 5 ans de prison pour toute personne qui exerce une maltraitance contre un enfant et des peines 2 fois plus lourdes lorsque les actes de violence sont perpétrés contre un enfant que contre un adulte, notamment les violences sexuelles et les viols.

En ce qui concerne les enfants privés de famille, chaque année, entre 3000 à 3200 enfants sont abandonnés par leurs parents, et généralement, immédiatement après leur naissance. L'État prend en charge ces enfants, soit en les plaçant en institution : pouponnières puis FEA (Foyers pour Enfants Assistés) après l'âge de 6 ans, soit en les plaçant en famille (dans le cadre de la kafala ou de la garde payante).

Malgré cet arsenal juridique important et tous les dispositifs mis en place par l'Algérie pour apporter la meilleure prise en charge possible à l'enfance privée de famille, les réponses apportées à cette catégorie d'enfants semblent relativement inefficaces, et les enfants privés de familles iront souvent grossir la population des enfants en situation de rue ou des enfants en conflit avec la loi.

Il s'agit pour nous dans la présente étude, à partir de documents divers (textes de loi, rapports...) consacrés aux réponses apportées à l'enfance privée de famille, de faire une synthèse des mécanismes et dispositifs de protection de l'enfance, mais surtout d'analyser l'efficacité de ces réponses basées sur le travail social, les principales difficultés et limites rencontrées dans la protection des enfants privés de famille.

## I – LA JURIDICTION :

Au plan juridique, la prise en charge des enfants privés de famille était régie par le code de la santé de 1976, abrogé en 1985. Ce code de la santé reste toutefois la source de référence réglementaire en matière d'enfance abandonnée à cause du vide juridique à ce sujet.

Le code de la famille, promulgué en 1984 ne traite pas de l'abandon, mais régit essentiellement le recueil légal ou *Kafala* (articles 116 à 123 du code de la famille)<sup>3</sup>. La « *kafala* » est le dispositif le plus important pour la protection de l'enfance, introduit en 1976 et révisé en 1984 puis en 1992, (Décret exécutif n° 92-24 du 13 janvier 1992) avec l'ordonnance portant changement de nom qui autorise la concordance entre le nom du « *kafil* »<sup>4</sup> et celui du « *mekfoul* »<sup>5</sup>. La *kafala* est concrétisée par un contrat fait devant le juge ou le notaire. Les parents *kafils* doivent s'engager à élever et entretenir l'enfant (article 116 du code de la famille)<sup>6</sup>

<sup>2</sup> Code de la Famille, Code de la Nationalité, Code de l'État Civil, mise à jour 2005, Berti Edition, Alger, 2009/2010.

<sup>3</sup> Ibidem.

<sup>4</sup> Le parent adoptif

<sup>5</sup> L'enfant adopté

<sup>6</sup> Code de la Famille, Code de la Nationalité, Code de l'État Civil, mise à jour 2005, Berti Edition, Alger, 2009/2010.

## II – LES DISPOSITIFS DE PROTECTION DE L'ENFANCE PRIVÉE DE FAMILLE

Il existe 2 types de réponses à l'enfance privée de famille: le placement en institution et le placement en famille dans le cadre de la *kafala*

### 1 – Le placement en institution

Chaque année, environ 3000 à 3200 enfants sont abandonnés par leurs parents, et dans la plupart des cas, immédiatement après leur naissance. L'État a le devoir d'assurer leur prise en charge : la première réponse est le placement en institution, FEA ou Foyers pour Enfants Assistés. Le fonctionnement des FEA est prévu par le Décret 80-83 du 15 mars 1980 portant création, organisation et fonctionnement des F.E.A. Cependant ce décret ne définit pas de façon exhaustive la vocation des foyers pour enfance assistée.

#### 1.1. - Nombre et répartition des FEA:

Les documents étudiés signalent tous l'imprécision et le manque de fiabilité des chiffres en ce qui concerne les enfants privés de famille placés en institutions, la confusion étant souvent faite entre effectifs réels et capacités d'accueil théoriques des foyers, mais également la confusion entre enfants privés de familles et ensemble des pensionnaires des centres qui sont souvent des adultes (handicapés ou valides).

Il existe actuellement 35 foyers étatiques répartis dans les grandes villes de 26 wilayas auxquels s'ajoutent 2 pouponnières gérées par des associations (Hadjout et AEFAB à Palm Beach), et le village d'enfants SOS de Draria<sup>7</sup> prenant en charge les enfants de 0 à 27 ans. Ces 3 derniers n'étant pas recensés au MSN, les enfants pris en charge ne seraient pas comptabilisés dans les statistiques. Il existe également 4 FAO (foyers d'accueil des orphelins).

Les 35 FEA étatiques regroupent 2748 places au total :

- les foyers pour enfants assistés âgés de 0 à 6 ans, dits Pouponnières (22 sur le territoire national),
- les foyers pour enfants assistés âgés de 7 à 19 ans, au nombre de 13 : 8 pour garçons, 4 pour filles et 1 mixte, regroupant 1200 places.

Les 35 FEA ont une grande capacité d'accueil mais avec un taux d'occupation de moins de 70%, seule une minorité d'enfants reste en institution (1792 enfants pris en charge pour un effectif théorique de près de 2 800 places). Cet état de fait montre que la *kafala* et le placement d'enfants en familles d'accueil sont des solutions privilégiées, qu'il faut encourager.

Les 35 FEA ont au total des personnels au nombre de 2260.

#### 1.2. - Processus d'admission et placement en pouponnière:

Les enfants sont placés en pouponnières dans les cas d'abandon ou de problèmes de garde parentale :

- Par voie administrative sur présentation du procès-verbal établi par le service social de la maternité (Ce sont les assistantes sociales des maternités des services hospitaliers qui réfèrent les cas aux juges, lesquels statuent sur le placement en institution).

- Par réquisition de la police pour les cas d'enfants trouvés ou présentés par des tiers.
- À la suite de la présentation de l'enfant par la mère au service de tutelle.
- Par ordonnance judiciaire.

L'enfant est placé en pouponnière de manière temporaire, en attendant son adoption en *kafala* ou son placement en famille d'accueil. Beaucoup d'enfants sont pris en adoption, et de manière générale, restent en pouponnière les enfants en garde judiciaire (enfants dont les parents sont déchus

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<sup>7</sup> Petite ville de la région d'Alger

de la garde parentale, définitivement ou temporairement, ou enfants en danger moral) et les enfants en situation de handicap.

### 1.3. - Les FEA de 7 à 19 ans :

Notons d'abord que toutes les études montrent que dans les FEA, les enfants provenant de pouponnières sont peu nombreux ; ce sont essentiellement les enfants handicapés ou en garde judiciaire, (qui n'ont pas été pris en kafala) qui arrivent après l'âge de 6 ans aux FEA.

En effet, 20 à 30% des pensionnaires des FEA sont des handicapés (1 sur 4 selon l'étude de Mimouni)<sup>8</sup>, auxquels les FEA ne peuvent pas apporter une aide spécifique.

Les 2/3 des résidents sont des enfants en garde judiciaire qui ne peuvent pas sortir de l'institution tant que le juge ne donne pas la main levée. Leur présence en FEA se justifie par les textes régissant la mission de ces institutions qui est « la prise en charge de tout enfant privé de famille définitivement ou temporairement ».

Les FEA abritent également un nombre important d'adultes (valides et handicapés) dont l'émancipation et l'intégration sociale n'ont pas abouti, ce qui représente 60% de l'effectif des pensionnaires, soit 3 pensionnaires sur 5. Ceci révèle la carence éducative d'une prise en charge qui n'a pas amené les enfants à l'autonomie. Ces derniers demeurent dans le seul lieu qui les sécurise, car ils ont peur de se mêler à la société.<sup>9</sup>

## **2 – Reprise par la famille d'origine :**

Les restitutions (reprises par la mère célibataire ou les parents) seraient de 16,3% de l'ensemble des admissions (enfants en dépôt temporaire et enfants abandonnés) durant la dernière décennie.

La reprise par la famille d'origine serait en progression par rapport aux décennies précédentes, mais rencontre de nombreux obstacles : difficultés financières des familles, résistance de l'environnement à la reprise des enfants par les mères célibataires, précarité de la situation des mères célibataires dont 46% se prostituerait régulièrement ou occasionnellement selon l'étude du CENEAP.<sup>10</sup>

Malgré ces difficultés, 38% des mères célibataires vivaient avec leur enfant en 2002 et 26% leur rendraient visite<sup>11</sup>. Selon la même étude, 3 femmes sur 5 seraient en mesure de garder leur enfant. Afin d'encourager la mère célibataire en difficulté qui émet le vœu de garder son enfant et pour faire face aux frais occasionnés par son entretien, une mesure d'élargissement de l'octroi de l'aide au secours à l'enfance aux mères célibataires a été adoptée depuis 2005. Grâce à une campagne de sensibilisation menée aux niveaux national et local, par le Ministère en charge de la solidarité et ses démembrés (Direction de l'Action Sociale de Wilaya) en vue de lutter contre l'abandon des enfants nés hors mariage par la mère biologique, le nombre des enfants récupérés par les jeunes mères célibataires ne cesse de connaître une augmentation progressive pour passer de 478 enfants en 2005 à 564 enfants en 2007<sup>12</sup>.

## **3 – Placement en familles d'accueil: (garde payante)**

C'est une garde payante, temporaire, en attendant le placement définitif pour enfants (privés de famille, temporairement ou définitivement)

C'est un dispositif qui a toujours existé mais qui a perdu de son importance depuis la confirmation de la kafala par le code de la famille en 1984. Ce dispositif est peu décrit, l'étude du

<sup>8</sup> MOUTASSEM MIMOUNI B, *Naissances et abandons en Algérie*, éd Khartala, 2008.

<sup>9</sup> CENEAP, *Les enfants abandonnés pour naissance hors mariage et mères célibataires*, Alger, 2002.

<sup>10</sup> CENEAP, Op cit.

<sup>11</sup> CENEAP, Op cit.

<sup>12</sup> Rapport Comité des Droits de l'Enfance, 2009 ; République Algérienne Démocratique et Populaire

CNES<sup>13</sup> nous le montre comme un dispositif peu utilisé et en situation d'échec. En effet, selon le CNES, pour un nombre d'enfants placés en famille et qui avoisine les 11.000, il est recensé, à fin 2000, plus de 50 % d'échecs :

- en raison du fait que le placement des enfants s'effectue souvent au sein de familles à faible revenu ;
- et du fait que la pension allouée, par mois et par enfant, aux nourrices pour l'entretien des enfants est insuffisante, (bien que revalorisée récemment à 1300 DA ou 1600 DA en cas d'enfant handicapé)
- et que de surcroît, elle est payée de manière irrégulière.

#### 4 – Placement en kafala :

La kafala est l'un des moyens essentiels de désinstitutionalisation de la prise en charge des enfants privés de famille. Il convient de noter que la Kafala est l'objectif principal de la politique menée en direction de l'enfance privée de famille à titre définitif. Les Établissements d'accueil ou pouponnières ne sont considérés que comme une étape transitoire entre la maternité et la famille d'accueil. Le placement en milieu familial est encouragé par les autorités<sup>14</sup>.

**Tableau 1-** Statistiques sur les mesures de prises en charge des enfants privés de famille : Bilan 2005/2008

Rubriques	2005	2006	2007	2008
Nombre de <i>kafala</i> locale	1.608	1.972	1.739	1733
Nombre de <i>kafala</i> à l'étranger	289	144	192	137
Nombre d'enfants repris par la mère biologique	478	512	564	551

Source : RADP (2010) Rapport CDE<sup>15</sup>

Le placement en kafala est régi par les articles 116 à 123 du code de la famille.

Les familles candidates à la kafala se présentent au service social, auprès de l'assistante sociale et du psychologue pour la prise de contact et la formulation de la demande. Cette rencontre préliminaire permet de dresser un profil de la famille, qui est invitée à fournir un dossier. Puis, un entretien avec le psychologue permet de déterminer si :

- La famille manifeste un réel désir d'enfant.
  - Le projet est mûr.
  - Les deux conjoints adhèrent à ce projet ainsi que les autres membres de la famille.
- Puis la demande de kafala est présentée à la commission de placements, pour avis.

Les parents sont déclarés aptes à prendre un enfant en kafala après une enquête sociale réalisée par les assistantes sociales de la Direction de l'Action Sociale.

La kafala est concrétisée par un contrat fait devant le juge ou le notaire, selon l'article 116 du code de la famille<sup>16</sup> où les parents kafils s'engagent à élever et entretenir l'enfant. Ce dispositif pose toutefois la question de ses limites en cas de décès du kafil, (la garde du mekfoul n'étant pas assurée par la mère comme c'est le cas pour les enfants légitimes, mais aux héritiers du kafil), ou en cas de divorce où la garde est donné au kafil: une discrimination entre enfants légitimes et enfants

<sup>13</sup> CNES Rapport national sur le développement humain, Algérie 2008. Conseil Économique et Social, en coopération avec PNUD (2009)

<sup>14</sup> UNICEF, *Analyse de la situation « Enfants et femmes en Algérie »*, version préliminaire, 2010

<sup>15</sup> RADP (2010) *2eme Rapport national sur les Objectifs du Millénaire pour le Développement*. Rapport établi par le gouvernement algérien

<sup>16</sup> *Code de la Famille, Code de la Nationalité, Code de l'État Civil*, mise à jour 2005, Berti Edition, Alger, 2009/2010.

illégitimes apparaît au niveau de ces procédures juridiques qui ne reconnaissent pas aux deux catégories d'enfants les mêmes droits.

*Les documents consultés insistent sur l'aspect curatif des réponses apportées à l'enfance privée de famille, privilégié par rapport à l'aspect préventif (prévention des grossesses hors mariage, renforcement des capacités des familles d'origine, ...)*

### III – LES PRATIQUES EXISTANTES

#### 1 – Les intervenants :

Le personnel impliqué dans la prise en charge de l'enfant en pouponnière est constitué par les éducateurs, les psychologues, les médecins, les infirmiers, les nourrices/berceuses, les veilleuses de nuit.

Les nourrices, berceuses, veilleuses de nuit constituant 1/3 du personnel n'ont pas de qualifications et ont un statut précaire au sein des pouponnières (vacataires, emploi jeunes, filet social, CDD...). Toutefois, malgré l'absence de qualification et de formation initiale, ces nourrices, formées sur le tas, auraient développé des compétences certaines de prise en charge des enfants.

Les psychologues interviennent directement auprès des enfants, ou auprès des nourrices et berceuses pour conseils et soutien.

Le rôle des médecins et infirmiers est le suivi de la santé des enfants.

Concernant la formation des intervenants, nous devons noter que :

- les universitaires (médecins, psychologues) et personnels diplômés (infirmiers, éducateurs (éducatrices)...) n'ont pas de formation spécifique à la petite enfance.
- Les berceuses/nourrices n'ont pas de formation, ni de qualification.
- Tous les corps confondus ne bénéficient pas de formation continue.

#### 2 – Les pratiques

- En milieu institutionnel, le modèle de prise en charge reste axé sur la satisfaction des besoins primaires et obéit aux principes de l'assistantat. L'appellation même des institutions en charge d'enfants privés de famille reste « Foyers pour Enfants Assistés ».

- Dans les pouponnières, le rôle du personnel est le maternage et la stimulation des enfants.

- La baisse spectaculaire du taux de mortalité dans les pouponnières (55% en 1976 à 4,5% en 2006) ne serait pas due seulement au changement de la prise en charge, mais serait beaucoup plus la conséquence du placement important et rapide des enfants en kafala.

- Dans les FEA, l'organisation de la vie quotidienne s'articule autour de l'hébergement en dortoirs collectifs, de l'absence d'espaces personnels, de la restauration dans des réfectoires collectifs, donc d'une absence de sphère privée et d'une organisation qui ne rappelle pas la sphère familiale. Les documents étudiés mettent également l'accent sur une carence en activités de loisirs qui stimulent le développement des enfants.

- La scolarisation des enfants qui sont encore dans le circuit scolaire ou dans la formation professionnelle est peu importante: les documents sur les FEA mentionnent très peu cette question de la scolarisation des enfants en âge d'être scolarisés, alors que le droit à l'éducation est fondamental, particulièrement dans le cas de populations vulnérables.

#### 3 – Les difficultés et limites de la prise en charge:

Les différentes analyses des dispositifs de prise en charge de l'enfance privée de famille mettent l'accent sur leurs insuffisances et leur inadéquation aux besoins actuels de la société.

### 3.1. - La formation des acteurs impliqués:

- Les éducateurs ne sont pas formés de manière spécifique à la prise en charge des enfants privés de familles et ne semblent pas motivés par ce rôle, selon l'étude de Mimouni<sup>17</sup>.
- Les berceuses ou nourrices ne sont pas diplômées, ni qualifiées pour la plupart. Elles sont recrutées comme faisant fonction. Certaines auraient reçu des formations d'ONG ou d'associations, mais ces formations, qualifiantes mais non diplômantes ne sont pas reconnues par le MSN et ne leur permettent pas d'accéder à un statut stable, ce qui dévalorise ce métier.
- Les personnes faisant fonction ont souvent occupé des postes de travailleurs sociaux en FEA et leur manque de compétence a également contribué à la dévalorisation de ces métiers.
- Les personnels qualifiés et diplômés n'ont pas une formation spécialisée à la petite enfance.
- Il n'y a pas de formation continue des personnels des FEA

### 3.2. - L'encadrement :

- Nous constatons d'abord un faible niveau d'encadrement des structures, où la proportion des personnels spécialisés ne représente que 35% des effectifs employés.
- En pouponnière, les éducateurs (éducatrices) polyvalents ou spécialisés sont en nombre insuffisant et le taux d'encadrement est médiocre : 8 à 9 enfants par éducatrice.
- au sein des FEA (pour les enfants de plus de six ans) chaque éducatrice s'occupe de quinze à vingt-cinq pensionnaires.
- La rémunération du personnel qualifié est nettement insuffisante d'autant qu'une partie du personnel pédagogique et d'encadrement est payé sur le budget du filet social et de l'emploi des jeunes ;

### 3.3. - La préparation des enfants :

- La préparation des enfants des pouponnières à la séparation avec l'institution pour aller vers le placement en famille d'accueil n'est pas faite de façon appropriée.
- De même, il n'y a pas de préparation des enfants de FEA à l'insertion familiale et sociale, ni pour les enfants valides, ni pour les handicapés. D'où le nombre important d'adultes qui restent en institution. Les enfants n'ont pas de projet de vie susceptibles de permettre une insertion sociale réussie.
- Les foyers pour enfants privés de famille sont très peu ouverts sur l'environnement extérieur. Il n'y a pas de sorties organisées pour les enfants.
- Le lien familial n'est pas pris en compte dans les décisions du lieu d'affectation en pouponnière ou en FEA. Le contact avec les parents ou autres personnes de référence n'obéit pas à une organisation précise mais se fait au gré des parents visiteurs.

### 3.4. - La qualité de vie en structure d'accueil des enfants privés de famille :

- L'organisation dans les structures d'accueil ne permet pas une répartition adéquate des enfants selon l'âge (les enfants de 6 ans sont installés avec enfants de 18 ans), ni selon les besoins (enfants valides et enfants à besoins spécifiques...)
- La prise en charge spécifique d'adolescents pour la plupart en difficultés (toxicomanie, problèmes affectifs, maltraitance) est insuffisante.
- Les structures d'hébergement ne sont pas adaptées aux missions des foyers et ne permettent pas une prise en charge de qualité : l'enfant n'a pas un territoire propre à lui, les espaces de vie ne rappelant pas l'espace de la famille ...

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<sup>17</sup> MOUTASSEM MIMOUNI B, *Naissances et abandons en Algérie*, éd Khartala, 2008.

- Il n'y a pas de suivi et de soutien à la scolarité des enfants qui sont encore dans le circuit scolaire, d'où un très faible taux de réussite scolaire.

### 3.5. - Les mécanismes de suivi

Les mécanismes de suivi et de contrôle sont quasi inexistants, concernant tous les dispositifs de prise en charge de l'enfance privée de famille.

A – Concernant le placement en foyer d'accueil :

- Il n'y a pas de mécanismes de contrôle du fonctionnement des foyers, ni de critères qualité à respecter.

- Aucune politique particulière n'est mise en place pour préparer la sortie de l'enfant des centres.

- Une partie de la population des enfants en situation de rue, est constituée par les enfants fuyant les foyers et les familles d'accueil (enquête du CENEAP sur le phénomène des enfants de la rue). Ceci montre l'absence de mécanismes de contrôle et de suivi des foyers mais aussi des familles kafilates.

B – Concernant le placement dans les familles :

- La garde temporaire en famille d'accueil pose le problème du suivi des enfants pour lequel aucun dispositif réglementaire n'est mis en place. En découlent des perturbations graves lors du placement définitif car l'enfant et la famille ne sont pas suffisamment accompagnés pendant le placement et pendant la transition.

- Aucun suivi ni contrôle spécifique par les services du Ministère de la Solidarité Nationale n'est assuré auprès des parents kafils, il n'y a pas de soutien ni d'accompagnement des familles. Certaines pouponnières assurent de façon informelle l'accueil et le conseil des parents, mais officiellement rien n'est prévu.

Des problèmes particuliers se posent par rapport à la kafala :

- Les rejets ou restitutions d'enfants sont assez fréquents en raison de la révocabilité de l'acte de kafala (prévue par l'article 125 du code de la famille)<sup>18</sup>.

- La procédure, révèle, dans les faits, des carences dans l'opération de sélection, de préparation et de suivi. L'acte juridique de Kafala serait facultatif et ne serait pas toujours fait.

Une grande problématique reste celle du placement à long terme des enfants handicapés.

## **IV – EFFICACITÉ DE LA PRISE EN CHARGE ET DU TRAVAIL SOCIAL EN MATIÈRE D'ENFANCE PRIVÉE DE FAMILLE**

Les pratiques en matière de prise en charge des enfants privés de famille s'appuient essentiellement sur l'assistantat et l'institutionnalisation qui ne préparent pas à l'autonomisation. En effet, l'intervention institutionnelle exprime une politique centrée sur la prise en charge totale des individus, et manifeste une position paternaliste qui ne favorise pas la mobilisation des ressources des individus en vue du changement de leur situation.

Or, comme le souligne Mimouni<sup>19</sup>, Il ne s'agit pas d'abriter mais d'éduquer, il ne s'agit pas non plus de garder l'enfant dans ces institutions, mais de le préparer à partir ailleurs dans une famille, l'institution n'est pas « sa maison », mais doit être considérée comme un 'internat temporaire' qui ne constitue en aucun cas un foyer ! L'entrée d'un enfant dans le FEA doit entraîner

<sup>18</sup> *Code de la Famille, Code de la Nationalité, Code de l'État Civil*, mise à jour 2005, Berti Edition, 2009/2010, Alger

<sup>19</sup> MOUTASSEM MIMOUNI B. *Les foyers pour enfants assistés: État des lieux et perspectives*, in *Insaniyat*, n°41, pp 67-81, Oran, 2008.

automatiquement l'élaboration d'un projet pour lui quelles que soient ses origines et quelle que soit la durée de séjour prévue.

Il s'agit donc de passer de pratiques d'assistantat à un accompagnement social où la personne et les groupes seraient acteurs de leur changement.

Il s'agit également de désinstitutionnaliser en favorisant le travail social de proximité : travail avec les familles, avec les enfants....

Le placement hors du foyer familial doit seulement être envisagé à titre transitoire et lorsque ni la famille ni l'entourage familial de l'enfant ne sont en mesure de lui offrir une prise en charge adéquate lui assurant un environnement marqué par la sécurité et des relations émotionnelles stables et qui lui offrirait des perspectives d'avenir certaines.

Une nouvelle vision de la protection des enfants, le soutien aux familles, le placement d'enfants en famille d'accueil ou Kafala aura certainement comme conséquence de réduire le nombre d'enfants qui seront placés dans les institutions.

Actuellement, l'approche en matière de protection de l'enfance privée de famille est plutôt curative, la prévention occupant une place minime.

- Il faudrait donc favoriser la prévention primaire pour réduire les risques (grossesses hors mariage, abandons d'enfants...).

- Mais aussi développer la prévention secondaire en améliorant l'accès aux droits et aux services sociaux.

## V – LES PROPOSITIONS

Parmi les recommandations faites dans les documents étudiés, certaines sont récurrentes et nous paraissent essentielles. Il s'agit en particulier de :

### 1 – Mettre en place de nouvelles pratiques et renforcer des pratiques existantes

- Il s'agit ici de diversifier les réponses et de privilégier les réponses non institutionnelles. Des solutions alternatives au placement prolongé en institution doivent être instaurées : le placement en institution ne doit être envisagé que comme réponse temporaire et non pas définitive ou durable.

- Restructuration des foyers existants : la séparation des enfants de moins de 3 ans des enfants plus âgés est recommandée, ainsi que d'éviter les structures à grandes capacités, vecteur de dépersonnalisation ; l'adaptation des espaces aux besoins des enfants (espaces privés, intimes/espaces communautaires), et le fait de privilégier une organisation de vie par petits groupes dans des espaces rappelant les espaces familiaux (chaque espace regroupant un nombre limité d'enfants autour de chambres, d'un séjour et d'une cuisine) seraient des points positifs.

- Créer des structures spécialisées pour enfants privés de famille et handicapés qui représentent environ 0,5% des enfants abandonnés. (CENEAP)

- Ouvrir les institutions sur l'environnement (pour favoriser le développement de solutions d'intégration). Il faut favoriser l'insertion des enfants dans les écoles (en créant des classes spéciales pour ceux dont le niveau scolaire est très bas), partager des infrastructures avec la population de la région : jardin public, terrain de sport, piscine... Encourager l'éducation préscolaire dans les écoles publiques, mosquées...

- veiller à ce que la qualité de vie des enfants et leurs loisirs favorisent le développement et l'éducation des enfants : les enfants doivent pouvoir faire leurs devoirs scolaires, faire du sport, avoir accès à l'information....

- privilégier le travail social de proximité : pour assurer un suivi social et éducatif régulier des enfants placés en kafala, en famille d'accueil, ou repris par les familles d'origine et éviter ainsi les rejets, restitutions d'enfants et les fugues.

- Renforcer le placement en familles d'accueil (garde payante) et assurer le suivi des enfants en garde payante.

## **2 – Renforcement des capacités des professionnels :**

Les services sociaux ont besoin de personnes qualifiées et engagées tant sur le plan professionnel que social et qui mettent leur expertise et leur humanité au service des enfants. Il est indispensable de disposer des ressources humaines nécessaires pour permettre aux enfants de grandir dans un environnement favorable à leur développement et pouvoir soutenir efficacement les familles. Renforcer les capacités des professionnels, c'est garantir la qualification des travailleurs sociaux. Le renforcement des capacités des professionnels passe par :

- La réhabilitation de la fonction des travailleurs sociaux et éducateurs par une revalorisation statutaire et salariale

- La construction de nouveaux métiers émergents, complémentaires aux métiers existants. Ces nouveaux métiers doivent émerger à partir des nouvelles pratiques à mettre en place. La proposition de Claudie DIDIER SEVET<sup>20</sup> est la création du métier d'assistante maternelle (qui viendrait soutenir, sur un temps court, la fonction maternelle quand celle-ci est défaillante : mères célibataires, veuves, malades...) accueillant l'enfant à son propre domicile et constituant une alternative au placement en institution et attendant de trouver une solution durable. La seconde proposition de DIDIER SEVET est la création du métier d'auxiliaire de vie scolaire, affecté à un établissement scolaire et dont le rôle est l'accompagnement de la scolarisation et de la socialisation d'enfants dans le cadre de la réinsertion d'enfants en milieu ordinaire (enfants placés en kafala, en garde payante...) mais également d'enfants demeurant encore en institution et scolarisés. L'auxiliaire de vie scolaire assurera un travail de proximité au sein des écoles auprès des enfants en réinsertion sociale.

- Assurer la professionnalisation en offrant de nouvelles approches de travail, en renforçant et en développant de nouvelles compétences aux travailleurs sociaux traditionnels. Les assistants sociaux seront formés au travail avec les familles, pour assurer la guidance et l'accompagnement, chose qui n'existe pas actuellement.

- Formation obligatoire des personnels faisant fonction et/ou validation des acquis d'expérience pour ne pas continuer à dévaloriser l'image du travail social à travers ses agents.

- Assurer la formation continue des professionnels

## **3 – Renforcement des capacités des familles**

- Renforcer les capacités de soutien aux familles pour assurer que l'enfant puisse grandir dans sa propre famille.

- Accompagnement des mères célibataires et renforcement de leurs capacités : aide financière, soutien psychologique, guidance... afin de leur permettre de s'occuper de leurs enfants.

- Mise en place de procédures de sélection et de suivi des familles kafalates et des familles d'accueil.

- Développer et professionnaliser les modes de placement en familles d'accueil.

## **4 – Mise en place d'un contrôle extérieur :**

- Il est important que soient mis en place des indicateurs de suivi et d'évaluation pour les services de la protection des enfants privés de famille, tant au niveau des institutions que des

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<sup>20</sup> DIDIER SEVET Claudie, « *Professionnalisation des acteurs sociaux, renforcement des compétences, émergence de nouveaux métiers* », Rapport pour l'UNICEF et le MSN, 2008.

familles d'accueil et familles kafalates. C'est ce suivi et cette évaluation qui permettront de prévenir les situations d'échec de la kafala et de la garde d'enfants.

### **5 – Renforcer les actions intersectorielles :**

- Pour permettre une prise en charge intégrée, il serait utile de développer les partenariats institutionnels: Ministère de la solidarité, Santé, Justice, enseignement, formation professionnelle

### **POUR CONCLURE :**

Malgré les efforts importants fournis en matière de prise en charge des enfants privés de famille, et l'amélioration de leur situation, cette prise en charge demeure fondée sur les principes de l'assistanat, de l'institutionnalisation et de l'approche curative. De nombreux problèmes persistent, particulièrement le manque de préparation des enfants à l'autonomisation et l'intégration sociale d'où découle l'échec de l'insertion familiale et sociale. La prise en charge des problèmes liés à la protection des enfants privés de famille nécessite une refonte de la prise en charge de l'enfance privée de famille, fondée sur les principes de l'accompagnement, de la désinstitutionnalisation et de la prévention.

Les réponses en matière de protection de l'enfance, qui étaient pertinentes à un moment donné, doivent répondre à une nouvelle vision de la société et de l'individu, vision basée sur l'autonomisation, l'intégration sociale et familiale. Ces réponses, basées sur l'assistance aux personnes, consistant à répondre aux besoins par une aide financière et technique et sur l'institutionnalisation et le placement en structures d'accueil destinés à protéger les personnes vulnérables (en les sortant de la rue) ont montré leurs limites. Ce type d'aide fabrique en effet des générations de personnes assistées, dépendantes de ceux qui les aident et n'ayant pas les compétences pour trouver des solutions à leurs problèmes.

Cette vision de l'aide sociale est révolue et les modes d'intervention sont amenés à changer à la lumière de nouveaux principes. Il s'agit maintenant, à la lumière de la transformation de la notion d'« aide », d'accompagner et non plus de donner des solutions extérieures qui ne sont pas durables. Il s'agit de désinstitutionnaliser et de maintenir les individus dans leur contexte. Pour cela, le travail social doit se transformer, les travailleurs sociaux doivent devenir de plus en plus des animateurs des ressources des systèmes dans lesquels ils travaillent.

Les anciens métiers doivent s'adapter aux exigences des besoins actuels et de nouveaux métiers doivent apparaître, plus proches des populations en difficulté. C'est dans ce contexte que les métiers de la protection de l'enfance doivent évoluer vers l'accompagnement en milieu ouvert et de proximité. Cet accompagnement de proximité implique de développer de nouvelles compétences qui permettront des interventions participatives plus globales du travail social.

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## Book reviews

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### **“Corruption and combating the phenomenon by means of criminal law and criminal procedure” by Dr. Aurelian Sabau Pop, Universul Juridic Publishing House, 2010.**

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ASSOC. PROF DR. MIHAELA DACIANA NATEA<sup>21</sup>

**C**orruption is an important negative phenomenon in Romania as international and national data show, and this is why it is relevant to underline the research published by Senior Lecturer Dr. Aurelian Sabău Pop and based on his PhD thesis. The research explores and identifies the way the corruption is defined and punished in the criminal code and criminal procedure code, and compare them to the practice of corruption thus identifying gaps in legislation.

The book is structured on six chapters which propose a methodological and conceptual approach over corruption. In the first chapter the author presents the political and social dimension of the concept of corruption, continuing with the international and national evolutions in legal mechanism. The chapter focuses on the legal norms starting from definitions and moving forward to penal and procedural norms in this matter, showing how the national legal system is connected to the European norms and recommendations.

The second chapter develops the corruption crimes, types and legal application. The third chapter develops on types of corruption crimes for companies, starting from international and European regulations and how they were implemented in the national legal system, thus pointing out the strong points but also the weakness of national system. Also, this chapter helps identifying the source of some European reports regarding the national legal system and corruption.

The fourth chapter approaches the aspect of corruption as a form of organized crime linking the European and international dimension of the phenomenon, with the national practices. The chapter identifies the way Romania fits into this system in positive and negative aspects, identifying favorable aspects which may increase the development of such practices.

The fifth chapter has a high scientific and policy making value as it proposes an extensive research concerning a comparative study concerning legal norms on corruption crimes, starting from the World Trade Organization, and continuing with the Finish, Swedish, Portuguese, Spanish, Dutch, Hungarian, Irish and German systems in combating corruption. Thus, the book adds an important contribution to the literature, highlighting similarities and practices specific to different European states.

The last chapter analyses the efficiency of legal norms in combating the phenomenon. Considering the globalization of the international economic system, the problem of sanctioning corruption and other linked crimes in international transactions has increased considerably. The books point that more attention needs to be given and stronger international norms and institutions need to be built in order to prevent and punish such crimes. As an international phenomenon,

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<sup>21</sup> Assoc. Prof Dr. Mihaela Daciana Natea - UMFST

combating corruption should be seen as a European endeavor, aimed at unifying forces and methods in order to stop transnational crimes of corruption.

The book has the merit point towards the need of a European institutional system concerning this exact case, which, in fact was developed over the years. The book stresses the need for international cooperation between states, and national convergent norms as difference in legislation may represent the breach companies or private individuals need in order to escape punishment. Another conclusion of the book concerns the link between company and public entities corruption, and the need to identify legal means to stop these practices, which can be detrimental to the economy, to public service but also to country's image abroad, which can affect its international reputation and funding.

## Romania in European and International Context: An Overview of a Century

DR. CRISTINA-MARIA DOGOT<sup>1</sup>

**Book review of:** Maria Costea, Simion Costea (eds.), *Diplomație și actori geopolitici în epoca interdependenței complexe* [Diplomacy and geopolitical actors in the age of complex interdependence], Cluj-Napoca, Ed. Napoca Star, 2021. ISBN 978-606-062-223-9

The book *Diplomacy and geopolitical actors in the age of complex interdependence* [Diplomație și actori geopolitici în epoca interdependenței complexe], coordinated by Maria Costea and Simion Costea<sup>2</sup>, proposes a new vision on the evolution of Europe, the European construction and the history of Romania itself, from the perspective of the complex interdependence, which characterizes the international relations in the contemporary and immediate history. This vision of complex interdependence is illustrated by the collection of fourteen papers organized in two chapters, one related to Romania's domestic and foreign policy issues since the first world war to the seventh decade of the of the XX-th century, and another on geopolitical issues related to some Eastern European states.

The first chapter gathers articles of some recognized Romanian scholars in the fields of history of Romania's international relations: Ion Calafeteanu, Nechita Runcan, Constantin Cheramidoglu, Maria Costea, Nicolae Răzvan Mitu, and Cezar Stanciu. The papers of the above-mentioned authors cover different topics related to the interwar period, as following: the Romanian national consciousness in the context of the First World War and Romania's unification of 1918; the religious freedom of Catholics Romanian citizens in the Constitution of 1923; a reflection in the French press of the time of the German politics at the mouth of the Danube; the role of Romania in European geopolitics according to the view of Belgian diplomats; the situation of Quadrilateral in the last years of belonging to Romania; Romanian reactions and perceptions to the Indo-Pakistani war of 1971.

Some key ideas related to this historical period can be highlighted: the active negotiating role of Romanian liberal politician I.I.C. Brătianu in the decision-making process related to Romania's

<sup>1</sup> PhD, Lecturer at the University of Oradea, Department of International Relations and European Studies. E-mail: cdogot@uoradea.ro.

<sup>2</sup> Among the other very valuable publications of the two coordinators, we can indicate: Costea, Simion, et Michel Labori, *Le Management des Politiques de l'Union Européenne/ The Management of EU Policies*, PARIS, Prodifmultimedia, 2011. Costea, Simion, *Ideea europeană și interesele statelor/ European Issue and State Interests*, Cluj-Napoca, Napoca Star Publishing House, 2005. Costea, Simion, *România și Proiectul Briand de Uniune Europeană, /„Romania and the Briand Project of European Union”*, Tîrgu-Mureș, Petru Maior University Publishing House, 2004. Costea, Simion (coord.), *Culture, Elites and European Integration, Volume IV – International Relations and European Union Interdisciplinary Studies* (Preface de dr. Nicolae Paun), PARIS, Editions Prodifmultimedia, 2011. Costea, Simion and Maria Costea (coord.), *Integrarea României în UE: provocări și perspective/ Romania's Accession to the EU: Challenges and Perspectives*, Iași, European Institute, 2007. Costea, Simion (coord.), *“For a Stronger and Wider European Union”*, Cluj-Napoca, Napoca Star Publishing House, 2005. Costea, Simion, *The Culture of the European Accession Negotiations*, in vol. *Globalization and intercultural dialogue: multidisciplinary perspectives / ed.: Iulian Boldea - Tîrgu-Mureș : Arhipelag XXI, 2014 p.50-56*. Costea, Maria and Costea Simion, *THE EU-TURKEY SUMMIT IN MARCH 2016*, p.45-56 in vol. *Globalization and National Identity. Studies on the Strategies of Intercultural Dialogue / ed.: Iulian Boldea - Tîrgu-Mureș: Arhipelag XXI, 2016*. Costea, Maria, Costea Simion, *HYBRID WAR, OLIGARCHIC DEMOCRACY AND EUROPEAN ASPIRATIONS*, p.44-53, in vol *The Proceedings of the International Conference Globalization, Intercultural Dialogue and National Identity, Volume no. 2, 2015*, ed.: Iulian Boldea - Tîrgu-Mureș: Arhipelag XXI, 2015.

participation in the WWI and in 1919 Paris Peace Conference<sup>3</sup> and, besides some other state and religious actors, in the new relations between Romania and Vatican Holy See<sup>4</sup>; the conflicting political and economic interests of Western states in the Danube and Black Sea areas, as they were reflected by the French newspapers of the time<sup>5</sup>; the detailed observations of the Belgian diplomats on Romania's position in its relations with Germany before the beginning of the Second World War and on the development of its relations with France, UK and Poland in this very special historical context<sup>6</sup>; on the sinuous relations between Romania and Bulgaria regarding the Quadrilateral, the geopolitical interests in the Black Sea area both of Germany and Soviet Union, and the difficulties that Romania faced in managing the Quadrilateral issues in its relations with Bulgaria, with its neighbours and its historical western collaborators, France and UK<sup>7</sup>; and, after a consistent time jump, on the particular character of Indo-Romanian relations in the fragile relational framework (despite of ideological affinities) of the Cold War<sup>8</sup>.

More eclectic than the first one, the second chapter focuses on some actual topics at international level: some approaches on diplomatic relations of China, the federal perspectives of the founder fathers of the EU and the current energy challenges of the EU and Ukraine, some geopolitical and security issues for the South-Eastern Europe and even an interesting article on Ukrainian Orthodox Church. In what concern the articles on China, there are two approaches: one related to the economic diplomacy of China in the actual global context and analyses the rise of China as economic power<sup>9</sup>, and another related to diplomatic relations between Serbia and China. It is noteworthy, in the second article, the analysis that the author, a career diplomat, makes on the economic attraction and influence that China exerts on Serbia, the balance of Serbia between the EU and China, and on the fundamentals of China's presence in Central and Eastern Europe<sup>10</sup>.

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<sup>3</sup> Ion Calafeteanu, "Elogiu conștiinței naționale" [Praise to the national conscience], in Maria Costea, Simion Costea (eds.), *Diplomație și actori geopolitici în epoca interdependenței complexe* [Diplomacy and geopolitical actors in the age of complex interdependence], Cluj-Napoca, Ed. Napoca Star, 2021.

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<sup>8</sup> Cezar Stancu, "România și conflictul indo-pakistanez privind Bangladesh-ul, 1971" [Romania and the Indo-Pakistani conflict over Bangladesh, 1971], in Maria Costea, Simion Costea (eds.), *Diplomație și actori geopolitici în epoca interdependenței complexe* [Diplomacy and geopolitical actors in the age of complex interdependence], Cluj-Napoca, Ed. Napoca Star, 2021.

<sup>9</sup> Nicoleta Vasilcovschi, "Diplomația economică a Chinei – evoluție și adaptare în context global" [China's diplomacy – evolution and adaptation in a global context], in Maria Costea, Simion Costea (eds.), *Diplomație și actori geopolitici în epoca interdependenței complexe* [Diplomacy and geopolitical actors in the age of complex interdependence], Cluj-Napoca, Ed. Napoca Star, 2021.

<sup>10</sup> Mihaela Osorio, "Serbia și China: o prietenie de oțel. Aniversarea a 70 de ani de relații diplomatice sino-sârbe la Belgrad" [Serbia and China: a friendship of steel. 70<sup>th</sup> anniversary of Sino-Serbian diplomatic relations in Belgrade], in Maria

In the paper on energy security challenges of the EU and Ukraine, the author analyses the strategic effects of the gas pipelines Nord Stream 2 and Turks Stream 2, highlighting the key influencing factors: the cleavages emerged between some of the Member States, based on their different interests, Russia's own strategies concerning both its former satellites and the EU (as a whole or some of EU member states). The author also highlights the US warnings about the possible consequences of EU energy strategies on both EU and Ukraine.<sup>11</sup>

As previously said, two papers of this chapter refer to some geopolitical and security issues for the South-Eastern Europe. The first one refers to the geopolitical and geostrategic situation of the Black Sea area after the end of Cold War, and the author considers that, despite its troubled history and of the new challenges surrounding it (the economic and some ethnic problems of riparian countries, materialised in some frozen conflicts, as the problems generated by corruption and organised crime), the concerned region will succeed, with the support of the EU and its different foreign policy tools (and the author presents the numerous programmes of cooperation in different fields of interest for riparian states) and of NATO, to overpass its unwieldy condition.<sup>12</sup> In the same register can be considered the article of the Ambassador Paraschiva Bădescu, related to security challenges emerged in the South-Eastern Europe. From the author's perspective, the EU enlargement placed Romania (beside Poland and Baltic states) and Black Sea area in a challenging strategic position for the EU vis-à-vis Russia and some Asiatic states, in terms of security.<sup>13</sup>

As above-mentioned, two articles of the second chapter refer to Ukraine. One of it focuses on Ukrainian Orthodox church, and the author reveals both historical facts and details concerning the structure and the way to organise of Ukrainian Orthodox Church, and the changes and challenges of the post-communist period<sup>14</sup>. In the other article Ambassador Bădescu, who refers to the situation of Ukraine since the beginning of the conflict from Donetsk and Lugansk, in April 2014, with a focus on the results of negotiations between Ukraine, Russia and some EU member states on the status of the Russian-Ukrainian military conflict (the series of Minsk Agreements) and on the EU's and NATO's reactions to the conflict and the outcome of these negotiations.<sup>15</sup>

As can be seen, the volume provides an eclectic perspective on Eastern European geopolitics, through the collection of articles it proposes, leaving it to the reader to select those appropriate to his sphere of interest. From different perspectives, these **articles illustrate the book's coherent vision on complex interdependence** between the actors of international relations and their impact on

Costea, Simion Costea (eds.), *Diplomație și actori geopolitici în epoca interdependenței complexe* [Diplomacy and geopolitical actors in the age of complex interdependence], Cluj-Napoca, Ed. Napoca Star, 2021.

<sup>11</sup> Aurel Lazăr, "Implicațiile strategice ale gazoductelor Nord Stream 2 și Turkstream 2 asupra securității energetice a Uniunii Europene și Ucrainei" [Strategic implications of Nord Stream 2 and Turkstream 2 gas pipelines on the energy security of the European Union and Ukraine], in Maria Costea, Simion Costea (eds.), *Diplomație și actori geopolitici în epoca interdependenței complexe* [Diplomacy and geopolitical actors in the age of complex interdependence], Cluj-Napoca, Ed. Napoca Star, 2021.

<sup>12</sup> Carmen Irène Atanasiu, "Situția geostrategică și geopolitică a spațiului pontic după încheierea Războiului Rece" [The geostrategic and geopolitical situation of the Pontic space after the end of the Cold War], in Maria Costea, Simion Costea (eds.), *Diplomație și actori geopolitici în epoca interdependenței complexe* [Diplomacy and geopolitical actors in the age of complex interdependence], Cluj-Napoca, Ed. Napoca Star, 2021.

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<sup>14</sup> Adrian Ignat, "Biserica ortodoxă din Ucraina astăzi" [Ukrainian orthodox church today], in Maria Costea, Simion Costea (eds.), *Diplomație și actori geopolitici în epoca interdependenței complexe* [Diplomacy and geopolitical actors in the age of complex interdependence], Cluj-Napoca, Ed. Napoca Star, 2021.

<sup>15</sup> Paraschiva Bădescu, "Ucraina – între speranțe și noi provocări" [Ukraine – between hopes and new challenges], in Maria Costea, Simion Costea (eds.), *Diplomație și actori geopolitici în epoca interdependenței complexe* [Diplomacy and geopolitical actors in the age of complex interdependence], Cluj-Napoca, Ed. Napoca Star, 2021.

Romania, the European Union and its neighbors, the impact of international relations on the internal policies of states, and conversely, the impact of internal policies and events on international relations, conflicts, diplomacy and international cooperation. The volume represents an important source of information on the Eastern states, and can be useful for both researchers and students in the field of international relations and European studies or in the field of political science, as well as those passionate about the Eastern European reality.

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Université Catholique de Lille (Faculté Libre de Droit C3RD)  
Faculté Libre de Droit, 60 Boulevard Vauban BP 109, 59016 Lille Cedex France  
Tel. 0320159688, E-mail: international@icl-lille.fr  
www.univ-vatholille.fr

Faculte Libre de Droit Institut Catholique  
de Toulouse  
31 Rue de la Fonderie BP31068 Toulouse Cedex 7  
Tél: 05 61 36 81 22 Fax: 05 61 36 81 37  
E-mail: secr.univ2@ict-toulouse.asso.fr



Mouvement Européen Nord  
219 bis, bd de la Liberté, BP 1134, 59 012 Lille Cedex, France  
Tél. : 03 20 52 72 89, Fax : 03 20 97 73 60, E-mail: mouveuropeen@wanadoo.fr  
<http://www.mouvement-europeen.org/section/>

Association «Confrontations» (Paris, France)  
4 Place de Valois 75001 Paris, Tel. 0033142605241,  
E-mail: courriel@confrontations.fr  
www.confrontations.fr



University of Medicine, Pharmacy, Sciences and Technology of Târgu-Mureș,  
Gheorghe Marinescu Street no 38, Târgu Mureș, 540139, România  
Tel.: +40 265 215.551, Fax: +40 265 210.407  
E-mail: rectorat@umftgm.ro , www.umfst.ro/en/home.html



Babeş-Bolyai University  
Faculty of European Studies  
1, Mihail Kogalniceanu Street  
RO-400084 Cluj-Napoca 0264 40.53.00 0264 59.19.06  
www.ubbcluj.ro



Tallinn Law School at Tallinn University of Technology  
Akadeemia tee 3, 12618 Tallinn, Estonia  
Tel.: 003726202430 Fax: 003726202429  
E-mail: tls@ttu.ee, www.ttu.ee/tallinn-law-school



Université de Beira Interior (Portugal)  
Convento de Sto. António, 6201-001 Covilha  
Tel:+351(275)319700 Fax:+351(275)319057, www.ubi.pt

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