OBSERVARE
Universidade Autónoma de Lisboa

e-ISSN: 1647-7251
Vol. 13, Nº. 1 (May-October 2022)

JANUS.NET
e-journal of International Relations

Vol. 13, Nº. 1 (May-October 2022)

https://doi.org/10.26619/1647-7251.13.1

ARTICLES

NOTES

CRITICAL REVIEWS

OBSERVARE
Universidade Autónoma de Lisboa

e-ISSN: 1647-7251
Vol. 13, Nº. 1 (May-October 2022)

JANUS.NET
e-journal of International Relations

THE SECURITY DILEMMA IN RUSSIA'S NEW NATIONAL SECURITY STRATEGY: BETWEEN MILITARISM AND BEING A GEOGRAPHICAL PIVOT

SANDRA FERNANDES

sfernandes@eeg.uminho.pt

Assistant Professor, Department of Political Science of University of Minho (Portugal) and Director of the Master Degree in International Relations. Ph.D. in Political Science and International Relations from Sciences Po. Awarded the Jacques Delors Prize 2005 for research on the European Union and Russia. Collaboration with the Portuguese Embassy in Russia. She was nominated by the Minister of Foreign Affairs to be part of the jury for access to the diplomatic career; responsible for the creation and coordination of the Diplomatic Career Access Course, UminhoExec and member of the Board of the Portuguese Political Science Association (APCP). She was Guest Lecturer within the scope of postgraduate courses in foreign universities. She was Guest Researcher at the Centre for European Policy Studies

MARCO CRUZ

cruz.maf@ium.pt

Lieutenant Colonel of the National Republican Guard (Portugal), Professor in Armed Crises and Conflicts at the Military University Institute, teaching Geopolitics, International Relations and Security Studies. He participated in GNR missions in Iraq, East Timor and Bosnia and Herzegovina (European Union-EUFOR). He is the Coordinator of the Nucleus of European Military Studies at the Research and Development Centre of the IUM, and an expert in internal security and criminal phenomena. Master's degree in law and Security and Bachelor and master's degree in military sciences. Postgraduate diploma in Political Science and International Relations and is a Ph.D. student in International Relations in the specialty of political studies. He is a researcher at the Research and Development Centre of IUM, and author and co-author of several publications in the areas of Geopolitics and Security Studies.

Abstract

The article analyses the new Russian Security Strategy as a formulation of Russia's "security dilemma", both in terms of interpretation and response (Booth and Wheeler 2007). Very focused on the transformation of the world order, resulting from changes in the International System, within which the powers seek to strengthen their positions in the global structure, the strategy increasingly foresees the use of the military instrument as a way of guaranteeing and imposing national interests, which are reflected in different domains and regional areas. Exploring the strategic relations with China, in economic and political terms, Russia also seeks to strengthen its status as a global power, through the expansion of geographic space and areas of intervention. In its interpretation of the so-called "modern world", very marked by the rivalry between the US and China, it seeks to assume itself as the geographical pivot of that same relationship. The National Security Strategy therefore is a roadmap for Russia's ambitions, assessing the motives, intentions and capabilities of the "others" and identifying the "rational" and "legitimate" ways of responding to its "security dilemma". Whereas it is possible to confirm that the invasion of Ukraine on 24 February 2022 materialized the elements present in the strategy, the effects do not seem to coincide with the objectives sought by Moscow.

Keywords

Russia; Security Strategy; security dilemma; geographical pivot; militarism

How to cite this article

Fernandes, Sandra; Cruz, Marco (2022). The security dilemma in Russia's new national security strategy: between militarism and being a geographical pivot. In Janus.net, e-journal of international relations. Vol13, Nº. 1, May-October 2022. Consulted [online] on the date of the last visit, https://doi.org/10.26619/1647-7251.13.1.1

Article received on January 11, 2022 and accepted for publication on April 1, 2022

JANUS.NET, e-journal of International Relations
e-ISSN: 1647-7251
Vol. 13, Nº. 1 (May-October 2022), pp. 1-18
The security dilemma in Russia's new national security strategy: between militarism and being a geographical pivot
Sandra Fernandes, Marco Cruz

THE SECURITY DILEMMA IN RUSSIA'S NEW NATIONAL SECURITY STRATEGY: BETWEEN MILITARISM AND BEING A GEOGRAPHICAL PIVOT[1]

SANDRA FERNANDES

MARCO CRUZ

Introduction

In the 21st century, in contrast to the 1990s, Russia embarked on a path of international (re)ascension, under the leadership of Vladimir Putin. The Russian-Georgian war of 2008 and the annexation of Crimea in 2014 marked a turning point in Moscow's modus operandi in asserting its interests. These include not only areas of direct strategic interest in its "near abroad"[2], but also in more distant regions, such as the African continent and South and Central America (Gurganus, 2018).

Since the implosion of the Soviet Union in 1991, Russia's foreign and security policy has evolved according to its relationship with the West and with the main Western powers. During the Cold War, this relationship was one of strategic rivalry, through the search and dispute of influence space, both in political and military terms (Gaddis, 2007). Moscow's intention to bring it closer to Western states and organizations even included the possibility of its integration into the Atlantic Alliance itself (Thorun, 2009). Initial support for the war on terror after the 9/11 attacks also illustrates this approach (Cardier, 2015: 160). After the phase of relative convergence, President Putin's leadership broke with this cooperative course, resurrecting the perception that it is necessary to reverse the position of weakness of the Russian nation, "having lost Eastern Europe, the USSR lost its most important defence zone and suffered a huge geopolitical blow" (Dugin, 2016: 70).

[1] Article translated by Carolina Peralta.

[2] The term "near abroad" appeared for the first time in 1992, being considered a geopolitical "label" among Russian politicians in the context of the dissolution of the Soviet Union. It refers to the near abroad, that is, to the former Soviet republics, which have since become independent sovereign countries. The term recognizes the new independent status, but despite this, it keeps countries under Russian influence, given that these countries continue to belong to the former Soviet family (Toal, 2017: 3).

Putin made this perception explicit in key speeches in 2005 and 2007, identifying the implosion of the Soviet Union as the greatest geopolitical catastrophe of the century, the aggressiveness of the enlargement policies of NATO (North Atlantic Treaty Organization) and the European Union (EU) to post-Soviet states, and the criticism of the hegemony of the United States (US) in an international order that is multilateral (Putin, 2005; 2007).

The role of Russian leadership has been crucial for relations with Western powers, with two distinct type-views: one that places Russia as a European power, that is, closer to Western normative frameworks; and another that defends Russia's centrality in Central Asia, occupying the "heart" of the Heartland (Mackinder 1943: 595-605) and, in this way, seeking Russian autonomy in relation to Western actors, including strengthening partnerships with Asian countries (Krickovic & Pellicciari, 2021: 89-90).

The change in Russia's path was based on economic prosperity and materialized mainly in the Russian-Georgian war of 2008, and in the so-called colour revolutions that led to the overthrow of rulers in Georgia and Ukraine, closer to the Kremlin (Nygren, 2008: 30; Sakwa, 2015: 65). The previous leaderships of the Ukrainian and Georgian governments were replaced by politicians whose ambition was to approach and eventually be part of Euro-Atlantic institutions, aiming to benefit from the economic support and development of the EU and the security "umbrella" of NATO. This geopolitical framework has changed relations between Russia, the EU and NATO (Casier, 2016: 18-19; Mendras, 2015: 85). From Moscow's point of view, as during the Cold War period, Western countries sought to subjugate Russia, removing vital spaces of influence from it, not only encircling it (Crowley, 2018), but removing the buffer zone between Russia and the West (Haas, 2010: 3).

This article aims to analyse the new Russia's National Security Strategy (RNSS) of July 2021 (RF, 2021). This document is the main strategic document of the State, to which the military doctrine and the concept of its foreign policy are subordinated. As a result of the changes it announces within the international system, the new strategy contrasts with the previous version published in 2015 (RF, 2015) and identifies the main trends and opportunities for Russia in the "modern world". Based on the concept of "security dilemma sensitivity" formulated by Booth and Wheeler (2007)[3], we argue that the document under analysis informs about the role of fear in Russian attitudes and behaviours. Thus, our main objective is to identify how Moscow responded to its "interpretation dilemma" by defining what the motives, intentions and capacities of others are.

Although in rhetorical terms, the new RNSS also indicates how Russia solved its "response dilemma" by listing the rational ways to respond to its security dilemma. The "special operation" that the Kremlin launched on Ukraine on 24 February 2022, condemned as a war of aggression by the West, embodies the Russian response to its interpretation of the security dilemma.

3 The authors define the concept as follows: "an actor's intention and capacity to perceive the motives behind, and to show responsiveness towards, the potential complexity of the military intentions of others. In particular, it refers to the ability to understand the role that fear might play in their attitudes and behaviour, including, crucially, the role that one's own actions may play in provoking that fear" (Booth and Wheeler: 7).

Based on the recent changes that the Kremlin has made in its external relations, the article thus identifies the extent to which these dimensions are translated into the new RNSS. Although the document unequivocally expresses the deterioration of relations between Russia and the "Western countries", our analysis seeks to understand to what extent and in what way the changes established in the RNSS include elements of Russian geopolitical thought (Fernandes and Ageeva, 2021) and ruptures confirmed by the current war in Ukraine. These elements include a move away from European cooperation options; a challenge to Western leadership in the global order in the sense that there are multiple centres of power (multipolarity); the search for partnerships in Asia and a new Russian foreign policy identity on a Eurasian scale.

Using qualitative methodology based on the content analysis of the RNSS, we analysed, firstly, how the "West" is approached in that same document, in terms of actors and issues, in order to highlight the dynamics of cooperation and of conflict that Moscow reveals. Secondly, to question Russia's ambition to be a Eurasian actor, we identified elements of global ambition compared to elements of a regional predisposition. Finally, still in order to assess the articulation of Russian Eurasianism in the RNSS, we assessed Moscow's objective of being a "geographical pivot" in a world that Russia perceives as not being centred in the West but composed of several centres of power.

1. The West as "Other": Defending Russian Interests and Culture

The RNSS identifies the US and its main western allies as the main threat to Russia's interests, underlining NATO's (and EU's) enlargement policies as the main element of interference in its "near abroad". It is also in the West that the main threats "to internal political unity and stability" and to its values and principles originate (RF, 2021: 4). In addition to the emphasis given to climate issues, the economy and technology, the new strategy seeks to challenge the hegemonic order dominated by Western countries, demanding a more relevant role for Russia, which is in line with its international weight in military, geographical, technological and legal terms, namely its status as a permanent member of the United Nations Security Council (UNSC).

As far as NATO is concerned, the organization and its allies remain a military threat to the Russian Federation and its main partners, in particular those that are part of the Commonwealth of Independent States (CIS). In this context, the construction of nearby military bases are highlighted as threats to Russian sovereignty, referring to the military exercises and the installation of nuclear weapons "against the Russian Federation" carried out (RF, 2021: 12).

In addition to pointing to the West, albeit indirectly, as being behind the computer attacks that Russia has been experiencing, in the view of the new strategy, some actors threaten Russian values - spiritual, moral, historical and cultural. The States are joined by transnational companies, non-governmental actors, religious entities and extremist and terrorist organizations. As in other moments in its history, the so-called westernization of Russian culture is seen as a threat to its sovereignty, as it seeks to "falsify Russia and its world history, distort historical truth and memory" [4], thus inciting interethnic and interreligious group conflicts that weaken the State itself.

In order to "protect" Russian values and spirit from external interference, fourteen actions are identified, with emphasis on the information and research domain, where the promotion of state information programmes and research centres that carry out the scientific dissemination of documents related to Russia and its history, in the "educational space" (physical and virtual) is defended (RF, 2021: 36-38). In religious and cultural terms, the fostering of projects in partnership with different entities, in particular with the (Orthodox) church, inside and outside Russian territory, is advocated. The most relevant aspect of the activities, however, comes from point 7, which emphasizes the "reinforcement of the cultural sovereignty of the Russian Federation and the preservation of the unity of its cultural space (RF, 2021: 36).

This "defence" of Russian culture makes it possible to expand the space of Russian intervention far beyond its physical borders. Russian-speaking communities and Russian entities that carry out activities abroad are one of the bases of power. In addition to the countries of its "near abroad", the Western Balkans stand out, in particular Serbia and Bosnia and Herzegovina, countries where the Kremlin maintains a strong political influence, as a result of its historical and cultural proximity (Cruz, 2021). At the beginning of 2022, Serbia, through its President, announced the acquisition of military weapons from Russia, antitank weapons, tanks and drones (Stojanovic, 2022). Serbia has been one of the main centres of Russian investment, in economic, information, military and political terms (Blank, 2021). On the Bosnian side, the political support given by Moscow for the secession of the Serbian Republic (*Republika Srpska*), declared several years ago by the President of this region, Milorad Dodik, is intended, first of all, to keep Bosnia away from approximation and integration in NATO (Gotev, 2019) and in the EU. Furthermore, with the proximity it seeks to have with Bosnian political leaders, in particular the Serbian and Croatian side of the tripartite presidency (which also includes a Bosnian-Muslim representative), Russia intends to maintain its influence (Jagiello, 2021), exploring the ethnic divisions to create instability (Mujanovic, 2017), in a region considered of great geostrategic importance for the EU (RFE, 2021; Kamath, 2021).

With this new strategy, relations with the West in general, and with the US in particular, are not articulated with cooperative projects, mainly due to Western threats in areas of Russian interest. The fight against the risks associated with the westernization of the country in political, economic and cultural terms, is assumed as one of the fundamental pillars for the Russian identity. In addition to allowing the prioritization of exclusive national dimensions, the maintenance of the western reference as the "other"[5] (Zevelev, 2016: 8) - a matrix considered essential from the theoretical perspective of the construction of identities (Wendt, 1994: 385) (Shelling, 1960: 19) also promotes internal

4 Over the years, the theme related to historical issues has been crucial for the different Russian rulers, so it is not an issue in the current Russian leadership. Just recently, Vladimir Putin accused Western historians of wanting to downplay Russia's role in World War II, saying that the Soviets were primarily responsible for the Nazi defeat. Radchen (2020) claims that the Russian president wants to rewrite history.

5 The relationship between the "I" and the "other" evidences the idea that identities can be based on difference, thus being created through a relational context (Delanty, 2005). In foreign policy, the distinction between the in and the out group forms the basis for the formulation of political identities, defining who the "we" are, in contrast to the external groups, that is, the "other", which can be implied or explicitly excluded from the national community (Bruter, 2003: 1150).

cohesion and legitimizes the political governance in place. On this particular point, the RNSS maintains the guideline of the 2015 strategy (RF, 2015), deepening the divergences with the West.

In military terms, relations with NATO are a central priority and concern for Russia, resulting not only from the installation of anti-missile systems and nuclear weapons close to its borders, but also from the successive policies of enlargement of the Alliance to the East. In response to the recent tensions created in the Donbass region (Ukraine), Putin unilaterally proposes a "new security agreement" with the US and NATO, which guarantees the non-inclusion of Ukraine in NATO in the future (Ministry of Foreign Affairs of the Russian Federation, 2021).

The RNSS identifies a wide range of threats to Russia's national security, both internally and externally. The document's definition of what it considers to be a "threat to national security" is very comprehensive, encompassing "the set of conditions and factors that directly and indirectly create an opportunity to limit the interests of the Russian Federation" (RF, 2021). The scope of the notion of National Security, in addition to establishing the link between the internal and external domains, that is, the indivisibility between the two domains, identifies the relationship between the different types of threats. With regard to terrorism and security issues in general, including threats originating from disinformation and propaganda campaigns, there is a concern on the part of the Kremlin to protect its power internally, giving legitimacy to measures and restrictions imposed by the political power. The narrative used in relation to the West and the threat that Western values entail, and which are placed alongside others such as terrorism and extremism, materialize this same intention of legitimation.

The most relevant aspect in terms of threats concerns the way in which threats originating in the West are understood, in physical terms, but especially in virtual terms. The RNSS finds a central pillar of threats in cybernetics, thus reinforcing the subjective nature of its assessment. The enlargement of Russian borders, in the identified space of cultural sovereignty (RF, 2021: 36), in order to include States considered strategic from its near abroad, aims to obtain legitimation in domestic and international terms in the issues of protection of Russian-speaking communities, which are, according to Moscow, "discriminated and judicially accused" (RF, 2021: 6). In the annexation of Crimea, in addition to historical issues, the argument used by Putin to intervene was to guarantee the security of the Russians, who represent the majority population in that territory (Putin, 2014).

2. A global ambition, with a strong regional focus

Similar to the strategies of the great powers, the RNSS gives Russia a global position, using all the instruments at its disposal: political, military, technical-military, diplomatic, economic, and informational. In this section, we identify Russia's active intervention in regional terms and the reinforcement of its role in global terms, reinforcing the aspects that effectively give it this position capacity. The strengthening of Russian civilization, in contrast to the West, and the country's global ambition mitigate Russian weaknesses in different areas, particularly in economic terms, occupying the 11th position in world terms, with the Russian economy representing only 1.95% of the global economy (World

Barometer, 2021a), and with regard to population, taking the ninth position in the world (World Barometer, 2021b).

In political terms, Russia's geography enhances connections to all continents through different forums (political and economic), in particular the BRICS (Brazil, Russia, India, China and South Africa), and States with a strong historical connection to Russia and the former Soviet Union (Central and South America and Africa). As a result of this connection, economic and military relations are favoured, through the sale of arms and military support, in terms of cooperation, the installation of bases and the development of military capabilities. In addition to state-owned companies, this proximity also favours the intervention of Russian companies in the various markets.[6]

The RNSS also refers to Russia's global dimension through the UN, in particular in the permanent seat at the UNSC. The reference to the principles of the UN Charter, as a model for regulating the world order, intends to "call" Russia to participate in the main global issues, thus reinforcing its weight with the main powers. The appeal made to multilateralism, as a way of reducing tensions, seeks to claim a new global order, where Russia, together with other powers (China), seeks to assume a prominent role and have global institutional weight. In addition to its role in the UNSC, Russia's ambition includes strengthening its participation in UN Peacekeeping Operations (RF, 2021: 40).

In military terms, Russia's global claim is mainly made by its capability and strategic deterrence. The RNSS underlines Russia's need to maintain its leading position in terms of technology, weapons and its entire industrial complex linked to this capability. Despite advocating maintaining levels of nuclear deterrence, the Strategy continues to give primacy to international understanding as a way to reduce the risks associated with its use (RF, 2021: 5, 11-12, 39). Being currently considered the first power with the greatest capacity in numerical terms, with 6257 warheads (FAS, 2021), both in technological terms, followed by the US, the Russian nuclear capacity gives it this weight among the great powers.[7] In the military-technical vector, Russia sees itself as a leader on a global scale. A large part of Russian investments is sold to third parties, sometimes sacrificing the strengthening of the military capabilities of its Armed Forces. Currently, there are weapons and technology sold by Russian state-owned companies that are not available to the Russian military (Connolly & Sendstad, 2017). This sale expands Moscow's influence on a global scale, particularly in markets in politically closer countries. This is how the Kremlin's ambition to guarantee not only technological leadership, but also, as mentioned in the RNSS, strategic autonomy must be understood (RF, 2021: 13).

Despite the elements of global image mentioned above, the RNSS is mainly dedicated to Russia's ambition in regional terms, the Russian "near abroad", which encompasses the States that are part of the CIS. It reflects the main security concerns, including how Vladimir Putin will consider the use of all means, including the military. For this region, several activities and measures are proposed, including the use of kinetic resources,

[6] In addition to state-owned companies, mainly linked to the energy and armaments sector (Luzin, 2021), the role that the Russian private military security company Wagner plays in the foreign policy of the Russian state is highlighted, increasingly reinforced in several countries, namely Libya (Stronski, 2020), Ukraine, Iraq, Afghanistan, Yemen, Chad, Sudan, South Sudan, and Mozambique (Katz, B. et al., 2020).

[7] According to data from the Federation of American Scientists (FAS) (2021), Russia and the US hold about 91% of nuclear weapons worldwide. As far as strategic nuclear weapons are concerned, the two countries are on par (the US has 100 more of these weapons, out of a total of 1700.

strengthening cooperation with the CIS States, South Ossetia and Abkhazia, and with international institutions, namely the Eurasian Economic Union (EEU), the Collective Security Treaty Organization (CSTO) and the Union of Russia and Belarus (RF, 2021: 39-42).

The strategic centrality of the post-Soviet area is revealed in the tasks identified in paragraph 101, dedicated to Russian foreign policy (RF, 2021: 39). Of the 25 proposed actions, eight explicitly concern States in this area, while others can also be applied to this region. Besides the political, informational and cultural connection, the military aspects, the sale of weapons and technology and multilateral technical-military cooperation are also highlighted here.

In turn, in regional terms, the link to China, along with India, is seen as fundamental, exploring the economic and technological aspects of this relationship, both in the bilateral framework and in the multilateral framework offered by the Shanghai Cooperation Organization[8]. In addition to issues related to the international order, political relations between Moscow and Beijing have economic issues as a central pillar. Since 2002, when the turnover between the two was 8 thousand million dollars, there has been an increase in trade, to the point that in 2018 the turnover was around 110 thousand million dollars (Larin, 2020). On the Russian side, exports are mainly related to the energy, technology and agriculture sectors, while China is a relevant partner in the supply of manufactured products, as well as in the investment sector (Hill, 2021). In political terms, the alignment of Moscow and Beijing reinforces their positions in relation to the change of the international order, seeking to replace US hegemony and unilateralism. In military terms, Russia is one of the main Chinese partners, providing support in the training and sale of material and technology. Together with India, the two states receive around 56% of all Russian arms exports (Connolly & Sendstad, 2017: 11). Joint exercises between the Chinese and Russian Armed Forces, such as the Vostok military exercises (2018), reinforce strategic and operational proximity.

In addition to the bilateral aspects, relations between Moscow and Beijing are also implemented at multilateral level. At the UN level, there is an alignment between the two regarding the US leadership role in the organization. In March 2021, foreign ministers called for a meeting with the permanent members of the UNSC, in order to discuss the main focuses of turmoil, with the Russian minister referring to the destructive way in which the US has acted in international terms (Reuters, 2021). In the diplomatic sphere, the solidarity between Moscow and Beijing was expressed in the Chinese silence regarding the Russian invasion of Crimea (Ismail, 2019). This stance has also been visible in the current war in Ukraine, as in addition to Beijing refusing to use the term «invasion», it has also framed this conflict as Russia's response to NATO's policies of enlargement to Eastern Europe (Liu, 2022). China abstained from the Security Council the day after the start of the Ukraine conflict, in the resolution condemning the invasion (UN, 2022).

---

8 A Eurasian political, economic and military organization founded in 2001, whose headquarters are in Beijing. It comprises eight states (Kazakhstan, China, India, Pakistan, Kyrgyzstan, Russia, Tajikistan and Uzbekistan), four observers (Afghanistan, Belarus, Iran and Mongolia), six dialogue partners (Armenia, Azerbaijan, Cambodia, Nepal, Sri Lanka and Turkey) and three guests, two organizations (ASEAN and CIS) and one State (Turkmenistan).

On the western stage of the Eurasian continent, Russia's intervention is mainly focused on areas of traditional influence whose geographical proximity and security challenges are seen by Moscow with great concern. In addition to political and economic support for partner states, as a way of limiting the ability of other foreign powers to intervene (RF, 2021: 5, 26), the Russian strategic document points to the threats of NATO enlargement and the construction of military bases in the vicinity of Russia, its allies and partners (RF, 2021: 11). In the field of cooperation regarding information, it is with partner states that Russia proposes to work, including the use of information and communication technologies (RF, 2021: 23). Still in relation to this regional priority, Russia is willing to "support allies and partners (...) in matters related to security and defence, and in neutralizing attempts to interfere (by external actors) in its internal affairs". (RF, 2021: 40).

The post-Soviet area (RF, 2021: 42) is, therefore, the region where most of the vital Russian objectives are identified, particularly in the field of security. Thus, Belarus, Ukraine and Moldova stand out as a buffer zone (Toucas, 2017) (Tabachnik, 2019), that is, as a kind of "sanitary cordon" in relation to the West, and, to a lesser extent, the Baltic States (Estonia, Latvia and Lithuania), Poland, the Czech Republic, Romania and Bulgaria. In addition to the military instrument, Russia's intervention also includes the information one, through disinformation and propaganda campaigns, including using the local media. This combination of civil and military, material and virtual instruments reinforces Russia's hybrid intervention capabilities in different regions, particularly in its "near abroad".

In regional terms, Russia has also taken advantage of a large part of the opportunities generated by the lack of capacity and understanding of Western powers to act in certain geographical spaces, seeking to support factions opposite to those supported by Western powers in several States. Depicting the increase in tensions and conflicts in the post-Soviet space, the Middle East, North Africa, Afghanistan and the Korean peninsula, the RNSS associates this widespread regional instability as a source for the development of international terrorism and extremist activities (RF, 2021: 12). The centrality that these types of threats have in Russia's strategy, in internal (RF, 2021: 35) and international (RF, 2021: 41) terms, including the risks associated with the use of nuclear, chemical and biological weapons by these actors (RF, 2021:17), seek to legitimize Russia's influence and intervention in areas where these greatest risks and threats are identified.

Syria and Afghanistan are two examples of the way the Kremlin has guided its foreign policy, in the sense of "limiting" terrorism and extremist activities, and also Western influences. Political, diplomatic and military support for President Assad's regime has kept the Syrian leader in power. The same is true of Afghanistan, where the withdrawal of the American and NATO military contingent has allowed Russia to have an even greater role in the governance of that State. The Taliban's visit to Moscow, to point out that their rise to power in Afghanistan does not pose any threat to Russia, illustrates this protagonism (AP, 2021).

The affirmation of Russia in areas where Western powers have sought to change the status quo, mainly through democratization-Europeanization processes, aims to reinforce Russian identity, both internally and internationally. The West has therefore been designated as the "other" (Maalouf, 2003: 14; Fukuyama, 2018: 45), that is, the enemy, for the identification and reinforcement of the civilizational framework. Although not a new element, Vladimir Putin has, in recent years, used this factor to strengthen not only the country's power, but also the legitimacy of his own power. His declaration, three days before the invasion of Ukraine, regarding the non-existence of the State and the Ukrainian people, serves this same objective, not only of hostility towards the West, but in particular of affirmation of Russian identity (Putin, 2022) .

3. The Russian geopolitical pivot in a polycentric world order

We identified above that the RNSS considers all actions that jeopardize Russia's interests. This scope of the concept broadens, in geographical terms, Russia's scope of action, seeking to obtain legitimacy (internally and externally) to act outside its physical borders. In addition to Moscow's recognized military (land, air, naval, aerospace and cyber) (IISS, 2021; GFP, 2021) and technological (Jankowski, 2021) capabilities, the most recent Russian interventions have been supported by Russian perception of its active role in the current global geopolitical context and in the main world crises and conflicts, as well as by the great powers, especially China and the US. In this regard, mention should be made to Russian action and influence in Africa (Siegl, 2021) and in the Middle East (Rumer & Weiss, 2019; Borshchevskaya, et. al, 2021).

Russia's prominent role in the so-called "modern world", which is marked by the increase in geopolitical tensions (RF, 2021: 3), is reflected in the RNSS through its proposed and coveted contribution to the stability and security of the international system. In addition to identifying itself as fundamental to increasing predictability in relations between states, the document highlights Russia's role in strengthening global confidence and security (RF, 2021: 38).

It is in the identification of Russia as a fundamental actor for the maintenance and resetting of the international order that the RNSS stands out the most, recognizing not only that the Western powers will seek to maintain their international predominance, but also that there is an increase in the number of centres of economic and political power. Due to these circumstances, there are States that reinforce their role in regional and global terms, even intending to change the world order itself, in its architecture, principles and values (RF, 2021: 3). Although it does not mention it explicitly, Russia's strategic document refers to China as the revisionist power of the new global order, with whom it intends to develop a comprehensive partnership and strategic interaction (RF, 2021: 40).

Russia's favourable geographical position, as a Eurasian power, allows it to obtain advantages in the context of the strategic rivalry between the US and China, seeing itself as a geopolitical "pivot" of that relationship. In addition to economic benefits, Russia also seeks, in this pivotal position, to achieve its own strategic objectives, namely regaining recognition as a global power. Like the Chinese government (Romana, 2005: 301-309) (Gaspar, 2020: 43) (Economy, 2022), Russia also aims to put an end to American hegemony, thus contesting, both in normative and material terms, a world order that is no longer de facto dominated by the US.

Despite the proximity (political, economic and military) between Beijing and Moscow, there are areas of strategic competition between the two regimes. It should be noted that, currently, China competes in markets and with Russia's own partners, and the Kremlin is aware of this problem. The arms trade and disputes over Asian and African markets are just one of the reflections of this rivalry, since both have influence in them, and in the case of China, it is booming. In addition to military issues, there are still other areas in which relations are troubled, with border disputes between the two countries dating back to the Soviet period[9]. (Gerson, 2010; Sidorov, 2014). In international terms, the (re)ascension of China took place, in large part, during the period of weakening of Russia (Soviet Union and the 1990s), so there are also, in global geopolitical terms, disputed zones and areas, the example of what happens in the countries of Central America, politically closer to Moscow (Nicaragua, Venezuela and Cuba), in the countries of North Africa and in the South Caucasus. There are discrepancies between the two powers in terms of economics and human resources, with China booming in economic terms and with a high human development index, representing 20% of the population worldwide (WPR, 2022).

Beijing aims, therefore, to surpass the other powers, including Russia, in other vectors, particularly in the military, technological and nuclear areas. In the nuclear field, the Chinese construction of another field with 120 nuclear silos in the province of Gansu, located some 350 kilometres from another one in the east of Xinjiang, constitutes both a threat to the American territory and to the entire Russian territory (Korda & Kristensen, 2021).

Aware of the Chinese "dangers", in addition to seeking the integration of China in different multilateral forums, for example, in the CIS, Putin also intends to counterbalance China's regional power through (discreet) rapprochement with the West. Thus, while realizing the importance that Russia has for China in altering the international order and North American hegemony, Russian diplomacy has also understood its value to Western powers in relation to the Chinese threat, in global terms. Moscow seeks to assume itself as a geopolitical pivot between these two actors, valuing both the broad partnership and strategic interaction with Beijing (RF, 2021: 40), as well as the maintenance of relations with Western powers, in particular the US.

It is in this sense of greater awareness of the China factor that the strengthening of the dialogue between Russians and North Americans is understood. In May 2021, the new US administration, led by Joe Biden, lifted the sanctions imposed on the company "The Executive", which is primarily responsible for the construction of the Nord Stream 2 gas pipeline. The project has created many tensions between the EU and the US, as it further increases the EU's energy (and political) dependence on Russia.

Although the Russian and North American leaders publicly maintain some points of disagreement (BBC News, 2021), both showed some progress in their relations, in order to guarantee "strategic stability", and establish a "bilateral dialogue of strategic stability" (Biden, 2021), in an attempt to strengthen diplomatic and military channels between the

9 In addition to economic issues, one of the main reasons that led the Russian Federation to seek its integration into Western institutions, right after the implosion of the Soviet Union, was, as Trenin (2001: 93) mentions, the fear of an eventual Chinese expansion into its borders.

two states. Steps were also taken towards understanding cybersecurity issues and conflicts in Syria, Afghanistan and Ukraine.

Russia's understanding of its geopolitical and geostrategic relevance to Western aspirations to contain China reinforces its status as a world power, publicly recognized by President Biden[10] at a press conference after a meeting with Putin (Biden, 2021). This Western awareness allows the Kremlin to obtain greater tolerance in relation to the actions promoted mainly in its near abroad, and to increase its negotiation margin in relation to its vital interests, of which the most recent example is Moscow's demand to "close" the Ukrainian question, through the guarantee, by treaty, that Ukraine will not join NATO.

The role of global geopolitical pivot aims, on the one hand, to obtain economic and political benefits, in relation to areas of Russian interest that involve the two main international actors (US and China), and, on the other hand, to mitigate the threats that both sides can represent for Russia, exploring its weaknesses at different levels: economic, social, political and security. The current conflict in Ukraine has exposed the dynamics of relations between Russia, China and the US-led Western countries. In conflicts with the West, on the part of Beijing or Moscow, in relation to areas of influence, there is a "collaborative neutrality" (Costa, 2022) of the actor not directly involved, thus expanding its own international protagonism. Although cautiously, given the trade relations it has with Western powers, in the Ukraine crisis, China has tried not to leave Russia completely isolated. This shared awareness between the Russians and Chinese of maintaining a strategic proximity to confront Western powers is particularly valid in their respective areas of interest and when Americans and Europeans seek to gain greater prominence and limit their own influence in regional and international terms.

Conclusion

In substantial terms, the new RNSS is the formulation of the Russian security dilemma, both in terms of interpretation and response (Booth and Wheeler, 2007). Very focused on the transformation of the world order, resulting from changes in the International System, within which the powers seek to strengthen their positions in the global structure, it increasingly foresees the use of the military instrument as a way of guaranteeing and imposing national interests, which are reflected in different domains and regional areas.

Moscow seeks to be a global geopolitical pivot, taking advantage of its diplomatic and geographic proximity to China, and thereby obtaining economic dividends. It is largely related to the supply of energy (hydrocarbons), which support its economy and consequently its technological development, one of the most relevant vectors of Russian power. In the context of Russia's increasing isolation since February 2022 and from the

[10] Unlike the previous US president, Barack Obama, who referred to Russia, in 2014, as a regional power (The Guardian, 2014). This aspect is of great importance for the analysis of the evolution of the relationship between the US and Russia, as Biden was, at the time, Vice President.

perspective of the EU being able to redirect its energy market, China's relevance has increased.

Despite the preponderance of the anti-Western stance, the Kremlin is aware of its role in the relations between Beijing and Western powers, in particular with the US, identifying itself in this same relationship as a key actor in geopolitical terms. The role played by Russia in this context increased its capacity to "negotiate" in relation to the geographic space it considers to be of vital interest, in particular its "near abroad". The diplomatic posture of the Western powers in the face of Russian "bellicosity" in the weeks of crisis that preceded the war in Ukraine confirmed this.

This Russian centrality reinforces its instruments of power as a global power, which are materialized in political terms through its weight in the UNSC, and, in military terms, through nuclear issues and nuclear development. Therefore, we can, argue that the RNSS goes from the centre to the outside. This is because it interconnects aspects of foreign policy with matters of internal policy and the legitimacy of the government in the eyes of the Russian population and, above all, because the image of power in regional terms, particularly along its borders, reinforces Russia's intentions to establish itself as a global power, in the "new" order that it (along with China) seeks to forge. However, the global effects of the military offensive against Ukraine question the statement desired by the Kremlin, to the point of becoming an eventual pariah state.

The RNSS was established as a roadmap for the announced "new" international order, within which Russia seeks to safeguard its various interests, adjusting its capabilities to its weight in the international geopolitical context, as a power on a global scale. The decision to invade Ukraine is thus in line with perceptions of threat and the centrality of resorting to the military factor. The western response to the invasion of the country, centred on the isolation of Moscow, as well as the adherence of private actors to this stance, raise serious doubts about the materialization of Russian objectives of being a new centre of power in a relationship of connivance with actors such as China.

References

AP (2021). Taliban visit Moscow to say their wins don't threaten Russia. Available at https://apnews.com/article/taliban-moscow-europe-russia-51327432f1455020352826281c6c4e73

BBC News (2021, 16 June). Biden e Putin fazem reunião em Genebra, mas a discórdia entre EUA e Rússia permanece. Available at https://www.bbc.com/portuguese/internacional-57506016

Biden, L. (2021, 16 de junho). President Biden meets with Russian President Vladimir Putin. PBS Newshour. Available at https://www.youtube.com/watch?v=x8OK2d_bHag

Blank, S. (2021). Can Selling Weapons to Serbia Create Peace in the Balkans?. In The National Interest [Online a]. Available at https://nationalinterest.org/blog/buzz/can-selling-weapons-serbia-create-peace-balkans-194448

Booth, K., & Wheeler, N.J. (2007). *The Security Dilemma: Fear, Cooperation, and Trust in World Politics*. Basingstoke: Palgrave Macmillan.

Borshchevskaya, A., Wajeeh, R., Rakov, D & Sim. L (2021). Russia in the Middle East: A source of stability or a pot-stirrer?. In Atlantic Council [Online]. Available at https://www.atlanticcouncil.org/blogs/menasource/russia-in-the-middle-east-a-source-of-stability-or-a-pot-stirrer/

Bruter, M. (2003). Winning hearts and minds for Europe. The Impact of News and Symbols on Civic and Cultural European Identity. Comparative Political Studies, Vol. 36 No. 10, 1148-1179. https://doi.org/10.1177/0010414003257609

Casier, T. (2016). «Identities and Images of Competition in the Overlapping Neighbourhoods: How EU and Russian Foreign Policies Interact». In: Piet, R. & Simão, L (eds). *Security in Shared Neighbourhoods Foreign Policy of Russia, Turkey and the EU*. New York: Palgrave Macmillan, pp. 13-34.

China Power Team (2021, 27 May). How Dominant is China in the Global Arms Trade?. In China Power [Online. Available at https://chinapower.csis.org/china-global-arms-trade/

Chu, Y. & Zheng, Y. (2021). *The decline of the western-centric world and the emerging new global order*. London and New York: Routledge Taylor & Francis Group.

Connolly, R. & Sendstad, C. (2017). Russia's Role as an Arms Exporter The Strategic and Economic Importance of Arms Exports for Russia. In Chatam House [Online]. Available at https://www.chathamhouse.org/sites/default/files/publications/research/2017-03-20-russia-arms-exporter-connolly-sendstad.pdf

Costa, F. (2022, 4 March). O Dilema Chinês. CNN Portugal. Available at https://cnnportugal.iol.pt/china/russia/francisco-seixas-da-costa-o-dilema-chines/20220304/6221d9890cf21847f0aeff68

Crowley, (2018, 2 August). OTAN 'Encirclement' May Be Creating a New Crisis with Russia. In The National Interest [Online. Available at https://nationalinterest.org/blog/skeptics/OTAN-encirclement-may-be-creating-new-crisis-russia-27617

Cruz, M. (2021). «Russia in theWestern Balkans: Interests and Tools of Influence». In Holger Mölder, H, Sazonov, V., Chochia, A. & Kerikmäe, T. (Eds). *The Russian Federation in Global Knowledge Warfare. Influence Operations in Europe and Its Neighbourhood*. Switzerland: Spinger. (pp. 315-334). https://doi.org/10.1007/978-3-030-73955-3_16

Dugin, A. (2016). *Geopolítica da Rússia Contemporânea*. Lisboa: Instituto de Altos Estudos em Geopolítica & Ciências Auxiliares.

Economy, E. (2022). Xi Jinping's New World Order. Can China Remake the International System?. In Foreign Affairs [Online]. Available at https://www.foreignaffairs.com/articles/china/2021-12-09/xi-jinpings-new-world-order

Federation of America Scientists (FAS) (2021). Status of World Nuclear Forces. Available at https://fas.org/issues/nuclear-weapons/status-world-nuclear-forces/

Fernandes, S. & Ageeva, V. (2021). New Russian Geopolitics: Reviving Past Perceptions and Ambitions. In N. Morgado (Ed.), *Geopolitics in the Twenty-First Century: Territories, Identities, and Foreign Policies* (pp.31-56). New York: Nova Publishers.

Fukuyama, F. (2018). *Francis Fukuyama. A exigência de Dignidade e a Política do Ressenimento. Identidades*. Alfragide: Dom Quixote.

Gaddis, J. (2007). *A Guerra Fria*. Lisbon: Edições 70

Gaspar, C. (2020). O *mundo de amanhã. Geopolítica contemporânea*. Lisbon: Fundação Francisco Manuel dos Santos.

Gerson, M. (2010). The Sino-Soviet Border Conflict: Deterrence, Escalation, and the Threat of Nuclear War in 1969. Defense Threat Reduction Agency Advanced Systems and Concepts Office Report Number ASCO 2010 027. Available at https://www.cna.org/CNA_files/PDF/D0022974.A2.pdf

Global Firepower (GFP) (2021). Russia Military Strength. Available at https://www.globalfirepower.com/country-military-strength-detail.php?country_id=russia

Gotev, G. (2019). Bosnian Serb leader: I have friends both in Moscow and Brussels. In EUROACTIV [Online]. Available at https://www.euractiv.com/section/enlargement/news/bosnian-serb-leader-i-have-dear-friends-both-in-moscow-and-brussels/

Gurganus, J. (2018). Russia: playing a geopolitical game in Latin America. In Carnegie [Online]. Available at https://carnegieendowment.org/files/Gurganus_Russia_Latin_America_Geopolitcal_Game_May_2018_FINAL.PDF

Haas, M. (2010). *Russia's Foreign Security Policy in the 21st Century. Putin, Medvedev and beyond*. New York: Routledge.

Hill, I. (2021). Russia–China: an Unholy Alliance?. In The interpreter [Online]. Available at https://www.lowyinstitute.org/the-interpreter/russia-china-unholy-alliance

Jagiello, B. (2021). «The Balkan Kettle: Russia's policy toward the Balkans». *Security and Defence Quarterly*, 35(3), 47-61.

Jankowski, D. (2021). Russia and the Technological Race in an Era of Great Power Competition. In Center for Strategic & Internacional Studies [Online]. Available at https://csis-website-prod.s3.amazonaws.com/s3fs-public/publication/210914_Jankowski_URMT2021.pdf?FCiMUQFzXJJJ8_NYJgOlYC8sIf8Rqh_Z

Kamath, B. (2021). Why the Western Balkans matter to the European Union? In Observer Research Foundation (ORF) [Online]. Retrieved from https://www.orfonline.org/expert-speak/why-the-western-balkans-matter-to-the-european-union/

Katz, B., Jones, S., Doxsee, C. & Harrington, N. (2020). The Expansion of Russian Private Military Companies. In CSIS (Center for Strategic & International Studies) [Online]. Available at https://russianpmcs.csis.org/

Korda, M. & Kristensen, H. (2021, 26 July). China Is Building A Second Nuclear Missile Silo Field. In Federation of American Scientists (FAS) [Online]. Available at https://fas.org/blogs/security/2021/07/china-is-building-a-second-nuclear-missile-silo-field/

Krickovic, A. & Pellicciari, I. (2021). «From "Greater Europe" to "Greater Eurasia": Status concerns and the evolution of Russia's approach to alignment and regional integration». *Journal of Eurasian Studies*, Vol. 12(1) pp. 86–99.

Larin, V. (2020). «Russia-China Economic Relations in the 21st Century: Unrealized Potencial or Predetermined Outcome?.» *Chinese Journal of International Review*. Vol. 2, No. 1 (2020) DOI: 10.1142/S2630531320500018. Available at https://www.worldscientific.com/doi/epdf/10.1142/S2630531320500018 ´

Liu, Y. (2022, 19 March). The Unintended Consequences of China's Stance on Ukraine. The Diplomatic. Available at https://thediplomat.com/2022/03/the-unintended-consequences-of-chinas-stance-on-ukraine/

Luzin, P. (2021, 3 November). Russia's Defense Industry and Its Influence on Policy: Stuck in a Redistributive Feedback Loop. In Russia Matters [Online]. Available at https://www.russiamatters.org/analysis/russias-defense-industry-and-its-influence-policy-stuck-redistributive-feedback-loop

Maalouf, A. (2003). In the name of identity. Violence and the need to belong. New York: Penguin books.

Mackinder, H. (1943). The Round World and the Winning of the Peace. Foreign Affairs, Vol. 21, No. 4, 595-605.

Mendras, M. (2015). «The Rising Cost of Russia's Authoritarian Foreign Policy». In: Cadier, D. & Light, M. (ed.), *Russia's Foreign Policy Ideas, Domestic Politics and External Relations*. New York: Palgrave Macmillan, pp.80-96.

Ministry of Foreign Affairs of the Russian Federation (2021, 17 December). Agreement on Measures to Ensure the Security of the Russian Federation and Member States of the North Atlantic Treaty Available at https://mid.ru/ru/foreign_policy/rso/OTAN/1790803/?utm_source=Chatham%20House&utm_medium=email&utm_campaign=12889053_REP%20-%20content%20update%20KG%20EC%20-%2022.12.21&dm_i=1S3M,7O999,S3NCNT,V9O9Z,1

Mujanovic, J. (2017). Russia's Bosnia Gambit. Intrigue in the Balkans. In Foreign Affairs [Online]. Available at https://www.foreignaffairs.com/articles/bosnia-herzegovina/2017-09-06/russias-bosnia-gambit

Nygren, B. (2008). The Rebuilding of Greater Russia. Putin´s foreign policy towards the CIS countries. Oxon: Routledge.

Putin, V. (2005, 25 April). Annual Address to the Federal Assembly of the Russian Federation, Available at http://en.kremlin.ru/events/president/transcripts/22931

Putin, V. (2007, 25 April). Speech and the Following Discussion at the Munich Conference on Security Policy. Available at http://en.kremlin.ru/events/president/transcripts/24034

Putin, V. (2014, 18 March). Vladimir Putin addressed State Duma deputies, Federation Council members, heads of Russian regions and civil society representatives in the Kremlin. Available at http://en.kremlin.ru/events/president/news/20603

Putin, V. (2022, 22 February). How Putin's Denial of Ukraine's Statehood Rewrites History. Times. Available at https://time.com/6150046/ukraine-statehood-russia-history-putin/

Radio Free Europe (RFE) (2021). Merkel Says It's In EU Interest To Advance Balkan Integration. Available at https://www.rferl.org/a/western-balkans-eu-merkel/31342360.html

Reuters (2021). Russia, China push for U.N. Security Council summit, lash out at West. Available at https://www.reuters.com/article/us-russia-china-un-idUSKBN2BF0GO.

Romana, H. (2005). *República Popular da China. A sede do poder estratégico. Mecanismos do Processo de Decisão*. Coimbra: Almedina.

Rumer, E. & Weiss, A. (2019). A Brief Guide to Russia's Return to the Middle East. Carnegie. Available at https://carnegieendowment.org/2019/10/24/brief-guide-to-russia-s-return-to-middle-east-pub-80134.

Russia Federation (RF), 2021. Strategy of National of the Russian Federation. Available at https://www.academia.edu/49526773/National_Security_Strategy_of_the_Russian_Federation_2021

Russian Federation (RF) (2015). The Russian Federation's National Security Strategy. Available at https://www.ieee.es/Galerias/fichero/OtrasPublicaciones/Internacional/2016/Russian-National-Security-Strategy-31Dec2015.pdf

Sakwa, R (2015). Dualism at Home and Abroad: Russian Foreign Policy Neo-revisionism and Bicontinentalism. In: D. Cadier & M. Light*. Ideas, Domestic Politics and External Relations.* New York: Palgrave Macmillan (65-79).

Shelling, T. (1960). *The Strategy of Conflict*. Cambridge: Harvard University Press.

Sidorov, A. (2014). «Russia's Territorial Disputes with China and Japan: A Comparative Analysis». *The Journal of Territorial and Maritime Studies*, 1(2), 97-114.

Siegl, J. (2021, 17 September). Russia´s asymmetric strategy for expanding influence in Africa. In London School of Economic and Political Science [Online]. Available at https://blogs.lse.ac.uk/africaatlse/2021/09/17/russia-asymmetric-strategy-expanding-influence-in-africa-security-moscow/

Stojanovic, D. (2022). Serbia praises another arms shipment from Russia. In Defense News [Online]. Available at https://www.defensenews.com/global/europe/2022/01/03/serbia-praises-another-arms-shipment-from-russia/

Stronski: (2020, 2 June). Implausible Deniability: Russia's Private Military Companies. In Carnegie Endowment For International Peace [Online]. Available at https://carnegieendowment.org/2020/06/02/implausible-deniability-russia-s-private-military-companies-pub-81954

Tabachnik, M. (2019) Defining the nation in Russia's buffer zone: the politics of citizenship by birth on territory (jussoli) in Moldova, Azerbaijan, and Georgia, Post-Soviet Affairs, 35:3, 223-239, https://doi.org/10.1080/1060586X.2018.1542868

The International Institute for Strategic Studies (IISS) (2021). *The military Balance 2021*. Oxfordshire: Routledge Taylor & Francis Group.

Thorun, C. (2009). *Explaining Change in Russian Foreign Policy. The Role of Ideas in Post-Soviet Russia's Conduct towards the West*. New York: Palgrave Macmillan

Toal, G. (2017). *Near Abroad. Putin, the west, and the contest over Ukraine and the Caucasus*. New York: Oxford University Press.

Toucas, B. (2017). Russia's Design in The Black Sea: Extending the Buffer Zone. In Center for Strategic International Studies [Online]. Available at https://www.csis.org/analysis/russias-design-black-sea-extending-buffer-zone

Trenin, D. (2001). *The End of EURASIA: Russia on the Border Between Geopolitics and Globalization*. Washington DC: Carnegie Moscow Center.

United Nations (UN) (2022, 26 February). Russia vetoed a draft U.N. Security Council resolution on Friday. Available at https://news.un.org/en/story/2022/02/1112802

Wendt, A. (1994). «Collective Identity Formation and the International State». *The American Political Science Review*, *88*(2), 384–396. https://doi.org/10.2307/2944711

Wezeman, P., Kuimova, A. & Wezeman, S. (2021). Trends in International Arms Transfers, 2020. SIPRI Fact Sheet. Available at https://sipri.org/sites/default/files/2021-03/fs_2103_at_2020.pdf.

World Barometer (2021a, 29 July). GDP by Country. Available at https://www.worldometers.info/gdp/gdp-by-country/

World Barometer (2021b, 29 July). Current World Population. Available at https://www.worldometers.info/world-population/

World Population Review (WPR) (2022). China Population. Available at https://worldpopulationreview.com/countries/china-population

Zevelev, I. (2016). Russian National Identity and Foreign Policy. Center for Strategic and International Studies (CSIS). Available at https://www.jstor.org/stable/pdf/resrep23235.pdf

OBSERVARE
Universidade Autónoma de Lisboa

e-ISSN: 1647-7251
Vol. 13, Nº. 1 (May-October 2022)

JANUS.NET
e-journal of International Relations

PROTECTION OF DEMOCRATIC PROCESSES AND ELECTORAL ACTS FROM RUSSIAN DIGITAL ACTIVE MEASURES: 2016 AS A REFERENCE YEAR

RICARDO SILVESTRE
ricsilvestre@hotmail.com
PhD in Philosophy from the University of Connecticut, with a major in Human Physiology, and an MA in International Relations from the Lusófona University of Humanities and Technology in Lisbon, with a focus on the future of online political debate. International Officer of the think tank Social Liberal Movement (Portugal). Coordinator of political communication projects with the European Liberal Forum, the think tank of the Alliance of Liberals and Democrats for Europe party in the European Parliament. His main interests in the area of political research are: the future of democracy, digital solutions to societal problems, and the transition and energy independence of the European Union with its associated reduction of the security dilemma towards authoritarian and illiberal countries.

Abstract

Russia has been credibly accused of trying to weaken Western liberal democracies with use of digital means. Cybersecurity experts, intelligence agencies, investigative journalists, and government services, have detailed the Kremlin's actions in illegally accessing digital infrastructures, disseminating stolen contents online, and influencing political debate on digital platforms to create dissention and polarization. These initiatives are included in a wider strategy of altering the balance of power in the international order via what are known as 'active measures'. Two of the most consequential recent application of this kind of measures took place in 2016, in the United States Presidential Elections and in the Brexit Referendum. Reports made public with the assessments of errors committed by the United States and the United Kingdom governments show there was an insufficient protection of those two crucial public consultation processes. The mistakes made by these countries in protecting democracy from hostile agents with a high level of digital proficiency, should be a point of interest, and urgency, for the European Union. It is to be expected that this kind of influence operation will continue, and become more sophisticated, as they can target elections in Member States of the Union, but also for the European Parliament. The early detection, applying of countermeasures, and the sharing of information with the voters of this kind of attacks by foreign agencies is an important defense mechanism that needs to be strengthen and expanded.

Keywords

Democracy; intelligence agencies; digital platforms; Russian Federation; European Union

How to cite this article

Silvestre, Ricardo (2022). *Protection of democratic processes and electoral acts from Russian digital active measures: 2016 as a reference year*. In Janus.net, e-journal of international relations. Vol13, Nº. 1, May-October 2022. Consulted [online] on the date of the last visit, https://doi.org/10.26619/1647-7251.13.1.2

Article received on May 11, 2021 and accepted for publication on March 3, 2022

PROTECTION OF DEMOCRATIC PROCESSES AND ELECTORAL ACTS FROM RUSSIAN DIGITAL ACTIVE MEASURES: 2016 AS A REFERENCE YEAR[1]

RICARDO SILVESTRE

Introduction

The Kremlin has been trying to weaken western liberal democracies considered by the establishment, and by President Putin, as threats to the Russian Federation[2]. Cybersecurity experts, intelligence agencies, legislative bodies, and investigative journalists, have detailed some of Moscow's initiatives to meddle in democratic processes. Examples include Georgia, Estonia, Lithuania, Ukraine, Netherlands, France, Germany (Tennis, 2020). Russian's behavior, as seen through Robert Jervis' theory of the "four worlds", has an internal logic: the preference for offensive actions to tilt the balance of power in the international order (Jervis, 1978). Also, the decision of not assuming defensive postures could be seen as a response to political and social perceptions of threats coming from the borders to the west (Rato, 2018). Such concerns leads to a maximization of power, instead of cooperation (Baylis, Smith & Owens, 2019). In an anarchic international system, states seek their survival by weakening adversaries. One example is the creation of disrupting actions in those countries (Mearsheimer, 2001). One of these disruptions is the targeting of democratic systems, elections and organizations with digital tools. An analysis of cyber enabled incidents between 2014 and 2018 (Galante & Ee, 2018) show that these could be; exploitation of infrastructures via access to computer networks with collection or alteration of datum; manipulation of votes from voter registration, changing of vote counting or of casted votes in order to cause distrust of electoral results; dissemination of information obtained illegally with compromising materials for politicians or political parties; "false fronts" with counterfeit profiles of individuals and groups, mainly on social networks, with the intention of causing polarization; amplification of dissension with open or covert operations; production and spreading of false information and misinformation.

Two of the most consequential, and even striking, actions by Russia in interfering on democratic processes took place during 2016, in the United States Presidential Election and the United Kingdom European Union Membership Referendum. Getting back to the

[1] Article translated by Cláudia Tavares.
[2] To better understand the motivations of President Putin it is suggested the reading of "*The Man Without a Face. The unlikely rise of Vladimir Putin*", from Masha Gessen.

theories of Jervis and Mearsheimer, these actions can be seen as resulting from a calculation by the Kremlin of risks and benefits of said actions. The risks were further antagonizing the international community, with the possibility of sanctions and proportional responses. As for benefits, contributing to the breakdown of a neighboring economic and political bloc, and helping to defeat a candidate for President of the United States that was manifestly opposed to the regime in Moscow in favor of other clearly more friendly, if not eager to acquiesce to the Russian President intentions. The results were obviously positive for the Kremlin. The United Kingdom left the European Union, with internal divisions that could lead to the disaggregation of the Kingdom. In the United States, the Trump Administration alienated allies, tried to diminish the importance of the North Atlantic Treaty Organization (NATO), even threatening America's exit from the organization, privileged Russian interests in the Middle East, and placed the United States in economic and diplomatic "wars", that diminished the country's status in the international community. The European Union was also a target of these actions in some of its Member States, that lead to the implementation of measures to combat misinformation, false news, cyber-attacks, disruption and polarization operations. The Vice-President of the European Commission for the Digital Single Market said in 2019 that "[w]e must protect our free and fair elections. This is the cornerstone of our democracy. To secure our democratic processes from manipulation or malicious cyber activities by private interests or third countries" (ENISA, 2019).

Research goals and methods

The objectives of this paper is to produce a systematized body of knowledge, by describing how Russian digital active are being deployed in western liberal democracies with the intent of causing dissention, and disruption. Equally, solutions will be proposed on how better fight these threats. The methodology used is a qualitative research strategy, with the collection of information with the aim of developing a meaning associated with said activities and responses (Unikaitė-Jakuntavičienė & Rakutienė, 2013). This strategy allows for the creation of a constructivist narrative, which aims to develop a theory in a deductive way, starting with specific facts, empirical observation and advancing to a theoretical generalization of the facts related to the theory. Likewise, a qualitative scientific investigation will be applied, with the analysis of the behavior of the different agents involved in the construction of the theory, as well as values, beliefs and emotions. This will be done through observation, analysis of speeches, documents and opinions from governmental and civil society organizations and news articles. The research logic is thus inductive, with a starting point of cognition of reality, flexible concepts and analytical generalizations with the help of examples (Unikaitė-Jakuntavičienė & Rakutienė, 2013).

Literature review

The Russian Federation and "active measures"

The term active measures was developed in the Soviet Union, beginning in the 1950s, to characterize secret and subversive operations of political influence which are easily refutable. They can range from creation of front organizations, support for pro-Russian political groups and the spread of disinformation (Galeotti, 2019). In 1982, the then leader of the State Security Committee (KGB), Yuri Andropov, made active measures one of the Kremlin's main forms of intervention during the Cold War (Andrew & Mitrokhin, 2006: 316). The use of these measures slowed down when the Soviet Union changed their approach to the international community, first led by Gorbachev, and then by Yeltsin, with attempts to have a closer relationship with the west. With the loss of influence of Russia and with the rise of Vladimir Putin to power, Moscow returned to hostilities towards countries, and blocks of countries, that promote liberal and democratic values. These values can then reach Russia and the countries at its frontiers. This was the case of the 2012 protests in Russia for free elections, which Putin explained as an American influence operation (Crowley & Ioffe, 2016), or in the case of the "color revolutions" on its borders (Stewart, 2009). Added to this concern, are the debilitating economic sanctions for primary sectors of the Russian economy, blockade to the sale of arms and related materials, freezing of economic assets and of the acquisition of equipment for the oil industry (Krausse, 2018). And then there is NATO, and in particular Article 5º of the organization charter, where an attack to one of the members is an attack on all (OTAN, 1949). This causes an attractive prospect for countries that Russia thinks as part of its sphere of influence. All these factors increase the perception by Putin of a siege around him (Rato, 2018).

With the decrease in the expectations of east-west understandings, Moscow returned to the array of actions already known, adding to recent ones carried out in the "near abroad" countries (Galeotti, 2019). Recently, in 2013, General Valery Gerasimov, Chief of Staff of the Russian Army, advocated the use of "indirect and asymmetric methods" to create political influence (Bartles, 2016: 33). This includes, changing the balance of power in adversarial countries (Bartles, 2016: 34), and support of political parties that defend a friendly relation with Moscow, as observed in Italy and Germany (Apuzzo & Satarino, 2019), and in France (Turchi, 2017). It is also attributed to Gerasimov the proposal that the tactics developed during the time of the Soviet Union should be updated and included in strategic military thinking, for a "new theory of modern warfare—one that looks more like hacking an enemy's society than attacking it head-on" (McKew, 2017). Strategic measures advocated by the General include combinations of technological, informational, diplomatic, and military actions (Galeotti, 2013). In September 2014, General Philip Breedlove, during a meeting of NATO, warned that Russia was engaged in "the most amazing information warfare blitzkrieg we have ever seen in the history of information warfare" (Vandiver, 2014).

Among the main Russian organizations, in terms of creating and applying active measures to intrude into the democratic processes of foreign countries, intelligence agencies stand out. The best-known examples are: the Main Directorate of the General Staff of the Armed Forces of the Russian Federation, or GRU[3]; Federal Security Service of the Russian Federation, or FSB[4]; and the Foreign Intelligence Service of the Russian Federation, or SVR[5]. The Kremlin's administrative apparatus is characterized by being a

3 *Glavnoje Razvedyvatel'noje Upravlenije*, in the original.
4 *Federal'naya sluzhba bezopasnosti*, in the original.
5 *Sluzhba Vneshney Razvedki*, in the original.

"non-institutionalized" system with a high level of coordination between agencies for the application of active measures (Galeotti, 2017). They then report directly to the Kremlin and/or President Putin (DNI, 2017). From there, three known forms of interference in elections are known: directed by the State with actions carried out by operatives in their capacity as representatives of the regime; encouraged by the State, where operatives are not directly responsible for initiating active measures, but whoever is responsible does so with the knowledge that it will be welcomed by leadership; and those aligned with the state, where individuals and/or organizations act for the promotion of the regime policies (Galante & Ee, 2018). As an extension of the intelligence agencies there are also private institutions, under the control of oligarchs in the orbit of Putin, that act to advance pro-Russian narratives, by creating polarization in the public opinion of targeted countries. That is the case of the Internet Research Agency (IRA), based in St. Petersburg, which will be presented in more detail ahead. These different "attack fronts" create a "connective tissue" of organizations that work towards the same goal (Watts, 2018), in the unconventional modern warfare model suggested by Gerasimov. These kinds of actions, its origins and applications, have been described extensively in reports made public by western intelligence agencies. Some of these examples will now be presented.

The United Kingdom European Union membership referendum

Before the 2014 referendum on the future of the relationship between the United Kingdom and the European Union (Brexit), another referendum happened on the possible independence of Scotland from the Kingdom. In that democratic process, Russian-based operatives were detected intruding in the public consultation (Carrell, 2017). Through Twitter, Facebook and YouTube, fake accounts spread allegations of interference in the referendum to bolster the maintenance of Scotland in the Union. Despite the absence of a direct link to Moscow, "pro-Kremlin accounts demonstrably boosted those allegations. The anger and disappointment felt by many yes voters [was] fanned by pro-Kremlin trolls, in a manner characteristic of Russian influence operations" (Carrell, 2017). The prospect of a desegregation of the United Kingdom matches to the aims of the Kremlin of destabilization of western bloc of countries, and a weakening of adversaries both in the military and political arena. The exit of Scotland of the Kingdom poses a challenge to the national security and economical prowess for all countries involved. A diminution of Great Britain's standing in the world leads to less advantageous trade deals, since Scotland accounts for one-third of the land mass and around 8% of consumers. Equally, a break-up of the Kingdom would lead to military questions. An exit of Scotland of the Union could "unilaterally disarm the UK of its nuclear deterrent", since those defences are "currently located at Faslane and Coulport but an independent SNP government would require their removal from Scotland" (Daisley, 2020). It should be added that Nicola Sturgeon, who assumed the position of Prime Minister after the referendum, denied that such influences had existed in the public consultation, and the Electoral Commission, which as the authority for holding elections and referenda, guaranteed that it had found no evidence of fraud. The same was assured, post-Brexit, by the Office of the Prime Minister Theresa May's, assuring there was no evidence to support the conclusion that the referendum in the United Kingdom and the European Union relationship was targeted for interference by foreign governments (Syal, 2017).

However, evidence that Her Majesty's Government could have underestimated, or worse, minimized possible active measures during the Brexit referendum prompted the request for an assessment of the actions taken by institutions responsible for the protection of democracy in the Kingdom. After what was considered to be a excessive delay for the publication of the assessment, and accusations of attempts to minimize the importance of his contents by the Office of the Prime Minister Boris Johnson (Murphy, 2020), the Intelligence and Security Committee of Parliament published the report named "Russia" (ISCP, 2020). This Commission supervises the activity of intelligence agencies; the Security Services (MI5), the Secret Intelligence Service (MI6) and Government Communications Headquarters, or GCHQ. One of the justifications for the report production states that "[t]here has been credible open source commentary suggesting that Russia undertook influence campaigns in relation to the Scottish independence referendum in 2014" (ISCP, 2020: 13). Regarding the referendum in the relation between the United Kingdom and the European Union, "[t]he written evidence provided to us appeared to suggest that HMG [Her Majesty's Government] had not seen or sought evidence of successful interference in UK democratic processes or any activity that has had a material impact on an election, for example influencing results" (ISCP, 2020: 13). Going further, the Commission states that "[w]e have not been provided with any post-referendum assessment of Russian attempts at interference. This situation is in stark contrast to the US handling of allegations of Russian interference in the 2016 presidential election" (ISCP, 2020: 14). The Commission determined that Her Majesty's Government seriously underestimated the Russian threat and neglected countermeasures, therefore not protecting the referendum process (ISCP, 2020a).

In the report it is described that the Russian Federation tends to see foreign policy as a "zero-sum", where every action detrimental to the west is favorable to Moscow. This stems from an appreciation "fed by paranoia, believing that Western institutions such as NATO and the EU have a far more aggressive posture towards [Russia] it than they do in reality" (ISCP, 2020: 1). The decision center "is concentrated on Putin and a small group of trusted and secretive advisers (many of whom share Putin's background in the RIS [Russian intelligence services])" (ISCP, 2020: 29) causing those decisions to have an applicability and flexibility that western organizations cannot match. Mainly, and as assessed by the GCHQ, Russia has a high capacity in the digital area and is able to carry out cyber operations with a wide range of impacts in various sectors of society.

Since 2014, the Russian Federation has "carried out malicious cyber activity in order to assert itself aggressively in a number of spheres, including attempting to influence the democratic elections of other countries (…) GCHQ has also advised that Russian GRU actors have orchestrated phishing[6] attempts against Government departments" (ISCP, 2020: 5), something that was observed in the United Kingdom, Germany and the Netherlands (Silvestre, 2019). In fact, on the third of October 2018, the Minister of Foreign Affairs, at the time lead by Jeremy Hunt of the Conservative Party, publicly announced that the United Kingdom and its allies had identified a GRU campaign that are

[6] The act of *phishing* is the sending of fraudulent emails to induce users to share personal datum, such as passwords.

"reckless and indiscriminate: they try to undermine and interfere in elections in other countries" (NCSC, 2018).

Regarding proposals to fight the threats observed during the referendum, the Parliamentary Commission expressed that the "extreme care" by the intelligence agencies to get involved in democratic processes is "illogical". Interference in electoral acts by hostile countries should be seen as a priority regarding protection of the State and that this should be the responsibility of intelligence agencies (in particular, the MI5) (ISCP, 2020: 11). Another important recommendation in the report is that the Government should establish protocols with social media platforms to ensure that they detect active measures by hostile actors, with a clearly defined time for the removal of such contents. As legislative recommendations, the Digital, Culture, Media and Sport Select Committee asked the Government to assess whether current legislation to protect the electoral process from malign influence is sufficient and, that "[l]egislation should be in line with the latest technological developments" (DCMS, 2019: 71). They also propose that the Electoral Commission should have the power to "to intervene or stop someone acting illegally in a campaign if they live outside the UK" (DCMS, 2019).

The elections for the American Presidency

In February 2018 the then Special Counsel Robert Mueller delivered *de facto* evidence to a federal grand jury in the District of Columbia, which resulted in the indictment of thirteen Russian individuals and three Russian organizations for interfering in the 2016 American presidential election (USDJ, 2018). The indictment shows the scope, and the systematic nature of the attacks, which began in 2014. Particularly active was the company Internet Research Agency (IRA), with its *troll* farms[7]. By stealing American's identities, creating false accounts on social media platforms, and disseminating inflammatory content, both racial and social, IRA tried to cause disruption and political polarization. This company operations were not limited to remote actions from Saint Petersburg, but also in cooperation with members of the Trump campaign "on the ground" (USDJ, 2018: 4). Using fake profiles on Facebook and Twitter, IRA members organized rallies and meetings in the United States, via local campaign headquarters, and bought online advertisements to promote those rallies and meetings (USDJ, 2018: 21-28).

Like the Special Counsel Mueller, the US Senate Select Committee on Intelligence was also clear in its conclusions: Russian operatives, through the IRA, used digital social media platforms to conduct informational war campaigns, spreading disinformation and creating division in the United States (SSCI, 2019: 3). These campaigns were carried out under the direction of the Kremlin, and with the objective of reducing the chances of success of candidate Hillary Clinton in favor of candidate Trump (SSCI, 2019: 4), since the former was seen as more hostile to Russian interests (SSCI, 2019: 6). Although Moscow rejects the US Senate's conclusions, IRA owner Yevgeniy Prigozhin has direct links to President Putin, which points to a "Kremlin's direction, support and significant authorization in the operations and objectives of IRA" (SSCI, 2019: 5). Like the IRA, the

[7] A troll farm is group of internet users aiming interfere in the political discussion online with (mostly) nefarious purposes.

GRU was also accused of exploiting social media platforms to spread information obtained illegally. This was done by disseminating Clinton campaign e-mails, information that was obtained by the Units 26165 and 74455 inside GRU (USDJ, 2018a). In fact, Special Counsel Mueller charged Colonel Aleksandr Osadchuk, commander of Unit 74455, for assisting "in the release of stolen documents through the DCLeaks and Guccifer 2.0 personas, the promotion of those releases, and the publication of anti-Clinton content on social media accounts operated by the GRU" (USDJ, 2018a: 5). In a joint statement by the Department of Homeland Security and the Director of National Intelligence (DHS, 2016) it was announced that the American intelligence community was confident that the Russian government had interfered in the elections through the misuse of emails obtained illegally from American political organizations. To this end, they used the help of external organizations, mainly WikiLeaks and Guccifer 2.0, the second being another front for Russian military intelligence services (Sanger & Schmitt, 2016). The American intelligence agencies that contributed to this investigation included the Federal Bureau of Investigation (FBI), the Central Intelligence Agency (CIA), and the National Security Agency (NSA). Naturally, the degree of trust between the agencies in the results of the analytical processes was not uniform. However, most conclusions are presented with a "high degree of confidence" (DNI, 2017).

Regarding the use of social media platforms by Russian agents, Facebook confirmed to the Special Committee that activity attributable to the Fancy Bear group (Unit 26165 of GRU) was observed (Graff, 2018). Like the IRA, Fancy Bear also created fake profiles on the platform and through the organization DCLeaks to distribute information obtained illegally to journalists (Stretch, 2018). In the 2017 minority report from the US House of Representatives Permanent Select Committee on Intelligence (authored by Democratic Party members), with the results of an investigation into Facebook about disruption and polarization in the 2016 election, IRA actions included the purchase of 3,393 political ads, and creation of 470 Facebook pages that reached 126 million users (HSCI, 2017). On the other social media platform "giant" where there is a dynamic political debate, Twitter, between September first and November fifteen of 2016, more than 36,000 tweets about the presidential election were generated by *bots*[8] linked to Russian accounts. These tweets generated about 228 million interactions[9]. In addition, more than 130.000 tweets were from accounts directly linked to IRA (HSCI, 2017).

Active measures implemented by Russia are not a recent phenomenon. The KGB was responsible for authoring and disseminating false stories, as well as fraudulent letters, targeting Presidents John Kennedy and Ronald Reagan, and the activist Martin Luther King, Jr. (SSCI, 2019: 11). However, in the 2016 election, this type of action was refined by the use of social media platforms, with a special focus on suppression the vote, especially of the black community (SSCI, 2019: 39), promoting political narratives, namely, to entice the followers of Senator Bernie Sanders (Timberg & Harris, 2018); and targeting the coalition supporting the Secretary of State Clinton (Kim, 2018).

8 A *bot* is an autonomous program that interacts with digital systems and users.
9 Interactions include actions from users like retweets, replies, follows, inclusion of hashtags and tweet expansion.

Protecting democracy in the European Union from digital cyber-attacks

In the reports presented above, there is the concern on how to protect democratic processes and electoral acts from active measures by intelligence agencies from hostile countries. In the digital age, and in line with Thomas Jefferson edict that "eternal vigilance is the price of freedom" (TJM, 2020), it`s the European Union's job not to underestimate what happened in the United States and the United Kingdom. The Member States of the European Union, together with the European Parliament and the European Union Agency for Cibersecurity (ENISA), organized an exercise in 2019 to "test the EU's response and crisis plans for potential cybersecurity incidents affecting the EU elections" (ENISA, 2019). This exercise aimed to increase cooperation between national authorities in the areas of cybersecurity, data protection and cybercrime. In addition to working "on the ground", ENISA also produces practical documents to ensure security in electoral processes. For the European Commission, the objectives are to protect democratic systems in Member States but also to safeguard European values (European Commission, 2020). There is a set of instruments that exist already with similar objectives, including the Action Plan on disinformation[10], the European Democracy Action Plan[11], the European cooperation network on elections[12], the Compendium on Cyber Security of Election Technology[13], the EU Cybersecurity Act [14], the Revised Directive on Security of Network and Information Systems (NIS2)[15], as well as instruments to combat hybrid threats[16] and boost cybersecurity[17].

However, there is a visible absence in the protection systems in the European Union, be it through inaction, or due to a lack of communication to the citizens of the Union: what is the ability to collect information and analyze threats to democratic processes by hostile intelligence agencies? This applies both in elections whiten the Member States (if agreed upon them), and those for the European Parliament. Presently, there is the EU Intelligence and Situation Centre (INTCEN)[18] that has the mission of creating timely alerts for menaces, and assessing threats in the areas of security, defense and counterterrorism. This work is carried via the collection of information in collaboration with the agencies in the Member States, military authorities, and diplomats (Estevens, 2020). The inclusion of INTCEN in a wider and more integrated defense strategy is recommended, serving as an advanced system for signal detection, both from open source, digital means or through human resources. The assignment of this mission would be the responsibility of the European Commission: via a resolution with clear definitions about information handling and sharing between agencies in Member States; types of

10 https://ec.europa.eu/info/publications/action-plan-disinformation-commission-contribution-european-council-13-14-december-2018_en.
11 https://ec.europa.eu/commission/presscorner/detail/en/ip_20_2250.
12 https://ec.europa.eu/info/policies/justice-and-fundamental-rights/eu-citizenship/electoral-rights/european-cooperation-network-elections_en.
13 https://www.ria.ee/sites/default/files/content-editors/kuberturve/cyber_security_of_election_technology.pdf.
14 https://digital-strategy.ec.europa.eu/en/policies/cybersecurity-act.
15 https://digital-strategy.ec.europa.eu/en/library/revised-directive-security-network-and-information-systems-nis2.
16 https://ec.europa.eu/commission/presscorner/detail/en/IP_18_4123.
17 https://ec.europa.eu/commission/presscorner/detail/en/IP_17_3193.
18 https://eeas.europa.eu/sites/default/files/2021_-_01_-_02_-_eeas_2.0_orgchart.pdf.

rapid responses development and application; relationship with legislators both in the European Parliament and in the local governments; and with voters, when possible or advisable. Naturally, actions from intelligence agencies in detecting threats and applying countermeasures to defend electoral processes, sometimes, cannot be in the public domain. There is a need to find a balance between protection of sources and processes, and what threats can be shared with voters, so that they are informed and can make political decisions without malicious external influences.

Another growing demand, by organizations such as the European Commission, the US Senate Select Committee on Intelligence, and the Intelligence and Security Committee of the UK Parliament, is that social media platforms change their policies for a greater joint work with authorities, including intelligence agencies and legislative bodies. This joint work must include a timely and comprehensive sharing of information, mainly of malicious activities that exploit the digital architecture of the platforms, manipulation of algorithms, and dissemination of content for subversion of electoral processes. The Digital Services Act (DSA), proposed by the European Commission and accepted by the European Parliament does address some of these needs. In the DSA, internet providers of intermediary services need to produce transparency reports with information on interaction with authorities, description of illegal content, time taken for removal of content, actions taken and legal justifications (European Commission, 2020a). If bad actors or active measures are detected, intelligence agencies must be able to act in a precise and timely manner in collaboration with digital platforms for the application of appropriate measures. This process must be coordinated by overseeing governmental structures, and, if necessary, legislative bodies whenever there is a need for changes in laws to resolve structural problems. Likewise, there should be a joint work with political parties and/or candidates for governmental positions. Successful examples of such collaboration have taken place in France and the United Kingdom. In France, the Agence Nationale de la Sécurité des Systèmes d'Information, the agency responsible for protecting government infrastructures from cyber-attacks, organized cybersecurity information sessions for all political parties (although not everyone shown an interest in participating) (Daniels, 2017). In the United Kingdom, it was the turn of the Britain’s National Cyber Security Centre, part of GCHQ, to offer help in strengthening the communication networks of political parties (Reuters, 2017).

Conclusions

A provocative question raised by Persily is “Can Democracy Survive the Internet?” (Persily, 2017). Some authors warn of the naivete of thinking that the internet is way to a utopia of debate, understanding and consensus, in a Madisonian perspective of governance[19]. At the same time, even more powerful digital tools, like personal data retrieving, big data, machine learning, algorithmic function, can open the space for companies, that are for hire, to generate political advertising targeted at the individual level, creating “digital bubbles”, “echo chambers” that leads to political polarization and counterproductive political action.

---

[19] Some of these warnings can be found in books written by Timothy Garth Ash, Rebecca MacKinnon, Cass Sustein, Clay Shirky e Evgeny Morozov.

The US Senate Select Committee on Intelligence warns that active measures, having the Kremlin as an epicenter, and with an alleged direct connection to Vladimir Putin, "represent the most recent expression of Moscow's longstanding desire to undermine the U.S.-led liberal democratic order" (SSCI, 2019: 11). It is worrying that countries with established democracies, sophisticated intelligence agencies, a free press and a vibrant civil society, such as the United Kingdom and the United States, did not realized, or ignored, the threats of the Russian Federation in disrupting the electoral processes of 2016. In the report of the Intelligence and Security Committee of Parliament, there is a disturbing warning that the United Kingdom government was in a "state of denial" about Russian influence, so as not to question the legitimacy of the executive associated with the outcome of Brexit (Ellehuus & Ruy, 2020). That was not exclusive of Whitehall. In the United States, President Trump spent part of his mandate denying, or minimizing, Russia's actions in the 2016 elections, even clashing with American intelligence agencies over whether Putin had authorized any of them. In fact, Trump would fire, in 2017, FBI Director James Comey because of, in the President's words, "Russia issue". This would result in the appointment of Special Attorney Robert Mueller and the impeachment process of the President (Balsamo, 2019). Still in the Parliament report, another important observation was lack of definition inside the United Kingdom government on what defense mechanisms to use against foreign active measures in democratic processes. This made the assuming of responsibilities to look like a "hot potato" (ISCP, 2020: 5).

Russian agents will continue to test these active measures in western countries. In 2018, on the eve of the midterm elections for the United States Senate and House of Representatives, another criminal complaint against the IRA, in the person of Elena Khusyaynova, was filed in the Eastern District of Virginia by a Federal Prosecutor, for conspiring to interfere with the American political and electoral process in the 2018 elections (USDC, 2018). In the same year, the CIA assessed that Vladimir Putin was "probably" responsible for another campaign to discredit Vice-President Joe Biden, then candidate for President (and eventual winner) (Rogin, 2020). Similar actions were seen in Europe, where in the period between 2017 and 2018, disinformation campaigns using state media and social media by Russian-sponsored outlets happened in Italy, Netherlands, Spain (the Catalan independence referendum), Czech Republic and Sweden (Tennis, 2020).

If the motivations for Presidente Putin and the Kremlin seem obvious in the light of the theories by Jervis and Mearsheimer, of trying to maximize an offensive posture by meddling with democratic processes and elections in the west, the "price" to be paid does not seem to be a deterrent. The Russia Federation is a (almost) a *de facto* pariah state regarding relations with the west (exacerbated by military interventions in the "near abroad"), hence, the threat of isolation is not operative. Similarly, sanctions due to election interference and cyberattacks continue to focus on individuals and organizations that are believed to relate to the center of power in Moscow (Turak & Macias, 2021). However the Russian government will keep denying any responsibility, while giving shelter to people and groups indicted, making them immune to persecution in the west. In this way it will be difficult to inflict serious blows to these structures that promote active measures.

The Vice-President of the European Parliament, Rainer Wieland, said in 2019 that "[c]yber-attacks are a recent but very real threat to the stability of the European Union and its Member States. A cyber-attack on elections could dramatically undermine the legitimacy of our institutions. The legitimacy of elections is based on the understanding that we can trust in their results. This very trust has come under pressure from cyber-attacks and other new types of election fraud in the Digital Age, and we must respond!" (ENISA, 2019). One of the most important needs, is to detect, as soon as possible, who is behind these attacks, how they started, how they are run, and the effects of these active measures in democratic processes, because of the influences in the way societies operate. Especially, adversarial intelligence agencies are known to be a "clear and present danger", as attested by open-source information. Agencies like GRU, FSB and SRV will continue to test the western systems and countermeasures. It is advised that a bloc of countries, with a centralized power at the European Parliament, like the European Union, should use all the instruments available in this line of defense, including exploring the potential of some of the already existing ones.

This work aimed to systematize some of the open-source information on digital active measures, their *modus operandi*, and to give some countermeasures to fight these threats. However, the battlefield is enlarging and becoming progressively dangerous. Sectorial responses, like the ones seen in the European Union, the United States, the United Kingdom, could be the entry points to a coordinated, multi-pronged, proportional strategy to strengthen western liberal democracies, and inspiring ones around the world, against these threats.

References

Andrew, C & Mitrokhin, V (2006). *The Mitrokhin Archive: The KGB in Europe and the West.* New York: Penguin Press History.

Apuzzo, M & Satariano, A (2019). Russia Is Targeting Europe's Elections. So Are Far-Right Copycats. [Consulted 15 de April 2021]. Available at: https://www.nytimes.com/2019/05/12/world/europe/russian-propaganda-influence-campaign-european-elections-far-right.html.

Balsamo, M (2019). Trump depicted in Mueller report feared being called a fraud. [Consulted 15 de April 2021]. Available at: https://apnews.com/article/677b7b2f0c184e65921afe2314e468ac.

Bartles, C.K (2016). «Getting Gerasimov Right». *Military Review*. 96(1): 30-38.

Baylis, J, Smith, S, & Owens. P (2019). *The Globalization of World Politics. An Introduction to International Relations*. Eighth Edition. Oxford: Oxford University Press.

Carrell, S (2017). Russian cyber-activists 'tried to discredit Scottish independence vote'. [Consulted 15 de April 2021]. Available at: https://www.theguardian.com/politics/2017/dec/13/russian-cyber-activists-tried-to-discredit-scottish-independence-vote-says-analyst.

Crowley, M & Ioffe, J (2016). Why Putin hates Hillary. Behind the allegations of a Russian hack of the DNC is the Kremlin leader's fury at Clinton for challenging the fairness of

Russian elections. [Consulted 15 de April 2021]. Available at: https://www.politico.com/story/2016/07/clinton-putin-226153.

Daisley, S (2020). Why Putin wants Scottish independence. [Consulted 15 de April 2021]. Available at: https://www.spectator.co.uk/article/why-putin-wants-scottish-independence.

Daniels, L (2017). How Russia hacked the French election. [Consulted 15 de April 2021]. Available at: https://www.politico.eu/article/france-election-2017-russia-hacked-cyberattacks/.

DCMSC [Digital, Culture, Media and Sport Committee] (2018). Russian Influence in Political Campaigns. Disinformation and "fake news": Interim Report. [Consulted 15 de April 2021]. Available at: https://publications.parliament.uk/pa/cm201719/cmselect/cmcumeds/363/36308.htm.

DHS [Department of Homeland Security] (2016). Joint Statement from the Department Of Homeland Security and Office of the Director of National Intelligence on Election Security. [Consulted 15 de April 2021]. Available at: https://www.dhs.gov/news/2016/10/07/joint-statement-department-homeland-security-and-office-director-national.

DNI [Director of National Intelligence] (2017). *Assessing Russian Activities and Intentions in Recent US Elections*. Intelligence Community Assessment, [Consulted 15 de April 2021]. Available at: https://www.dni.gov/files/documents/ICA_2017_01.pdf.

Ellehuus, R & Ruy, D (2020). Did Russia Influence Brexit? [Consulted 15 de April 2021]. Available at: https://www.csis.org/blogs/brexit-bits-bobs-and-blogs/did-russia-influence-brexit.

ENISA [European Union Agency for Cybersecurity] (2019). EU Member States test their cybersecurity preparedness for fair and free 2019 EU elections. [Consulted 15 de April 2021]. Available at: https://www.enisa.europa.eu/news/enisa-news/eu-member-states-test-their-cybersecurity-preparedness-for-fair-and-free-2019-eu-elections.

Estevens, J (2020). «Building intelligence cooperation in the European Union». *Janus.net, e-journal of International Relations.* 11(2)

European Commission (2020). Tackling online disinformation. [Consulted 15 de April 2021]. Available at: https://ec.europa.eu/digital-single-market/en/tackling-online-disinformation.

European Commission (2020a). Proposal for a Regulation of the European Parliament and the Council on a Single Market For Digital Services (Digital Services Act) and amending Directive 2000/31/EC. [Consulted 15 de April 2021]. Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52020PC0825&from=en.

Galante, L & Ee, S (2018). *Defining Russian Election Interference: An Analysis of Select 2014 to 2018 Cyber Enabled Incidents*. Atlantic Council, [Consulted 15 de April 2021]. Available at: https://www.atlanticcouncil.org/wp-content/uploads/2018/09/Defining_Russian_Election_Interference_web.pdf.

Galeotti, M (2013). The 'Gerasimov Doctrine' and Russian Non-Linear War*.* [Consulted 15 de April 2021]. Available at: https://inmoscowsshadows.wordpress.com/2014/07/06/the-gerasimov-doctrine-and-russian-non-linear-war.

Galeotti, M (2017). Controlling Chaos: How Russia Manages its Political War in Europe. ECFR Briefing*.* [Consulted 15 de April 2021]. Available at: https://www.ecfr.eu/publications/summary/controlling_chaos_how_russia_manages_its_political_war_in_europe.

Galeotti, M (2019). Active Measures: Russia's Covert Geopolitical Operations*.* [Consulted 15 de April 2021]. Available at: https://www.marshallcenter.org/en/publications/security-insights/active-measures-russias-covert-geopolitical-operations-0.

Gessen, M (2012). *The man without a face. The unlikely rise of Vladimir Putin*. New York: Riverhead Books.

Graff. G.M (2018). Indicting 12 Russian Hackers Could Be Mueller's Biggest Move Yet. [Consulted 15 de April 2021]. Available at: https://www.wired.com/story/mueller-indictment-dnc-hack-russia-fancy-bear.

HSCI [House Select Committee on Intelligence] (2017). Exposing Russia's Effort to Sow Discord Online: The Internet Research Agency and Advertisements. [Consulted 15 de April 2021]. Available at: https://intelligence.house.gov/social-media-content.

ISCP [Intelligence and Security Committee of Parliament] (2020). *Russia*. Intelligence and Security Committee of Parliament, [Consulted 15 de April 2021]. Available at: https://isc.independent.gov.uk/wp-content/uploads/2021/03/CCS207_CCS0221966010-001_Russia-Report-v02-Web_Accessible.pdf.

ISCP [Intelligence and Security Committee of Parliament] (2020a). *Press Notice. Intelligence and Security Committee of Parliament publish predecessor's Russia Report.* [Consulted 15 de April 2021]. Available at: https://docs.google.com/a/independent.gov.uk/viewer?a=v&pid=sites&srcid=aW5kZXBlbmRlbnQuZ292LnVrfGlzY3xneDoxMmRkZmU2MjQ4ZWEzNDI0.

Jervis, R (1978). «Cooperation Under the Security Dilemma». *World Politics.* 30(2): 167-214.

Kim, Y.M (2018). *Uncover: Strategies and Tactics of Russian Interference in US Elections. Russian Groups Interfered in Elections with Sophisticated Digital Campaign Strategies*. University of Wisconsin, [Consulted 15 de April 2021]. Available at: https://journalism.wisc.edu/wp-content/blogs.dir/41/files/2018/09/Uncover.Kim_.v.5.0905181.pdf.

Krausse, C (2018). Exxon Mobil Scraps a Russian Deal, Stymied by Sanctions. [Consulted 15 de April 2021]. Available at: https://www.nytimes.com/2018/02/28/business/energy-environment/exxon-russia.html.

McKew, M.K (2017). The Gerasimov Doctrine its Russia's new chaos theory of political warfare. And it's probably being used on you. [Consulted 15 de April 2021]. Available at: https://www.politico.com/magazine/story/2017/09/05/gerasimov-doctrine-russia-foreign-policy-215538.

Mearsheimer, J.J (2001). *The tragedy of great power politics*. New York: W.W. Norton & Company.

Murphy, S (2020). UK report on Russian interference: key points explained. [Consulted 15 de April 2021]. Available at: https://www.theguardian.com/world/2020/jul/21/just-what-does-the-uk-russia-report-say-key-points-explained.

NCSC [National Cyber Security Center] (2018). Reckless campaign of cyber attacks by Russian military intelligence service exposed. [Consulted 15 de April 2021]. Available at: https://www.ncsc.gov.uk/news/reckless-campaign-cyber-attacks-russian-military-intelligence-service-exposed.

OTAN [Organização do Tratado do Atlântico Norte] (1949). Tratado do Atlântico Norte. [Consulted 15 de April 2021]. Available at: https://www.nato.int/cps/en/natohq/official_texts_17120.htm?selectedLocale=pt

Persily, N (2017). «Can Democracy Survive the Internet? ». *Journal of Democracy*, 28: 63-76.

Rato, V (2018). «Romper o cerco: a Rússia de Putin e a Nova Guerra Fria». *Nação e Defesa*. 150: 116-148.

Reuters (2017). UK political parties warned of Russian hacking threat: report. [Consulted 15 de April 2021]. Available at: https://uk.reuters.com/article/us-britain-russia-cybercrime-idUKKBN16J0OE.

Rogin, J (2020). Secret CIA assessment: Putin 'probably directing' influence operation to denigrate Biden. [Consulted 15 de April 2021]. Available at: https://www.washingtonpost.com/opinions/2020/09/22/secret-cia-assessment-putin-probably-directing-influence-operation-denigrate-biden.

Sanger, D & Schmitt, E (2016). Spy Agency Consensus Grows that Russia Hacked D.N.C. [Consulted 15 de April 2021]. Available at: https://www.nytimes.com/2016/07/27/us/politics/spy-agency-consensus-grows-that-russia-hacked-dnc.html.

SSCI [Senate Select Committee on Intelligence] (2019). *Russian Active Measures Campaigns and Interference in the 2016 U.S. Election. Volume2: Russia's use of Social Media with Additional Views*. 116th Congress, [Consulted 15 de April 2021]. Available at: https://www.intelligence.senate.gov/sites/default/files/documents/Report_Volume2.pdf.

Silvestre, R (2019). «A Rússia e os ciber ataques a instituições democráticas europeias». *ResPublica*. 19: 83-107.

Stewart, S (2009). «Democracy Promotion before and after the 'color revolutions'». *Democratization*. 16(4): 645-660.

Stretch, C (2018). *Written responses from Facebook's General Counsel to U.S. Senate Select Committee on Intelligence*. U.S. Senate, [Consulted 15 de April 2021]. Available at: https://www.intelligence.senate.gov/sites/default/files/documents/Facebook%20Response%20to%20Committee%20QFRs.pdf.

Syal, R (2017). Brexit: foreign states may have interfered in vote, report says. [Consulted 15 de April 2021]. Available at: https://www.theguardian.com/politics/2017/apr/12/foreign-states-may-have-interfered-in-brexit-vote-report-says.

Tennis, M (2020). Russia Ramps up Global Elections Interference: Lessons for the United States. [Consulted 15 de April 2021]. Available at: https://www.csis.org/blogs/technology-policy-blog/russia-ramps-global-elections-interference-lessons-united-states.

Timberg, C & Harris, S (2018). Russian operatives blasted 18.000 tweets ahead of huge news day during the 2016 presidential campaign. Did they know what was coming? [Consulted 15 de April 2021]. Available at: https://www.washingtonpost.com/ellipsis/russian-operatives-blasted-18000-tweets-ahead-of-a-huge-news-day-during-the-2016-presidential-campaign-did-they-know-what-was-coming/2018/07/20/6715a547-91db-43f0-b21a-a75ff3d9205a_story.html.

TJF [Thomas Jefferson Encyclopedia] (2020). Eternal vigilance is the price of liberty (Spurious Quotation). [Consulted 15 de April 2021]. Available at: https://www.monticello.org/site/research-and-collections/eternal-vigilance-price-liberty-spurious-quotation.

Turak, N & Macias, A (2021). Biden administration slaps new sanctions on Russia for cyberattacks, election interference. [Consulted 15 de April 2021]. Available at: https://www.mediapart.fr/journal/international/300317/marine-le-pen-signe-nouveau-pour-de-l-argent-russe.

Turchi, M (2017). Marine Le Pen Signe à Nouveau Pour de l'Argent Russe. [Consulted 15 de April 2021]. Available at: https://www.mediapart.fr/journal/international/300317/marine-le-pen-signe-nouveau-pour-de-l-argent-russe.

Unikaitė-Jakuntavičienė, I, & Rakutienė, S (2013). Writing a Bachelor's Thesis in the Field of Political Science. Didactical Guidelines. [Consulted 15 de April 2021]. Available at: https://www.esparama.lt/es_parama_pletra/failai/ESFproduktai/2013_metodine_priemone_Writing_a_Bachelors_Thesis.pdf

USDC [United States District Court] (2018). 1:18-MJ-464. [Consulted 15 de April 2021]. Available at: https://www.justice.gov/usao-edva/press-release/file/1102591/download.

USDJ [United States Department of Justice] (2018). Case 1:18-cr-00032-DLF. [Consulted 15 de April 2021]. Available at: https://www.justice.gov/file/1035477/download.

USDJ [United States Department of Justice] (2018a). Case 1:18-cr-00032-DLF. [Consulted 15 de April 2021]. Available at: https://www.justice.gov/file/1080281/download.

Vandiver, J (2014). SACEUR: Allies must prepare for Russia 'hybrid war'. [Consulted 15 de April 2021]. Available at: https://www.stripes.com/news/saceur-allies-must-prepare-for-russia-hybrid-war-1.301464.

Watts, C (2018). Russia's Active Measures Architecture: Task and Purpose. [Consulted 15 de April 2021]. Available at: https://securingdemocracy.gmfus.org/russias-active-measures-architecture-task-and-purpose.

OBSERVARE
Universidade Autónoma de Lisboa

e-ISSN: 1647-7251
Vol. 13, Nº. 1 (May-October 2022)

THE RESILIENCE OF THE COMMUNIST PARTY OF CHINA

LUIS CUNHA
luisfmcunha@gmail.com
PhD in International Relations, integrated researcher at Instituto do Oriente (ISCSP/University of Lisbon, Portugal), and author of the following books on China's geopolitics: *China: Cooperação e Conflito na Questão de Taiwan* (2010), *A Hora do Dragão – Política Externa da China* (2012), *China na Grande Guerra – A Conquista da Nova Identidade Internacional* (2014) e *China`s Techno-Nationalism in the Global Era – Strategic Implications for Europe* (2016). He has published several articles in national and foreign journals on Asia-Pacific geopolitics.

Abstract

Upon reaching 100 years of activity, the Communist Party of China (CPC) highlights and projects a unique model of political and social development. Taking as methodological inspiration the proposal of Samuel P. Huntington for the study of the political phenomenon, regarding the adaptability of the seat of power, this work focus on some of the variables that justify the perpetuity of the CPC.

Culture and ideology drive an unparalleled evolutionary process in conventional systemic frameworks, legitimized by an outfit with intrinsic Chinese characteristics. China's apparent exceptionalism, based on a strong nationalist vision, is conveyed through a transformational "new era." Western academic currents denote difficulty in framing this phenomenon with global implications.

Keywords

Communist Party of China; Xi Jinping; Chinese dream; nationalism; centenary.

How to cite this article

Cunha, Luís (2022). The Resilience of the Communist Party of China. In Janus.net, e-journal of international relations. Vol13, Nº. 1, May-October 2022. Consulted [online] on the date of the last visit, https://doi.org/10.26619/1647-7251.13.1.3

Article received on May 10, 2021 and accepted for publication on September 9, 2021

THE RESILIENCE OF THE COMMUNIST PARTY OF CHINA[1]

LUIS CUNHA

Introduction

Political scientist Samuel P. Huntington considers that the institutionalization of a political system can be measured by the adaptability, autonomy and coherence of its organizations and procedures.

That definition fits perfectly the centenary CPC, which has not only overcome the countless adversities of its long trajectory, but now emerges, in the first quarter of the 21st century, apparently strengthened in its ideological development plan for China.

Openly assuming an autonomous project, differentiated from the models rooted in the proposals of the liberal democracies of the West, CPC and its leadership highlight the predicates of a singular civilizational and political culture, a carrier of presumed added value – in the officially conveyed version – in relation to alien political systems, which they consider fallible. Throughout its long history, the non-aligned CPC has systematically tried to evade the "logic of dependency" aptly characterized by Bertrand Badie, in the westernization of the political order in "imported states" (2000).

Some of these dominant traits in the history of CPC, and in the discourse of its leaders, are worth reflecting on. This paper addresses some of the aspects that justify the survival of the largest communist party in the world, its organizational institutionalization, and intrinsic vulnerabilities. In the finale, we confront the main dissenting views – American and Chinese – on the case study that the CPC embodies.

The Chinese route

An official document released by Xinhua news agency in June 2021 recalled that Western academic theories have denoted great difficulty in framing and justifying the survival of the CPC, and the meteoric rise of China in different dimensions of power.

The text would serve as an antechamber to the conclusions of the 6th plenary session of the 19th CPC Central Committee and the "white papers" on the functioning of democracy in China, as well as the CPC's position on the Hong Kong administration.

[1] Article translated by Hugo Alves.

Common to all documents is the reference to the originality of the path chosen by the Communist Party for the development of China, emphasizing the civilizational acquis of the country, the refusal to align in the model of liberal democracies of the West and the role of the General Secretary as the "central core" of the Central Committee and the whole Party, which now has as "ideology-guide" Xi Jinping's thought about "socialism with Chinese characteristics in the new era".

In fact, we are before a type of revisionism with Chinese features. And, as Aron pointed out, "the opposition between revisionist State and conservative is often misleading" (2002: 142), but it is no less certain that the route chosen by the CPC, the Party-State, claims the originality of its ascension project.

Assuming itself as a genuine and pragmatic party, closely linked to popular aspirations, the CPC repeatedly repudiates what it considers to be the "chaos of Western-style democracy", offering, in return, a "functioning democracy" based on theoretical innovations, which highlight the adaptation of Marxism to the Chinese reality, in addition to the thought of Deng Xiaoping, Jiang Zemin's triple representativeness theory, or Hu Jintao's scientific theory of development.

At the academic level, these political theories are supported by attempts to build a model of international relations appropriate to China's contemporary projection, of which traditionalist currents of constructivist moral or relational realism are examples.

One of the major challenges in the study of China's foreign policy is the theorization of the patterns and behaviors measured and their framework in the international relations. Authors such as Zhao Tingyang, Yan Xuetong or Qin Yaking try to bridge this gap through their works by seeking to integrate China into the world order.

It is in this context that we can frame Xi Jinping's "Chinese dream", which proposes an inclusive and harmonious process for China's development and affirmation, but also a multipolar order. It is a process of ideological and political renewal, using the rehabilitated Confucianism and cultural traditionalism, mixed with the inescapable Marxism in the Chinese version.

But it is the Leninist logic, attributing to the Party the indisputable authority legitimized by democratic centralism, that consolidates and unites the trinity constituted by CPC-State-People's Liberation Army (PLA). On the other hand, despite the Leninist costume, the CPC strives to highlight the democratization of its processes within the limits imposed by loyalty to the party. The "white paper", with the suggestive title "The Functioning Democracy" (PRC Council of State: 2021), recalls that there are eight other parties in the Chinese political system, but that they must all obey the CPC.

The partial opening of the CPC to democratic processes should not be read as ideological liberalization, but as an attempt to refine and improve its functional and organic methods. For Zheng Yongnian, this process, which he called "internal pluralism," integrates the meritocracy inherited from the imperial era with elements of modern democracy (2020:16). The construction of "socialism with Chinese characteristics in the new era", has as main objective to strengthen the party itself. The CPC placed special emphasis on the delicate selection and recruitment process for its staff, thus becoming an elitist political organization.

However, to overcome the exhaustion of the economic model adopted since China's opening to the world in 1978, the CPC has revised its position, which now involves the defense of an alternative model for globalization, the proposal for new complementary international organizations and/or alternatives to the Bretton Woods system, and a shared destiny for humanity. And although the CPC does not openly admit that the "Chinese model" is exportable, it considers that "the experience and practice of the CPC can offer good references to others" (*People First*: 2021). According to Xi Jinping's speech marking the 95th anniversary of the CPC, what is at stake is not so much the "Chinese model", but the "Chinese solution". Shortly thereafter, in his speech to the 19th CPC Congress, Xi came very close to promoting a Chinese model of international relations, noting that China's path "offers a new option for other countries and nations that want to accelerate their development, while preserving their independence" (2017).

While the United States of America (USA) administrations of Trump and Biden accuse China of being a "revisionist" power, committed to dismembering the international *status quo* (see National Security Strategy: 2017; National Defense Strategy of the United States: 2018), China stresses that it intends only to promote "more democracy in international relations". On the other hand, the USA stance during the Trump Administration, harassing allies and withdrawing from the Trans-Pacific Partnership project, a measure that benefited China, was seen by some observers as another strain of revisionism, no less pernicious than China’s".

The concept of "revisionism" lends itself to different interpretations, depending on the "orders" to which it refers. For Alaistair Ian Johnston, who identifies eight international "orders", China is markedly a "constitutive" power, that is, based on the conception of sovereignty and territoriality and, not least, on the preservation of the CPC (2019: 9-60). He considers that China interacts with the different "orders" in a different way. It supports some, does not support others and supports others only partially.

Odd political laboratory

In his book *The Party*, Richard MacGregor called the survival of the CPC a "political miracle" (2012: 33). If we consider that its founding inspiration, the Communist Party of the Soviet Union (CPSU), was extinguished three decades ago, the assertion proves to be valid. There are, however, other important variables in question. In the monolithic Chinese political system, nothing is lost, and everything is transformed, by the work and ingenuity of a party capable of remarkable adaptive capacity.

Over the course of a century, the CPC was able to overcome, with greater or lesser degree of success, all its crises and internal contradictions, becoming the largest and most powerful communist party in the world[2]. The CPC is responsible for the unparalleled power projection in China's history, thanks to competent management of the geostrategic and geoeconomics agenda. China, governed by an omnipresent Party-State, is an unparalleled political laboratory.

[2] In addition to the PRC, Cuba, North Korea, and Laos are the other officially communist States. Only the Communist Party of North Korea surpasses the CPC in longevity.

However, one of the many paradoxes of the CPC, perhaps the main one, is that it failed to achieve communism when it completed its centenary. This apparent contradiction is openly accepted in the Party Constitution, when it states that "the goal of the CPC is the realization of communism" and that "the most important ideal of communism persecuted by the Chinese Communists can only be realized when socialist society is fully developed and highly advanced"[3].

A goal that could be partially achieved in 2049, when celebrating the 100th anniversary of the establishment of the People's Republic of China (PRC). In the CPC lexicon, this milestone of the double centenary will mark the "rejuvenation of the Chinese nation"[4].

In fact, the communist chimera will not be easily attainable, as the history of the second half of the 20th century revealed with the implosion of the Soviet Union and its Communist Party. Some scholars even argue that the Soviets never implemented communism, since the USSR's party leaders would have opted for state capitalism (Resnick and Wolff, 2002: 324). Others, such as David Shambaugh, go further by vaticinating the collapse of the CPC in the medium term. For that American sinologist, the CPC will be fatally contaminated with systemic weaknesses that could lead to a violent end of the regime (2015).

It will now be up to the CPC and its 91 million militants to prove definitively that the communist ideal, recalibrated with "Chinese characteristics", can turn utopia into reality. The Soviet nightmare would be compounded by Xi Jinping's "Chinese dream".

Although the CPC does not hide the trauma caused by the disappearance of its Soviet counterpart, doing so that history does not repeat itself tragically, Leninist costumes and state capitalism remain as some of the main pillars of the Party. The CPC, "the most enduring asset of Soviet Russia in Foreign Policy" (Chang and Halliday, 2005: 39), or the "most successful Leninist Party in History" (Zheng, 2020: 1), calls itself the task of triumphing in the techno nationalist confrontation with the West.

A Party of Variable Geometry

The CPC divides its centenary route into three periods: from its foundation in Shanghai (1921), to the proclamation of the PRC (1949); from that year until the opening to the world and the beginning of reforms (1978); and since the coming to power of the current leader, Xi Jinping (2012).

In the official version, the CPC[5] was founded in July 1921 by a dozen activists, following the failure suffered by China at the Peace conference in Versailles after World War I,

---

3 *Constitution of the Communist Party of China*, *Revised and adopted at the 19th National Congress of the Communist Party of China on October 24, 2017*, p. 1. According to the official Chinese speech, China "will continue for a long time in the primary phase of socialism." At the 16th CPC Congress, in 2002, this period had been established in "more than 100 years". See: *Documents of the 16Th National Congress of the Communist Party of Chin*a, Foreign Languages Press, 2002, pp. 78-79.

4 The two centenaries established by the CPC aim to build a moderately prosperous society on the centenary of the Party (2021) and a modern socialist society when the CPC celebrates its centenary (2049).

5 Note the semantic differentiation: in December 1920 the French Communist Party was founded and in March 1921 the Portuguese Communist Party; the CPC, founded in July 1921, adopted the designation of Communist Party *from China* (our italics). According to the authors of a biography of Mao Tse-Tung, the CPC was founded in 1920 and Mao would not be among the founders. See Chang, J., Halliday, J. (2005). *Mao, The Unknown History*. Lisbon: Bertrand.

which saw the great powers sanction the Japanese occupation of the Chinese province of Shandong, and the nationalist-inspired student demonstrations that followed it, in what became known as the "May 4th movement" (1919).

The Chinese Communists, who were not familiar with Marxism, whose economic theory did not coerce with Chinese reality, still saw in that doctrine imported from the Bolshevik Revolution, an ideological primer ready to use in the fight against Western imperialism (Dreyer, 1996: 64-65).

By adapting Marxism to the situation in China, the founders of the CPC opted for ideological flexibility with Chinese characteristics that would remain to this day. It would be Mao Tse-Tung to warn of the need for the Chinese Communists to "sinolization of Marxism". To this extent, "socialism with Chinese characteristics for a new era", the theory of Xi Jinping consecrated by the CPC at its 19th Congress, is seen as the latest progress in the adaptation of Marxism to the Chinese context.

During the first 28 years of existence, the CPC was forced to obey Stalin's dictates and fight the Kuomintang Party, its political archrival, led by Chiang Kai-Chek. Revealing the remarkable political agility that would characterize him in the following decades, Mao would even join the Kuomintang, by Stalin's indication.

The expedition to the North, with the CPC still allied with the Kuomintang (1924-27), the Agrarian Revolutionary War (1927-37), the War of Resistance Against Japan (1927-37) and the Civil War, or "Liberation War" (1946-49), were the main historical landmarks of this period. Mao followed in Lenin's footsteps, jumping from Marxist theory to action, only by inverting the sequence.

With the proclamation of the PRC on October 1, 1949, the CPC would assume the reins of power under a political-institutional monopoly. Mao's victory would surprise Truman and Stalin (Gaddis, 2021: 47). The Chinese communist dynasty and the Party-State were born, in an organic and functional interdependence of Leninist inspiration. For the first time in centuries, China was moving to union under one flag.

It ended a troubled period, marked by more than forty changes of the central government since the establishment of the republic in 1912. However, internal pacification was not assured. Externally, Mao would risk the existence of the State he had just created. Just over a year after the proclamation of the PRC, the Chinese army was fighting the Americans in Korea.

The first major step towards China's identity emancipation would be the sending of 140.000 workers to the stages of WWI in Europe. In the aftermath of the conflict, the "May 4th Movement" would serve as an embryo to the founding of the CPC.

On the other hand, without fighting the Japanese in WWII, the CPC would not have been able to achieve power, as Mao himself would have admitted. The rise and consolidation of the CPC's power is based on historical facts associated with the two world wars. Since then, the Chinese have cultivated a harnessed anti-Western nationalism.

The Party-State

The CPC began by adapting the Soviet-inspired Leninist costume to Chinese reality. Democratic centralism – the subordination of the individual to the organization and its leaders – began to govern the functioning of the party machine. Like the CPSU, the Chinese counterpart established at its summit the governing bodies, namely the Central Committee (elected every five years by the Party Congress), responsible for selecting the Politburo (25 members).

In turn, the Politburo elects its Standing Committee, the hard core of policy makers, the current seven men (not including women; 70% of the Party members are men) who define China's path. The powerful *nomenklatura*, in Soviet terminology. The *primus inter pares* is the General Secretary, who also assumes the position of President of the Republic and president of the Central Military Commission. The Secretariat has the task of implementing the decisions of the Politburo and its Standing Committee.

However, some characteristics of the CPC differ from the Soviet system. First, the Party's ability to penetrate the social, economic, and military fabric. The CPC is present in every corner of society, forcing unconditional loyalty. The military owes constitutional obedience to the Party as well as the judicial system. The same applies to the public sector of the economy, which includes some of the best-known companies internationally, the so-called "industry champions". This is how Xi Jinping's "thought... reflects the common will of the whole Party, all the Armed Forces and the people of all ethnic groups" (Announcement of the 6th Plenary Session of the 19th Central Committee of the CPC).

Constitutionally, the Soviet government and the CPSU were separate bodies, although reality belied this artificialism. In China, the Party has always made it clear that it would be solely responsible for controlling the whole of society. Consequently, the close interconnection between Party and State is indistinguishable. In the official language "it is necessary to ensure that the leadership of the Party and the State remains in the hands of those who are loyal to Marxism, the Party and the people" (*China: Democracy That Works*: 8).

When world leaders meet with President Xi Jinping, in his capacity to hold an eminently ceremonial office in accordance with the constitution of the PRC, they have before them the powerful General Secretary of the CPC.

By resetting legal formalities, since it is not registered as an organization, the Party legitimizes its ubiquitous influence in the conquest of power following Civil War, on economic and social development since China's openness to the world, in its nationalist view and on the spiritual purity derived from dogmatic partisan principles, assisted by a culturalist vision rooted in Confucian philosophy – a social code that has regulated Chinese society for thousands of years. A social contract that the Chinese subscribe to, if opportunities for prosperity and wealth are not called into question.

The deployment

Mao Tse-Tung, the supreme leader of the CPC until his death in 1976, had no urgency in reorganizing the Party after the founding of the PRC. The first five-year plan was only approved in 1953 and the first CPC congress only took place in 1956 (until 1977 none completed the five-year term). In turn, the National People's Congress (NPC), founded in 1954, did not meet between 1966 and 1974 (Dreyer, 1996: 90-91). Also, in 1954 the first Constitution of the PRC was approved.

Mao would prove to be paradoxically the most troubled leader of the CPC. In the Great Leap Forward (1958-1962), he was responsible for 36 to 45 million deaths (Yang, 2008: 2; Dikötter, 2011: 1). By promoting the forced transition from an underdeveloped economy to a utopian modern communist society, Mao brought China's social and economic system to the brink of collapse.

Still poorly redone from the catastrophe of Maoist experimentalism, the Chinese people were forced to immerse themselves in the Cultural Revolution (1962-1976), which would prove to be another black page of the CPC and its leader, committed to stirring the masses through constant revolutionary unrest. Seeing himself as the rightful heir to Marxism-Leninism, Mao once again wanted to accelerate the transition from socialism to communism, thereby guaranteeing his historical legacy. The purges and political persecution within the CPC, as well as physical and psychological torture and exile, would become commonplace. The Party was virtually paralyzed. Five million militants would be punished (Dikotter, 2017: 10). The students, mobilized for revolutionary combat, would eventually be the main victims of the Cultural Revolution. Xi Jinping would be one of them. Teaching in China would delay a decade.

The adoption of collective leadership and the abolition of the cult of personality and "Mao's thought" as an ideological guide had been enshrined in the 8th CPC Congress, but in the following 12 years Mao was able to reverse these principles. At the 9th Congress (1969), led by a politically resurrected Mao, the Cultural Revolution was officially declared "a great success" (Li, 1994: 508). It was in that year that he came to consider the Soviet Union, not the USA, the greatest threat to China's security.

The rapprochement with the USA would be the greatest success of the final phase of Mao's political career. A maneuver exquisitely executed by the master of tactics that was Chu Enlai, the Prime Minister.

Historical rectification

The death of Mao Tse-Tung and the consequent assumption of power by the formerly ostracized Deng Xiaoping opened a chapter of paramount importance in the evolution of the CPC, which carried out an unprecedented exercise of self-criticism, to rectify the delicate Maoist legacy.

The important Resolution on the History of the CPC, adopted at the 6th plenary session of the 11th Central Committee of the Party (1981), reviewed the "arbitrary" performance of Mao Tse-Tung and his "theoretical and practical errors". Particular attention was paid to the period of the Cultural Revolution, which "did not conform either to Marxism-Leninism, nor to the Chinese reality". Although the CPC considered Mao to be the main responsible for the social catastrophe triggered by the Cultural Revolution, by "confusing the people with the enemy", the resolution made it clear that the scientific value of "Mao's thought" remained valid as the ideological beacon of the Party.

By openly exposing the wounds opened by a leader "divorced from reality and the masses", the CPC intended to initiate a process of internal regeneration, while at the same time validating Deng Xiaoping's reformist project. But China's openness to the world, which began in 1978, and the resulting economic development, entailed existential risks to the CPC that would prove dramatically.

Tiananmen

The CPC would not produce a document like the 1981 self-critical resolution on the failures of the Cultural Revolution. The causes and effects of Tiananmen events in 1989 would be obliterated from official historiography. The official documentation of the CPC is silent on the hectic period, which could have overthrown the Ruling Party, although this was not the goal of the protesting students (Zhao, 2009: 79).

All authoritarian regimes depend to a greater or lesser extent on repression and Deng Xiaoping, more Leninist than Maoist, did not hesitate to avail himself of "disciplinary power" in Foucault's meaning. However, by resorting to the use of force to stop the CPC's internal bleeding caused by students' demonstrations, the legacy of Deng Xiaoping, the great statesman responsible for China's modernization, would be irreparably tarnished. On the other hand, Gorbatchev, the controversial leader responsible for the implosion of the Soviet Union, would be awarded the Nobel Peace Prize.

A decade earlier, Deng had even vented the possibility of a separation between the Party and State, a reform never realized, provided that the impossibility of political liberalization was maintained as an unbreakable rule in the light of the tripartite model of separation of powers adopted in the West. This red line would be maintained and reinforced by subsequent CPC leaders.

The *Civilizational* Party of China

A centuries-old communist party, in power under a monopoly and ruling for as long as the SUCP ruled the former Soviet Union, is obliged to take care of its legitimacy in a permanent way.

One of the keys to understanding the CPC's perpetuity will be Bertrand Russel's judicious observation, when he concluded that "China is not so much a political entity, but a civilization" (1993: 208). That is, the principle of national unity is firmed in the valorization of civilizational heritage. This results in a sense of moral superiority *vis-à-vis* the West that the CPC cultivates on a recurring basis. To this extent, more than an interpreter of the history of China, the CPC is a central actor in this story. Its legitimacy privileges the historicist perspective over the ideological one.

It is this culturalist thesis, based on Chinese exceptionalism, that legitimizes the originality of the political system, transforming the CPC into the exclusive representative and guardian of a certain historical truth. The virtue of Confucian inspiration was shaped by socialist values, resulting in "Chinese characteristics".

For Zhang Wewei, it is the "civilizational state", led and interpreted by the CPC, that allowed the "greatest economic and social revolution of humanity" (2012:2). The Chinese scholar recalls that China has successfully merged the longest-off civilization with a modern state. A unit forged in history and habit, superior to any form of government.

Another reading finds justification in Chinese society's aversion to chaos, so often experienced in its history. In fact, the official discourse does not miss an opportunity to emphasize the unifying role of the CPC, a true dynamo of a country formed by 56 ethnic groups. As historian Niall Ferguson recalls, if China were organized like Europe, it would have to be divided into 90 nation-States (2012: 10).

Institutionalization

Non-Western societies struggle between the logics of adaptation and innovation (Badie, 2000: 2). Chinese society is no exception. Throughout a century, the CPC has succeeded in mitigating the contradictory forces of the political system it has implemented.

And although the CPC has regained imperial logic in *its modus operandi* and in China's positioning as an international actor, the institutionalization of transition processes in the ruling elite has allowed the 5th generation to achieve an unprecedented global power.

The CPC is not only shaped in the state machine, but also controls it in all dimensions, becoming a " Party-State without complexes" (Rios, 2021: 304). This oversight has been intensified through the organic reforms implemented by Xi Jinping in the judicial, military, and legislative spheres, at an unprecedented rate, which create a new impetus to China's political and economic trajectory. Xi's leadership has embarked on a process of institutional transformation that aims to reverse many of the changes consolidated by the relative liberalization of recent decades (Economy, 2018: 5; Bowring, 2021:239).

For Huntington, "the probability of a 100-year-old organization surviving another year is, perhaps, 100 times greater than the probability that an organization with one year will survive another year" (1968: 13-14). Maybe that is why the official documents say that "the 100-year-old CPC, which fights for the lasting prosperity of the Chinese nation, is in *the prime of age*" (Announcement of the 6th Plenary Session of the 19th Central Committee of the CPC).

The core of the CPC

Xi Jinping is a transformational leader, only comparable to Mao and Deng, charismatic leaders. He is imbued with a historical ineffability as to the mission of transforming China into the most powerful of nations. But Xi is not charismatic, but rational in the Weberian sense. He keeps the Party away from liberalization, firmly rejecting the division of powers and parliamentarism and does not hesitate to resort to the repressive instruments of the State. He is a strong leader with a well-defined political project. He drew the red lines when, in the spring of 2013, an internal memo from the CPC (document no. 9) outlined the main existential threats of the Party, including western-matrix constitutional democracy and neoliberalism (Bougon, 2018: 153-158).

When he took the 5th generation leadership to achieve power in China in 2012, *Financial Times* reported the possibility of Xi being "sympathetic to the demands for a more liberal political system"[6]. Not only did this prediction prove erroneous, but Xi would reveal a style of strong one-person leadership, while neutralizing collective governance – which never fully worked – and the ban on the cult of personality advocated by the CPC since Deng Xiaoping.

Xi's first consecration took place at the 19th CPC Congress in 2017. In five years, he managed to consolidate his power and inscribe his doctrine in the CPC Constitution, placing himself alongside Mao and Deng in the pantheon of immortal leaders.

It was a measure of great political significance, since Deng Xiaoping's name was only inscribed in the CPC Constitution after his death, and Jiang Zemin only managed to get his "theory of triple representativeness" (translated into the co-optation of the party's business) to be recognized after he left power. In turn, Hu Jintao's "theory of scientific development" was inscribed in the Constitution after his first term, but only elevated to "guide to action" after he left office.

More recently, the Party has come to mark a clear dividing line between the period of reforms set by Deng and a "new era" of 30 years, which began in 2020. In the first 15 years, until 2035, Xi wants to see the foundations of a "moderately prosperous" society consolidated and in the second stage of 15 years, until 2045, the modernization of the "socialist society" mut be consolidated.

Much of Xi's meteoric rise was justified by the internal cleansing campaign to fight corruption, which has hit thousands of members of the Party and Armed Forces, including prominent leaders. At issue will be a real "ethical revolution" designed to sustain the legitimacy of the Party (Zhang and McGhee, 2017). It is undeniable, however, the remarkable capacity for party and national mobilization of Xi, which goes far beyond the internal purges within the Party. By appealing to nationalist sentiments, Xi invokes and enshrines his emotional legitimacy.

Since the beginning of this century, China has been exploring the strategic opportunities evidenced at the 16th CPC Congress, but it is at Xi Jinping's consulate that China shows all its power and assertiveness. Xi's official narrative has definitively eliminated the understated strategy for China's foreign statement recommended by Deng Xiaoping.

China, which may rise to the status of the world's greatest economic power soon, is now "approaching the center of the stage" and is already "a leader in terms of national strength and international influence" (Xi, 2019: 9-25). It also wants to build powerful armed forces, "capable of winning wars", already possessing the largest war navy in the world, in addition to having put in place an ambitious nuclear rearmament plan and have advanced disruptive technologies, namely hypersonic missiles, electromagnetic pulse weapons and cyberweapons. As Aron pointed out, "States can be prophetic, but they are always armed" (2002: 131).

---

6 Anderlini, Jamil, "The leAdeRship: focus on the next generation as transition gets under way," *Financial Times*, October 26, 2011. [Online] Consulted on 23.11.2021. Available in: https://www.ft.com/content/ec0d167e-f8c3-11e0-ad8f-00144feab49a.

Conclusions

The CPC did not win the utopia but overtook it. Throughout its history, the CPC has learned to live with numerous paradoxes and contradictions. It has become a hybrid centrifuge machine, capable of absorbing, regenerating, and returning to society the different political and economic approaches. It combines authoritarianism with pragmatism. It is a resilient organization, currently run by a resilient leader.

China did not invent Marxism-Leninism, nationalism, or capitalism. However, the CPC has proved to be an expert cultivator of these seemingly antagonistic currents. But it is primarily to nationalism, and the "imagined political community", that the CPC will redeem its legitimacy.

A legitimacy that China wants to see transposed to the international scene, where, more than taking a central role, wants to see validated its proposal for a new development-focused order, of which the proposed *One Belt and Road Initiative* (BRI) is an example, resulting in clear geopolitical and geoeconomics implications. This is an unprecedented global vision. It is in this context that the scholar Zhang Weiwei, author *of The China Wave: Rise of a Civilizational State*, integrates a Chinese intellectual chain that, in addition to rejecting any emulation with Western political models, considers that the time has come for China to influence the world.

On the other hand, stability and the quality of governance are credits that some Western circles have difficulty recognizing to Chinese leaders. The external indicators of economic development are extraordinary and the strategic combination of soft power with hard power (within the meaning of "smart power" of Nye) too, but it is the fact that the CPC has managed to lift 800 million Chinese out of poverty, 10 years ahead of schedule for the first of the United Nations Sustainable Development Goals (SDGs), which impresses by the scale and socio-economic implications.

In the constitutions of the Republic and the CPC, we find the obligatory communist lexicon referring to a popular democratic dictatorship, democratic centralism, and the struggle for the working class. In fact, the "proletariat" has given way to businessmen co-opted by the Party at the time of Jiang Zemin, and the "class struggle" is now reduced to the contradiction evidenced in the social inequality caused by rampant economic development. A structural fragility that the CPC openly admits in its official documents.

Over a century, the CPC has succeeded in achieving one of the main objectives that it has presided over: the transformation of China into a strong and independent country. The CPC has led China to a level never reached in its long history, finally enjoying power and prestige in the notion that Morgenthau attributed to it (1985: 714).

And if some deep *connoisseurs* of Chinese reality, such as Susan Shirk (2007) or David Shambaugh (2008; 2015) support the thesis of the irreversible decline of the CPC in the medium term, listing known systemic weaknesses, the institutional reforms implemented by Xi Jinping, covering the functioning of the CPC and the Armed Forces, have been modernizing and strengthening the PLA-State-relationship. In fact, Xi has operated to rationalize the institutional architecture of the CPC; the fundamental point is the necessary – and required – accommodation and loyalty of all social actors to the hegemonic dynamics of the party. Nor is it believable that the relative neutralization of collective leadership – which has never fully worked – will have counterproductive consequences in the new institutional organic implemented in Xi's governance.

The available indicators show that the CPC enjoys a high degree of popularity, while the party elite maintains the necessary cohesion. These are crucial factors for the perpetuation of the necessary legitimacy and foresees that the place of strategic power in the Chinese political system – the CPC – will not be threatened soon. The great challenge of the CPC's top leader will be to operate the transition between authoritarianism and technological innovation.

China, with an autocratic regime led by the resilient CPC, will not intend to export its Marxist-Leninist-Maoist and now Xiist ideology. Rather, it demands the legitimacy of a model unrelated to the concept of universalism pervading the political order of the West. Moreover, Huntington too would draw timely attention to the fact that the West is unique, but not universal (1996).

China's new assertive and self-confident stance, nullifying the theory of "peaceful ascension," has led to a reactive policy by Washington, USA, major European capital-cities and even NATO, which considers China "a full-spectrum systemic rival," (NATO, 2020:27)." For the European Union, for example, China is now "a systemic adversary promoting alternative models of governance" (2019), but is also "a partner, a competitor and a rival" (Borell, 2021). On the other hand, the chemical crisis served as a catalyst for geopolitical clarification in the relationship between the main western powers and China. In fact, the CPC has managed to win unprecedented power in China's history, but as Kissinger warned, "the question is whether it is possible to create an international system with China as a participant without it dominating the system (2011: 43)".

For more than a century the world has been torn between the views of Lenin and Woodrow Wilson in a perennial ideological divide. It will be the quality of governance and the battle for technological leadership to decide whether there will be winners or just losers in the dispute between major powers. It will be seen whether China will look more like the world, or the world like China.

References

Anderson, B. (2021). *Comunidades Imaginadas*. Lisboa: Edições 70.

Aron, R. (2002). *Paz e Guerra entre as Nações*. São Paulo: Imprensa Oficial do Estado de São Paulo.

Badie, B. (2000). *The Imported State*. California: Stanford University Press.

Bougon, F. (2018). *Inside the Mind of Xi Jinping*. London: C. Hurst & Co.

Borrell, J. (2021). *The EU needs a strategic approach for the Indo-Pacific*. [Em linha] Consultado em 14.12.2021. Disponível em: https://eeas.europa.eu/headquarters/headquarters-homepage/94898

Chang, J., Halliday, J. (2005). *Mao, A História Desconhecida*. Lisboa: Bertrand Editora.

Comunicação Conjunta da Comissão ao Parlamento Europeu, ao Conselho Europeu e ao Conselho UE-China – *Uma Perspetiva Estratégica* (2019). [Em linha] Consultado em

29.04.2021. Disponível em: https://eur-lex.europa.eu/legal-content/PT/TXT/PDF/?uri=CELEX:52019JC0005&from=EN

Comunicado da 6ª Sessão Plenária do 19º Comité Central do Partido Comunista da China (2021). [Em linha] Consultado em 17.11.2021. Disponível em: https://portuguese.xinhuanet.com

Dickson, B. J. (2016). *The Chinese Communist Party`s Strategy for Survival*. Oxford University Press.

Documents of the 16th National Congress of the Communist Party of China (2002). Beijing: Foreign Languages Press.

Dreyer, J. T. (1996). *China`s Political System*. Massachusetts: Allyn & Bacon.

Economy, E. C. (2018). *The Third Revolution*. New York: Oxford University Press.

Fewsmith, J. (2018). "The 19th Party Congress: Ringing in Xi Jinping's New Age" *China Leadership Monitor*, No.55, January 23.

Gaddis, J. (2021). *A Guerra Fria*. Lisboa: Edições 70.

Huntington, S. P. (1968). *Political Order in Changing Societies*. New Haven: Yale University Press.

Huntington, S. P. (1996). "The West: Unique, Not Universal". New York: *Foreign Affairs*, Vol. 75, pp. 28-46.

Johnston, A. I. (2019). "China in a World of Orders". *International Security*, Vol. 44, nº 2, pp. 9-60.

Kissinger, H, Niall Ferguson, Fareed Zakaria, David Li (2012). *O Século XXI Pertence à China?* Rio de Janeiro: Elsevier.

McGregor, R. (2012). *The Party, The Secret World of China`s Communist Rulers*. New York: Harper Perennial.

Morgenthau. H. J., Thompson, K. W. (1985). *Politics Among Nations*. New York: Alfred A. Knopf.

National People's Congress Observer. *Constitution of the People's Republic of China* (2018). [Em linha] Consultado em 20.12.2021. Disponível em https://www.constituteproject.org/constitution/China_2018.pdf?lang=en

New China Research Xinhua News Agency. *People First – Political Commitment of the Century-old Communist Party of China* (2021). [Em linha] Consultado em 25.10.2021. Disponível em: http://www.xinhuanet.com/english/2021-06/29/c_1310032889.htm

Resolution on CPC History (1981). Beijing: Foreign Languages Press. [Em linha] Consultado em 23.11.2021. Disponível em: https://www.marxists.org/subject/china/documents/cpc/history/index.htm

Resnick, S., Wolff. R. (2002). *Class Theory and History: Capitalism and Communism in the USSR*. London: Routledge.

Rios, X. (2021). *A Metamorfose do Comunismo na China*. Pontevedra: Ágora K.

Russel, B. (1993). *The Problem of China* (first published in 1922 by George Allen & Unwin Ltd). Nottingham (UK): Spokesman.

Shambaugh, D. (2008). *China's Communist Party: Atrophy and Adaptation*. University of California Press.

Shambaugh, D. (2015). *The Coming Chinese Crackup*. Wall Street Journal. [Em linha] Consultado em 30.12.2021. Disponível em: https://www.wsj.com/articles/the-coming-chinese-crack-up-1425659198

Shirk, S. L. (2007). *China – Fragile Power*. New York: Oxford University Press.

The State Council Information Office of the People's Republic of China. *China and the World in the New Era* (2019). [Em linha] Consultado em 05.02.2022. Disponível em: http://english.www.gov.cn/archive/whitepaper/201909/27/content_WS5d8d80f9c6d0bcf8c4c142ef.html

The State Council Information of the People`s Republic of China. *China: Democracy That Works* (2021). [Em linha] Consultado em 02.01.2022. Disponível em: http://www.news.cn/english/2021-12/04/c_1310351231.htm

Xi, J. (2014). *The Governance of China*. Beijing/Washington: ICP Intercultural Press.

Xi, J. (2017). *Secure a Decisive Victory in Building a Moderately Prosperous Society in All Respects and Strive for the Great Success of Socialism with Chinese Characteristics for a New Era*. Delivered at the 19th National Congress of the Communist Party of China. [Em linha] Consultado em 10.09.2021. Disponível em: http://www.xinhuanet.com/english/download/Xi_Jinping's_report_at_19th_CPC_National_Congress.pdf

Zhang, W. (2012). *The China Wave Rise of a Civilizational State*. New Jersey (USA): World Century Publishing Corporation.

Zhang, S., McGhee, D. (2017). *China`s Ethical Revolution and Regaining Legitimacy*. Cham, Switzerland: Palgrave Macmillan.

Zheng, Y., Gore, L. P. L. (Eds.) (2020). *The Chinese Communist Party in Action*. London: Routledge.

OBSERVARE
Universidade Autónoma de Lisboa

e-ISSN: 1647-7251
Vol. 13, Nº. 1 (May-October 2022)

JANUS.NET
e-journal of International Relations

LIBERTÉ, EGALITÉ ET LAÏCITÉ: THE USE OF HIJAB IN PUBLIC SCHOOLS AS A THREAT TO THE FRENCH REPUBLICAN ONTOLOGY (1989-2004)

BRUNO PEDROSA
bruno.cspedrosa@gmail.com
Master's student in International Security and Defense at the Brazilian War College (ESG, Brazil) specializing in BRICS' common identity formation. He holds a Bachelor's degree in International Relations from the Fluminense Federal University (UFF) focusing on Eurasian geopolitical dynamics. He writes for an independent think tank Quo Vademus. He is an external collaborator to the Nucleus of Studies on BRICS (NEBRICS) and a fellow researcher in the Group of Studies on BRICS (GEBRICS).

Abstract

This paper analyzes the perception construction of the hijab use in public schools as an ontological threat to France. Considering laïcité as one of the pillars for French society and identity and the school as the basis of the construction of this narrative, the use of the hijab could be considered as a threat to religious neutrality in the public spheres, injuring the basic principles of the Republic. This situation led to the approval of a law banning the use of all kind of apparent religious garments in primary school across France, despite religious freedom being a fundamental right in the country. As a methodology, it conducts a discourse analysis of the statements and opinions of French leaders and institutions of the executive and judicial branches in relation to the use of clothing in relation to the principle of laïcité and freedom of worship in France between 1989 and 2004.

Keywords

Ontological Security; *Laïcité*; Islam; Religious Freedom; France.

How to cite this article

Pedrosa, Bruno (2022). Liberté, Egalité et Laïcité*: the use of hijab in public schools as a threat to the french republican ontology (1989-2004)*. In Janus.net, e-journal of international relations. Vol13, Nº. 1, May-October 2022. Consulted [online] on the date of the last visit, https://doi.org/10.26619/1647-7251.13.1.4

Article received on September 23, 2021 and accepted for publication on March 16, 2022

LIBERTÉ, EGALITÉ ET LAÏCITÉ: THE USE OF HIJAB IN PUBLIC SCHOOLS AS A THREAT TO THE FRENCH REPUBLICAN ONTOLOGY (1989-2004)

BRUNO PEDROSA

Introduction

Terrorist attacks have been treated as a security issue in France since the 1980s. However, since the 9/11 event, such threats have been correlated with Islamic extremism, both by the media and by the French government (France, 2006). These concerns about the French State's security and its citizens regarding the Muslim community in the country permeated social layers and brought to debates issues on identity and private life.

It is known these speeches addressed by the state and the media have increased the stigma towards Muslims in France. Stéphane Bauzon (2017: 190) states that "the terrorist attacks carried out by Islamists on French territory in recent years have only reinforced this mistrust towards the Muslim religion". Moreover, one can also say that there was a development of a type of distrust not only regarding the religion, but towards representations and symbols of it, being the use of the hijab as the greatest example of this phenomenon.

However, despite being one of the countries from which ideals such as tolerance and religious freedom spread to the rest of the world, the country's government approved in 2004 a law prohibiting the use of the hijab by Muslim girls in primary public schools. This measure was approved by the justification of "reaffirming the republican symbol of *laïcité*[1],[2] promoting the equality and emancipation of Muslim women" (Bauzon, 2017: 186) In addition, the French educational system aims to increase the country's internal cohesion by marginalizing "regional and religious allegiances" (Windle, 2004: 97) . Also, according to Windle (2004: 97), concerning the French public school system, "a 'free, secular, and compulsory' national educational system is one of the key guarantors of

[1] Although the term can be translated directly into "secularity" or "secularism", I opted for the original use of the symbolic and cultural charge that is brought, which does not occur when there is translation. This justification for the non-option of translation applies to all other terms in foreign language in this work.

[2] According to the French government *itself, laïcité* is a value that guarantees "freedom of conscience". Therefore, it allows "the freedom to manifest their beliefs or convictions within the limits of respect for public order." It is concluded that "*laïcité* implies the neutrality of the State and imposes the equality of all before the law without distinction of religion or conviction" (France, [s.d.]).

republican values [...]". Thus, wearing the hijab could "symbolize [...] a threat to the very conditions of the existence of the Republic" (Windle, 2004: 97).

Despite Windle's (2004) statements, it can be seen that explanations about the use of the state apparatus to deal with the Islamic issue at schools have been insufficient. This is shown by the concentration of studies in state security having the State as the main study object (Gregory, 2003) and negligence of the ontological issue of security seen through French society's lens. Other thinkers try to understand the effect of these religious symbols using other interpretations. Whether by the media, by gender studies or by social issues such as integration and immigration (Carle, 2004). However, these works fail to fully explain the origins of the motivations of French policies to avoid the use of the hijab in the country's public schools, although they are sometimes interpreted as inconsistent with the French values of freedom and equality themselves.

According to Resende (2017: 90),when she talks about the effects of the 9/11 attacks on American society, she say this event produced a trauma in the collective imaginary of that nation provoking "questions of the dominant discourses about America and about Americans". Then, in the face of this identity crisis, the thinker states that, in order to overcome trauma and restore social order, "the articulation of a new dominant discourse capable of recommence is the framework of intelligibility of reality broken in 2001" (Resende, 2017: 90). Likewise, the use of the hijab by girls in French public schools has generated a crisis in the dominant narratives about the identity of the country, role of school and the founding principles of the present-day French Republic, such as freedom and secularism.

Given the explanatory insufficiency offered by the dominant literature, this work aims to offer a perspective of the problem through the ontological security lens. Based on the security perspectives' expansion, and the studies on identities as objects to be securitized by the State (Mitzen, 2006; Steele, 2008; Subotić, 2016; Resende, 2017), this text focuses on answering the following question: how can the use of hijab in primary schools be considered as an existential threat to France? Through this approach, this article's main argument finds itself at the following statement: Muslim religious manifestations can be constructed as supposed threats to French national security, even if this process is against French Republic's founding values.

With the objective of analyzing the impact of this garment on the French identity imaginary, one can see that discourse analysis makes it possible to understand the discursive practices and narratives that shape perceptions of reality (Hansen, 2013). Another possibility offered by this method is that it "not only to explicate the content of a state's biographical narratives, but also to reveal how a discourse's effects constitute certain types of action" (Steele, 2008: 10–11). In addition, the analysis of speech acts by authorities are both a source and a methodological practice for this work .

The choice of temporal scope is justified by the following situations: in 1989, an episode occurred that became known, in French known as *affaire des foulards islamiques*[3], rekindled the public debate about the limits of secularism within French society, notedly

[3] Translated as the "case of Islamic veils", this event occurred when three girls of school age and of Maghreb origin were expelled from the school where they studied for insisting on the wearing of the hijab in the classrooms.

within schools. In 2004, one can consider as the apex of this discussion when there was a prohibition, by law, of the use, not only of the hijab, but as of other apparent religious garments in public schools. Thus, this work will be divided into four parts. The first takes place in the understanding of ontological security as a theoretical approach to understand the securitization of identity as a political practice. The second part is dedicated to understanding the space of *laïcité* in the French imaginary as part of its identity. The third part will have the objective of analyzing the phenomenon's unfolding through the approval of the ban on the use of hijab in French schools in 2004. The last part is intended for the final conclusions on the issue.

Ontological security: what is it and why is it important?

Benedict Anderson (2006: 6) states that "communities are distinguished not by their falsehood/authenticity, but by the style they are imagined." These imaginations are based on symbols and narratives that offer "a sense of space and a sense of place" (Subotić, 2016: 612) for individuals belonging to these same communities. It can be said, then, that narratives "play a critical role in the construction of political behavior [...]. We create and use narratives to interpret and understand the political realities in our surroundings" (Patterson and Monroe, 1998: 321).

Thus, Subotic (2016: 612) says that these narratives serve as autobiographies. Used by both individuals and larger groups, these autobiographies function as an ontological reference of those who reproduce it. By creating a story about "where did 'we' come from, how we did come to be who we are, what bring us together in a group, what purpose and aspirations does our group have," communities can create an ontological anchor that gives them "a sense of stability and allows us to move forward." According to Steele (2007: 904),"state agents give meaning to their actions to others through this narrative [...]". Thus, Subotic (2016: 612) concludes by stating that one cannot understand the behaviors of political actors without "understand what is the normative narrative underpinning of the policy choices actors make [...]". Therefore, they are narratives that enable the ordering of a sense of "who I am", which enables the construction of rational calculations as a "precondition for knowing what to do" (Somers, 1994: 618).

However, when this narrative and the identity that comes from it suffers a crisis, the state tends to take certain measures to resume the previous balance. According to Steele (2008b: 2) in this scenario, "states seek social actions to serve their self-identity needs, even when these actions compromise their physical existences". Thus, the author even states that ontological safety is more important than physical security. This is due to state's willingness to keep "self-concepts consistent, and the Self of states is constituted and maintained through narrative [...]" (Steele, 2008: 3).

However, what is ontological security? According to Mitzen (2006: 342), she refers it as "the need to experience oneself as a whole, continuous person in time – as being rather than constantly changing – in order to realize a sense of agency". Thus, feeling ontologically secure means being safe about one's own identities.

Also, according to Mitzen (2006: 345), ontological security becomes important because, through this perspective, identity is the basis of the actors' agency. According to her, when the individual is in an ontological insecurity situation, it "cannot relate ends systematically relate to means in the present, much less plan ahead". For these moments of "profound ontological crises" (Subotić, 2016: 614), is called trauma. Trauma, in turn, occurs when "external events cannot be neatly placed into the ontological security narrative because they represent a challenge to the state internal or external identity" (Subotić, 2016: 614).

In the face of these ontological crises, the narratives present in the imaginaries of the communities are activated in order to give a strategic basis for political actions (Subotić, 2016). According to Subotić, the use of these discourses by political leaders serves to create cognitive bridges between political action and the restoration of autobiography so that its continuity is maintained. "Narratives provide intersubjective meaning to policy change. They make political change comprehensible and acceptable" (Subotić, 2016: 616).

Laïcité as France's Ontological Pillar

As part of the narrative of what it is to be French, *laïcité* is one of the most important aspects of the Republic's ontology. It is part of the national myths and symbols that "are receptacles that allow people to project onto them their idealized images of their values, cultures, histories, peoples and lands. In France, a particular understanding of *laïcité* is linked to a sense of identity" (Gunn, 2004: 429). However, to better understand the importance given to this concept in the French imaginary, it is worth making a brief historical recap of its construction.

According to Gunn (2004), there were two historical periods in France that were essential for the development of this concept as part of the country's autobiographical narrative: the Revolution of 1789 and the Period of the Third Republic (TR) which lasted from 1870 to 1940. The most important point the author wants to discuss is that the construction of *laïcité* "did not embody the high principles of tolerance, neutrality, and equality; rather it emerged from periods of conflict and hostility, most of which targeted the Roman Catholic Church" (Gunn, 2004: 433).

In the French Revolution period, a main point of the revolutionaries' criticism was the influence that the Catholic Church had on the state's public affairs. The objectives of the most radical (the Jacobins) were a total separation between the State and the Church and the dechristianization of French society. "[...] the French revolutionary spirit of citizenship is understood as freedom of religion" (Carle, 2004: 66). Despite later, it was turning against Protestants and Jews, the Catholic Church was the main target hit by the revolution having its assets confiscated by the state and its leaders were impeached and hunted. Gunn (2004: 438) says there was a "demand that citizens choose between their religions and the state". Then, according to Carle (2004: 66), "one of the most valued legacies of the Revolution is the secular state and institutional structure of the public, secular education implemented by Jules Ferry under the Third Republic [...]".

During the Third Republic, after having gone through several political changes, the Revolution's extremism had already disappeared. Nonetheless, according to Gunn (2004), it was during this period that the term *laïcité* has begun to be more common in political discourses. One of the great milestones of TR in this sense was the total legal division between the Church and the state in 1905, which had as its principle, present since the times of the Revolution, that there be "the separation of civil society and religious society, the State not exercising any religious power, and the Churches no political power" (Capitant, 1930: 305). Then, "in France, *laïcité* identifies with the Republic" (Bauzon, 2017: 177).

At the same period of TR, the French government took its first steps to establish a public primary education system and "training teachers as defenders of science to counterbalance the village priest" (Windle, 2004: 98). "The new structure of secular power replaced the religious community with a political community, excluded religion from public political life, and gave rise to a still present anti-religious and anticlerical discourse which makes *laïcité* a particular experience". This thought was in the perception of the French State that it must "guarantee freedom of conscience for all and the equality of all convictions" (Nugier *et al.*, 2016: 16) by relegating religion to the private environment.

Thus, the State was responsible for the religious neutrality of citizens within all public spheres (Nugier *et al.*, 2016: 16). In addition, French secularism is seen as a guarantor of neutrality on the part of the State with all religions and a cohesion that allows national unity (Berg and Lundahl, 2016). As a result, the wearing of religious clothing in French schools is regarded as a proselytizing religious act and as "an unacceptable expression of a religious background that infringes upon the neutrality and the laicist character of the public school" (Shadid and van Koningsveld, 2005: 48). All this is demonstrated in a speech by former French Prime Minister Laurent Fabius in 2003, in which he says: "The school is not just one within many places; is where we shape our little citizens. And this tripod: *laïcité*, Republic, school, is the tripod on which we support ourselves" (Fabius, 2003).

It can also be affirmed that the French State model of seeing society and its relationships with it reinforce the neutrality of religious representation. Based on the Jacobean centralizing and unitary model, the system today insists on an individualistic relationship between the State and people (Doyle, 2011: 487). According to Doyle (2011: 478) this is explained by a legacy of the revolutionary period in which, in order to "combat the hierarchy of hereditary states", the ideal of the reconstruction of French nationality would be based on the emancipation of individuals from "affiliation groups". In other words, "French republicanism encouraged a strong serum of democratic public power but relegated cultural affiliations and identities, including religion, to the private sphere" (Doyle, 2011: 478).

The Case of Hijabs in Primary Schools

In 1989, three Muslim girls were temporarily suspended from their schools for their insistence on wearing the hijab in the classroom. This has generated heated debates within French society about whether or not the right to wear the veil, "revived existing controversies, exploited French fears of Islamic fundamentalism and again dramatized continuing concerns about the future of Muslim immigrant communities in France" (Feldblum 1993: 61). The controversy reached the highest court of justice of France (the *Conseil d'État*) from which came the opinion that the use of the hijab or expression of the religion of those girls do not affect the principles of *laïcité* (Gunn, 2004). However, the same court said that students can be passive to punishment if they try to make any kind of religious propaganda or disrupt school activities

Because it was not clearly solved, the issue of the use of the hijab by Muslim students in primary schools was still a fuel of debate in the country. In addition, the increase in immigration from former muslim majority French colonies to the country, from the 1980s, began to produce a certain social tension in relation to the wearing of clothing that distinguish women from this religion. The use of the hijab and other types of adornments worn by Muslims in France in public places causes the status of *laïcité* and its limits to be questioned. This even causes a suspicion among the French whether Muslims prefer their Islamic identity than French identity (Gunn, 2004). As many of these women are immigrants or their daughters, they are seen as foreigners, a non-national symbol that has not been fully integrated into the standard and genuinely French values, according to the prevailing identity narratives. "When the French see the veil, they are not proud that their country is tolerant and welcoming of other peoples and religions, but feel that something foreign and non-French has infiltrated their society (Gunn, 2004: 418-419).

Since this episode in 1989, several similar cases have been disputed in France, between those who wanted a purer *laïcité* and those who did not see conflicts between the use of religious devices and the legal concept. Also, according to Gunn (2004), however, in most cases, the *Conseil d'État* was in favor of wearing the veil, but always warning the issue of proselytizing and disturbance of order. However, in 2004, legislation was passed almost unanimously that effectively banned the use of hijba in public schools (Windle, 2004).

This movement to strengthen *laïcité* (some authors even call it *nouvelle laïcité)*[4] began in 2003, when former Prime Minister Raffarin said during a television interview that the veil should be punished absolutely in public schools (Ockrent and Leclerc, 2003). Soon after this episode, the Minister of the Interior (who would end up being the president of the country) Nicholas Sarkozy said before the Union of Islamic Organizations of France that no woman should wear the veil when taking photos for official documents in the Republic (Gunn, 2004). However, although the *laïcité* issue was built in relation to the Catholic Church and expanded to other religions, "the threat posed by Catholicism has never been portrayed exactly as the current threat of Islam is by the mainstream *media.* The old mistrust of religious power is now combined with the fear of the formation of separatist communities" (Windle, 2004: 98).

Prime Minister Raffarin's concern about the alleged threat that the wearing of the hijab posed to the Republic was based on an issue called *communautarisme.* Based on "a life founded on belonging to the Muslim religion", the *communautarisme* "is perceived as the refusal to shape the traditional French lifestyle and even as the will to reproduce in the national territory true enclaves of its original countries" (Bauzon, 2017: 189). This

[4] To delve into the issue see Nugier et al (2016).

is reinforced by the minister's own words by saying that there should be a "debate that engages in school and its future" since "we are all convinced, that the school is the primary space of the Republic" (Raffarin, 2003). In addition the minister (2003) goes on to say that it must be ensured that it is in the school that the "supreme value that is the Republic and that there are no ostentatious symbols *of communautarisme* that come to unbalance our school balance". Raffarin concludes by saying that the school should remain as "the space par excellence of the Republic, soon of the *laïcité*". Therefore, it is clear the perception of the French authorities that French identity was at risk of existence for alleged infringements of *laïcité* by religious groups.

In view of the increased intensity of the debate across the country, President Jacques Chirac proposed the creation of a committee to assess the situation that should give him an opinion by the end of 2003. This committee aimed to generate "reflection on the application of the principle of *laïcité* in the Republic" (Stasi, 2003: 2). Named Stasi report (last name of the committee leader), the document proposed several proposals for social inclusion and improving the lives of marginalized communities, such as Muslims. However, the point that received the most attention from the public stated the following:

> *"Adopt the following provision for schools: in respect of freedom of conscience and the proper character of establishments under contract, clothes and manifesting signs of religious or political belonging are prohibited in schools, colleges and high schools"* (Stasi, 2003: 68).

In December of the same year, President Chirac gave his opinion on the report and addressed the issue of the use of religious ornaments in public schools in the country. On national television, the president thanked the Stasi commission's efforts and made remarks that would explain the approval of the ban on the use of religious parts by the French parliament in 2004. As he begins his speech, Chirac says that

> *"the debate on the principle of laïcité resounds in the depths of our consciences. It reminds us of our national cohesion, our ability to live together, our ability to gather about the essentials. The laïcité is inscribed in our hearts. It is at the heart of our identity"* (Élysée, 2003: 1).

By reaffirming that France is known "as the homeland of human rights", he continues to praise the principle. Moreover, it tells how *laïcité* is responsible for the reality in which France lives. "It is in fidelity to the principle of *laïcité,* the cornerstone of the Republic, the axis of our common values of respect, tolerance, dialogue, that I call all French and all French to come together". Continuing, "these values underpin the uniqueness of our nation. [...]. It is these values that make France". He also makes direct references to the *communautarisme* stating that it "cannot be a choice of France. He would be contrary to our history, to our traditions, to our culture" (Élysée, 2003: 1-3).

Recalling the principle that "school is a republican sanctuary that we must defend" (Élysée, 2003: 5), Chirac offers his final opinion on the issue. These are his words:

> *"With that in mind, I estimate that the carrying of clothes or symbols that ostensibly manifest the religious must be outlawed in schools, colleges and*

> *public schools. The discreet signs, for example, a cross, a star of David, or a hand of Fatima, will naturally remain possible. Unlike ostentatious symbols, that is, those that the size leads to perceive and recognize immediately their religious belonging, they cannot be admitted. They – the Islamic veil, whether it is its name, the kippa or a cross manifestly oversized – will have no room in public schools. The public school will remain secular"* (Élysée, 2003: 5).

In March 2004, President Jacques Chirac signed a law passed by the National Assembly and the Senate that banned all types of religious clothing in schools, including the hijab. In the face of all this, it can be seen that the issue of *laïcité* and, consequently, the French identity saw in Islam and its clothing its greatest threat within the period analyzed. Although the Stasi Commission and President Chirac's statements were about religions in general, throughout the text it was possible to see that both the beginning and development of the debate on the limits of *laïcit*é and *communautarisme* and religious clothing in public spaces, from 1989 onwards, Islam had been the main starting point.

However, although theoretically it is a contradiction within the logic of French values of tolerance and religious freedom and is a question of the opinions of the *Conseil d'État,* the 2004 decision is supported when looked at by the bias of ontological security. Resuming the thoughts of Steele (2008) and Subotić (2016), states create narratives about themselves so that their actions of both the past and the present and those of the future are justified in terms of identity. "[…] actors must create meanings for their actions to be logically consistent with their identities" (Steele, 2008: 11). Thus, it is understood why the policies and the resurgence of debates about *laïcité* within French society after the affair *des foulards islamiques*. Thus, anxieties about the future of their identity and the perception of the threats generated by Islam "justify a policy by reasoning what such a policy means or would mean about their state's respective sense of self-identity" (Steele, 2008: 12).

Putting into perspective the speeches of high-level officials of the executive power such as Jacques Chirac, Laurent Fabius and Jean-Pierre Raffarin it is seen that the religious expressions of French Muslims were being considered as threats to the continuity of the French hegemonic autobiography. Thus, fears and anxieties of French society regarding its identity, and consequently its existence, enabled the government to make these decisions.

Conclusions

As demonstrated by the new approaches of Security Studies, societal and identity issues have been seen as important interpretative keys of reality. In view of all that has been written, the conclusions of this text show that the manifestations and political mobilizations in France in relation to the use of the hijab in public schools, between 1989 and 2004, were reactions to the defense of the principle of *laïcité,* as one of the ontological bases of the country.

However, it is noteworthy that other issues that are necessary for understanding this issue are beyond the scope of this work. Reflections on whether these reactions came from French society in general or only from those who seek to maintain the racial and religious status quo is a space that this work opens up for future approaches. Moreover, issues such *as communitaurisme and* perceptions about this in relation to national integrity were points that were raised throughout the text but could not be developed comprehensively. Another point to be addressed is whether the threat seen in Islam is a prejudice only to Muslims or to any other non-Catholic religion, since France has a history of intolerance with Protestants (St. Bartholomew's Day) and Jews (Dreyfuss Affair). In any case, the aim of this work is not to exhaust the discussion, but only to bring a neglected perspective when it comes to identity in French society.

Within this same approach, speech acts from actors of high political positions (notedly the executive body) were analyzed, who were received by a French society who were fearsome and anxious about their identity due to the large influx of Muslim immigrants from former French colonies to mobilize narratives. In doing so, cognitive connections were created with the French autobiography that made acceptable the decisions to prohibit the wearing of ostentatious religious clothing within public schools as a way to protect the ontological bases of national identity. However, in the face of immigration movements and typical religious clothing, Islam has become the main target of these policies.

Therefore, the debate regarding the use of the hijab in public schools may be within the debate of ontological security. As demonstrated throughout this work, the use of the state apparatus was used as a tool to protect French identity by protecting the principle of *laïcité,* before Islam, within public schools.

References

Anderson, B. (2006). *Imagined communities: Reflections on the origin and spread of nationalism*. Verso books.

Bauzon, S. (2017). 'Le symbole républicain de la laïcité en France'. Revista Persona y Derecho. (77), 2017, 177 - 194

Berg, L. and Lundahl, M. (2016). 'Un/veiling the West: Burkini-gate, princess Hijab and dressing as struggle for postsecular integration', *Culture Unbound*, 8(3), pp. 263–283. https://doi.org/10.3384/cu.2000.1525.1683263.

Capitant, H. (1930). *Vocabulaire: juridique. Rédigé par des professeurs de droit, des magistrats et des jurisconsultes sous la direction de Henri Capitant*. Impr. des Presses universitaires de France.

Carle, R. (2004). 'Hijab and the limits of French secular republicanism', *Society*, 41(6), pp. 63–68. https://doi.org/10.1007/BF02688234.

Doyle, N. J. (2011). 'Lessons from France: popularist anxiety and veiled fears of Islam', *Islam and Christian–Muslim Relations*, 22(4), pp. 475–489. https://doi.org/10.1080/09596410.2011.606194.

Élysée (2003). *Discours de M. Jacques Chirac, Président de la République, sur le respect du principe de laïcité dans la République, Paris le 17 décembre 2003.*, *Actualités*. Available at: https://www.elysee.fr/jacques-chirac/2003/12/17/discours-de-m-jacques-chirac-president-de-la-republique-sur-le-respect-du-principe-de-laicite-dans-la-republique-paris-le-17-decembre-2003 (Accessed: 2 July 2021).

Fabius, L. (2003). *Prononcé le 17 mai 2003 - Discours de M. Laurent Fabius, membre du conseil national du PS, sur les*, *Vie Publique.fr*. Available at: https://www.vie-publique.fr/discours/139824-discours-de-m-laurent-fabius-membre-du-conseil-national-du-ps-sur-les (Accessed: 2 July 2021).

Feldblum, M. (1993). 'Paradoxes of ethnic politics: The case of Franco-Maghrebis in France', *Ethnic and Racial Studies*, 16(1), pp. 52–74. https://10.1080/01419870.1993.9993772.

France (2006). *La France face au terrorisme*. Paris: La Documentation Française.

France (no date). *Qu'est-ce que la laïcité ?* , *Observatoire de la laïcité*. Available at: https://www.gouvernement.fr/qu-est-ce-que-la-laicite (Accessed: 5 July 2021).

Gregory, S. (2003). 'France and the War on Terrorism', *Terrorism and Political Violence*, 15(1), pp. 124–147.

Gunn, T. J. (2004). 'Religious freedom and laïcité: a comparison of the United States and France', *BYU L. Rev.*, p. 419.

Hansen, L. (2013). *Security as practice: discourse analysis and the Bosnian war*. Routledge.

Krause, K. and Williams, M. C. (1996). 'Broadening the agenda of security studies: Politics and methods', *Mershon international studies review*, 40(Supplement_2), pp. 229–254.

Mitzen, J. (2006). 'Ontological security in world politics: State identity and the security dilemma', *European journal of international relations*, 12(3), pp. 341–370.

Nugier, A. *et al.* (2016). '«Nouvelle laïcité» en France et pression normative envers les minorités musulmanes [Secularism in France and normative pressure against Muslim minorities]', *International Review of Social Psychology*, 29(1).

Ockrent, C. and Leclerc, G. (2003). *Prononcé le 3 avril 2003 - Interview de M. Jean-Pierre Raffarin, Premier ministre, à France 3 le 3 | Vie publique.fr*, *France 3*. Available at: https://www.vie-publique.fr/discours/139373-interview-de-m-jean-pierre-raffarin-premier-ministre-france-3-le-3 (Accessed: 2 July 2021).

Patterson, M. and Monroe, K. R. (1998). 'Narrative in political science', *Annual review of political science*, 1(1), pp. 315–331.

Raffarin, J.-P. (2003). *Prononcé le 29 avril 2003 - Déclaration de M. Jean-Pierre Raffarin, Premier ministre, en réponse à u | Vie publique.fr*, *Service d'Information du Gouvernment*. Available at: https://www.vie-publique.fr/discours/141461-declaration-de-m-jean-pierre-raffarin-premier-ministre-en-reponse-u (Accessed: 2 July 2021).

Resende, E. S. A. (2017). *Americanidade, puritanismo e política externa: a (re) produção da ideologia puritana e a construção da identidade nacional nas práticas discursivas da política externa norte-americana*. Contra Capa.

Shadid, W. and van Koningsveld, P. S. (2005). 'Muslim Dress in Europe: Debates on the

Headscarf', *Journal of Islamic Studies*, 16(1), pp. 35–61. doi: 10.1093/jis/16.1.35.

Somers, M. R. (1994). 'The Narrative Constitution of Identity: A Relational and Network Approach', *Theory and Society*, 23(5), pp. 605–649. Available at: http://www.jstor.org/stable/658090.

Stasi, B. (2003). 'Commission de reflexion sur l'application du principe de laïcité dans la republique', *La Documentation française*.

Steele, B. J. (2007). 'Making Words Matter: The Asian Tsunami, Darfur, and "Reflexive Discourse" in International Politics', *International Studies Quarterly*, 51(4), pp. 901–925. Available at: http://www.jstor.org/stable/4621748.

Steele, B. J. (2008). 'Ontological Security in International Relations : Self-Identity and the IR State', *Ontological Security in International Relations: Self-Identity and the IR State*, pp. 1–215. https://doi.org/10.4324/9780203018200.

Subotić, J. (2016). 'Narrative, ontological security, and foreign policy change', *Foreign policy analysis*, 12(4), pp. 610–627.https://doi.org/10.1080/01419870.1997.9993974.

Windle, J. (2004). 'Schooling, symbolism and social power: The hijab in republican France', *The Australian Educational Researcher*, 31(1), pp. 95–112.

OBSERVARE
Universidade Autónoma de Lisboa

e-ISSN: 1647-7251
Vol. 13, Nº. 1 (May-October 2022)

PARADIPLOMACY AS THE PRODUCT OF STATE TRANSFORMATION IN THE ERA OF GLOBALISATION: THE CASE OF INDONESIA

ARIO BIMO UTOMO
ariobimo.hi@upnjatim.ac.id
PhD candidate in Social Sciences at Universitas Airlangga (Indonesia). Assistant Professor at the Department of International Relations, Universitas Pembangunan Nasional "Veteran" Jawa Timur. Researcher at the Center for Identity and Urban Studies. Advisor on sister city programs for the Surabaya City Government. The main focus of the author's research is on issues surrounding paradiplomacy, especially by cities.

Abstract

The study of international affairs has found itself increasingly intermingled with local contexts. This condition has led us to a more decentralised approach toward international relations, where more attention is given to the role of subnational units such as city and province. Numerous studies with systemic-level analyses have been dedicated to examining globalisation as a structure and its impact on the emergence of subnational governments in foreign activities, which can also be understood as paradiplomacy. However, there has been limited state-level analysis of how paradiplomacy relates to the evolving state role in the contemporary era. This paper attempts to fill the gap by drawing the experience of Indonesia, a unitary state and an emerging democracy, in reshaping its institutional structures to pave ways for its local governments in conducting paradiplomacy. This exploratory study uses library study to primarily explore official documents on Indonesian regional autonomy, mainly related to international cooperation. This paper asserts that the rise of paradiplomacy in Indonesia is driven by the domestication of global issues, decentralisation of power, and fragmentation of the formerly powerful central agency.

Keywords

Paradiplomacy; state transformation; Indonesia.

How to cite this article

Utomo, Ario Bimo (2022). Paradiplomacy as the product of state transformation in the era of globalisation: the case of Indonesia. In Janus.net, e-journal of international relations. Vol13, Nº. 1, May-October 2022. Consulted [online] on the date of the last visit, https://doi.org/10.26619/1647-7251.13.1.5

Article received on August 21, 2021 and accepted for publication on February 16, 2022

PARADIPLOMACY AS THE PRODUCT OF STATE TRANSFORMATION IN THE ERA OF GLOBALISATION: THE CASE OF INDONESIA

ARIO BIMO UTOMO

Introduction

The study of International Relations generally still revolves around the behaviour of countries that occur across borders. The state's central position, in this paper by Lake (2007: 1), is said to "stand for the foreseeable future". This idea is, to some extent, undeniable. Rooted in the study of Political Science, International Relations is generally busy explaining why a particular country takes specific actions or does not take certain actions. Even though non-state actors are starting to be included in the equation, commonly, they are still struggling with how the state will respond to the actions of these non-state actors.

A good example is taking case studies on terrorism, one of the most salient contemporary topics in international politics scholarships. Even though much research has been dedicated to analysing terrorists as non-state actors, the analyses still tend to emphasise how the state will manoeuvre against the existence of these actors. For example, Lai (2017) discusses the impacts of terrorism on the states' foreign policy. Valeriano and Maness (2018) also highlight the relations between terrorism and cyber security. Last but not least, there is also the likes of Okafor and Piesse (2018), who correlates the causes of the emergence of terrorism and its relation to cases in fragile countries. Without belittling other research that focuses on finding the link between international phenomena and behaviour at the state level, this shows that International Relations is a study that still places state actors as the central figure in its study.

However, the increasingly vigorous movement of international issues, driven by the increasing flow of globalisation, has prompted International Relations scholars to find alternative explanations for the interactions between international actors. International issues spread despite the existing political borders. We cannot truly distinguish domestic and international realms as the line has been blurred between those two, bringing us to the concept of intermestic, a portmanteau of the terms "international" and "domestic". This term widely appears in numerous research trying to divert our attention to a more localised global politics version. Those researches remind us that contemporary scholars need to pay more attention to domestic aspects when analysing global issues (see Friedrich, 2018; Huijgh, 2017; Huang and Wang, 2021).

Studies on the intermingling between the global and local context in the era of globalisation were notably initiated by Robertson (1995), who has warned Social Science researchers to be cautious in assuming globalisation as a phenomenon that overrides localities. According to Robertson, the dichotomous debate about homogenisation or particularisation cannot fully see the problem because what is currently happening is the transcendence between the two, giving birth to a concept he coins as "glocal" or a combination of globalisation and localisation.

In other terms, glocalisation can also include the hybridisation process. Pieterse (2019) formulates this idea of globalisation which does not automatically eliminate particularity. A good analogy is the creation of McAlooTikki by McDonald's India to cater for the local patrons, even though the spread of the aforementioned fast food joint itself is a global phenomenon (Reyaz 2013, p.244). This situation gave rise to terms such as "think global, act locally", which can be interpreted that each region has its particularity even though it is faced with the globalisation phenomenon, which seems to be a universal occurrence.

Pieterse (2019) states that globalisation is an extensive process permeating every aspect of life. Another essential idea from him is that glocalisation can also strengthen supranational and subnational regionalism. What is meant in this context is that not only globalisation can create new supranational blocs that respond to global issues, but it can also cause subnational government actors to adjust their positions on these issues. Therefore, globalisation in structural terms needs also to be understood as "the increase in the available modes of organisation: transnational, international, national, microregional, municipal, and local." (Pieterse, 2019: 72-73)

In light of that explanation, this paper attempts to see a facet of globalisation related to how subnational units are getting more power in international affairs. In the field of International Relations, such international affairs conducted by local governments is called parallel diplomacy or paradiplomacy. This paper tries to demonstrate how globalisation permeates the domestic level and transforms the role of states into making subnational governments the new international actors. In doing so, the author will bring the case of Indonesia's paradiplomacy through which we can see how globalisation brings a rise to subnational actors.

The structure of this paper will be structured as follows. First, the author will describe the logic behind globalisation and its impact on state dysfunction in carrying out activities to resolve their issues. Second, this paper will continue with how the dysfunction of the state causes subnational actors to come to the fore. Third, this paper will trace how the state then fragments and delegates its power to subnational actors to carry out paradiplomacy through case studies in Indonesia that can be related to the phenomenon of globalisation mentioned in the previous two sub-chapters.

In doing so, this paper utilises the State Transformation perspective developed by Hameiri et al. (2019), a frame of analysis that emphasises the development of states' roles in the era of globalisation where the global permeates into the local. The core of this perspective consists of three aspects: (1) fragmentation, (2) decentralisation, and (3) internationalisation. First of all, fragmentation refers to delegating the policy-making process to different actors. Then, decentralisation means allocating power to sub-state entities, for example, provincial and municipal governments. Third, internationalisation understands that there is a crossroads between domestic and international issues, so state agencies have begun to interact across borders (Hameiri et al., 2019: 4-5). Those three dimensions will be the departing points in seeing how paradiplomacy occurs due to the states' development under globalisation.

The main argument of this paper is that paradiplomacy is a product of state transformation driven by how globalisation slowly incapacitates centralised states and forces them to delegate some of its power to subnational actors. On the other hand, globalisation does not create uniformity but encourages glocalisation, absorbing the international issues into domestic realities. As a result, subnational governments welcome globalisation as an opportunity to internationalise themselves through paradiplomacy activities.

Previous studies on the topic

The study of paradiplomacy is still on the rise, and it has been getting more popular within the last few years in Indonesia. Among the earliest works that explore the concept of paradiplomacy from the Indonesian perspective are done by Damayanti (2012), bringing the argument that the practice of paradiplomacy can be used by Indonesia to enhance its stature within ASEAN. The study provides an idea that paradiplomacy has the potential to increase the depth of cooperation between members in regional organisations.

Some other articles, such as by Effendi (2012), Alam et al. (2020), as well as Moenardy and Sinaga (2021) add to the body of literature by using the economic lens in seeing the benefits of paradiplomacy. Those articles argue that paradiplomacy is an opportunity for Indonesian local governments to promote their international competitiveness by enhancing entrepreneurial government spirit. Mukti (2013), on the other hand, goes with a more holistic study, exploring the issue of paradiplomacy from four sides: International Relations, diplomacy, legal-formal, and practical. In his work, he highlights the prominence of the Indonesian Regional Autonomy in enabling the subnational government to perform in international affairs before providing case studies from the province of West Java, East Java, and the Special Region of Yogyakarta.

Regarding the use of State Transformation in the study of Indonesian paradiplomacy, Karim (2019) 's work has provided an essential foundation by highlighting the activities of frontier areas of Indonesia such as Batam and West Kalimantan participating in para-diplomacy activities with foreign territories bordering them (Singapore and Malaysia, respectively). However, the point of view Karim uses, in this case, is the dimension of border studies, which emphasises how regions respond to border management challenges that commonly occur in areas that share borders. Another dimension of paradiplomacy that has not been explored is the dimension of globalisation, or how the intensification of the spread of global issues ultimately encourages the redistribution of power from the state to the regions (Kuznetsov, 2014). Therefore, this paper will offer a new contribution from this aspect and see how globalisation has encouraged Indonesia to delegate the power to carry out diplomacy to the regions.

The author observes that while many Indonesian paradiplomacy pieces of research go directly to evaluating practices case studies or discuss them from the juridical side, departing from globalisation will add to the existing literature in viewing paradiplomacy as a necessity. In developing countries, paradiplomacy is not optimal because the implementing regions do not adequately perform it (Nganje, 2013). Meanwhile, there is also the possibility that the minimal knowledge of paradiplomacy will make the activity just a mere ceremony (Tavares, 2016). Thus, such a study is needed to prepare developing countries to welcome globalisation more responsively to essential issues.

Glocalisation and the rise of subnational actors

Even though the Westphalian nation-state system seems to be the prevailing status quo, it is not immune to objections after all this time. A notion of the "post-Westphalian order" is thus offered to accentuate the evolving global system. Linklater (1996: 78) defines the so-called post-Westphalian global system as a system in which the exclusionary nature of traditional sovereignty is put into question as "the central purpose of the state is mediating different loyalties at the subnational, national and international levels." Drawing from the European case study, he asserts this argument by saying that the bond which holds the communities within a state together is being challenged by globalisation and new loyalties towards subnational communities. In another article, Osiander (2001: 251) even dismisses the Westphalian order as a "myth" and describes it as construction that hampers the development of different International Relations theories by fixating it upon a largely imaginary concept of sovereignty which finds its roots from an event from the seventeenth century. The debate goes on until now and finds its ways through different aspects of global politics such as security (Sperling, 2017; Doyle and Dunning, 2018; Mircea, 2020), culture (Mancini, 2017; Beyer, 2020), as well as the political economy (Langan and Price, 2020; Hester and William, 2020). Consequently, nation-states are increasingly dysfunctional in managing affairs in an increasingly connected world (Bell 1987; Ohmae, 1992). However, from such a vast array of discussions, there is a conclusion that globalisation has created deterritorialisation and decentralisation as the new norms in managing global issues.

However, globalisation itself is not a monolith, and not all countries experience it uniformly from time to time. Following Swyngedouw's (2004) idea, globalisation has a two-way process. First, it infuses global issues and trends into daily human life. However, on the other hand, globalisation also allows subnational actors to express their interests in international forums. According to Robertson (1995), this two-way process is called glocalisation. Robertson argues that globalisation creates not only uniformity but also cultural enclaves, each of which can have its characteristics in globalisation, hence a "localised" version of global issues. Robertson finds that globalisation can lead to differences in local politics that differentiate the practice of globalisation in one place versus another. This condition makes the approaches might differ between countries to meet global trends.

Regarding the rise of local actors, Keohane and Nye (1971) are the prominent names who notably bring the study to the table through their work entitled *Transnational Relations and World Politics: An Introduction.* The authors develop a theoretical framework that departs from the traditional wisdom, which puts states as the basic unit of action in global politics. This work mainly responds to realism, which treats states as the main actors in international affairs. Keohane and Nye argue that the increasingly interdependent relations will bring a new trend called "transnational relations" rather than the conventional "international relations". By definition, transnational relations refers to "interactions across state boundaries that are not controlled by governments' central foreign policy organs" (Ibidem: 331). In this case, the notion of transnationalism begins from acknowledging that the dynamics between states—as we know it and thus becomes the basic of realist thinking—does not occur within a vacuum. This argument means that several other factors contribute to play, including geography, domestic politics, and the advancement of technology. Therefore, global interdependence also creates a window of opportunity for the new international actors to build mutual interests.

A need to see the rise of these new international actors can also be seen through the speech by Javier Solana (1998) at the *Symposium on the Political Relevance of the 1648 Peace of Westphalia*. Regarding the concept of Westphalian sovereignty, he implies that the prevailing state-centric point of view is less able to accommodate the increasing interdependence of actors in this globalising world. Drawing from the European Union lessons, Inanc and Ozler (2007: 127) resonate with this argument by stating that the notion of traditional international relations is insufficient to explain the increasing level of interaction and transaction under globalisation.

From here, we can conclude that we are now facing a condition where (1) scholars need to re-shift their attention toward the increasingly glocalised version of international issues and (2) states need to restructure themselves in the face of globalisation. Otherwise, they will be highly dysfunctional as issues are now moving fast despite the existing borders, and those issues permeate into the domestic realm within their borders. On the other hand, this signifies a condition where traditional international relations are reshaped to accommodate more actors.

If we relate the above discussions to the concept of glocalisation that this paper has mentioned earlier, then the unification of the world into a more integrated system has made local governments now begin to engage in their capacity as subnational actors (Mukti, 2014: 176). Theoretically, this phenomenon is called paradiplomacy, a portmanteau of "parallel" and "diplomacy", which translates to the capacity of subnational actors to engage in foreign diplomacy in order to fulfil their specific interests (Wolff, 2009). It is named "parallel" because it occurs alongside the traditional diplomacy that the state does. This definition infers a meaning where the host states share their power in foreign activities with the subnational governments. Currently, the notion of paradiplomacy is normalised as the standard practice in international relations. In this case of normalisation, he argues that paradiplomacy is too relevant to be dismissed in the current international context. The normalisation of paradiplomacy is measured through the intended outcomes, but it can also be studied as an assertion of "institutional autonomy in an increasingly complex context" (Cornago, 2010: 35). Next, it is essential to unveil the logic behind the existence of paradiplomacy due to the transforming role of the state in the current context.

State transformation and paradiplomacy

Previously, we have seen that globalisation brings with it the interconnection of issues and actors, which ultimately renders the absolute nature of the state obsolete. Here, the author argues that one of the lenses that we can use to view the phenomenon of paradiplomacy is to relate it to how the state's role has evolved in globalisation.

The concept of state transformation was developed by Hameiri and Jones (2016), with the main idea of this concept departing from the assumption that global governance is facing a crisis. Meanwhile, the crisis in question is the difficulty in balancing the relevance of multilateral institutions with domestic interests in a country. Thus, the authors argue that in this era of globalisation, what is no less critical for the state is transforming its institutional functions to respond to global challenges better.

The consequence of living in the post-Westphalian era is that countries can no longer minimise the impact of an issue in their territory. A case study on this is the mitigation of the Severe Acute Respiratory Syndrome, more popularly known as SARS, pandemic in China. The clash between Westphalian and post-Westphalian logic is at play here because China, as the first affected country, decided to postpone official information about SARS to save the domestic economy. On the other hand, the World Health Organisation (WHO) has vigorously announced the research results on SARS that China can no longer hide from the public. In this case, WHO's meta-governance positions it as an international oversight agency that defines the institutions, capacities, and relationships that China had to develop domestically to address global health problems (Hameiri and Jones 2016: 392).

The state transformation theory asserts a "pluralisation of cross-border state agency via contested and uneven processes" (Hameiri et al., 2019: 1). This idea arises as a further analysis upon the post-Westphalian order, which can no longer regard that only one central solid authority can "resolve all questions and contestations into a single foreign policy" (Ibidem: 3). There are three points that Hameiri et al. made in explaining such transformation. First of all, there is a process of fragmentation, noting that the initially powerful central agency has now been pushed to distribute its resources to different actors and sub-agencies, including private and public agencies. Second, there is also the process of decentralisation. Through this process, the central agency is now sharing its power with subnational entities such as regions, provinces, and cities. Lastly, state transformation also occurs as the domestic agencies have become involved internationally. In such a sense, globalisation will not be experienced equally by all the states in the world. Also, this concept reaffirms the post-Westphalian notion that states should no longer be regarded as single-unitary actors in international politics.

Following that explanation, paradiplomacy is equal to the internationalisation stage of state transformation. Here, the author sees it as an effort to transform the state to respond to global issues whose influence has spread to the domestic level. Repeating what Bell (1987) and Ohmae (1992) argued about the dysfunctional concept of the unitarian nation-state in the post-Westphalian system, paradiplomacy is necessary for countries to keep themselves relevant amidst the advent of new international actors. In this case, the practice pursued by the state is to allow local governments to participate in formulating foreign activities based on their specific interests. To give an example of how state transformation is linked to paradiplomacy, the next section will discuss how the transformation of state functions in Indonesia ultimately results in more regions practising paradiplomacy.

The case of Indonesia

Indonesia is an interesting case study. It is a country that has recently been undergoing a transition from an authoritarian government to a democratic one. Previously, Indonesia was under Suharto's New Order regime, where the Indonesian Constitution was "sacralised" to the extent that criticising Suharto was equal to criticising the Constitution. This had resulted in the legitimation of Suharto's authoritarian rule for 32 years (Hutagalung, 2017). In this era, Indonesia was a centralised country where power was concentrated in the hands of the President and development based on regional autonomy had no place in the political reality in Indonesia.

However, in 1998, Suharto's government collapsed following the crisis in Asia. Delin (2000) argues that the fall of the Suharto regime can be categorised as one of the phenomena of the third wave of democratisation experienced by world countries. In this context, Delin sees that globalisation has contributed to the downfall of authoritarian regimes because it was driven by several factors such as the emergence of Western-educated Indonesian democrats and the loss of legitimacy of authoritarian governments in the face of the global economic crisis. This argument, for example, is consistent with other works of literature that discuss the relationship between globalisation and democratisation, such as Acemoglu and Robinson (2006), who say that maintaining authoritarianism will be increasingly costly in an increasingly integrated world, and Xie et al. (2021) who finds that globalisation is positively correlated with democratisation based on their study of 129 countries in the period 1974-2018.

According to the State Transformation theory, the first dimension that changes the state's function is the emergence of fragmentation of the initially centralised body. This condition is due to the state's incapacity to manage increasingly complex problems. Fragmentation is marked by the spread of power-taking agencies that were previously centralised in one agency to many agencies, often with overlapping responsibilities (Hameiri et al., 2019: 5).

The 1945 Constitution stipulates that Indonesia is a unitary state. The Constitution, therefore, implies that the ultimate decision-making power rests with the central government. Such a context is different from the case of federal states, where the constituent states have more autonomy in the law-making process. Prior to the 1998 reformation, however, the 1945 Constitution recognised the *trias politica* model of power fragmentation, which divides the government into legislative (making laws), executive (implementing laws), and judicial (supervising the implementation of laws). However, this division of power remained ineffective because, in practice, the legislature could also issue decrees that supported the will of the rulers (Hutagalung, 2017: 339). Following the amendment of the 1945 Constitution in 1999 after the fall of Suharto, the powers are now fragmented even further to six powers, and those powers are: constitutive, executive, legislative, judicial, inspective, and monetary (Marlina, 2018: 176). In this case, fragmentation occurred in the post-Suharto era to minimise abuse of power in the hands of the executive.

First, the constitutive power is the power to change and establish the Constitution and is exercised by the People's Consultative Assembly (*Majelis Permusyawaratan Rakyat*). Executive power, which is the power to implement laws and the administration of the state government, is held by the President. Legislative power, which is the power to make laws, is held by the House of Representatives (*Dewan Perwakilan Rakyat*). The judicial power, which is the power to hold courts in order to uphold law and justice, is held by the Supreme Court and the Constitutional Court. The penultimate power is the inspective power related to the conduct of inspections on the management and responsibility for state finances. The Financial Auditing Agency exercises this power. The sixth and last power, the economic power to set and implement monetary policy, regulate, and maintain the currency's value, is exercised by Bank Indonesia as the central bank in Indonesia.

Although this dimension does not directly relate to the discussion of the practice of paradiplomacy in Indonesia, it provides some background on the current state of power fragmentation in the Indonesian government. After all, this fragmentation of power marks the context of Indonesia's post-reform democratisation. This condition is ripe for international cooperation due to its increasing regard to more accountable governance. A more detailed explanation of transferring power from the centre to the regions will be facilitated by implementing decentralisation.

From the aspect of decentralisation, Indonesia came up with regional autonomy, which later became the next stage after the fragmentation following the end of the New Order regime. Regional autonomy in the reformation era was the answer to the demands of society that commonly appeared in the New Order regime, such as the problem of uneven development, the government that is too centralised, and the ineffectiveness of the bureaucracy. The first regulation on decentralisation was stipulated through the Act No. 32 of 2004 on the Regional Autonomy. This regulation was later amended by Act No.23 of 2014 to catch up with the developments in the state, state administration, and demands for regional government administration (Indonesia, 2004).

The decentralisation aspect is fundamental to the study as paradiplomacy is related to how the powers are dispersed from central agencies to regions as implementers. Even though paradiplomacy positions subnational governments as the prominent actors, states as the highest sovereignty holder are the ones that need to bestow the power to the regional actors. Therefore, even though the Indonesian regional governments can now manage their affairs, they still have limited authorities (Mukti et al., 2020: 140). There are six powers reserved only for the central government. Those powers are foreign policy, defence, security, judiciary, monetary, and religion (Indonesia, 2014).

From the aspect of internationalisation, we need to understand that the context underlying Indonesia's paradiplomacy activities is the awareness that foreign activities are not only the central government's domain. Within the Act Number 37 of 1999 concerning Foreign Relations, Article 1 paragraph (1), Article 5 paragraph (1), and paragraph (2), it is implied that foreign relations are any activity involving international aspects carried out by the government at the national and subnational level. The subnational level referred to by this regulation are the cities (*Kota*), regencies (*Kabupaten*), and the provinces (*Provinsi*).

In its implementation, paradiplomacy by Indonesian subnaitonal governments is supervised by the Minister of Home Affairs and the Minister of Foreign Affairs. The two ministers coordinate in the implementation of foreign relations and their implementation. In Act No. 24 of 2000, article 5 paragraph (1), it is stated that state institutions and government agencies, which have plans to conclude international agreements, must first conduct consultations and coordination regarding plans with the relevant ministers.

With the Act as mentioned above No.32 of 2004, it is also mentioned that autonomous regions can carry out foreign cooperation as contained in Article 42 paragraph (1). There, it is stated that the Regional House of Representatives (*Dewan Perwakilan Rakyat Daerah*) has the function to give approvals for international cooperation carried out by regional governments. It is also emphasised in the explanation of the article that in addition to sister cities or province activities, local governments can also make "technical cooperation agreements including humanitarian assistance, loan and grant forwarding cooperation, capital participation cooperation and other cooperation following the laws and regulations" (Mukti, 2014: 182).

The essence of state transformation as a response to the glocalisation of issues is slowly being captured through paradiplomacy opportunities for Indonesia's cities, regencies, and provinces. Nowadays, regions in Indonesia are starting to establish cooperative relations based on the interests they most want to pursue. According to Lecours (2008), the interests in paradiplomacy are divided into three levels. First is economic interest, involving cooperative activities that attract foreign investment or promote local products. Second is knowledge interest, a paradiplomacy level that aims to increase knowledge through exchanges and capacity building programs. Third is political identity interest, a paradiplomacy that attempts to display an international image distinguished from the one possessed by the parent state. In connection with the Indonesian Constitution, which reserves the implementation of central politics to the state power, Indonesian subnational governments can only perform paradiplomacy at the first and second levels.

Paradiplomacy at the first level, namely economic interests, can be found on issues such as tourism and the creative economy. For example, tourism is a prevalent glocalised issue that many Indonesian regional governments focus on. It has become attention because of its promising position as the extension of the creative economy strategy in the current era. Arionesei et al. (2014) see that tourism has now become a global issue because of the growth of leisure time, accompanied by a better living standard, as well as increasing tourism demands by the international community. The advancement of information technology has made it possible for people to find different new touristic destinations. In response to this globalising tourism, the city of Bandung in West Java translates the issue by developing its own "halal tourism" concept by conducting paradiplomacy through tourism fairs by inviting Muslim country representatives as well as foreign journalists to come to Bandung (Dermawan et al., 2020). On the other hand, highly touristic regions such as Bali and the Special Region of Yogyakarta are also well-known for promoting their tourism potentials through foreign engagements (Adil, 2017; Rahmawati, 2019; Sabarno, 2021).

At the second level of paradiplomacy, the paradiplomacy infused with interest to increase knowledge, we can take environmental issues as an example. Responding to environmental demands that are starting to be felt at the local level, cities such as Surabaya (East Java) have established a thematic paradiplomacy with the city of Kitakyushu with a focus on green cooperation. This partnership with Kitakyushu also led to the development of the Green Sister City Program to manage waste and prevent this environmental issue from spreading into a more significant health issue (Wardhani & Dugis, 2020). Suppose we trace it up to the international context leading to the cooperation. In that case, we can find that the choice of the theme of green cooperation was initiated from a need to answer the eleventh point Sustainable Development Goals

(SDGs), regarding sustainable cities and settlements. This point regarding the SDGs is then translated into Indonesia's national plan to follow the SDGs as a national development priority that requires synchronisation of planning policies at the sub-national government level. Based on the SDGs, Surabaya then translated it into a vision of "Surabaya, a prosperous city with a strong character and a global competitiveness based on ecology" (Surabaya City Government, 2016). Surabaya also implemented regional development plans, which the Surabaya City Government facilitated through foreign cooperation schemes, one of which was with Kitakyushu through green cooperation. The implementation of the green sister city between Surabaya and Kitakyushu is an example of how the domestication of global issues translates to the paradiplomacy among subnational governments.

Admittedly, the paradiplomacy activities carried out by regions in Indonesia are still far from perfect. One lingering issue is that some paradiplomacy plans have stopped following the creation of the Memorandum of Understanding. Therefore no practical implementations are made (see Erika & Nurika, 2020; Putri & Adnan, 2017; Rani, 2014). However, this does not negate that a precondition has led to these regional activities on the international scene. In this case, the transformation of the Indonesian state can explain such a phenomenon. As a result, the regions now have a window of opportunity to interpret the reality of globalisation based upon their specific interests and react accordingly through cooperation.

The decentralisation and internationalisation phase of the state transformation are so closely related. The role of subnational governments in globalisation can be explained by a need to look at local aspects of the economy, followed by a need to look at local aspects of the state system. The logic of glocalisation is that it creates a particularity obtained by translating the global context into local aspects. The closer the translation is to the constituents, the more unique a subnational government is in globalisation (van der Heiden & Terhorst, 2007). In this context, the subnational government is a political actor whose function is to capture the needs and local context of the community below. On the other hand, decentralisation allows sub-national governments to have the political and structural capabilities to interact with international actors and global values in line with the transformation of power at the state level.

Conclusion

This paper has attempted to answer a question on how subnational units are getting more power in international relations. More specifically, it tries to shed light upon an issue about what makes them more engaged in international affairs through paradiplomacy. Throughout the discussion, the author has shown that the explanation can be related to how globalisation has been absorbed at the local level, creating the "intermestic" approach to varying life problems. This condition makes not every country faces this phenomenon uniformly. In addition, in responding to globalisation, countries also feel dysfunction increasingly due to growing issues and increasingly felt at their local level. This condition is known as hybridisation because each locality will experience global issues in different measures.

Paradiplomacy is a product of globalisation. It affirms the increasing role of non-state actors studied so far by International Relations scholars. The emergence of regions as actors of globalisation can be traced using the perspective of state transformation, which has three dimensions: fragmentation, decentralisation, and internationalisation. First, central government agencies are separated from a single body to more specific ones. Then, countries in globalisation are increasingly demanding to delegate their power to a lower level because global issues have permeated the regional level. The states are becoming more and more overwhelmed with managing those issues. The delegation of power made the region realise its needs and then carry out foreign activities through paradiplomacy.

The author has presented the case of Indonesia as an illustration of how state transformation can lead to the active participation of regions to carry out paradiplomacy. This activity can be viewed in two ways, firstly as a way for countries to compromise with increasing global demands, which are increasingly pressing them to delegate their power. Moreover, the second is a way for regions to assert their locality in the era of globalisation with specific collaborations with foreign partners.

Nevertheless, the author sees that new avenues of research can still improve this paper in the future. For instance, subsequent studies can focus on different case studies, especially in states that still adhere to authoritarianism. State transformation entails a condition of democracy and requires a delegation of powers. Also, more attention can be paid to analysing how leaders' characteristics affect Indonesia's regions to internationalise, especially their choice of partners and global issues to translate towards cooperation.

References

Adil, A. (2017). *Paradiplomasi Antara Provinsi Daerah Istimewa Yogyakarta Dengan Prefektur Kyoto, Jepang*. Doctoral dissertation, Universitas Wahid Hasyim Semarang.

Alam, G. N.; Sinaga, O.; Affandi, R. N. & Dermawan, W. (2020). The Role of the Government of West Java as a Sub-National Actor in Increasing Local Economic Development Through Paradiplomacy Economic. *Solid State Technology*, 63(4), 5413-5420.

Arionesei, G.; Stanciu, P.; Moroșan, S. A. A. & Cosma, P. D. S. M. R. (2014). Tourism Today: Why Is It a Global Phenomenon. In *International Conference Sustainable Development in Conditions of Economic Instability*: 240-248.

Bell, D. (1987). The world and the United States in 2013. In *Daedalus*: 1-31.

Beyer, P. (2020). Global migration, religious diversity and dialogue: Toward a post-westphalian circumstance. In *Religious diversity and interreligious dialogue*. Springer, Cham: 27-42.

Charountaki, M. (2018). State and non-state interactions in International Relations: an alternative theoretical outlook. In *British Journal of Middle Eastern Studies*, *45*(4): 528-542.

Damayanti, C. (2012). Potensi Paradiplomasi Dalam Mendukung Kinerja Diplomasi Indonesia Menuju Komunitas ASEAN. *Jurnal Transformasi*, *14*(22).

Delin, A. B. (2000). *The third wave of democratisation in Indonesia*. Naval Postgraduate School Monterey CA.

Dermawan, W.; Akim, A. and Primawanti, H. (2020). Paradiplomasi Bandung Menuju Kota Wisata Halal, *Indonesian Perspective*, vol. 5, no. 2, November: 183-200, https://doi.org/10.14710/ip.v5i2.34133.

Doyle, D.; & Dunning, T. (2018). Recognising fragmented authority: towards a post-westphalian security order in Iraq. *Small Wars & Insurgencies*, *29*(3): 537-559.

Effendi, T. D. (2012). Enhancing Local Government's International Competitive Advantage Through Entrepreneurial Government and Paradiplomacy Activities. *Prosiding Seminas*, *1*(2).

Erika, L., & Nurika, R. R. (2020). Perkembangan Sister City Surabaya-Guangzhou Dan Dampaknya Terhadap Kemajuan Kota Surabaya. *Jurnal Hubungan Internasional*, *13*(2): 141-162.

Friedrichs, J. (2018). "Intermestic security challenges: Managing transnational bonds." *European Journal of International Security* 3.2: 162-186.

Hameiri, S. & Jones, L. (2016). Global governance as state transformation. *Political Studies*, *64*(4): 793-810.

Hameiri, Shahar; Jones, Lee & Heathershaw, John (2019). Reframing the rising powers debate: state transformation and foreign policy, *Third World Quarterly*, 40:8: 1397-1414, https://doi.org/10.1080/01436597.2019.1594182.

Hester, R. J. & Williams, O. D. (2020). The somatic-security industrial complex: theorising the political economy of informationalised biology. *Review of International Political Economy*, *27*(1): 98-124.

Horner, R.; Schindler, S.; Haberly, D. & Aoyama, Y. (2018). Globalisation, uneven development and the North–South' big switch'. *Cambridge Journal of Regions, Economy and Society*, *11*(1): 17-33.

Huang, Z. and Rui Wang. (2021). "China's "intermestic" public diplomacy on social media during the US-China trade war." *International Studies Association 2021 Annual Convention-WF41: Comparative Public Diplomacy; Diverse Identities Engaging Internationally*.

Huijgh, E. (2017). "Indonesia's "Intermestic" Public Diplomacy: Features and Future." *Politics & Policy* 45.5: 762-792.

Hutagalung, M. P. (2017). Reformasi UUD 1945 melalui Konvensi Ketatanegaraan. *Jurnal Hukum & Pembangunan*, *29*(4): 335-349.

Inanc, H.; Ozler, H. (2007). Democratic Deficit in EU: Is there an institutional solution to over-institutionalisation? *Alternatives: Turkish Journal of International Relations*, *6*(1&2): 114-138.

Indonesia, R. (2004). Undang-Undang Republik Indonesia Nomor 32 Tahun 2004 Tentang Pemerintahan Daerah. *Jakarta (ID): RI*.

Indonesia, R. (2014). Undang-Undang Republik Indonesia Nomor 23 Tahun 2014 tentang Pemerintahan Daerah. *Jakarta (ID): RI*.

Karim, M. F. (2019). State transformation and cross-border regionalism in Indonesia's periphery: contesting the centre. *Third World Quarterly*, *40*(8): 1554-1570.

Kuznetsov, A. (2014). *Theory and practice of paradiplomacy: Subnational governments in international affairs*. Routledge.

Lai, B. (2017). "Terrorism and Foreign Policy." *Oxford Research Encyclopedia of Politics*. https://doi.org/10.1093/acrefore/9780190228637.013.491.

Lake, David A. (2007). The State and International Relations Available at SSRN: https://ssrn.com/abstract=1004423.

Lecours, A. (2008). *Political issues of paradiplomacy: lessons from the developed world*. The Hague: Netherlands Institute of International Relations' Clingendael'.

Linklater, A. (1996). "Citizenship and sovereignty in the post-Westphalian state." *European Journal of International Relations* 2(1): 77-103.

Mancini, S. (2017). Global religion in a post-Westphalia world. In *Handbook on Global Constitutionalism*. Edward Elgar Publishing.

Marlina, R. (2018). Pembagian Kekuasaan Dalam Penyelenggaraan Pemerintahan Di Indonesia. *Jurnal Daulat Hukum*, *1*(1).

Mircea, S. T. A. N. (2020). The Resilience Stage of Security and the impact on the Sovereignty of the Nation-State. Post-Westphalian Logic. *Redefining Community in Intercultural Context*, *9*(1): 195-200.

Moenardy, D. F.; & Sinaga, O. (2021). West Java Trade Diplomacy in Increasing Exports of Micro, Small, And Medium Enterprises (Msmes) In the Covid-19 Pandemic. *Review of International Geographical Education Online*, *11*(6): 1-7.

Mukti, T. A. (2013). *Paradiplomacy Kerjasama Luar Negeri oleh Pemda di Indonesia*. The Phinisi Press Yogyakarta.

Mukti, T. A., (2020) Politik Paradiplomasi Pemerintah Republik Indonesia. *Jurnal Majelis*, 1: 1-21.

Mukti, T. A.; Fathun, L. M.; Muhammad, A.; Sinambela, S. I. & Riyanto, S. (2021). Paradiplomacy Policies and Regional Autonomy in Indonesia and Korea. *Jurnal Hubungan Internasional*, *9*(2): 139-152.

Nganje, F. I. (2013). *Paradiplomacy: A Comparative Analysis of the International Relations of South Africa's Gauteng, North West and Western Cape Provinces*. Doctoral dissertation, University of Johannesburg.

Nye, J. S.; & Keohane, R. O. (1971). Transnational relations and world politics: An introduction. *International organisation*, *25*(3): 329-349.

Ohmae, K. (1995). *The end of the nation state: The rise of regional economies*. Simon and Schuster.

Okafor, G., and Piesse, J. (2018). "Empirical investigation into the determinants of terrorism: Evidence from fragile states." *Defence and Peace Economics* 29.6: 697-711.

Osiander, A. (2001). Sovereignty, international relations, and the Westphalian myth. *International organisation*, *55*(2): 251-287.

Putri, S. N. & Adnan, M. (2017). Kegagalan Kerjasama Sister City Kota Semarang dengan Kota Beihai. *Journal of Politics and Government Studies*, *6*(2): 251-260.

Rahmawati, M. (2019). Upaya Promosi Pariwisata untuk Menjadikan Daerah Istimewa Yogyakarta sebagai Daerah Tujuan Wisata Terkemuka di Asia Tenggara pada Tahun 2025.

Rani, F. (2014). *Efektivitas Kerjasama Sister City Kota Semarang (Indonesia) dengan Brisbane (Australia) Tahun 2002-2007*. Doctoral dissertation, Riau University.

Reyaz, M. (2013). Glocalisation and the Media: Studies from the South. *International Studies*, *50*(3): 240-254.

Robertson, R. (1995). Glocalisation: Time space and homogeneity heterogeneity. In M. Featherstone, S. Lash & R. Robertson (Eds), *Global maternities*. London: SAGE Publications.

Sabarno, D. K. (2021). Paradiplomasi Pemerintah Provinsi Bali Untuk Sister Province Bali Dengan Ho Chi Minh Di Bidang Pariwisata. *Review of International Relations (Jurnal Kajian Ilmu Hubungan Internasional)*, *3*(1).

Solana, J. (1998). Securing Peace in Europe. NATO. https://www.nato.int/docu/speech/1998/s981112a.htm.

Stiglitz, J.E. (2008) Making globalisation work. The 2006 Geary Lecture. *The Economic and Social Review*, Vol. 39, No. 3, Winter: 171–190.

Surabaya City Government. (2016), Rencana Pembangunan Jangka Menengah Daerah Kota Surabaya Tahun 2016 – 2021. Lembaran Daerah Kota Surabaya Tahun 2016 Nomor 8

Tavares, R. (2016). *Paradiplomacy: cities and states as global players*. Oxford University Press.

Therien, J. P. (1999). Beyond the North-South divide: the two tales of world poverty. *Third World Quarterly*, *20*(4): 723-742.

Valeriano, B. and Maness, R. (2018). "International relations theory and cyber security." *The Oxford Handbook of International Political Theory*: 259.

Van der Heiden, N.; & Terhorst, P. (2007). Varieties of glocalisation: the international economic strategies of Amsterdam, Manchester, and Zurich compared. *Environment and Planning C: Government and Policy*, *25*(3): 341-356.

Wardhani, B. & Dugis, V. (2020). Greening Surabaya: The City's Role in Shaping Environmental Diplomacy. *Bandung*, *7*(2): 236-258.

Wolff, S. (2009). Complex power-sharing and the centrality of territorial self-governance in contemporary conflict settlements. *Ethnopolitics*, *8*(1): 27-45.

Xie, Y., Zhang, J. & Yang, Z. (2021). Globalisation, state capacity and the third wave of democratisation: an empirical study. *Applied Economics*, *53*(29): 3377-3390.

OBSERVARE
Universidade Autónoma de Lisboa

e-ISSN: 1647-7251
Vol. 13, Nº. 1 (May-October 2022)

JANUS.NET
e-journal of International Relations

ACCEPTING ULTRAPERIPHERY: THE ROLE OF THE CONFERENCE OF PERIPHERAL MARITIME REGIONS (CPMR) IN THE TERRITORIAL MOBILIZATION STRATEGY OF THE GOVERNMENT OF THE AZORES WITH THE EUROPEAN UNION

ANDRÉ PIMENTEL GARCIA

andre.pimentel_garcia@coleurope.eu

Master Degree student in European Studies, College of Europe-Natolin (Poland). Master Degree in Political Science, University of Minho. Bachelor Degree in Communication Science, University of Porto.

SANDRINA FERREIRA ANTUNES

santunes@eeg.uminho.pt

Assistant Professor, University of Minho (Portugal). Bachelor Degree in International Relations and a Master Degree in Political Anthropology. Ph.D. in Political Science. She is Director of the Bachelor Degree in Political Science, University of Minho. She is an integrated member of the Centre for Research in Political Science, University of Minho and a scientific fellow, Research Centre for Political Life at the Libre University of Brussels. She was a visiting researcher, London School of Economics and University of Edinburgh and is Institute of International Studies (IBEI) in Barcelona. She received a scholarship from the Foundation for Science and Technology. She collaborated with the Committee of the Regions and the Assembly of European Regions. She was a political consultant for the Government of Catalonia and is a member of the Scientific Council of the Coppieters Foundation, Brussels. Her research focuses on nationalist movements within the European Union and on the representation strategies of regional and local entities within the European Union and on the Europeanization processes of small centralized states, such as Portugal, resulting in a book published by Routledge, 'Europeanization and Territorial Politics in Small European Unitary States: A Comparative Analysis'.

Abstract

The territorial mobilization strategy of the Regional Government of the Azores (GRAA) with the European Union (EU) is based on the use of all regionally based representation channels provided by the EU, including the Transregional European Associations (TEAs). Among these, we highlight the Conference of Peripheral Maritime Regions (CPMR) which GRAA presided during the 11th and 12th Governments, in the person of the president of GRAA Vasco Cordeiro. Based on this observation and given that the literature still does not offer any information on the purpose of using TEAs, this article aims to fill this gap by identifying the purpose of thee GRAA's using the CPMR. Thus, using the conceptual framework offered by Callanan and Tatham (2014) and by conducting eight semi-structured interviews with political and technical personalities from the GRAA and the CPMR, it was possible to conclude that the GRAA uses the CPMR mainly for the purpose of regulatory mobilization. (4.9 out of 5) and residually for the purpose of financial mobilization (3.3 out of 5). More specifically, in terms of regulatory mobilization, the essential issue for the GRAA is the maintenance of a strong cohesion policy, although sporadic opportunities are probed in various policy areas that may result in more advantageous frameworks for the GRAA. In terms of financial mobilization, the use of the CPMR is mainly related to the formation of consortia that can be an end in itself or can constitute an opportunity to prove certain political points.

Keywords

Territorial mobilization; Regional Government of the Azores (GRAA); European Union; Conference of Peripheral Maritime Regions.

How to cite this article

Garcia, André Pimentel, Antunes, Sandrina Ferreira (2022). Accepting ultraperiphery: the role of the Conference of Peripheral Maritime Regions (CPMR) in the territorial mobilization strategy of the Government of the Azores with the European Union. In Janus.net, e-journal of international relations. Vol13, Nº. 1, May-October 2022. Consulted [online] on the date of the last visit, https://doi.org/10.26619/1647-7251.13.1.6

Article received on January 4, 2022 and accepted for publication on April 13, 2022

ACCEPTING ULTRAPERIPHERY: THE ROLE OF THE CONFERENCE OF PERIPHERAL MARITIME REGIONS (CPMR) IN THE TERRITORIAL MOBILIZATION STRATEGY OF THE GOVERNMENT OF THE AZORES WITH THE EUROPEAN UNION[1]

ANDRÉ PIMENTEL GARCIA

SANDRINA FERREIRA ANTUNES

Introduction

The territorial mobilization strategy of the Regional Government of the Azores (GRAA) with the European Union (EU) is based on the use of all regionally based representation channels provided by the EU, including the Transregional European Associations (TEA). Among these, we highlight the Conference of Peripheral Maritime Regions (CPMR) which the GRAA presided over during the 11th and 12th Governments, in the person of the president of the GRAA Vasco Cordeiro between 2014 and 2020. The Europeanist vocation of the GRAA (Valente, 2017) and of the successive governments manifests itself in a strategy of strength in all channels of regional mobilization (Antunes and Magone, 2020). The Autonomous Region of the Azores (RAA) is not limited to trying to remedy a condition of apparent disadvantage, as is the case of the outermost regions. In fact, this potential is used as a strength and an opportunity by the region, as attested by Vasco Cordeiro, the President of the Regional Government of the 11th and 12th Governments of the Azores (from 2012 to 2020) (interview 2021h). In the same line of thought, for the assistant to the Regional Undersecretary of the Presidency for External Relations between 2012 and 2016 and Regional Director for European Affairs between 2016 and 2020: "*insularity is not fought*, *it is accepted*" (interview 2021b).

Therefore, it is in this particular context that the European political system emerges as a structure of political opportunity that allows regional entities to compensate for their peripheral position (Beyers and Kerremans, 2012). Participation in the European decision-making process, through the institutionalization of formal and informal channels, inside and outside European institutions, has allowed sub-national actors to influence key institutional actors at European level (Tatham, 2008). The objective is to influence the decision-making process in matters that may affect the interests of the Region, on the one hand, and to monitor funding opportunities that can enhance regional

[1] Article translated by Carolina Peralta.

development, on the other. The idea is to anticipate and sometimes override the action of central governments, in a proactive attitude that has earned the name of national bypassing (Keating et al, 2015).

The RAA's representation strategy with the EU as an Outermost Region (OR) does not differ from the strategies developed by other similar political regions. Similar to what happens with the German Landers or the Spanish Autonomous Communities, the GRAA participates in the dynamics of representation that arise within the framework of multilevel governance (MLG), seeking to promote the interests of the Azores Archipelago through the use of different channels - or access routes - provided by the EU itself. In this regard, Gary Marks (e.g. 1992 and 1993) was a pioneer in the operationalization of this new dynamic of European multilevel governance. Due to a context of power dispersion that operates upwards, for the European institutions, and downwards, for the sub-state entities, regional (and sometimes local) authorities feel legitimated to participate in decision-making at European level. This access is made through two routes, the national route provided by the Permanent Representation of Portugal to the European Union (REPER) and the Brussels route, although the latter is the most favoured given the freedom and autonomy of action it offers. It is in this last category that, along with the Regional Offices in Brussels (Rowe, 2011; Tatham, 2010), the participation in the TEA, such as the CPMR (Greenwood, 1997), stands.

Thus, by integrating the CPMR, the RAA fulfils the imperative signalled by Bomberg and Peterson (1998: 229): any subnational authority that wants to influence decision-making processes in the EU must position itself in coalitions within and between TEA. Thus, it can influence institutions, listing, as a bargaining chip for access to political decision-makers, the triad of information, experience and legitimacy (Beyers et al. 2008).

Whereas, on the one hand, the EU is understood as a structure of political opportunity by subnational territorial authorities (regional and local), on the other hand, European institutions need information from the domestic (including subnational) level, from technical advice to potential compliance issues (Beyers and Karremans, 2007). In addition, subnational entities, which actively participate in the download of European guidelines, must also be involved in the upload process (Bursens, 2010: 163-164). Thus, the territory is consolidated not as a neutral component, but as an interactive system in which specific conditions, resources, ties and capabilities coexist.

However, the literature on RAA mobilization in the EU is quite scarce. The existing literature essentially focuses on the mobilization of the Portuguese Autonomous Regions in favour of the definition and consolidation of the Ultraperipheral Region (UR) (Valente, 2013, 2016a, 2016b and 2017). More recently, Callanan and Tatham (2014), as well as Antunes and Magone (2020), contributed to the identification of the mobilization rationales underlying the activity of regional and local representative offices. Still, the dynamics of regionally based territorial mobilization via the TEA continue to be little studied. Even so, the salience of the TEAs, namely the CPMR, is confirmed by the aforementioned authors, as well as by the systematic mention in other studies of territorial mobilization strategies (Bomberg and Peterson, 1998; Hooghe, 2007; Tatham, 2008; Rowe, 2011).

This article aims to fill this gap by identifying the purpose of the GRAA´s use of the CPMR through the concepts of regulatory mobilization and financial mobilization (Callanan and Tatham, 2014). With this purpose in mind, this article will be organized into five parts. At first, it will identify the regionally based representation channels made available by the EU, among which the CPMR stands out. Then, it will present the conceptual framework of analysis and explain its methodological choices before presenting and discussing the data. Finally, in the conclusion, it will make some general considerations and identify new research paths.

1. Regionally based representation channels in the European Union: the case of the CPMR

The EU offers multiple opportunities for regionally based territorial mobilization. This process, through which interest groups move between access points, is called 'venue shopping', a term coined by Baumgartner and Jones (1993), which can be applied to European dynamics. This concept refers to the search for the access point to the EU that offers the best opportunities to achieve the actor's specific objectives. In the case of the EU, the literature distinguishes between the national route and the European routes (Loughlin, 1997; Hooghe, 1995; Greenwood, 1997). Within the latter, we identify formal channels and informal channels (Beyers and Bursens, 2006: 1075).

According to Greenwood (1997), the national route refers to the mediation provided by the national governments themselves through the Permanent Representation of Portugal to the EU (REPER). The use of the national route depends on the role of the central government in different stages of the European political process, including decision-making in the Council and its implementation, i.e. it depends on the extent to which the central state provides a familiar and convenient route of access to regional interests. Greenwood (ibid.) describes centralization as conducive to successful use of the national route. This is due to centralization providing better governmental coordination in terms of European affairs. In contrast, for more decentralized states, coordination is more difficult.

The Brussels route, also known as the European route, consists of the use of formal and informal channels that involve direct representation in the European institutions (Antunes and Magone, 2020). In fact, it is mainly on the Brussels route that we can speak through formal and informal channels. In order to be characterized as formal, channels must simultaneously fulfil two conditions (Kovzridze, 2002: 129): first, relationships must be regulated by the constitution or any other document with legal status, such as laws or intergovernmental agreements between levels of government; second, the relationship between the structures (sub-state, national and supranational authorities) must be ensured by inter-institutional coordination mechanisms, exercised on a regular basis. Informal relationships are defined in opposition to the former, which is why they take place without legally foreseen institutional mechanisms.

Within the framework of the Brussels route, the main formal channel of specifically regional representation is the Committee of the Regions (CoR). There are other formal channels, namely the European Commission, the European Council and the European Parliament, which, although they are formal channels of representation, are nationally and not regionally based. Informal channels of regional mobilization are based on practices that are not required by law, but which are capable of eclipsing formal rules (Kovziridze, 2002; Beyers and Bursens, 2006; Hogenauer, 2014) and becoming highly institutionalized, used on a regular basis and relevant to regional mobilization strategies. The main informal channels are essentially two: The Regional Representative Offices, widely covered in the literature on territorial mobilization in the EU (Hooghe, 1995; Marks et.al, 2002; Tatham, 2008; Rowe, 2011) and the TEAs, the "poor relative" of regional offices given the little attention it has received from the literature.

Despite this lack of attention, the TEAs are important thanks to the characteristics of the European decision-making process. This is the tendency to reward aggregate interests, for reasons of legitimacy and efficiency, given the competition for time, naturally limited, between interests (Bomberg and Peterson, 1998: 229). Also noteworthy is the more explicit recognition of the need to involve regional and local government associations in the EU policy process at European and national level with initiatives. Examples include as the White Paper on European Governance, the "structured dialogue" with associations of regional and local authorities and the provisions on local and regional authorities of the Treaty of Lisbon (Callanan, 2012: 756).

The CPMR is a TEA that is part of the informal channels of the Brussels route, similar to the Regional Representative Offices. Created in 1973 (CPMR, 1973) in Brittany, France, by 23 regions from eight-member states, the CPMR is a TEA that aims to promote the development of European territory, with special emphasis on the development of maritime and peripheral regions. The CPMR functions as a strategic office (think tank) and as a regional lobby, and is made up of around 114 regions. Its members come from regions of 24 member and non-member states of the European Union, representing approximately 200 million people. These regions are subdivided in the institutional structure into Geographical Commissions[2] (GC) which, since 1980 with the emergence of the first GC, of the Islands, correspond to the maritime basins of the European continent. As an example of its dynamism, we can mention that the CPMR was very useful in co-organizing conferences with the EC on issues where the latter felt that more consultation was needed (Tatham, 2010), mainly due to its ability to mobilize maritime regions. In fact, the CPMR is important, as attested by its mention in several works (Bomberg and Peterson, 1998; Tatham, 2008; Rowe, 2011; Callanan and Tatham, 2014; Antunes and Magone, 2020), with authors naming it among peers able to exert a significant presence regarding EU mobilization.

Regarding the participation of the RAA in the CPMR, the RAA has been part of the organization and has participated in its activities since 1979, even before Portugal joined the then EEC. There are no records of the Azores having served as president or vice president of the Conference before 2014, the year when Vasco Cordeiro was elected as president of the CPMR, at the General Assembly in Umeå (Sweden). The election of Vasco Cordeiro was repeated in 2016 in Ponta Delgada and in 2018 in Funchal, considering that the terms of office are for two years. Even so, there is an effort on the part of the governments of Carlos César, president of the Government of the Azores between 1996 and 2012, who also presided over the GC of the Islands for at least one term (interview

2 For additional information, check the CPMR website here: https://cpmr.org/who-we-are/geographical-commissions/ acceded on 10 December 2021.

2021b; RTP-Açores, 2010). The TEAs, like the CPMR, have a role in promoting specific regional interests when they overlap with those of other regions and can be instrumentalized by some regions to advance their agenda (Tatham, 2008: 508). Still, limited attention has been paid in the literature on regional mobilization to the TEAs (Beyers and Donas, 2012). In contrast, the importance of networking in gaining influence in EU policymaking processes has been repeatedly highlighted (Bomberg and Peterson, 1998; Tatham, 2008; Beyers and Donas, 2014).

Therefore, the strategy of mobilizing the RAA through the CPMR proves to be a case study capable of filling the gap in the literature in terms of the study of the TEAs. Whereas the prominence of the CPMR in the context of regional mobilization is proven by being mentioned in several works (Bomberg and Peterson, 1998; Tatham, 2008; Rowe, 2011; Callanan and Tatham, 2014; Antunes and Magone, 2020), the importance that the RAA attributed to it is confirmed by the successive presidencies of Vasco Cordeiro. Taking into account the conceptualization of the informal channels of the Brussels route, this research seeks to ascertain whether the concepts widely used in the study of Regional Representation Offices can be equally used in the study of a TEA.

2. The objectives of territorial mobilization: regulatory and financial mobilization

This research is based on a conceptual reflection already developed (Callanan and Tatham, 2014) on the types of mobilization that constitute the main rationales of regional actors in Brussels: financial mobilization, which arises with the centrality of the issue of cohesion policy in the study of subnational mobilization; and regulatory mobilization, less explored and seen as arising from the EU regulatory bias (Majone, 1994).

By financial mobilization, we refer to monitoring and collecting information with a view to accessing European funds for specific regions or areas. This mobilization is characterized as a more reactive process, with an emphasis on obtaining rewards or designing support for individual territories based on European funding schemes (Callanan and Tatham, 2014: 191-192). By regulatory mobilization, we mean a proactive and dynamic process in which regional and local governments seek to influence EU policies and legislative outcomes. Emphasis is placed on activities designed to influence the EU legislative process, where legislation has an administrative or financial impact on subnational governments (ibid: 194).

Although Callanan and Tatham have used these notions to explain the mobilization purposes associated with regional representation offices, we believe that this conceptual framework can be equally useful to understand the mobilization logics underlying the use of the TEAs, taking the CPMR as a particular case. In doing so, we intend to identify the purpose(s) for which the GRAA uses the CPMR for the purposes of representing its interests in the EU.

Finally, and similarly to what Callanan and Tatham argue, we believe that the GRAA, as an Autonomous Region with substantial political competences, will privilege territorial mobilization for lobbying purposes, that is, for the purposes of regulatory mobilization, as follows: GRAA uses the CPMR mainly for regulatory mobilization purposes and residually for financial mobilization purposes. This hypothesis, while expecting a greater prominence of regulatory mobilization, does not, however, exclude financial mobilization.

3. Research method and design

This paper consists of a case study (Yin, 2018: 49) that can be understood as an empirical method that examines a contemporary phenomenon (the case) in depth and within its context in the real world, especially when the boundaries between the phenomenon and the context are not clearly evident. A case study addresses a situation where there are many variables of interest and, therefore, benefits from the further development of propositions to guide design, information collection, and analysis.

Also according to Yin (ibid: 50), we can highlight three distinct applications of this study method. Case studies can aim at mere *description*, *explanation* or *exploration*. Thus, we speak of descriptive case studies when the purpose is to describe and identify the nature of a phenomenon. Alternatively, we speak of explanatory case studies when the purpose is mainly to explain the occurrence of a certain phenomenon. Finally, we speak of exploratory case studies when the purpose is above all to explore phenomena never studied before, thus treading new paths of intellection. The case study in question can be described as descriptive insofar as it seeks to identify the reasons for territorial mobilization that guide the action of the GRAA with the EU, in the use of the CPMR as a channel of informal mediation.

For the purposes of data collection, we favoured the use of primary sources through interviews with eight politicians and technicians relevant in the relationship between the GRAA and the CPMR. This sample is made up of almost all politicians at the highest level of the 11th and 12th Azores Governments who worked daily on European affairs and agreed to be interviewed. The initials of the interviewees resulted from a research in the official sources of the GRAA, but also from the contribution of the interviewees, namely at the level of the most relevant contacts in the CPMR.

Regarding the actual interviews, we prepared a semi-structured guide (Creswell, 2009), with open and closed questions (Appendix I). According to Mathews and Ross (2010), the semi-structured interview, with open and closed questions, follows a common set of topics or questions for each interview. It introduces the topics or questions in different ways or orders appropriate for each situation and allows the participants to respond to the questions or discuss the topic in their own words. Semi-structured interviews can be used for exploration, explanation and evaluation purposes. In this case, we use the first two: exploratory research to understand what participants think is important about the research topic and understand how they talk about it; and explanatory research to gather information that will help explain people's experience and the social phenomenon in a particular and profound way. For triangulation purposes, secondary sources were also used, such as official documents, mainly from the CPMR.

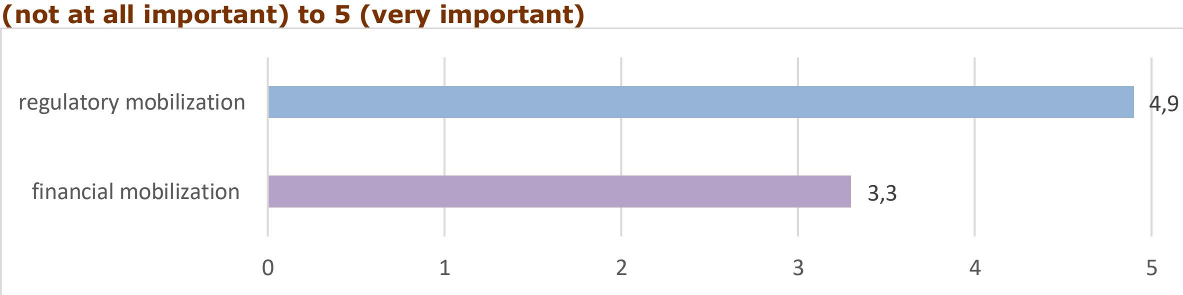
Data collection refers to the time frame 2012-2020. This period starts in 2012 with the election of the president of GRAA, Vasco Cordeiro, and ends in 2020 with the end of his term. In 2014, Vasco Cordeiro was elected for the first time as president of the CPMR. In 2016 and 2018, Vasco Cordeiro was re-elected for the second and third time, respectively. The year 2020 thus puts an end to the continuity of Vasco Cordeiro's term as president of GRAA and the CPMR.

4. Presentation and discussion of data

In the interviews with the eight individuals, they were asked to assign a value from 1 to 5 to each of the CPMR's mobilization objectives, with 1 being not at all important and 5 being very important. The global results are shown in graph 1, showing the average of the responses for each of the mobilizations.

Thus, regulatory mobilization is the most predominant, reaching an average of 4.9 out of 5, while financial mobilization reaches an average value of 3.3 out of 5. Nevertheless, the assistant to the Regional Undersecretary of the Presidency for External Relations between 2012 and 2016 and the Regional Director for European Affairs between 2016 and 2020 (interview 2021b) admits the strong link that exists between both objectives, as we will see later.

Graph 1 – Importance of each mobilization for the CPMR. The scale used ranges from 1 (not at all important) to 5 (very important)



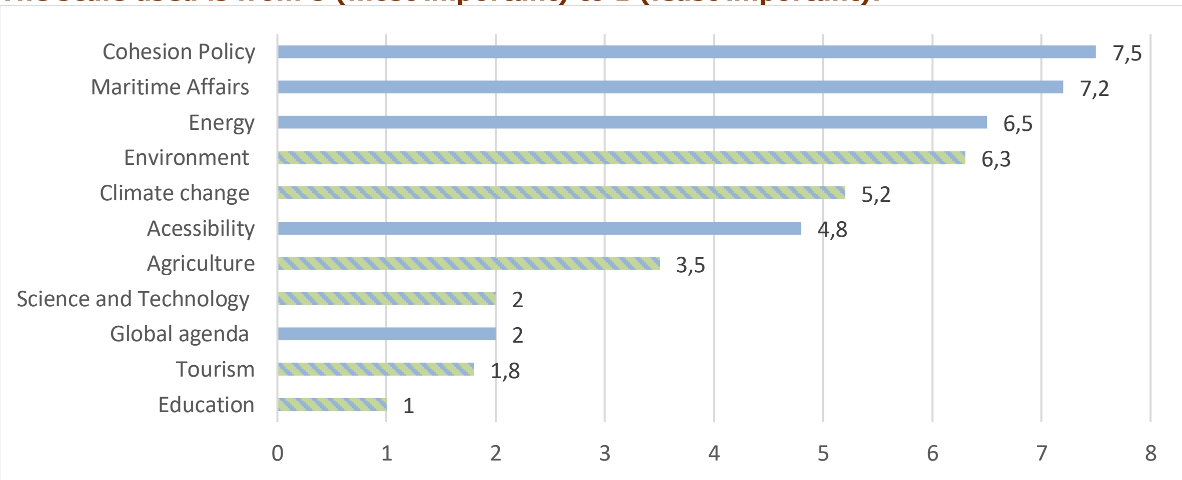
Source: Authors' own

Looking in more detail at the results obtained in Graph 2 below, with regard to regulatory mobilization, and similarly to what is mentioned in the literature (Callanan and Tatham, 2014), the preponderance of cohesion policy is obvious (7.5/8), maritime affairs (7.2/8), after the energy continuum (6.5/8), environment (6.3/8), and climate change (5.2/8). Accessibility also plays an important role in terms of mobilization opportunities (4.8/8). Of the 'official' areas of the CPMR, the one that seems least important to the GRAA is, in fact, the global agenda, especially related to migration. In the opinion of the Assistant Regional Undersecretary of the Presidency for External Relations between 2012 and 2016 and Regional Director for European Affairs between 2016 and 2020 (interview 2021b) and the Regional Undersecretary of the Presidency for External Relations between 2012 and 2016 (interview 2021g), although many ORs and other members of the CPMR receive a significant flow of migrants, this is not an issue that poses a problem for the Azores, which are positioned in terms of reception experiences (c.f. The Regions for Migrants and Refugees Integration – REGIN, Conference of Peripheral Maritime Regions, 2021).

In this context, cohesion policy is the key component of the CPMR, especially for the Azores, an OR considered a less developed region, with a GDP per capita below 75% of the EU average (Antunes and Magone, 2020: 8). Part of the CPMR's work includes advocating a strong cohesion policy that strengthens territorial cohesion in Europe. In this context, regulatory recognition of the specific characteristics of the outermost regions, safeguarded by Article 355 of the Treaty on European Union (TEU), and of other territories that face permanent deficits, such as islands, mountain regions and regions of low population density is particularly important (CPMR, 2013).

According to the Assistant to the Regional Undersecretary of the Presidency for External Relations between 2012 and 2016 and Regional Director for European Affairs between 2016 and 2020 (interview 2021b), the question of balance of interests is also present here, because, if the outermost regions defend a private disposition for themselves, the other territories are also entitled to do so. This opinion is corroborated by the president of the 11th and 12th Governments of the Azores (interview 2021h) when he states that the CPMR is not oriented – and was not even thought of – to defend only the interests of specific regions or even typologies of regions such as the ORs, but rather of all its members

Graph 2 – Averages of areas of regulatory mobilization ordered by GRAA interviewees. The scale used is from 8 (most important) to 1 (least important).



Note: In blue, the conventional areas of activity of the CPMR. In green, the additional areas suggested by respondents.
Source: Authors' own

In the context of cohesion policy, the CPMR regretted the proposed decrease in the EC budget, as well as the reduction in co-financing of regions with structural deficits, namely the ORs (European Commission, 2018a: 106-107), and the maintenance of the statutes concerned, in the Final Declaration of the 46th General Assembly of the CPMR (CPMR, 2018: 3-4). The CPMR played an important role in the crystallization of cohesion policy. "*In 2017, the European Commission launched a public consultation on what is expected of cohesion. It is curious that any reference to 'cohesion policy' was almost absent from that consultation, there was talk of cohesion, but 'cohesion policy' was something that was falling into disuse*" (interview with the President of the Regional Government between 2012 and 2020, 2021h).

This trend is also demonstrated by the CPMR report, 'The Impact of the CPMR 2015-2020' (CPMR, 2021), whose action had at least two important moments. In the first, the

CPMR was able to underline, at the highest level, the importance of Cohesion Policy in the post-2020 period. In the second, after several indications at a formal (European Commission, 2018a, pp. 106-107) and informal (interview 2021e) level of drastic cuts in Cohesion Policy, President Juncker expressed his support for this policy (European Commission, 2018b). In terms of the Azores, the most emblematic recent example will be exactly the negotiation process of the Multiannual Financial Framework 2021-2027.

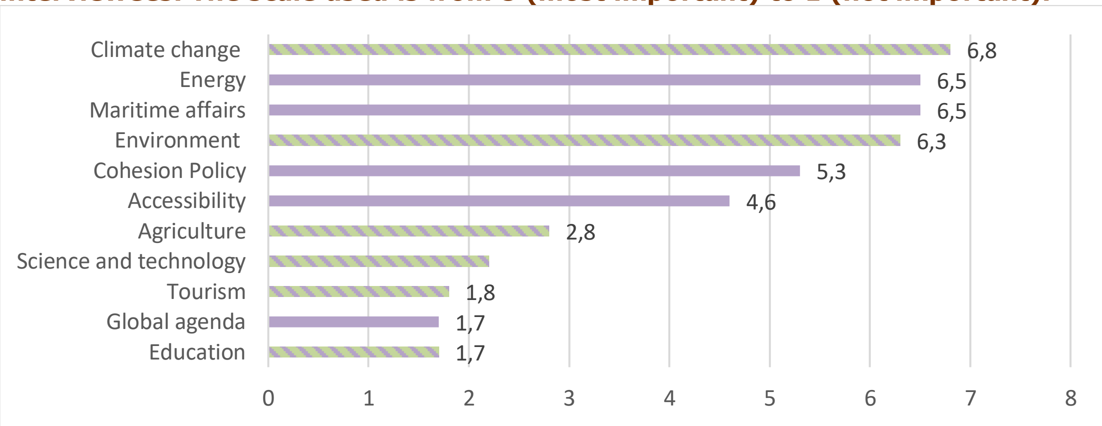
Overall, all respondents point to the dynamic posture of the organization that contributed to the EU maintaining a co-financing rate of 85% for the ORs (Official Journal of the European Union, 2013: 396). Although the CPMR was not the only channel in which the Azores acted, it is described by the GRAA interviewees as fundamental to the results obtained. According to the assistant to the Regional Undersecretary of the Presidency for External Relations between 2012 and 2016 and Regional Director for European Affairs between 2016 and 2020 and the advisor for External Relations of the President of the Regional Government of the Azores between 2012 and 2020 (interviews 2021a and 2021c), the EC's initial proposal envisaged a reduction in funds for the Azores, 70% of the funding would be provided by European funds, the remaining 30% would be provided by the region, which represented a decrease of 15 percentage points in relation to the European funding of the Multiannual Financial Framework 2021-2027 (Official Journal of the European Union, 2020: 468). This was effectively a success that added to the maintenance of the OR envelope in the previous Multiannual Financial Framework.

The pandemic has also played an important role, but there was a two-year work of contacts and conversation with the EC and the EP, which resulted in a fundamental change in the EU's stance towards the substantial fund that finances the ORs the most, according to the advisor for External Relations of the president of the Regional Government of the Azores between 2012 and 2020 (interview 2021c). Nevertheless, as mentioned by the Regional Undersecretary of the Presidency for External Relations between 2012 and 2016 (interview 2021g), there is a use of sporadic opportunities in several policy areas in terms of regulatory influence, especially in ensuring the mention and respect for the statute of outermost regions, as well as other measures to mitigate the added costs of insularity, which is why energy, transport and maritime policies are also important.

Regarding financial mobilization, the most important areas have to do with the environment in a broad way (graph 3): climate change (6.8/8), energy (6.5/8) maritime affairs (6.5/8), environment (6.3/8). Cohesion policy appears in a less important position compared to the prominence it has in regulatory mobilization. As the assistant to the Regional Undersecretary of the 12th Government of the Azores (interview 2021b) points out, when we talk about fundraising, we refer to "*identifying sources of funding other than those to which we would be entitled at the outset, for example, responses to calls, Horizon Europe, which we compete with other regions*".

In this regard, the projects that the member regions integrate, given the nature of their interests, stand out, in addition to the projects promoted by the consortia created within the organization itself. As the advisor for External Relations of the President of the Regional Government of the Azores between 2012 and 2020 explains (interview 2021c), "*these consortia are not exactly from the CPMR, they are from some of the regions that* *make up the CPMR (...). The organization [CPMR] assembles a consortium, typically 3 to 5 partners, applies as CPMR and, if it wins, the money is shared by all the regions*".

Graph 3 – Averages of the areas of financial mobilization ordered by the GRAA interviewees. The scale used is from 8 (most important) to 1 (not important).



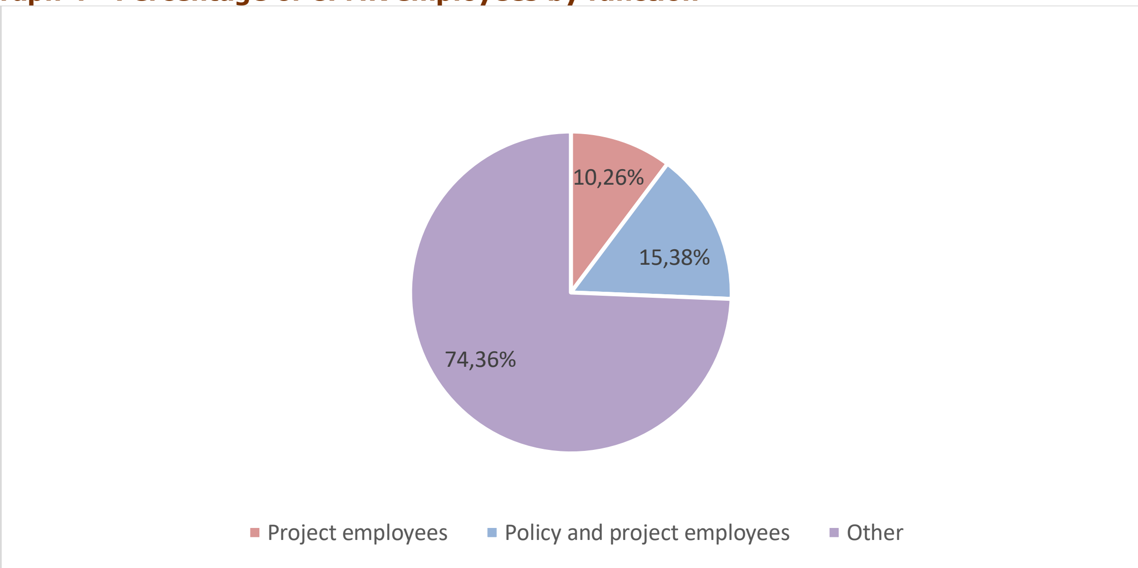
Explanation: In lilac, the conventional areas of activity of the CPMR. In green, the additional areas suggested by respondents.
Source: Authors' own

This information is also confirmed by the Assistant to the Regional Undersecretary of the Presidency for External Relations between 2012 and 2016 and the Regional Director for European Affairs between 2016 and 2020 (interview 2021b), who states that "*these regions can determine that the CPMR will keep a part of the financial envelope for its own financing, to accompany the project, but it is not the core business of the CPMR. The CPMR operates normally until the moment the consortium is formed*".

As we can see in Graph 4 below, some of the CPMR employees are only assigned to projects, such as Interreg, because what they do all their time is to develop these projects, they are the so-called project employees. Different from the above are policy and project officers, who spend between 20% and 30% of their time on projects and the rest on political issues, with a more regulatory bent. Cumulatively, the number of employees who dedicate themselves to the projects reaches approximately 26% of the total, although only about 10% do so exclusively.

At the CPMR, participation in Interreg programmes is also noteworthy, since the organization's structure is based on Geographical Commissions. According to the executive secretary of GC of the Islands (interview 2020e), the CPMR reached "*critical mass in terms of participation in some projects at European level*" and was a partner in about four dozen projects at the time of the interview, so it is relatively easy for the CPMR to set up a consortium and conduct a project. In this sense, the assistant to the Regional Undersecretary of the Presidency for External Relations between 2012 and 2016 and the Regional Director for European Affairs between 2016 and 2020 (interview 2021b) confirms the primacy of the practice of regulatory mobilization over financial mobilization by stating that: "(..) *although the participation of projects is important, the GRAA sought above all to promote regulatory mobilization at the level of the CPMR'. And she adds that "(..) as a rule, the regions that search for other [non-pre-allocated] funds where they* *have to do it in a competitive way, it is because they do not receive the structural funds that we receive* (...)".

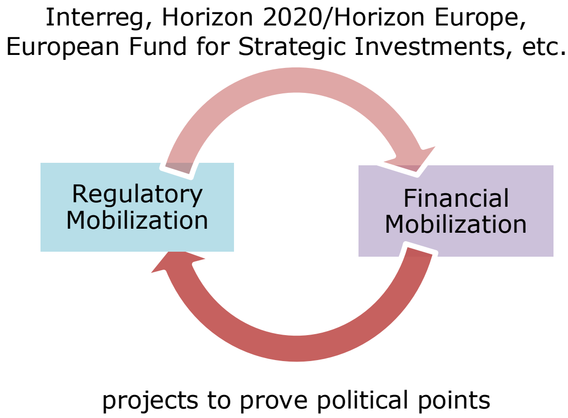
Graph 4 - Percentage of CPMR employees by function



Source: Authors' own[3]

However, as a final note, it should be noted that day-to-day practice presents 'grey areas'. Sometimes, consortia can have a dual purpose: they can be an end in themselves or they can be also an opportunity to prove certain political points (interview with the advisor for External Relations of the 12th Regional Government of the Azores, 2021c), so it is impossible to separate the two purposes of territorial mobilization, as shown in Figure 1.

Figure 1 – Relationship between regulatory mobilization and financial mobilization at project level



Source: Authors' own

[3] About the CPMR, check the website: https://cpmr.org/who-we-are/ acceded on 10 December 2021.

Conclusion

The CPMR is important to the RAA because it enables networking, the importance of which has been highlighted in gaining influence in regional mobilization in the EU (Bomberg and Peterson, 1998; Hooghe and Marks, 1996, Tatham, 2008; Beyers and Donas, 2014). On the other hand, this horizontal interaction between regions through TEAs has received limited attention in the literature (Beyers and Donas, 2014).

This article aimed to identify the objectives behind the use of the TEAs, namely the CPMR, by complementing previous research and focusing only and deeply on the strategy of mobilizing the GRAA in the EU through the CPMR. The importance of the CPMR is evidenced by being mentioned in several works (Bomberg and Peterson, 1998; Tatham, 2008; Rowe, 2011; Callanan and Tatham, 2014), with authors naming the organization among peers able of exerting a significant presence at the level of EU mobilization. Of these authors, the contribution of Antunes and Magone (2020) stands out, who used the conceptual framework of Callanam and Tatham (2014) to study the general mobilization strategy of regional authorities in Mainland Portugal (i.e. the Regional Coordination and Development Commissions) and the Portuguese Autonomous Regions in Brussels.

By using this same conceptual framework, we intend to understand for what purpose(s) the GRAA uses the CPMR regarding its regional mobilization strategy. From the beginning, in line with Callanan and Tatham (2014), we assumed that, as an autonomous region, the GRAA would privilege regulatory mobilization over financial mobilization, without excluding the latter. Data analysis corroborated this hypothesis: regulatory mobilization is the most predominant, reaching an average of 4.9 out of 5, while financial mobilization reaches a value of 3.3 out of 5, although most respondents admit the strong connection that exists between both objectives.

Regulatory mobilization is also the central area of action for the association. The essential issue for GRAA is the maintenance of a strong cohesion policy. As an OR and a less developed region, this factor is crucial for the development of the GRAA. The main focus is on cohesion policy (7.5/8). However, opportunities are also probed in various policy areas that could result in more advantageous frameworks for the GRAA, namely maritime affairs (7.2/8), energy (6.5/8) and environment (6.3/8).

In terms of financial mobilization, the GRAA is mainly interested in areas that have to do with the continuum of climate change (6.8/8), energy (6.5/8), maritime affairs (6.5/8) and environment (6.3/8). In this context, the performance of the CPMR, in line with the GRAA, is related to the formation of consortia for projects within the scope of Interreg, Horizon 2020/Horizon Europe or projects financed by the EIB. These projects can be an end in themselves or an opportunity to prove certain political points.

The main conclusion we draw from this study is that regulatory mobilization is more prevalent in the representation of the GRAA through the CPMR in the EU than financial mobilization. This mobilization strategy is mainly related to the cohesion policy and the maintenance of positive discrimination for the ORs, particularly in areas related to energy, the sea, the environment and accessibility. In this way, this article made it possible to study a Portuguese Autonomous Region individually through the conceptual framework used by Callanam and Tatham (2014), Tatham (2017) at the level of regional offices and local-based government associations and by Antunes and Magone (2020) to explain the mobilization strategy of the Portuguese Autonomous Regions in the EU.

Finally, when considering acting in and through a TEA with regional base common interests, this work can outline some research paths. On the one hand, the mobilization objectives conceptualized by Callanan and Tatham (2014) can be used to understand the dynamics of the TEAs. On the other hand, the literature lacks a deeper understanding of the rationale for using financial mobilization in the service of regulatory mobilization.

References

Primary sources

European Commission (2018b). *The outermost regions, a lasting support from the EU*. Accessed on 16 April 2022, https://ec.europa.eu/regional_policy/en/information/publications/factsheets/2018/les-regions-ultraperipheriques-un-soutien-perenne-de-l-ue

European Commission (2018a). Proposal for a Regulation of the European Parliament and of the Council. Accessed on 16 April 2022 https://eur-lex.europa.eu/legal-content/PT/TXT/HTML/?uri=CELEX:52018PC0375&from=PT

Conference of Peripheral and Maritime Regions (2021). "Projects – Global Agendas". Accessed on 9 February 2022, http://www.treasury.sa.gov.au/finance/pdf/mybr2001-02.pdf

Interview (2021a). Senior technician at the Directorate for European Affairs and Cooperation (2014-2020) and deputy to the Regional Undersecretary of the Presidency for External Relations (2016-2020). April 2021.

Interview (2021b). Assistant to the Presidency's Regional Undersecretary for External Relations (2012-2016) and Regional Director for European Affairs (2016-2020). March 2021.

Interview (2021c). External Relations Advisor to the President of the Regional Government of the Azores (2012-2020). May 2021.

Interview (2021d). Coordinator of the Structure for the Implementation of the Representation Office of the Autonomous Region of the Azores in Brussels (2017-2021). June 2021.

Interview (2021e). Executive Secretary of the GC of the Islands, CPMR. June 2021.

Interview (2021f). Executive Director of Policy and Think Thank, CPMR. June 2021

Interview (2021g). Regional Undersecretary of the Presidency for External Relations (2012-2016). June 2021.

Interview (2021h). President of the Regional Government (2012-2020). June 2021.

Official Journal of the European Union (2013). Regulation (EU) no. 1303/2013 of the European Parliament and of the Council, of 17 December. Accessed on 16 April 2022, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32013R1303

Official Journal of the European Union (2020). Amendments approved by the European Parliament on 13 February 2019. Accessed on 16 April 2022, https://eur-lex.europa.eu/legal-content/PT/TXT/?uri=CELEX:52019AP0096

Secondary sources

Antunes, Sandrina, Magone, José Manuel (2020). «With or without you: Mobilization strategies of Portuguese regional authorities». In *Regional Federal Studies* 30: 219–241.

Baumgartner, Frank, Jones, Brian (1993). *Agendas and Instability' in American Politics*. Chicago: University of Chicago Press.

Beyers, Jan, Donas, Tom (2014). «Inter-regional networks in Brussels: Analyzing the information exchanges among regional offices». In *European Union Politics*. Volume 15 (4): 547-571.

Beyers, Jan, Bursens, Peter (2006). «The European Rescue of the Federal State: How Europeanisation Shapes the Belgian State». In *West European Politics*. Volume 29 (5): 1057-78.

Beyers, Jan, Eising Rainner, Maloney, William (2008). «Conclusion: Embedding Interest Group Research». In *West European Politics*. Volume 31 (6): 1291-1302.

Beyers, Jan, Kerremans, Bart (2012). «Domestic Embeddedness and the Dynamics of Multilevel Venue Shopping in Four EU Member States». In *International Journal of Policy and Administration*. Volume 25 (2): 263-290.

Bomberg Elizabeth, Peterson Jan (1998). «European Union Decision-Making: The Role of Sub-National Authorities». In *Political Studies*. Volume 46 (2): 219-35.

Callanan, Mark (2012). «Subnational Collective Action: The Varied Patterns of Mobilisation of Local Government Associations». In *Local Government Studies*. Volume 38 (6): 753-775.

Callanan, Mark, Tatham, Michaël (2014). «Territorial interest representation in the European Union: actors, objectives and strategies». In *Journal of European Public Policy*. Volume 21 (2): 188-210.

Conference of Peripheral Maritime Regions of Europe (2015). «43rd CPMR General Assembly». November 2015.

Creswell, John (2009). *Research Design: Qualitative, Quantitative, and Mixed Methods Approaches*. London: Sage.

Greenwood, John (1997). *Representing interests in the European Union*. Basingstoke: Macmillan.

Högenauer, A.-L. (2014). «Formal Rules and Informal Cooperation: Inter-governmental Relations in Domestic European Policy Making in Comparative Perspective». In *Regional Federal Studies*. Volume 24: 321-340.

Hooghe, Lisbet (1995). «Subnational mobilization in the European Union». In *West European Politics*. Volume 18 (3): 175-198.

Keating, Michael, Lisbet, Hooghe, Michael, Tatham (2015) «Bypassing the Nation-State? Regions and the EU Policy Process in European Union: Power and Policy-Making». In Jeremy Richardson, Sonia Mazey (ed.), *European Union: Power and Policy-Making*. London: Routledge: 446–462.

Loughlin, John (1997). «Representing Regions in Europe: The Committee of the Regions». In Charlie Jefferey (ed), *The Regional Dimension of the European Union: Towards a Third Level in Europe?* London: Frank Cass: 147-165.

Majone, Giandomenico (1994). «The Rise of the Regulatory State in Europe». In *West European politics*. Volume 17: 77-101.

Marks, Gary (1992). «Structural Policy in the European Community» in Alberta Sbragia (ed.), *Euro Politics: Institutions and Policy Making in the New European Community*. Washington, DC: Brookings: 191-224.

Marks, Gary (1993). «Structural Policy and Multi-Level Governance in the EC». In Alan Cafruny, Glenda Rosenthal G. (ed.) *The State of the European Community: the Maastricht Debate and Beyond*. Boulder, CO: Lynne Rienner: 391-410.

Marks, Gary, Haesly, Richard, Mbaye, Heather (2002). «What Do Subnational Offices Think They Are Doing in Brussels?». In *Regional & Federal Studies*, 12 (3): 1-23.

Marks, Gary, McAdam, Doug (1996). «Social Movements and the Changing Structure of Political Opportunity in the European Union». In *West European Politics*. Volume 19 (2): 249-278.

Princen, Sebastian, Kerremans, Bart (2018): «Opportunity Structures in the EU Multi-Level System». In *West European Politics*. Volume 31 (6): 1129-1146.

Matthews, Bob, Ross Liz (2010). «*Semi-structured interviews*». In Bob Matthews, Liz Ross (ed.), *Research Methods: a practical guide for the social sciences*. Edinburgh: Longman publication: 218-234.

Rowe, Carolyn (2011). *Regional Representations in the EU: Between Diplomacy and Interest Mediation*. Basingstoke: Palgrave Macmillan.

Tatham, Michaël (2010). «'With or without you'? Revisiting territorial state-bypassing in EU interest representation». In *Journal of European Public Policy*. Volume 17: 76-99.

Tatham, Michaël (2017). «Networkers, fund hunters, intermediaries, or policy players? The activities of regions in Brussels». In *West European Politics* 40 (5): 1088-1108.

Tatham, Michaël (2008). «Going Solo: Direct Regional Representation in the European Union». In *Regional and Federal Studies*. Volume 18 (5): 493-515.

Yin, Robert (2017). *Case study research: Design and methods*. Thousand Oaks: Sage Publications.

ANNEX

INTERVIEW GUIDE

PART I: The Territorial Mobilization of the 11th and 12th Governments of the Azores in the EU

1. What are the biggest challenges of the GRAA in terms of mobilization in the EU?
2. Why an EU presence is strategically relevant to the GRAA?
3. Indicate the regionally based mobilization channels in order of importance to the GRAA's strategy, with 1 being the most important and 3 being the least important.
    - National channels
        - REPER (Permanent Representation of Portugal to the EU)
    - European channels
        - European Commission
        - European Parliament
        - Committee of the Regions
        - CPMR
        - Representative Office in Brussels
4. Can you please justify your ranking?
5. Based on two possible mobilization purposes – for the purposes of influence or lobbying and fundraising –, for what purpose does the GRAA use 3 main channels of representation, namely:

    a) Committee of the Regions*;*

    b) CPMR;

    c) direct representation via the representative office in Brussels
6. What is the importance of REPER for the representation of the interests of the Azores in the EU?

PART II: The participation of the Government of the Azores in the CPMR

1. When and how did the 11th and 12th GRAA first become aware of the mobilization opportunities at CPMR level?
2. From 0 to 5, what is the importance of the CPMR for the pursuit of GRAA´s strategy? (0 being not important and 5 being very important)
3. In which institutions do you mobilize through the CPMR? Rank in order of importance, with 1 being the least important and 4 the most important.
    a. European Parliament
    b. European Commission

c. Committee of the Regions

d. COREPER

Would you add any? Which?

4. For what purpose do you use the CPMR?

    a) to influence European legislation

    b) to probe availability of financial transfers to the region

    c) both

Assign a number from 0 to 5 (0 being not important and 5 being very important) to each one.

- To influence European legislation
- To probe availability of financial transfers to the region

5. When you use the CPMR to influence legislation, in which areas do you seek to act? Rate the different areas of activity from 1 to 5, with 1 being the least important and 5 the most important:
    - Cohesion
    - Regional policy
    - Energy
    - Maritime
    - Agriculture
    - Mobility
    - Education
    - Global agenda
6. Can you give examples of influence of European legislation?
7. Can you give examples of fundraising?

PART III: Evaluation of the Presidency of the CPMR and balance

1. What does the CPMR represent for the Government of the Azores?
2. What advantages did the CPMR Presidency bring to the Azores?
3. Do you think that the fact that you belonged to and held the presidency of the CRMR helped the Azores to fight insularity? If yes, in what way?
4. What were the main objectives of the CPMR presidency for the GRAA?
5. Bearing these goals in mind, what did they manage to do and what remained to be done?
6. How happy are you, from 1 (not at all happy) to 5 (very happy) with the mobilization potential of the CPMR in terms of:
    - Regulatory mobilization
    - Raising European funds
7. Which of the following policy areas continued to receive your attention in terms of mobilizing to influence European legislation?

- Cohesion
- Regional policy I
- Energy
- Maritime
- Agriculture
- Mobility
- Education

8. Which of the following policy areas continued to deserve your attention regarding fundraising?
    - Cohesion
    - Regional policy
    - Energy
    - Maritime
    - Agriculture
    - Mobility
    - Education
9. How has your level of satisfaction evolved over time? Has it been an ever-growing or up-and-down experience?
10. And now that the Government of the Azores no longer has the Presidency of the CPMR, what has changed?
11. Which other regions are particularly active in the CPMR?
12. Do you think you have learned from these experiences? In other words, do you think that the CPMR has been a source of learning for the Government of the Azores?
13. Do you think that the CPMR has encouraged networking with other regions? If yes, which regions have you networked with and in which areas of activity?
14. What benefits have the Azores reaped from this collaboration? Can you give examples?

OBSERVARE
Universidade Autónoma de Lisboa

e-ISSN: 1647-7251
Vol. 13, Nº. 1 (May-October 2022)

JANUS.NET
e-journal of International Relations

PORTUGUESE SCIENCE DIPLOMACY AND THE NETWORKS OF PORTUGUESE PROFESSIONALS, RESEARCHERS AND GRADUATE STUDENTS ABROAD: FROM THE ESCAPE TO THE CIRCULATION OF BRAINS

JOÃO MOURATO PINTO

jmouratopinto@gmail.com

Graduate and master in International Relations-European Studies by Coimbra University and Sciences Po Bordeaux. Professor of diplomacy and phD student at Minho University (Portugal), he has been studying the global action of the European Union, particularly in relation to Brazil and South America. A collaborating member of the Centre for Research in Political Science at that university, he has worked at the European Research Council (European Commission) and was the President of the Erasmus Student Network in 2017-2019, where he worked to improve the accessibility and quality of academic exchanges in higher education globally. His main research interests are the European Union's External Action, Brazilian foreign policy, South American regionalism, and diplomacy.

Abstract

Science diplomacy is a field born of the interaction between science and diplomacy. It arises in a context of extension of multilateralism to new actors, including scientists, higher education institutions, laboratories, companies, and cities. The Resolution of the Councils of Ministers No. 78/2016 is the legal matrix of Portuguese science diplomacy, presenting it as one of several pillars for the internationalization of science and technology in the country. Among various actors identified by this resolution, the "Networks constituted by Portuguese Professionals, Researchers and Graduate Students working abroad" have a high potential, especially considering the synergies they can create with embassies, through science advisors, higher education institutions and Portuguese cities. After a contextualization of science diplomacy as a discipline and European and national practice, this paper contributes to this debate through an exploratory reflection on the role of those networks in the operationalization of Portuguese science diplomacy.

Keywords

Science diplomacy; European Union; Portugal; emigration; higher education.

How to cite this article

Pinto, João Mourato (2022). Portuguese science diplomacy and the networks of Portuguese professionals, researchers and graduate students abroad: from the escape to the circulation of brains. In Janus.net, e-journal of international relations. Vol13, Nº. 1, May-October 2022. Consulted [online] on the date of the last visit, https://doi.org/10.26619/1647-7251.13.1.7

Article received on May 3, 2021 and accepted for publication on March 3, 2022

JANUS.NET, e-journal of International Relations
e-ISSN: 1647-7251
Vol. 13, Nº. 1 (May-October 2022), pp. 98-116
Portuguese science diplomacy and the networks of Portuguese professionals, researchers and graduate students abroad: from the escape to the circulation of brains
João Mourato Pinto

PORTUGUESE SCIENCE DIPLOMACY AND THE NETWORKS OF PORTUGUESE PROFESSIONALS, RESEARCHERS AND GRADUATE STUDENTS ABROAD: FROM THE ESCAPE TO THE CIRCULATION OF BRAINS[1]

JOAO MOURATO PINTO

Introduction

The notion of "science diplomacy" refers to a set of practices that cross the sectors of research, higher education, science, technology, and innovation, with the area of international relations, identifying points of common interest and instigating their collaboration in shared challenges. Its wide-ranging nature has resulted, on the one hand, into some conceptual confusion and, on the other, in constant innovation in its application.

This conceptual and pragmatic expansion has led some organizations to reflect on their contribution to science diplomacy. Among these, are the "networks consisting of portuguese professionals, researchers and graduate students abroad", which began to emerge over a decade ago spontaneously by Portuguese emigrants. The Resolution of the Council of Ministers No. 78/2016, which serves as a legal framework for science diplomacy in Portugal, assigns them a role of "interlocutor" between the Government and Portuguese embassies and emigrated researchers. This role of dialogue is an innovation that other countries have also sought to exploit and which, with the right strategy, can become a cornerstone of the future exercise of science diplomacy.

This work is part of a briefing paper written for the Ministry of Foreign Affairs (MNE) and the Ministry of Science, Technology and Higher Education (MCTES), and discusses the role these networks can play in the broader context of Portuguese science diplomacy. It looks at its potential to bring together graduate emigrants, especially those working in the scientific field, to contribute to replacing the term "brain drain" with "brain circulation". Also, it claims that networking and abroad, either temporarily or permanently, is an intrinsic condition for the scientific profession, affecting especially the most peripheral and resourceless countries. It is reasoned that such networks can serve as points of contact between the community and homeland, helping to integrate them into the new environment, while keeping them informed about and promoting their involvement in science made by the Portuguese, in Portugal and the rest of the world. This horizontal (between pairs) and vertical (with the country) interaction allows both

[1] Translated by Hugo Alves.

diplomacy and Portuguese science to include in their action the contribution of national scientists abroad, either through the knowledge obtained, or through the networks they are part of.

The study begins by highlighting the main aspects of the debate on the definition of science diplomacy, including its relationship with the so-called brain drain, then visits its implementation by the European Union (EU). This outline is followed by a more detailed examination of the Portuguese case, particularly to the dynamics most relevant to the networks concerned. Its role – present and potential – is articulated with that of science advisors, Higher Education Institutions (IES) and cities, seeking to follow multiple angles in the life of a researcher. Finally, ideas for the future are presented to contribute to the academic and practical debate around the role of science diplomacy in diplomacy and science. Foreign examples are introduced as illustrations of the arguments.

1. Science as a branch of diplomacy (and vice versa)

Science diplomacy is a relatively new, but rapidly evolving topic. It is part of a framework for the change of multilateralism, today also characterized by a progressive extension of diplomatic practices to other sectors of society. These new practices do not replace traditional diplomacy, which remains one of the most important foreign policy instruments of countries, particularly in the relations between States. Nevertheless, they are part of a gradual evolution of diplomacy, where national and international issues are intertwined in the era of globalization and where their use is not exclusive to governments.

Among the new expressions of diplomacy, science diplomacy is particularly comprehensive. Roughly speaking, it is defined as a "link of practices" (Mendonça, 2016) or a "diffuse interaction" (Aranda, 2019) between the foreign affairs of a State, which are generally coordinated by the ministries of foreign affairs, and its scientific and technological policy, which is managed by the ministries of science. It is about "developing the national environment of research and entrepreneurship while [projecting] in the international arena the strategic interests of the community of reference actors" (Mendonça, 2016). The intersection of two such wide-ranging fields generates a myriad of different approaches and angles assumed by science diplomacy in each State. As such, there is still no complete definition of the concept, or a single model that can be easily replicated (Aranda, 2019).

One of the most consensual definitions was created by the Royal Society (United Kingdom) and the American Association for the Advancement of Science (AAAS) in 2010, in their "New Frontiers in Science Diplomacy". It is based on three pillars: *diplomacy for science*, when diplomacy facilitates the conception of scientific partnerships; science *for diplomacy,* when science enables the growth of diplomatic relations; and *science in diplomacy*, when foreign policy objectives are informed by scientific advice. Since then, these terms combined have been used by various institutions as a shared understanding of an activity still under development. More recently, the EL-CSID[2] project, funded by Horizon 2020, proposed a fourth pillar *called diplomacy in science*, to incorporate

[2] European Leadership in Cultural, Science and Innovation Diplomacy - el-csid.eu.

diplomatic practices in science. According to EL-CSID, it may be easier to repair the fragmentation of society, combat skepticism about science and increase its impact on social debates and professionalize the dialogue between scientists and policy makers (Van Langenhove, 2021).

To achieve these goals, science diplomacy makes use of various tactical and operational tools. At the strategic level, joint declarations are issued between States, regions or institutions, and the seat in international organizations is used to highlight the importance of a given scientific agenda. The operative level is based on international collaboration agreements, such as CERN[3] or SESAME[4]. The latter brings together scientists from various Middle Eastern States, including some without diplomatic relations with each other, creating an environment conductive to the success of "science for diplomacy". The Intergovernmental Panel on Climate Change (IPCC) is another major example (Van Langenhove, 2016), as it gathers a multidisciplinary group of scientists and diplomats responsible for monitoring the Paris Agreement on climate change, thus being an illustration of "science in diplomacy". Other working tools include advisory councils on science and technology, allocation of science advisors to embassies, inclusion of foreign scientists in national science and technology funding schemes, academic exchange programs, international scientific collaboration programs, among others.

The implementation of science diplomacy should also include campaigns promoting its results and dedicated training programmes, these being perhaps the least worked fields (Van Langenhove, 2016). The lack of a career of science diplomacy hinders the creation of a formative offer since the subject tends to reside mainly in oral discourse as a reference to practices that combine science and diplomacy. Added to this difficulty, is the fact that some scientists do not consider that part of their work can be labelled as a type of diplomacy. Consequently, not all science professionals are trained to acquire the skills necessary for diplomatic practice and not all diplomats know science (as an abstract field) with the necessary depth. Issues such as these have increased criticism around the lack of mechanisms for assessing the effectiveness of science diplomacy (Flink, 2021).

The application of these tools requires the joint work of highly qualified human resources in various sectors. The S4D4C[5] project identified five groups of actors relevant to science diplomacy: the government sector (including subnational governments and public agencies); the intergovernmental sector and supranational organizations; the private sector (from start-ups to multinationals), universities and scientific research sector (including national academies, research councils or prominent individuals); and the civil society sector (Elorza *et al.*, 2021). One of the main difficulties of science diplomacy is the complex coordination of so many actors. According to the conclusions of S4D4C, there is a direct relationship between the level of effectiveness of this coordination and the scope of a State's science diplomacy.

The mandatory inclusion of political and diplomatic actors is one of the main characteristics that distinguishes science diplomacy from international scientific collaboration in general. Science diplomacy is a weighted result between science and political priorities, a coexistence that is not always harmonious, as "science represents

[3] European Organization for Nuclear Research.
[4] Synchrotron-Light for Experimental Science and Applications in the Middle East.
[5] Using Science for/in Diplomacy for addressing global Challenges "s4d4c.eu.

'objectivity' and 'truth', [and] diplomacy represents 'interest' and 'commitment'" (Mendonça, 2016). Some scientists fear that science may be instrumentalized by the *realpolitik*, especially considering science diplomacy is primarily a branch of diplomacy and, therefore, may be subject to logics potentially adverse to science (Muller, 2021). Countries such as the United Kingdom (UK) and China, and even the EU through Horizon 2020-funded projects, have increased their investment in science, aiming to expand their soft power, i.e., their ability to attract and influence international relations. Although the narrative around science diplomacy is mostly positive, emphasizing words like "cooperation" and "universality", the practice shows that this will not always be the case and that there is always another side of the coin. Today, science diplomacy also reflects logics of national interests and power dynamics, a trend accelerated by the COVID-19 pandemic (Fägersten, 2021).

Effective science diplomacy can have yet another perverse effect. By attracting to a given country the best global talents, it can contribute for both the enrichment of a State and the impoverishment of others. These movements tend to agglutinate in major scientific and technological centers worldwide, feeding a vicious circle of perpetuation of the imbalances that are at the origin of this same emigration. Science diplomacy can contribute to the perpetuation of migratory dynamics between centers and peripheries.

On the other hand, through the implementation of networks of professionals and researchers abroad, science diplomacy also offers States the possibility to stay connected to their brains "on the run", and these can contribute to the development of their country from a distance. Due to the hybrid nature of cooperation and competition of science, permanent or temporary emigration is intrinsic to the scientific profession. Through its tools, science diplomacy offers solutions to the breaking of the vicious circle, contributing to the expression "brain drain" replacement by "brain circulation", that is, the notion that researchers – national and foreign – have phases of their careers inside and outside the country and that both situations can add value to national science. This motion contributes to a country's science diplomacy gaining and distributing influence in decision-making processes in international organizations. By promoting the link to the home country, such networks can play an important role in correcting imbalances, helping to ensure that science diplomacy is not a zero-sum game.

To accelerate the advancement of the implementation of science diplomacy strategies in the world, in its final report, EL-CSID proposes a set of recommendations (EL-CSID, 2019). Firstly, it points to the need for greater theorization on the subject, especially in connection with the theories of International Relations, and based on case studies on successes and failures of science diplomacy. Secondly, the exchange of good practices should be fostered, especially between scientists and other professionals, as well as communication between them and policy makers. Thirdly, the investigation states that scientists should be more attentive to the consequences of their work in international relations, working on networks with an impact on science diplomacy. Finally, it is recommended that policy makers monitor this activity, incorporating it into their work and rejecting political blockages to the advancement of science.

2. Science diplomacy of the European Union

In June 2015, Carlos Moedas, then European Commissioner for Research, Science, and Innovation, in a speech addressed to the European Institute in Washington DC, said that "science diplomacy presents an unparalleled opportunity to address today's political, demographic and environmental challenges through language and the universal expression of scientific endeavor" (Moedas, 2015). The following year, the EU Global Strategy, the guiding document for European external action, indicated science diplomacy to resolve conflicts. Since then, EU has outlined six general objectives for its science diplomacy: to establish a free environment for scientists; to agree on the principles of scientific cooperation; to promote the capacity of cultural and science diplomacy in the context of its external action; to connect other foreign policy strategies to science diplomacy; to increase cohesion between member States; and to understand the role of actors in science diplomacy, some of which may be more strategic if left independent (Fägersten, 2021).

In this sense, EU has been including science diplomacy in some of its programmes and instruments. This is visible in the work of institutions like the European Research Council (ERC) or the Joint Research Centre (JRC) and in programmes such as Horizon 2020, the Marie Sklodowska-Curie Actions, or Erasmus+, which – including its Jean Monnet actions – receives direct funding from the European External Action Service (EEAS), to extend the role of the education sector in European external action. More recently, EU has integrated *alumni* from these and other programmes into its diplomatic strategy to create networks of *alumni* "ambassadors" of the European cause (Ferreira-Pereira and Mourato Pinto, 2021). The Euraxess network, which consists of more than 600 information points in 42 European countries with several links to other parts of the world, is another central tool in the European strategy for the area.

Horizon 2020 has provided the creation of the EU science diplomacy cluster (science-diplomacy.eu), which consists of three sibling projects: EL-CSID (finished in 2019); S4D4C (completed in 2021), which has created a free virtual course open to the public; and InsSciDE[6] (ending in 2022). In 2019, the communities boosted by these projects launched the "Madrid Declaration on Science diplomacy", with the aim of fostering the conduct of science-informed external policies, increasing the productivity of international relations, and expanding the capacity to face global challenges. The Madrid Declaration argues that science diplomacy must have citizens at the heart of its action and must be able to show results frequently. This community has been very active in creating proposals for EU science diplomacy, calling for the EU to encourage the training of its member States, foster the creation of a European community of professionals in this field and make a stronger link between science and tackling against global challenges (Melchor, Elorza, Lacunza, 2021). In 2021, this cluster was transformed into the EU Science Diplomacy Alliance, which offers training and advice opportunities, to form a European community of science diplomacy. It is a challenging task, considering that the field will be fractured in thematic areas, such as energy, water, health, and others. The

[6] Inventing a shared Science Diplomacy for Europe - insscide.eu.

focus should be the creation of spaces for the exchange of ideas and the provision of training opportunities (Hartl, 2021).

The EU action is also based on a network of thirteen scientific advisers distributed around the world and coordinated from Brussels by the Strategic Forum for International Cooperation in Science and Technology (SFIC), a collaboration between the EEAS and the Directorate-General for Research and Innovation of the European Commission (Council of the EU, 2016). They are allocated to countries of strategic interest to the EU[7], the most recent being created in 2020 in the UK, following Brexit[8]. The advisers promote EU research programmes to increase their international profile and foster collaboration between member States' advisers by organizing monthly meetings (Ruffini, 2021a). As for SFIC, it is equipped with a team specializing in science diplomacy, which launched in September 2020 the working paper "Anchoring Science Diplomacy in Horizon Europe – Developing Specific Subjects and Activities". This document stresses the need for greater connection between Horizon Europe and the European strategy for science diplomacy, with the desire to create greater synergies between different policies, as reflected in the 2016 EU Global Strategy. The Horizon Europe Strategic Plan 2021-24 dedicates a chapter to international cooperation, highlighting the role of science diplomacy.

These initiatives are also an EU contribution to the reform of multilateralism. They aim to make it more inclusive through the participation of non-state actors and disengaged from national logic (Muller, 2021), and to strengthen the mechanisms for solving transnational challenges, including global commons, such as climate change (Van Langenhove, 2016). The Union wants science diplomacy to increase its soft power and the capacity for action as an international actor. Overall, science diplomacy serves to renew the EU's image by adding the idea of an environmentally sustainable continent based on a development model based on science and technology, to the original peace project (Muller, 2021).

3. Portuguese science diplomacy

Portuguese science diplomacy was defined by the Council of Ministers Resolution No. 78/2016 and stated that "it must be understood as the coherent and systematic use of resources and initiatives in the areas of science and technology, in the framework of Portugal's European and foreign policy, to pursue the purposes of this policy and, namely, the promotion of the national image and interests, opportunities for knowledge, communication and reciprocal collaboration between the country and other States, people's contacts and public diplomacy". Although this definition has a one-way understanding, looking mainly at the contribution that science brings to Portuguese diplomacy, the whole resolution presents several actions aiming to internationalize Portuguese science through greater interaction with the country's foreign policy. To create a "policy of internationalization of higher education and science and technology", this internationalization enhances scientific and technological research in Portugal, contributes to cooperation with third countries and is a vehicle for "support to consortia

7 Canada (open 1977), United States of America (1980), Australia (1988), China (1991), Russia (2000), India (2001), Saudi Arabia (2002), Japan (2002), Brazil (2008), Ethiopia (2013), Korea (2014) and Egypt (n.d.).

8 No information on the nationality of the/a counselor/a.

and strategic partnerships that affirm the country and its natives in Europe and the world, and attracts qualified human resources". A greater relationship with faculties and scientific communities abroad is also an intention.

This set of objectives will give science diplomacy a multidisciplinarity that is difficult to implement. In this sense, a close collaboration has been created between MNE and MCTES and some competencies are delegated to Secretariats of State of the Portuguese Communities, Internationalization and Science, Technology and Higher Education. The coordination of implementation on the ground is largely in charge of the Foundation for Science and Technology (FCT), the National Agency for Scientific and Technological Culture (Living Science), the National Innovation Agency (ANI) and the Agency for Investment and Foreign Trade of Portugal (AICEP). The Portuguese diplomatic corps monitors the development of the theme in the respective countries, organizing events for scientific dissemination and stimulating local communities of Portuguese scientists. There is also the role played by the "networks of Portuguese professionals, researchers and graduate students working abroad", described in the next segments.

3.1. Networks of Portuguese Professionals, Researchers and Graduate Students working abroad

According to Eurostat (2019), while 10.8% of the Portuguese live in other EU member States, only 1.1% of Spaniards do so. Despite the socio-economic reasons that often motivate emigration, the Portuguese diaspora, including lusodescendants, is one of Portugal's main assets abroad. To encourage their (re-)approach to the country, the resolution aims to promote the creation of "Networks made up of Portuguese Professionals, Researchers and Graduate Students working abroad", acting as "priority interlocutors of the central services of MNE and MCTES, as well as the diplomatic and consular network, with a view to representing and promoting Portugal's interests and image in those countries" (Presidency of the Council of Ministers, 2016). The dynamization of this "academic and scientific associativism" is under responsibility of the Secretariat of State for the Portuguese Communities, and it is FCT's concern to stimulate the relationship with the Portuguese scientific diaspora, attracting it to employment at homeland. There are currently seven associations: AGRAFr (France), AGRAPS (Switzerland), APEI Benelux (Belgium, Netherlands, and Luxembourg), ASPPA (Germany), PAPS (United States of America and Canada), PARSUK (United Kingdom), Nordic SPOT (Denmark, Finland, Iceland, Norway, and Sweden). They arise from the capacity of self-organization of the Portuguese community, some of which precede in several years the publication of Resolution No. 78/2016. Although without homogeneity, its work is done in coordination with Portuguese embassies. There is also a still meager involvement with the respective councilors of communities; FCT has formal cooperation protocols established with some, and the objective is to extend them to all. The protocol with PARSUK has resulted in the creation of a scientific council formed by the Portuguese scientific diaspora in the UK.

The events organized by these associations, which are not limited to science diplomacy, include the promotion of Portuguese IES among their communities, organization of scientific debates in formal and informal contexts, online and offline, dissemination of the activities of Portuguese communities beyond the scientific world, etc. For example, PARSUK and FCT collaborate in the organization of an annual competition to support scientific mobility between Portugal and the UK, called the Bilateral Research Fund, which obtains hundreds of applications for an overall funding of €15,000. APEI Benelux, on the other hand, develops an annual activity to disseminate Portuguese IES to Portuguese secondary school students at the European School in Brussels, attracting them to the Portuguese higher education. Once a year, all organizations collaborate in the organization of GraPE – Forum of Portuguese graduates abroad, looking to promote discussion among professionals residing in the country and abroad. In its ninth edition, the event attracted several public and private institutions, including two ministers and a former European Commissioner; it is likely to become a showcase of research carried out by Portuguese around the world.

Born from associativism, these networks have the potential to give Portuguese researchers abroad greater ownership over Portuguese science diplomacy in their host country, contributing to the term "brain drain" being replaced by "brain circulation". For this to happen, Portuguese institutions must be aware of both the potential and limitations of associativism, integrating it appropriately into Portuguese science diplomacy. Voluntary work cannot replace the professional and should be subject of appropriate recognition and appreciation by the responsible entities. Plus, the acquisition of a global scale is dependent on centralized coordination, which must identify synergies between these networks and embassies, through science advisors, IES and Portuguese cities.

3.2. The Science Advisor

Council of Ministers Resolution No 78/2016 introduced the figure of the "Science Advisor", trying to centralize information on a single professional, responsible for "promoting scientific employment" (Presidency of the Council of Ministers, 2016). After the appointment of FCT and under the responsibility of main embassies, science advisors may be an addition to economic advisors, forming a team with great potential for attracting investment and knowledge to Portugal.

International examples: the various forms of the science advisor
Germany organizes international years of science to give visibility to bilateral scientific relations with a theme country for a year. Switzerland has Swiss outreach homes abroad, which are its own institutes based with major global scientific and technological hubs such as Silicon Valley, New York, or Shanghai. Denmark has appointed a representative for Silicon Valley-accredited technology and Austria has created the Office of Science and Technology in Washington DC. Spain has set up a network of science diplomacy in Madrid that builds on the dynamic of contact between the officials of embassies accredited in the city. Through this network, it disseminates its information and obtains some from other countries. France has the Agence Nationale de la Recherche, which compiles and disseminates information through its network of science advisors placed in its embassies. This information is of interest to French public authorities, private companies, research laboratories, and all those linked to investment in science. The UK created the Science and Innovation Network, mobilizing around 100 professionals to work on eleven thematic programmes located in forty countries.

While graduate associations may play the role of boosting their peers, their work is limited by their volunteering status, and they cannot implement government strategies. Through their set of skills, science advisors will be able to play this role by supporting FCT, embassies and networks in the local implementation of science diplomacy. Despite their potential, and although there are professionals seconded to perform some of these tasks, Portugal did not name any science advisor.

3.3. Higher Education Institutions

IES are one of the fundamental axes of science diplomacy, whether for their central role in higher education, research, innovation, business liaisons, or the promotion they provide to the cities that host them. They have the unique ability to bridge science and technology with education and youth. These characteristics make universities active and passive actors of diplomatic action; sometimes they speak of about "higher education diplomacy" (Ferreira-Pereira and Mourato Pinto, 2021; Ruffini, 2021b).

However, analyzing articles on the role of IES in science diplomacy, many of these have chosen to remain on the sidelines, possibly for reasons of political independence and universality of knowledge, leaving the emphasis on researchers and student flows. The most recent debates have focused on models of independent involvement of IES in science diplomacy. From a national perspective, these include policies attracting foreign students, training professionals in science diplomacy, managing *alumni* networks, and using European funds to increase their influence and contribute to national soft power. From a more global perspective, they can contribute to greater academic knowledge about science diplomacy, form frameworks for international organizations, promote the adoption of multidisciplinary approaches in diplomatic issues, or be vehicles of international cooperation through networks of universities (Ruffini, 2021b).

The internationalization of Portuguese IES has grown in Portugal in the last decade and has resulted in a positive balance in the international flow of higher education students; there are more foreign students in Portugal than the other way around. Almost half of them come from Lusophony, which is explained by cultural ties and academic cooperation agreements between IES and governments of Portuguese-speaking countries. The UNESCO Science LP (Portuguese Language) Center has been important in this context through the offer of training and doctoral scholarships to students from Portuguese-speaking African Countries (PALOP). On the other hand, almost half of Portuguese students abroad are distributed across the UK, France, and Spain (UNESCO, 2019).

FCT plays a central role in this area by training and financing national IES and creating partnerships with foreign entities. Among several examples, stands out the initiative GoPortugal – Global Science and Technology Partnerships[9], that promotes collaboration between Portugal and foreign higher education institutes of international reputation. In 2017 there were almost 55,000 researchers in the country, of which 4,647 (8.4%) were foreigners. Brazil continues to emerge as the main country of origin (27.1%), while PALOP countries have a lower representation, not reaching 6%. European countries are

[9] http://www.fct.pt/apoios/cooptrans/goportugal.phtml.en.

the main source of the income, manly Spain (14.8%), Italy (9%) and Germany (4.1%) (DGEEC, 2019).

The growth potential of the European public is particularly important, especially in view of the EU's plans for the sector through the allocation of €95.5 billion to Horizon Europe in the period 2021-2027. Portugal has gradually increased its capacity to raise and execute these funds, having been a net recipient of Horizon 2020 (PERIN, 2022: 3). Portugal network in Europe Research and Innovation Network (PERIN), launched in early 2021, sets out the objective of "attracting around €2 billion of EU funding in the areas of Research and Innovation" (PERIN, 2022: 2) over the duration of Horizon Europe. For that, it will be necessary to mobilize the country's scientific community, while looking at the opportunities created by the European Research and Education Areas and "European Universities". Also important are regionalized initiatives, such as the IACOBUS Program, signed in 2014 between IES of Northern Portugal and Galicia, Spain, to exchange employees, including scientists. In seven editions, the program has funded more than 1,000 research projects in the Galicia-North of Portugal Euro region (CCDR-N, 2021).

The investment and attention paid to the internationalization of Portuguese science may result in an increasing number of researchers in the country, whether domestic or foreign. Inherently to their profession, it is expected that they emigrate on a temporary or permanent basis, to integrate other teams and projects. Currently, IES develop their strategies of involvement of their *alumni* in isolation, providing them with information and offers. However, this model faces difficulties, as research is based on several institutions, laboratories, companies, etc.; the *alma mater* is only a chapter in the career of a researcher and graduate. Both the "brain circulation" effect and the impact of investments can be multiplied through an international monitoring strategy of national *alumni*, framed by the strategy for science diplomacy, which include Portuguese and foreign graduates from national universities. Due to their insertion in scientific associativism and their horizontal structure, the networks can be the cornerstones of this strategy.

Soon, IES will also be challenged to look at their school and formative offer in the context of science diplomacy. A study of the S4D4C project (Melchor, Elorza, Lacunza, 2021) recommends the creation of mixed training programs for scientists and diplomats, equipping them with the skills needed for this field. The curriculum of these programmes should follow national priorities, but their implementation should include as many face-to-face sessions, as distance ones, to include emigrated Portuguese scientists more easily.

International examples: training programs in science diplomacy
The University of Warsaw has an academy for science diplomacy and Barcelona's SciTech DiploHub offers training on the subject. Zurich's ETH works closely with Swiss science advisors, creating a direct link between national science diplomacy and students. The American Academy for the Progress of Science (AAAS) and The World Academy of Sciences (TWAS) offer in Trieste, Switzerland, a training program for trainers in science diplomacy. The Institute of International Relations of the University of São Paulo, Brazil, organizes every year the São Paulo School of Advanced Science in Science diplomacy and Innovation Diplomacy, which consists of five days of intensive training.

3.4. Cities

Cities are fundamental elements of science diplomacy; they centralize the triangle formed by science, companies, and industry. Together, they form poles of attraction for highly qualified professionals, including foreigners and emigrated Portuguese scientists. The country has several poles, like TagusPark (Oeiras), the Atlantic International Research Centre (Angra do Heroísmo), or the Braga-Guimarães axis, which includes the Iberian International Laboratory of Nanotechnology. Cities such as Covilhã, Coimbra or Évora, where the weight of students is disproportionate, but also Porto, Lisbon, or Aveiro, are very important for national science diplomacy. In all these examples stands out the partnership between municipalities, IES and local companies, favorable to for the setting of highly qualified human resources. Science diplomacy can serve to strengthen this relationship by contributing to talents fixation and attracting foreign direct investment, including in internationally little-known regions. For this reason, the Secretary of State for the Valorization of the Interior is involved in this dynamic.

International examples: Barcelona SciTech DiploHub
The Barcelona case is paradigmatic, because it is an example of "paradiplomacy", that is, international relations led by a government other than the national (Cornago, 2018). Under the municipality's coordination, "SciTech DiploHub" consortium was formed, which includes several local higher education institutions, companies, laboratories, and other entities relevant to the "first city to implement a strategy of scientific and technological diplomacy". It also intends to map and boost a community of "Barcelona *alumni*", which constitutes a "global network of scientists, technology experts, and leaders in innovation formed (...) in the knowledge ecosystem of the city and those currently residing abroad." Members of this network are considered ambassadors of the city and are connected through a virtual platform. A monthly newsletter keeps them informed about professional local offers and they are given a professional advice program. Finally, "Barcelona *Alumni*" are encouraged to share their stories, and personal affinities are fostered at exclusive events, like the "Barcelona Alumni Glo bal Summit" and the "Barcelona Innovation Days", which are decentralized to other worldwide cities, such as Boston, USA, or London, UK (SciTech DiploHub, 2021). In the case of Barcelona, the involvement of the municipality is a key factor for the success of the platform.

In a context of permanent circulation of qualified professionals, both cities and IES are simultaneously points of origin and arrival. This dual condition makes the follow-up of the careers of these professionals a difficult task, where Portugal has already taken important steps. One of the main examples is the Global Portuguese Network (GPS), created in 2016 because of a partnership between Aveiro University, Viva Science Agency, Francisco Manuel dos Santos Foundation, Altice company and Portuguese networks abroad. Quickly, there were more than 4.300 people on the platform in 126 different countries, who benefited from a newsletter, a search engine that finds Portuguese colleagues all over the world, and the possibility of participating in an exclusive annual event. Users can enter information about their professional achievements and share opportunities and opinions. The associations of graduates have reserved spaces in the platform, from which they can disclose important information only to Portuguese residents in their countries. The GPS platform currently has partnerships with television channels, newspapers and podcasts, and members are invited to speak publicly on the most varied topics. However, despite its success, the growth of the platform has been slower in recent years. While from the user's point of view the platform is at the state-of-the-art level, after the first years of mapping the Portuguese scientific diaspora, there is a need to draw up an equally ambitious plan for potentializing this information, particularly in the context of science diplomacy.

International examples: THE EU Alumni
To achieve objectives like those of the GPS Platform, the EU is conducting the EU *Alumni* Engagement Initiative pilot project. It is funded by the European External Action Service and aims to form a community of *alumni* based on peer relationships. The community is locally energized by the Erasmus *alumni* networks and Marie Curie actions and by EU delegations. The goal is to create channels through which EU can share information and make contributions to local strategies. Communication is done through a newsletter and online and offline events. In addition, EU invites *alumni* of academic exchange programmes to represent it both at its Study in Europe events and at major international higher education fairs (NAFSA, EAIE, etc.). While EU professionals are dedicated to building partnerships with other organizations and third countries, *alumni* share their personal history in these events to attract them to European programmes.

4. Ideas for the future

Portuguese science diplomacy is still taking its first steps and as there is neither a complete definition, nor a single model for its implementation; the options for the future are many. This list presents some ideas, for the operationalization of Portuguese science diplomacy.

I - National strategy for science diplomacy: the potential for greater coordination and more synergy

After the publication of the legislation in 2016 and the first years of experimentation, the current moment may be ideal for the creation of a strategy for Portuguese science diplomacy. Considering the growing number of actors involved, the lack of a global articulation strategy prevents its potential from being fully exploited. Such strategy could increase the effectiveness of science diplomacy by identifying synergies guided by a coordinating structure of most relevant actors. The latter does not have to be a new entity since the law already provides for the division of responsibilities. The Madrid Declaration introduces some of the most important principles on which this strategy can be based.

The Portuguese networks abroad are among the entities that can add value to national science diplomacy through greater coordination and establishment of national objectives measurable and situated in time. Today, these seven organizations focus on activities carried out in their territories, functioning as a global network almost only during the GraPE Forum. Some of current activities are of interest to Portuguese science diplomacy and others are the result of protocols with FCT, such as PARSUK's Bilateral Research Fund, ensuring greater synergies with national priorities. However, the global network effect requires a centrally coordinated and operationalized strategy in conjunction with other local actors, such as science advisors. International activities could be organized more easily, such as promotional campaigns, cycles of decentralized common theme events, among others. The design of this central strategy should include a total respect for the independence of these associations and contribute to the strengthening of their associativism. Besides having in mind Portuguese graduates and scientists in emigration, it should also pay attention to the motivation of active members in the associations, including them in the creation of strategies, in the coordinating structure and events and programs that value their volunteer time. This will guarantee a better representation of Portuguese graduate emigrants' interests before the State and vice versa.

A national strategy could also contribute to rethinking the disparity in the graphic identity and nomenclatures of different organizations. Its alignment, which should not neglect associative independence, can instantly strengthen the global network effect of Portuguese emigrated graduates, increasing the visibility of the country's science abroad and spreading that it takes place all over the world. To Portuguese scientists in transit, it would be easier to find local associations and capture the attention of potential global partners. This is, for example, the case of Spain, whose majority of associations are called "Asociación de Científicos Españoles en [country]" and all an apple as their logo, maintaining a greater graphic unit and thus increasing mutual exposure. The work of global *alumni* associations from EU programmes, such as the Erasmus Student Network, the Marie Curie *Alumni* Association, or the EIT *Alumni*, can serve as inspiration for this approach.

As the network is widened, the greater the need for general coordination of its work, either through the self-organization of associations, or the creation of an institutional position dedicated to it. The activities organized by the networks of Portuguese professionals and researchers abroad could better converse with others of Portuguese diplomacy and science.

Such strategy could also explore a better articulation between GraPE events, Encontro Ciência and the annual GPS network event. Since there is a partial overlap of target audiences, the discussion of a national strategy for science diplomacy may identify redundancies to be eliminated and synergies to be created, resulting in greater visibility and less budgeting. By bringing various actors to the same location, the event could include a segment dedicated to the discussion of science diplomacy strategies. This occasion could serve to organize discussion panels on the expansion and consolidation of networks abroad, the discussion of strategies for the involvement of lusodescendants, or the deepening of the GPS platform. Finally, this joint work could result in greater funding for Portuguese science diplomacy activities, notably through the Horizon Europe programme or the COST[10] network, thus fuelling the implementation of the objectives of the PERIN networkPNAID.

This plan should also include a better inclusion of Portugal in science diplomacy forums, such as the new EU Science Diplomacy Alliance. Partnerships with science advisers from the EU and their member States stationed in countries strategic to the national interest should be encouraged. Portuguese cities also play an important role through their

[10] European Cooperation in Science and Technology - cost.eu.

international partnerships and talents attraction initiatives. Finally, science funding entities will be able to hearten their principal researchers to include science diplomacy actions in their projects. To this end, MNE will specify the objectives to achieve in this field and, in collaboration with MCTES, agree on the priorities by science projects in Portugal.

That should pay attention to the public communication of results and the need for cyclical success evaluation, an aspect that would even be innovative in the global context and could position Portugal at the center of the academic debate on science diplomacy.

II - Human resources at the heart of the strategy

Portuguese science diplomacy should be based on the principle of brain circulation, concerned not only with attracting more talented professionals, but also in following-up those educated in the country (Portuguese or not) throughout their career abroad. Through their activity, Portuguese networks abroad promote socialization between emigrants and Luso descendants and provide opportunities for the creation of more networks. Some already offer newsletters and survival guides for Portuguese newcomers. These services in several countries facilitate the maintenance of the link between Portugal and the emigrated researchers. This monitoring can grow if there is dialogue with other initiatives, such as the GPS network or the *alumni* programs of IES, which also offer newsletters and events.

In the context of human resources, the creation of a specialized communication for lusodescendants should be considered; the creation of a special contingent in access to higher education, which reserves 7% of the vacancies for emigrants and their families, was an important contribution to the increase of Portugal's attractiveness to this population. The 600 vacancies filled in the 2020-2021 school year, out of a total of 3500, show that the initiative was of interest and that there is room to grow. However, the attraction of emigrant graduates and lusodescendants depends on other factors, such as streamlining equivalences of academic and professional qualifications obtained abroad, an objective that is now integrated in the National Diaspora Investment Support Program (PNAID). Long-term measures should also pay attention to Portuguese teaching abroad, which should be based on a clear distinction between Portuguese as a mother tongue and as a foreign language. Today, lusodescendants are integrated into mixed classes, where linguistic and sociocultural immersion may not have the necessary depth for their greater future relationship with the country (CCP Europa, 2018). In the medium and long terms, this and other challenges related to the inclusion of lusodescendants may weaken the objectives of programs such as PNAID or PERIN network. Due to their physical proximity and their model based on peer interaction, associations of graduates can also play a relevant role here, especially if they receive appropriate training from the State.

III - Training in science diplomacy

Portuguese IES and research centers will be increasingly challenged to provide training in science diplomacy aimed for young people who decide to pursue this career and professionals who choose to specialize in a subject. While international centers can offer programs open to the Portuguese, equipping them with theoretical knowledge and examples from other countries, only a formative offer accompanied by national institutions can respond to the specific needs of the country. As training in science diplomacy gains international interest, particularly from academics, the construction of this offer may also consider the rest of Lusophony, as well as foreign researchers interested in Portuguese diplomacy and science, thus supporting its internationalization.

The country may even consider the creation of a career associated with science diplomacy by following a specific postgraduate training. This could be done by offering training in the IES and/or by developing training programmes for diplomats and interested scientists. This model could include training of both Portuguese graduate associations abroad and researchers and managers of most relevant scientific projects. The creation of a central strategy empowers modular programs in conjunction with existing programs.

In addition, IES should continue to focus on acquiring skills relevant to this career, notably through more opportunities for the internationalization of their students and researchers. PERIN network could contribute to this by intending to "triple the number of students in mobility in higher education", especially through the Erasmus+ Programme (PERIN, 2022: 2). Skills gained after an international experience can be exposed through a reflection programme, as suggested by the Erasmus Skills[11] project, funded by Erasmus+. As for incoming students, the institutions should promote their involvement in the creation and active implementation of their internationalization strategies (Mourato Pinto and Benke-Åberg, 2019), like in the Barcelona example. These involvements of "internationalized" students contribute to the acquisition of important skills for science diplomacy. Finally, IES vocational training support offices should receive instructions on opportunities in the area to better advise interested pupils.

IV - Towards Team Portugal

Lastly, and because science diplomacy is only one of the expressions of Portuguese diplomacy and science, the conception of a strategy for this field should have as main objective the better integration of what Portugal already does. The aim is to create a single "Portugal Team", which should meet periodically and aggregate the main actors, such as the different advisers in embassies, the Councillors of the Portuguese Communities, emigrated entrepreneurs, networks, etc. The latter could disseminate with greater ownership the most relevant messages of Portuguese foreign science and policy among its members, effectively involving scientists in national diplomacy and thus expanding the reach of national soft power. For a country with limited resources, geographically small and peripheral in the European context, the extension of soft power through emigration has a potential for relative power gains that can be better explored. The creation of a Portugal Team could facilitate the creation of a unique message, increasing the effectiveness of the new expressions of the country's diplomacy. It is about building the governance of Portuguese science diplomacy, blurring institutional boundaries, and promoting the interdisciplinarity and collaborative spirit that are essential to it.

[11] erasmusskills.eu sorry.

Conclusion

Scientific production in Portugal is reaching a new level with a record number of publications, registered patents, and brain circulation inside and outside the country. This climate of innovation, associated with the growing number of students in higher education, the potential of both diaspora and Lusophony and the possibilities opened by European funds, make this the right time for a strong focus on science diplomacy. This paper sought to identify some dynamics resulting from the implementation Resolution of the Council of Ministers No. 78/2016, especially those most relevant to the networks of Portuguese professionals and researchers abroad, to contributing to the debate on the subject. It is useful a national strategy for science diplomacy that promotes academic and scientific associativism of the Portuguese diaspora for supporting careers without national barriers, but still connected to the country and contributing to its progress, even from abroad.

Part of the future success of Portuguese science diplomacy relies on its ability to capture its graduates, through IES, cities, and embassies. In all of them, networks abroad can play a key role in combining formal and informal dimensions of international experience, promoting a good integration of Portuguese out of homeland, and attracting foreigners to investigate in the country. They are fundamental in this "circulation of brains" that modern science promotes and in which Portugal has been involved. By keeping graduates linked to homeland, Portugal may be able to capture more foreign direct investment and increase its profile in international organizations. Through this strategy, the country can contribute more actively to the definition of science diplomacy, clarifying practices and discourses, creating communication strategies, and establishing dedicated careers.

References

Aranda, J. (2019). *Diplomacia Científica: Saber é Poder*. Lisboa: Edições Colibri.

Comissão de Coordenação e Desenvolvimento Regional do Norte (2021). *Programa IACOBUS bate meta com aprovação de 1000 projetos de investigação transfronteiriça*. Website www.ccdr-n.pt/noticia/outros-destaques/programa-iacobus-bate-meta-com-aprovacao-de-1000-projetos-de-investigacao-transfronteirica.

Comissão Europeia (2021). *Horizon Europe Strategic Plan (2021 – 2024)*. Luxembourg: Publications Office of the European Union

Conselho das Comunidades Portuguesas (2018) *CRE-CCP Língua e Ensino*. Website www.ccpeuropa.wordpress.com/2018/06/19/cre-ccp-lingua-e-ensino.

Conselho da União Europeia (2016). *Revised mandate for SFIC*. Bruxelas. Website https://data.consilium.europa.eu/doc/document/ST-7308-2016-INIT/en/pdf.

Cornago, N. (2018). "Paradiplomacy and Protodiplomacy" *in* Gordon Martel (ed.) *Encyclopedia of Diplomacy*. Oxford: Blackwell-Wiley.

Direção Geral de Estatísticas da Educação e Ciência (2019). *Study and Research in Portugal*. Lisboa: DGEEC.

EL-CSID (2019). *Final Report European Leadership in Culture, Science and Innovation Diplomacy (EL-CSID)*. Bruxelas: Institute for European Studies.

Elorza, A., Melchor, L., and Lacunza I. (2021). *Nurturing the EU Science Diplomacy Community: The Launch of a EU Science Diplomacy Alliance for Addressing Global Challenges*. S4D4C Policy Report, março.

Eurostat (2019). *EU citizens living in another Member State - statistical overview*. Website https://ec.europa.eu/eurostat/statistics-explained/index.php/EU_citizens_living_in_another_Member_State_-_statistical_overview.

Fägersten, B. (2021). Intervenção no painel "Addressing Global Challenges Under Multipolarity: Science Diplomacy and Strategy" da conferência *S4D4C final meeting.* 16 de março, online.

Ferreira-Pereira, L. C. e Mourato Pinto, J. (2021). "Soft Power in the EU's Strategic Partnership Diplomacy: The Erasmus Plus Programme" *in* Laura C. Ferreira-Pereira and Michael Smith (eds.) *The European Union's Strategic Partnerships: Global Diplomacy in a Contested World*. Londres: Palgrave MacMillan.

Flink, T. (2021). *Why Science Diplomacy needs evaluative backing*. S4D4C Policy Brief, fevereiro.

Hartl, M. (2021). Intervenção no painel "The Future of EU Science Diplomacy" da conferência *S4D4C final meeting*. 19 de março, online.

Mendonça, S. (2016). "Diplomacia científica e tecnológica, comunicação de inovação e empreendedorismo". *Anuário Janus 2015-2016: Integração regional e Multilateralismo*. Nº 19, maio de 2016. Lisboa: Universidade Autónoma de Lisboa.

Ministério da Ciência, Tecnologia e Ensino Superior (2022). *PERIN – Portugal in Europe Research and Innovation Network. Estratégia de promoção da participação nacional nos programas de financiamento da União Europeia 2021-2027 Investigação & Inovação, Erasmus, Espaço e Digital*.

Melchor, L., Elorza, A., Lacunza, I. (2021). *Calling for a Systemic Change: Towards a European Union Science Diplomacy for Addressing Global Challenges*. S4D4C Policy Report, February.

Moedas, C. (2015). *The EU approach to science diplomacy*. Discurso no European Institute, Washington DC, Estados Unidos da América. 1 de junho.

Mourato Pinto, J. e Benke-Åberg, R. (2019). "Students as co-creators of internationalisation strategies". *EAIE Conference Conversation Starter – Encompassing All Voices*. Amesterdão: European Association for International Education, pp. 19-23.

Muller, J. M. (2021). Intervenção no painel "The Future of EU Science Diplomacy" da conferência *S4D4C final meeting*. 19 de março, online.

Presidência do Conselho de Ministros (2016). *Resolução do Conselho de Ministros n.º 78/2016*. Diário da República, 1.ª série – N. 230. 30 de novembro, Lisboa.

Royal Society (2010). *New Frontiers in Science Diplomacy: Navigating the Changing Balance of Power*. Londres: Royal Society.

Ruffini, P.-B. (2021a). Intervenção no painel "Addressing Global Challenges Under Multipolarity: Science Diplomacy and Strategy" da conferência *S4D4C final meeting*. 16 de março, online.

Ruffini, P.-B. (2021b). Intervenção no painel "Bringing Universities (back) in Science Diplomacy" da conferência *S4D4C final meeting*. 17 de março, online.

SciTech DiploHub (2021). *Barcelona Alumni*. Website https://scitechdiplohub.org/barcelona-alumni.

SFIC Secretariat (2020). SFIC Task Force on Science diplomacy working paper "Anchoring science diplomacy in Horizon Europe developing specific subjects and activities". 21 de setembro, Bruxelas. Website https://data.consilium.europa.eu/doc/document/ST-1357-2020-INIT/en/pdf

UNESCO Institute for Statistics (2019). *Global Flow of Tertiary-Level Students*. Website https://uis.unesco.org/en/uis-student-flow.

Van Langenhove, L. (2016). "Global Science Diplomacy for Multilateralism 2.0", *Science & Diplomacy*, 5(4).

Van Langenhove, L. (2021). Intervenção no painel "European Science Diplomacy Cluster" da conferência S4D4C final meeting. 19 de março, online.

OBSERVARE
Universidade Autónoma de Lisboa

e-ISSN: 1647-7251
Vol. 13, Nº. 1 (May-October 2022)

JANUS.NET
e-journal of International Relations

THE DESECURITIZATION OF DRUG TRAFFICKING IN MEXICO UNDER THE AMLO ADMINISTRATION

LUIS MIGUEL MORALES GÁMEZ
lmoralesgamez@gmail.com
PhD specialized on Security and policy on the drug trafficking combat in Mexico. Expert in strategies for crime and violence prevention in Mexico. Lead researcher with numerous publications focused in citizen security, police reforms with politically- sensitive awareness (Mexico). In-depth knowledge of bilateral relations US-Mexico citizen security policies, conducting several research projects in collaboration with US universities as a guest researcher. He has work experience as a political advisor and auditor, project management in academic research projects, and public policy strategic projects.

Abstract

The present paper analyzes, from the perspective of desecuritization theory, the manner in which Andrés Manuel López Obrador (AMLO) changed the policy of the Mexican government for tackling drug trafficking in the country from a military to a social approach. The aim is to establish whether this strategy has been successful in comparison with the open war waged against the drug cartels over the twelve years preceding the AMLO administration. Given that this desecuritization strategy resulted from political decision-making rather than social pressure, the analysis presented here focuses on the President's position and the actions he has taken.

Keywords

Securitization; desecuritization; drug trafficking; Mexico; violence; military.

How to cite this article

Gámez, Luis Miguel Morales (2022). The desecuritization of drug trafficking in Mexico under the AMLO administration. In Janus.net, e-journal of international relations. Vol13, Nº. 1, May-October 2022. Consulted [online] on the date of the last visit, https://doi.org/10.26619/1647-7251.13.1.8

Article received on October 10, 2021 and accepted for publication on March 14, 2022

THE DESECURITIZATION OF DRUG TRAFFICKING IN MEXICO UNDER THE AMLO ADMINISTRATION

LUIS MIGUEL MORALES GÁMEZ

Introduction

On taking office, Andrés Manuel López Obrador (AMLO) changed national policy with regard to drug trafficking organizations, deciding to exclude the *Secretaría de la Defensa Nacional* (SEDENA or the Secretariat of National Defence) and the *Secretaría de la Marina* (SEMAR or Secretariat of the Navy). The last two presidential administrations had charged these two ministries with managing the threat posed by trafficking organizations, a threat which remains foremost among the nation's priorities.

From the election as president of Felipe Calderon, in 2006, until the end of the administration of Enrique Peña Nieto, in 2018, one of the main security issues facing Mexico has been the fight against drug trafficking organizations (DTOs). These previous administrations dedicated significant national resources to this effort, with Calderon even requesting support from the United States of America in the form of the Merida Initiative (MI).

In their theoretical proposal on the securitization process, Buzan, Waever, and De Wilde (1998) consider that the response, when a statesman or elite stakeholder declares something or someone to be a threat to national security, demands that a variety of resources be dedicated to responding to said threat. Both statesmen and elites must consider the actions and resources that will be required by this response. In some cases, society is aware of the threat when this securitization process is ongoing, supporting the decisions made by both statesmen and elites, while in others, society is either oblivious to or is not sufficiently informed of the threat as a result of said statesmen and elites keeping this information out of the public domain (Buzan, Waever and De Wilde, 1998).

The present paper analyzes both the shift, in responsibility for security, from SEDENA and SEMAR to the newly established Mexican National Guard and the data corresponding to the implementation of social programs for young people with the aim of reducing violence and insecurity. It should also be noted that another aim of AMLO's desecuritization policy is also to eradicate corruption in public security institutions alongside the rollout of scholarship programs and job training to prevent the recruitment of young people by criminal organizations.

We will also analyze how AMLO proposed his desecuritization strategy by declaring "the end of the drug war", arguing that previous administrations' declaration of war on the DTOs had failed to resolve the threat and that the violence involved in this war had simply incited more violence. His position is that DTOs are not a security problem in themselves and are, instead, a symptom of economic and social injustice in Mexico. In light of the foregoing, the present paper seeks to explore how this desecuritization policy reduces crime, violence, and the threat posed to the State, comparing it to the securitization policy applied by previous administrations, which involved direct armed confrontation with drug traffickers.

Theoretical framework for securitization and the desecuritization process

Security from a constructivist perspective, describe the process of securitization and how it functions, as well as the role played by statesmen and the elites when publicly identifying threats and channeling resources and actions to prioritize their policy agenda. A securitization process involves identifying what statesmen and the elites consider as a threat to national security and the actions that they are willing to take to tackle it (Buzan, Waever and De Wilde, 1998).

Wolfers points out security can be either objective (when the threat is recognized as real) or subjective (the threat is merely perceived), a distinction crucial to establishing national security for the State, as it requires both an understanding of the perception of a threat and an assessment of the evidence supporting this perception (Wolfers, 1962).

Successful securitization comprises three factors: the existing threat; the emergency action taken to address it; and the effects of rules violations. Waever describes security as a "speech act", wherein an issue is presented as a priority that must be resolved by taking action, thus enabling an agent to claim the necessity and right to use significant measures and the resources they require. The main interest of this discourse is to understand how a threat is publicly presented and identified as a security issue (Waever, 1996).

The public must discuss the existence of a threat in order to be able to legitimize the measures and actions taken against it, which, once legitimized, can then be addressed by the State. The absence of public acceptance would entail solely a securitization movement rather than a securitized object. Securitization studies seek to understand how to securitize, what objects (threats) to securitize, who (subjects) to securitize, why (the reasons) to securitize, under what circumstances to securitize, and the factors that determine when securitization has been successful.

Desecuritization is "the shifting of issues out of emergency mode and into the normal bargaining process of the political sphere". The desecuritization process involves the choice not to rely on public scrutiny of the threat (namely whether it is subjective or objective) and is seen by said authors as the "optimal long-range option, since it means not to have issues phrased as threats against which we have countermeasures but to move them out of the threat-defense sequence and into the ordinary public sphere" (Buzan, Waever and De Wilde, 1998: 4-8).

Waever points out that the inner circle, "the elite", questions the actions of statesmen, who try to reestablish order by either affirming that the threat is present or pretending that nothing wrong has happened. However, in reality, circumstances are changed by the presence of the threat and the new priority should be to establish the truth pertaining to the situation faced by the State (Waever, 1995).

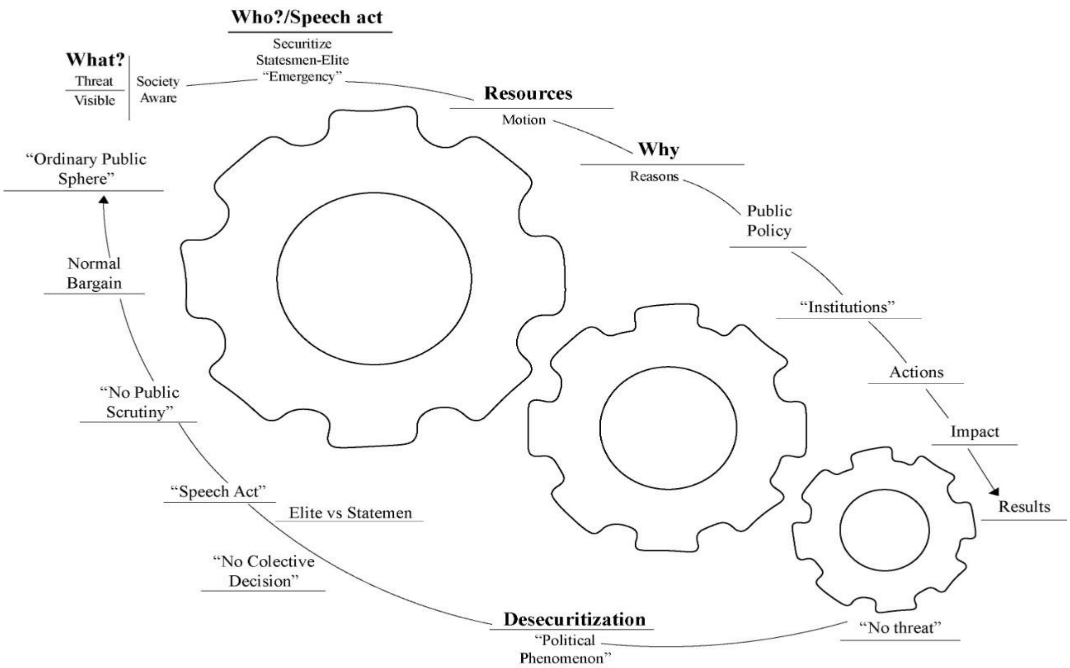
The present study focuses on the "speech act" conducted by AMLO, in which he announced the end of the war against DTOs, arguing that there are alternatives solutions. However, insecurity remains a problem that manifests in criminal violence, the constant expansion of the DTOs' operational capacity in Mexico, and the emergence of new criminal organizations (Cattan, 2019).

In her paper *Reconstructing desecuritization: the normative-political in the Copenhagen School and directions for how to apply it*, Lene Hansen points out how an issue can be desecuritized, firstly by means of its relationship to politics, given that the securitization of an issue is a political phenomenon. Secondly, an issue can be desecuritized in the public sphere, which would be a much more political decision than simply politicizing the issue, while, thirdly, via a collective decision, society decides to desecuritize an issue as this would be more effective than securitizing it. Finally, Hansen invokes Waever's reflection about "détente" and how this concept forms the basis for desecuritization (Lene, 2012).

Based on the research described above, the present paper posits that the public sphere is a useful concept for explaining how Andrés Manuel López Obrador (AMLO) desecuritized the governmental response to DTOs, which can be framed as a bargaining process by means of which his government decided to downgrade a securitized emergency to a desecuritized issue.

Hansen describes how a shift in focus from an emergency or threat to a bargaining process conducted in the public sphere suggests a shift from the securitized (the issue relates to a sphere of public policy that requires the allocation of resources or some other form of communal governance) to the politicized (the state does not deal with the issue and it ceases to be subject to public debate and decision).

Image 1 – Analysis of theoretical discussion



Source: Author's own

Boswell suggests a flow of ideas connecting public discourse and policy practice, while the Copenhagen School sees the political sphere as a dynamic space in which actors seek to justify their policies and destabilize those of their opponents. (Boswell, 2007).

The presidential election campaign and AMLO's promises

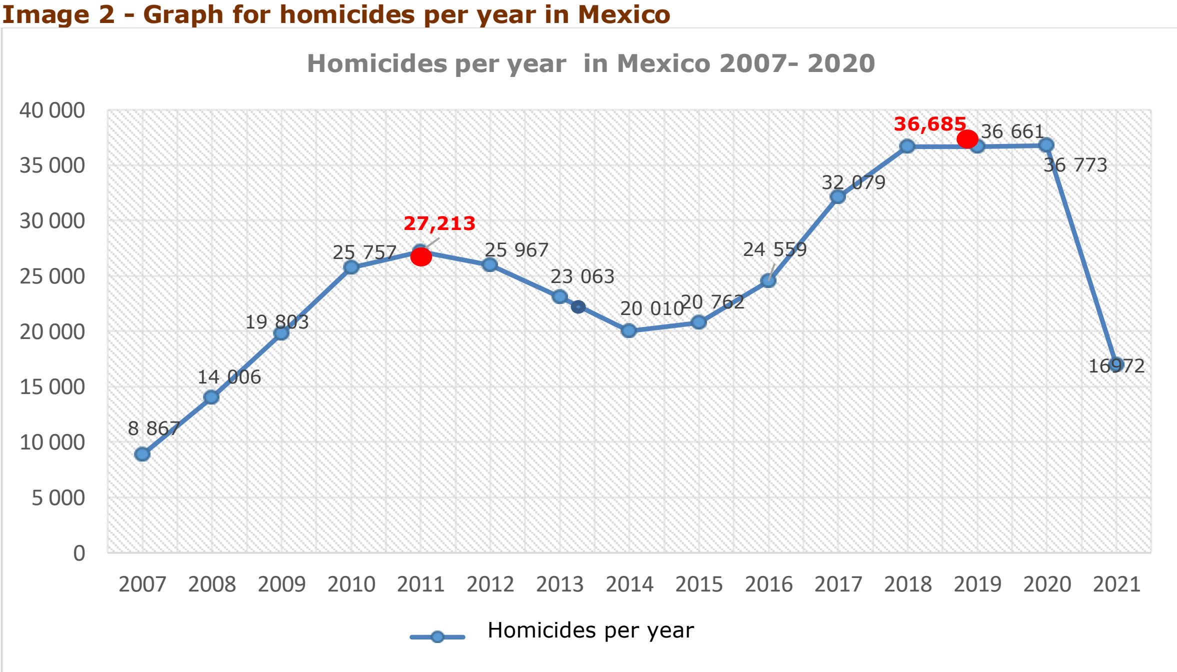
As stated above, from the beginning of Felipe Calderon's administration, in 2006, to the end of Peña Nieto's administration, in 2018, the principal security policy implemented in Mexico had involved confronting the DTOs. The initial objective had been to reduce violence on a national level and to prevent the DTOs from bringing their products into North America, for which specific purpose the US government provided Mexico military equipment and trained its military personnel (Astorga, 2015). While this US financial support was known in Mexico as the Merida Initiative (MI), it was largely perceived in the US Congress as simply a tranche of international aid to be approved year-on-year as part of its budget.

In Mexico, this security policy resulted in continuous violence and deaths, at the hands of both the DTOs and the State (which was now responding militarily), which was exacerbated by endemic corruption and a flawed justice system that failed to prosecute criminals. Therefore, the objectives of the MI shifted to promoting governmental and institutional reforms in Mexico, including the judicial system, and strengthening the rule of law (Cook, Rush, Ribando, 2008: 1-6).

Although this financial assistance began in the last year of the administration of George W Bush, it was continued by his successor Barack Obama, who stipulated that Mexico needed to take more action to tackle the violence, stem the growth of the DTOs, and also address the corruption observed in governmental institutions. However, these criteria were not met, with the violence increasing year-on-year and the DTOs competing for market share. (Camhaji and García, 2019; Infobae, 2019).

During the period discussed above, AMLO was a prominent political figure, having run twice for the Mexican presidency and losing twice due to what he described as the corruption within the electoral system, and one characterized by the news media as a threat to national security. In his third presidential race, AMLO campaigned against a major opponent - the flawed security policy pursued by the last two administrations, representing two different political parties, the *Partido Acción Nacional* (PAN or National Action Party) and the *Partido Revolucionario Institucional* (PRI or Institutional Revolutionary Party).

Image 2 - Graph for homicides per year in Mexico



Data source: National Institute of Geography and Statistics (INEGI) (2020). https://www.inegi.org.mx/sistemas/olap/proyectos/bd/continuas/mortalidad/defuncioneshom.asp?s=est

During this campaign, AMLO set out how he was going to deal with violence and drug trafficking from an alternative perspective, namely dealing with it as a social problem, solving the causes that draw people into drug trafficking and identifying economic and social alternatives for them. He proposed the removal of the military from the streets, not only because it was never intended to be used for public security activities but also because its constant human rights violations only increased the levels of violence. Finally, he proposed an amnesty for those involved in the drug trafficking business, particularly the poor (López, 2018: 105; Oré & Díaz, 2018).

By relating drug trafficking and violence in Mexico to social and economic problems, rather than a threat to the State and government stability, AMLO was signaling a change of perspective from that pursued by the last two administrations. He argued that the violence used by the State to regain control over drug smuggling routes into US territory was unacceptable, phrasing his approach as *"abrazos, no balazos"* (hugs, not bullet wounds.

Once elected, AMLO's policy position was enacted in the National Plan for Peace and Security 2018-2024, which claimed that "…violence and insecurity involve the confluence of a great number of factors, starting with those of an economic and social nature, such as the lack of quality employment, the insufficiencies of the educational system, and institutional breakdown…" (Gobierno de México, S/F: 2). The plan associated the objectives of achieving peace and security with two main factors: the institutional corruption that encouraged drug trafficking; and the need for both popular wellbeing and social justice to be reinforced by the law.

AMLO's scholarships and violence

Andrés Manuel López Obrador won the presidential election in 2018 with 53.19% of the total number of votes cast, becoming the first presidential candidate to receive that level of support in many election cycles, giving a clear mandate for him and his policy platform. Despite this mandate, critics pointed out that the popular expectations this had raised would not match the results achieved during his time in office (Rojas, 2018: 1-4).

The section on security in the National Plan for Development 2018-2024 states that the new vision for security in the country, given the deficiencies in terms of employment and education for young people, was going to *"…remove the social base from criminality by means of the mass incorporation of young people into education and work…"* (Presidencia de la República, 2019 (a): 11). The objective of this vision was to end the war on drugs in the country.

As part of the promises made during the campaign, AMLO began by announcing the social programs for students and young people under the rationale that this policy would best garner initial popular support. In February 2019, months after being sworn in, he announced, in a ceremony at *La Plaza de las Tres Culturas* (Square of the Three Cultures) in Tlatelolco, Mexico City, the first of these scholarships program, *Young People Writing the Future*, remarking that:

> *"…in our country there are 16 million young people living in poverty, imagine if a criminal offers to employ them as the "hawks", as they are known colloquially, who inform [their employers] as to who is entering and exiting the communities..."* (Presidencia de la República, 2019 (b): 27).

As discussed above, the new strategy was to fight drug trafficking socially rather than militarily, the approach followed for the previous decade. From AMLO's point of view, as the root of the problem was the potential for teenagers to be recruited by DTOs and drawn into criminal activities, if they were provided jobs and an education, they would reject the advances of the DTOs as they would have another way of making a living.

Without prior studies or analysis indicating how many teenagers would benefit from these social programs, how they would be rolled out, the budget that would be allocated to them, or, even, what their results may have been, this was a political decision made by the president without considering whether the federal budget could cover it.

Four scholarships for young people were offered: Benito Juárez; Young People Writing the Future; Young People Building the Future; and Welfare for Families in Elementary Education. The scholarship payments range from $800 to $3,748 pesos ($40 to $187 USD) per month, which amounts to a combined federal budget of over twenty billion pesos, which critics pointed would be insufficient, given the absence of any prior research on the policy (Becas y Convocatorias, 2020).

It was at this point that the policy began to be subject to questions: Is this going to end drug trafficking and violence in the country? Why has the president associated violence with financial support for young people in the country? Are these scholarships going to resolve the main problem, namely the existence of DTOs in the country? These questions were prompted by the observation that, as drug trafficking in Mexico is sustained by the US illegal drug market, it does not depend on whether young Mexican people are in employment or their level of income.

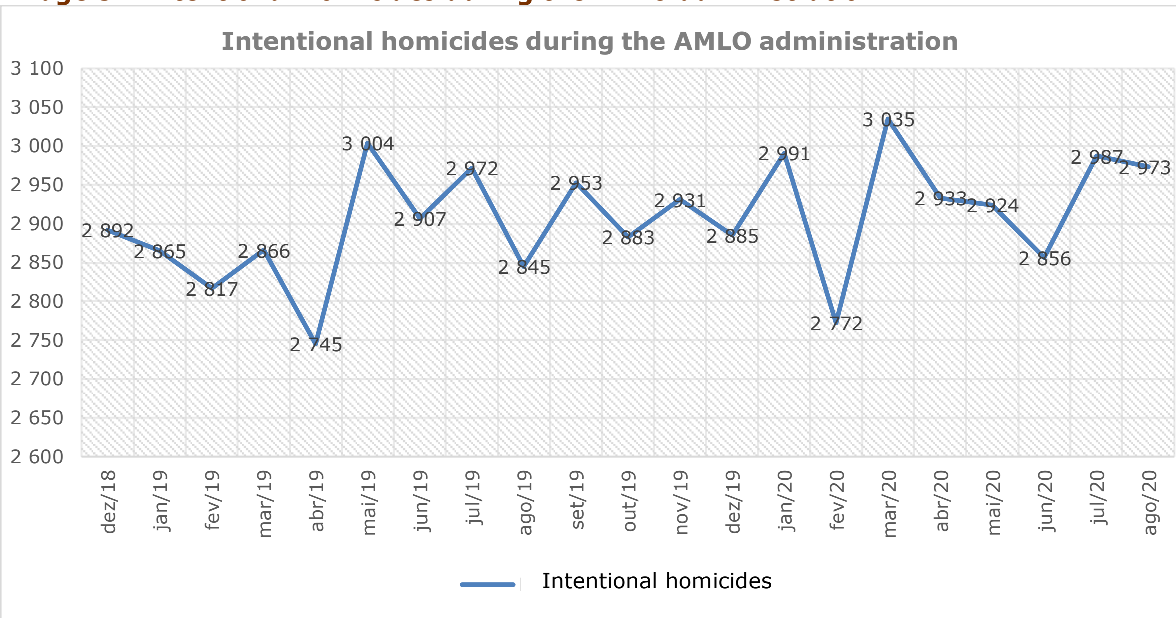
The objective of the DTOs in Mexico was to gain control of the US illegal drug market and trafficking routes as well as other criminal activities, such as kidnapping and human trafficking. Many pointed out that the lack of job opportunities and education for young people were not the cause of DTO activity, either contemporaneously or historically.

Drug trafficking in Mexico began as part of the bilateral relationship between Mexico and the United States, with the former representing supply and the latter demand. Greatly influenced by their Colombian counterparts, Mexican DTOs were established with the purpose of profiting from drug trafficking and organized criminal activity and not because those working within them were uneducated or unemployed. In fact, there are many anecdotal accounts of how politicians, police officers, or other educated professionals were involved in DTO activity.

The policies enacted by AMLO, therefore, represent the first time that a Mexican politician saw his best chance of taking power was to offer financial support to young people with no restriction as to what they could spend it on, given that these social programs do not ask for evidence of expenditure.

This position also corresponds to the desecuritization of the fight to tackle drug trafficking, as Helsen describes, given the manner in which AMLO's policy represented a shift from an emergency to a politicized matter, a policy decision made by him and not by either the audience or the political elite involved in a public debate around the relevant issues.

Image 3 - Intentional homicides during the AMLO administration



Source: *Total number of intentional homicides: 2018 - 36,685; 2019 - 36,661; and, up to August 2020 - 23,471. Source: A. López, 18 de septiembre de 2020, in "Robos y secuestros tienen histórica tendencia a la baja. Conferencia presidente AMLO". YouTube. https://www.youtube.com/watch?v=1gZjtxV0LqY

The scholarships implemented by AMLO's government do not directly correlate to a decrease in violence in Mexico. As we can see in images 2 and 3, since he assumed the presidency, violence in Mexico only began to decrease in 2020 in the context of the SARS-COV2 pandemic. The sustained level of violence observed from December 2018 to August 2020 does not support the direct relationship proposed by AMLO between violence and poverty, education, and his scholarships.

AMLO's administration has, thus far, been more violent than the previous two, despite his Secretary of Security's protestations to the contrary. The highest peak in the levels of violence during the Calderon and Peña Nieto administrations was the 27,213 thousand intentional homicides recorded in 2011. Intentional homicides were recorded at 36,685 in 2018, at the end of which AMLO took office, and did not decrease until the reduction observed in 2020 as related to the SARS-COV2 pandemic. In the year and a half since the scholarships were introduced, intentional homicides have not decreased, and drug trafficking continues unabated (Image 3).

The creation of the National Guard

During his candidacy, AMLO insisted that there was a lack of coordination among public security institutions in a congested institutional environment that interfered in the fight against organized crime and efforts to reduce violence. To address this lack of inter-institutional strategy, he proposed the following:

> *"…to integrate the police corporations, the Navy and the Army, (in) a National Guard. Right now, it is a disaster because each corporation does what it considers proper, on one side there is the Navy, on the other there is the Army, on another there is the police; it won't be like that anymore…"* (Hernández & Romero, 2019: 87-106)

His solution was to unify the security and enforcement actions taken against criminal organizations by creating a single military force under the sole command and direction of the president, what would become the National Guard (DOF, 2019). Thus, AMLO proposed, in the chapter *Safe Society and Rule of Law* of his election manifesto *Proyecto Nación 2018-2024* (Project for the Nation 2018-2024), a series of measures to end the violence that had blighted the country over the previous twelve years. The most important points included the following: the creation of the National Guard to replace the military, which would gradually retreat from certain high risk regions under the rationale that it should not be carrying out public security functions; the allocation of more resources for police training; the creation of the National College for Public Security with the objective of training specialist security corps, which would offer a career option attractive for the teenagers who do not work or study. In order to tackle violence and insecurity, AMLO set out a different approach to previous governments, in both operational and institutional terms, proposing three important changes: relieving the Secretary of the Interior of its security functions; the creation of the Secretariat of Security and Citizen Protection; and the creation of the National Guard (Secretaría de Seguridad y Protección Ciudadana, 2019).

At the launch of this proposal, the future Secretary for Public Security, Alfonso Durazo, outlined the priorities for a potential Obrador government: "The first is to close the cycle of war. The second, to achieve a significant decrease in criminal violence within 180 days. Number three: to recover the trust of society in the security forces. Four: to strengthen the strategy within three years and, finally, to deliver a country in peace and quiet in 2024." (*Expansión Política*, 2018: 4). The deadlines set out by Durazo did not seem realistic and he was criticized given that violence did not decrease as a result of Felipe Calderón's 'war' on the DTOs and, while there was a slight decrease in crime when Enrique Peña Nieto took power, violence peaked towards the end of his administration, surpassing even the levels of the Calderón administration (Figure 2 / García, 2019: 4).

Shortly after AMLO won the election, Alfonso Durazo, who was in the running to be Secretary of Public Security, announced that the National Guard would no longer be created, with this shift in priorities meaning that the fight against organized crime would be pursued by focusing on money laundering. For Durazo, this would be the best approach to confronting criminal organizations in the country and could be pursued at a lower cost (Ramírez, 2018: 3-4).

Durazo's position was in keeping with the promise of "hugs not bullet wounds" made during the campaign (*Otro País*, 2019: 3-8). It should also be noted that, during the election campaign, the relationship between AMLO and the military had been strained in light of his statements regarding a possible amnesty for those involved in organized criminal activity and the withdrawal of the military from the streets, as well as his statements highlighting human rights violations committed by the military in Mexican territory (Zavala, 2019).

The National Guard was proposed as one of the indispensable instruments that would enable the federal government to provide security, investigating and arresting anyone jeopardizing the safety of Mexican citizens. It was envisaged that the National Guard would not be fully operational until 2021, with reforms to the Constitution also necessary, given that none of Mexico's armed forces could be in charge of public security and also that the policy required the dissolution of the Federal Police (*Gobierno de México*, 2019: 1, 4).

Once the constitutional reforms required had been approved in the nation's state congresses, the National Guard was officially established via an announcement, in March 2019, in the Official Gazette of the Federation. The 10th, 16th, 21st, 31st, 35th, 36th, 73rd, 76th, 78th, and 89th articles of the constitution were modified for this purpose while the National Guard Law was also enacted (*Cámara de Diputados del H. Congreso de la Unión*, 2019: 6). These reforms were criticized as representing the legalization of the intervention of the armed forces in matters of public security, although, in DW fact, this was a continuation of the measures implemented by both Calderón and Peña Nieto.

The failed capture of Ovidio Guzman

One of the main media strategies applied during the Calderon and Peña Nieto administrations was to generate publicity via the arrest of criminals and the killing of DTO kingpins. In an effort to foment support from the general public, the objective was to show that public security institutions were working hard to fight the DTOs all over the country. The objective of these media events was the same, irrespective of the DTO involved, leading people to think that they were purely performative and conducted for publicity purposes.

Criminals noticed that the policy of the newly elected president, AMLO, was different to past administrations, leading to a major embarrassment for the government during the attempt to capture Ovidio Guzmán, the son of Chapo Guzman (the past leader of the Sinaloa cartel in Mexico), on October 17th, 2019. The clear contradictions between all security institutions involved, as evinced from their public statements, showed a glaring absence of coordination for an operation of the utmost importance to the new AMLO administration.

Although the Secretary of Public Security should have at least been made aware of this top-secret operation, which was to be carried out jointly by the National Guard and SEDENA, his public comments showed the opposite. He stated that the operation "was circumstantial" (Camarillo, 2019: 3) and that "Ovidio was never arrested", continuing that no deal had been made with the Sinaloa organization to secure Ovidio Guzman's release and, finally, admitting that there were failures in the execution of the arrest without indicating why (Guerrero, 2019: 2).

On 21st October, AMLO announced that SEDENA and the National Guard were going to recapture Ovidio, but not by military means this time, because this would put the general public at risk, something his government was not going to do. He stated that "I was informed about this action because there is a general recommendation. I think SEDENA knew about it" (Alvarado, 2019: 13-18).

Statements from all the Secretariats involved underlined this lack of coordination, contradicting AMLO's repeated policy objective of greater coordination. Further to his statements, outlined above, Durazo later said that the military carried out the operation based on an extradition order from the US. Given that AMLO's account seemed to change with every new statement and that he was failing to account for what was clearly a SEDENA-led security operation, the conclusion drawn was that the president had neither been informed about the operation nor did he have any real idea as to why the military had been involved (Alvarado, 2019).

Pointing to what can be described as the desecuritization of the fight against DTOs, given the avoidance of direct violent confrontation with one specific organization in this case, AMLO was signaling his prioritization of civilian life over the waging of 'war' against DTOs. The real issue related to this desecuritization policy is that, while AMLO, like his predecessors, appears not to want criminal violence to be perpetrated on society by the DTOs, he clearly prefers that this kind of operation fail if it could result in civilian casualties.

By releasing a high-ranking DTO member, such as Ovidio Guzmán, in full view of society, AMLO showed his commitment to his promise not to provoke these organizations, despite them being high-value targets for US extradition and reiterated his stated preference for peace over violence. This episode provided evidence of AMLO's policy of desecuritizing the fight against DTOs. Although he was criticized for this political decision, it was consistent with his promise not to use violence in the fight against the DTOs, as it had been used in the past. Considering that AMLO's desecuritization policy is making the confrontation between DTOs and the state less evident than in the past, it can be said to be a success; however, the statistics for violence in the country can be said to show the opposite (Figures 1 and 2).

The approach followed by the AMLO administration to desecuritize the fight against the DTOs, which even involved publicly releasing a senior narcotrafficker after his capture by AMLO's own armed forces, will not achieve the results that he hopes.

The SARS-COV2 a pandemic and the Mexican army

The SARS-COV2a began to spread across Mexico in March 2020, with 2,000 deaths and 20,000 cases reported by 21st April (Hernández, 2020). The National Guard was brought in to assist with the implementation of public safety measures, such as encouraging social distancing and mask use and supervising the security of public health institutions (Rodríguez, 2020). The Mexican army and navy were then brought in because they were much more organized and experienced due to the armed forces' *Plan de Auxilio a la Población Civil en Casos de Desastre* (Plan DN-III-E or Civil Aid and Disaster Relief Plan).

However, this plan was established in 1965 to provide aid and relief during natural disasters such as flooding, earthquakes, and fires, did not include the National Guard, which was not established until 2019 (Nájar, 2020).

The decision to bring in the military was announced via presidential decree, on March 26th, 2020, in which AMLO set out the activities to be undertaken by the armed forces in support of the National Guard's work to prevent the spread of the virus. On May 4th, 2020, he stated that, as the army and navy had the appropriate experience and personnel for this task, they were going to administer both Plan DN-III-E and the Navy's own contingency plan.

The National Guard was responsible for the repatriation Mexican nationals abroad, with the private flights required coordinated by the Secretariat of Foreign Affairs, and was also charged with the following: the refurbishment of military facilities to make them suitable for treating civilians; the production of medical material; the hiring of specialized health personnel; the procurement of foreign ventilators; the closing of beaches, businesses, and public places; the monitoring and prevention of potential outbreaks of looting; the application of sanitary control points in public places; the monitoring and closure of public transit; shutting down parties; and, the imposition of curfews (although this last activity led to censure by the Secretary for the Interior). Acting in support of these initiatives, the armed forces have been criticized for actions they have taken when keeping people off the streets, encouraging mask use, closing businesses, and, even, closing public places, as occurred in the state of Guerrero when beaches were closed by the use of public force (Rodríguez, 2020).

Durazo, the Secretary of Public Security and Citizen Protection, stated that, in carrying out public security activities, the armed forces were subordinate to the National Guard, stressing that this action did not represent a militarization of public security in the country, as has been alleged. Moreover, he announced the number of military personnel involved in these actions: SEDENA – 27,364; SEMAR – 12,508; National Guard – 10,470; and Federal Protective Service – 637. Their duties, according to Durazo, were to guard warehouses, protect businesses and hospitals, help with the transport of medical supplies, and distribute food to inaccessible parts of the country (García, 2020).

Durazo wanted to reassure the public that the armed forces were not taking over the country or represented a threat and that their responsibilities and duties were clear and would be made evident by their actions. He was clear that, both under the law and by the actions taken, the armed forces were not undermining or even a threat to the presidency. He also cited the provisional fifth article regarding the use of the armed forces to support the National Guard: "…while the structure, capacities, and territorial jurisdiction of the National Guard are being developed, the President of the Republic may make use of the permanent Armed Forces in matters of public security in an extraordinary, regulated, audited, subordinate, and complementary manner" (DOF (b), 2019).

By the end of 2020, on December 23rd, SARS-COV2a vaccines began to arrive in Mexico and the armed forces were assigned the task of ensuring their security, distribution, and safety, namely their storage, transportation, and administration to the population.

Vaccination was considered vital to the national interest, given that it was seen as the only practical effective measure to stop the spread of the disease. In his speeches, AMLO has rejected the criticism that the armed forces are being deployed in this context as part of an effort to militarize Mexico, because he considers that his government is using the military to ensure public safety (Storr, 2020).

The desecuritization policy of the AMLO administration represents an attempt to pursue a different policy trajectory, wherein the armed forces have been withdrawn from security operations against the DTOs; however, at the same time, the National Guard is not yet ready to take on the responsibility of conducting these operations.

Conclusions

The present article sought to examine the process of desecuritization in Mexico, as carried out by the AMLO administration with the aim of ending the 'war' against drug trafficking". The desecuritization policy was the product of AMLO's view that DTO violence is a social problem rather than a threat to both State and society, with poverty and the social problems resulting from economic inequality the main causes of violence in Mexico.

Under this perspective, AMLO proposed the scholarship programs for teenagers as the first step in the desecuritization process. However, no direct relationship between violence and social injustice has been found and, moreover, as a social program, the scholarships do not have a stated objective, are not subject to demographic tracking, nor are their results published. There is no way to measure either the relationship between these scholarships and the level of violence or how the AMLO administration is going to achieve the results that he has promised. As the award of the scholarships does not depend on a commitment from the recipient to spend the money for a specific purpose, such as further study, there is no evidence that teenage scholarship recipients are not being recruited into DTOs.

The second step in the desecuritization process followed by AMLO in his public policy was the creation of the National Guard to conduct the public security function formerly fulfilled by the Mexican armed forces (SEDENA and SEMAR) under previous administrations and which resulted in major human rights violations. However, most of the personnel of the National Guard have been recruited from both SEDENA and SEMAR, meaning that, in practice, it is not a civilian force but a militarized force, despite the original intention to create a civilian one.

The real test for the desecuritization process was the release of Ovidio Guzmán. The Sinaloa Cartel is one of the main DTOs in Mexico - a transnational and international threat. The decision taken by AMLO during the crisis sparked by Ovidio's arrest was to show that he was not going to risk the safety of the general population. His desecuritization policy led him to choose to release Ovidio over starting an open war with the Sinaloa Cartel, a decision that is going to be interpreted by the DTOs as signaling that the State represents a diminished threat to them.

The present document sought to establish whether AMLO's desecuritization policy will reduce crime, violence, and the threat to the State in contrast to the securitization policy of previous administrations. We conclude that, rather than reducing violence in Mexico, public policy has not significantly reduced violence in Mexico, with homicide data showing the opposite, not only when comparing the two years of the AMLO administration to its stated objectives, but also in comparison with the two previous administrations, during which homicide rates were both high and increased.

Former president Calderon was criticized for declaring a "war against drug trafficking" while Peña Nieto saw an increase in the levels of violence all over Mexico during his presidency. The current president is inclined to take the opposite tack, having declared the "end of the war", although the results achieved do not provide evidence of a reduction of violence in Mexico. While he promises that violence will decrease as a result of his desecuritization policy, the statistics show the opposite.

References

Alvarado, I. (21 de octubre de 2019). ¿Qué pasó en Culiacán? Llueven nuevas versiones en torno al fallido arresto de Ovidio Guzmán, el hijo de El Chapo. Univisión Noticias. Retrieved from https://www.univision.com/noticias/narcotrafico/que-paso-en-culiacan-llueven-nuevas-versiones-en-torno-al-fallido-arresto-de-ovidio-guzman-el-hijo-de-el-chapo

Astorga, L. (2015). ¿Qué querían que hiciera? Inseguridad y delincuencia organizada en el gobierno de Felipe Calderón, México, Editorial Grijalbo.

Becas y Convocatorias. (2020). Conoce los tipos de becas AMLO y sus requisitos para aplicar. Becas y Convocatorias. Retrived from https://becasyconvocatorias.org/becas-amlo-tipos-y-requisitos/

Belmont, J. (12 abril 2018). Abrazos y no balazos, promete AMLO en Sinaloa". Milenio. Retrived from http://www.milenio.com/politica/abrazos-balazos-amlo-promete-reducir-violencia

Buzan, B., O. Wæver and J.d. Wilde. (1998). Security: A New Framework for Analysis. Boulder: Lynne

Cámara de Diputados del H. Congreso de la Unión (20 de noviembre de 2018). Presenta Morena iniciativa de reforma constitucional, para crear el modelo de Guardia Nacional considerado en el plan de seguridad de López Obrador. Retrieved from http://www5.diputados.gob.mx/index.php/esl/Comunicacion/Agencia-de-Noticias/2018/Noviembre/20/813-Presenta-Morena-iniciativa-de-reforma-constitucional-para-crear-el-modelo-de-Guardia-Nacional-considerado-en-el-plan-de-seguridad-de-Lopez-Obrador

Camarillo, M. (19 octubre 2019). Nunca hubo detención formal: Durazo. Crónica. Retrieved from https://www.cronica.com.mx/notas-nunca_hubo_detencion_formal_durazo-1134826-2019

Cook, C. W., Rush, R. G. and Seelke, C. R. (2008). Merida Initiative: Proposed U.S. Anticrime and Counterdrug Assistance for Mexico and Central America. Retrived from https://www.casede.org/BibliotecaCasede/RS22837_20080318.pdf

Diario Oficial de la Federación DOF) (a) (2019). DECRETO por el que se aprueba la Estrategia Nacional de Seguridad Pública del Gobierno de la República. Retrived from https://www.dof.gob.mx/nota_detalle.php?codigo=5560463&fecha=16/05/2019

Diario Oficial de la Federación (DOF) (b) (2019). Decreto por el que se reforman, adicionan y derogan diversas disposiciones de la Constitución Política de los Estados Unidos Mexicanos, en materia de Guardia Nacional. Retrived from https://www.dof.gob.mx/nota_detalle.php?codigo=5555126&fecha=26/03/2019

García, A. (22 de mayo de 2020). Las Fuerzas Armadas apoyan en el combate del Covid19. Notisistemas. Retrieved from https://www.notisistema.com/noticias/las-fuerzas-armadas-apoyan-en-el-combate-del covid-19/

García, J. (8 de noviembre de 2016). Peña Nieto admite un repunte de la violencia. Retrieved from https://elpais.com/internacional/2016/11/08/mexico/1478577325_196604.html

García, J y Camhaji, E. (2019). Narco, una guerra sin rumbo claro. El País. Retrieved from https://elpais.com/especiales/2016/guerra-narcotrafico-mexico/

Gobierno de México. (7 junio 2021). Declaración conjunta. Washington DC. Gobierno de México. Retrieved from https://www.gob.mx/cms/uploads/attachment/file/467956/Declaracio_n_Conjunta_Me_xico_Estados_Unidos.pdf

Guerrero, E. (28 de octubre de 2019). Culiacán: el fiasco y a los agraviados. El Financiero. Retrieved from https://www.elfinanciero.com.mx/opinion/eduardo-guerrero-gutierrez/culiacan-el-fiasco-y-los-agraviados/

Hernández, A. (7 de abril de 2020). El coronavirus y los presidentes desnudos. Deutsche Welle. Retrieved from https://www.dw.com/es/el-coronavirus-y-los-presidentes-desnudos/a-53052746

Hansen, L. (2012). Reconstructing desecuritization: the normative-political in the Copenhagen School and directions for how to apply it. Review of International Studies Vol. 38, No. 3 July, (2012). pp. 525-546.

Hernández, G. and Romero, C. (2019). La Guardia Nacional y la militarización de la seguridad pública en México. Revista Latinoamericana de Estudios de Seguridad. No. 25, (2019). pp 87-106.

Infobae. (2019). Este es el mapa del narcotráfico en México a 10 meses de la llegada de López Obrador al poder. Infobae. Retrived from https://www.infobae.com/america/mexico/2019/10/19/este-es-el-mapa-del-narcotrafico-en-mexico-a-10-meses-de-la-llegada-de-lopez-obrador-al-poder/

López, A. (2018). Proyecto de Nación 2018-2024. Retrived from https://contralacorrupcion.mx/trenmaya/assets/plan-nacion.pdf

Najar, A. (4 de mayo de 2020). Coronavirus: México inicia un despliegue militar para combatir la pandemia ante la que se prevé que sea su semana más crítica", BBC News

Mundo, México. Retrieved from https://www.bbc.com/mundo/noticias-america-latina-52539824

National Institute of Geography and Statistics (INEGI) (2020) graph for homicides per year. From: https://www.inegi.org.mx/sistemas/olap/proyectos/bd/continuas/mortalidad/defuncioneshom.asp?s=est

Oré, D. y Díaz, L. (3 Jul 2018). Adiós a las armas: la polémica propuesta para acabar con la narcoviolencia en México. Reuters. Retrieved from https://cn.reuters.com/article/elecciones-mexico-amnistia-idESKBN1JT0MB-OESEN

Presidencia de la República (a) (12 de julio de 2019). Plan Nacional De Desarrollo 2019-2024. Retrived from https://www.dof.gob.mx/nota_detalle.php?codigo=5565599&fecha=12/07/2019

Presidencia de la República (b) (12 de febrero de 2019). Versión estenográfica | Entrega de becas Jóvenes Escribiendo el Futuro. Gobierno de México. Retrived from https://www.gob.mx/presidencia/articulos/mensaje-del-presidente-andres-manuel-lopez-obrador-en-la-entrega-de-becas-jovenes-escribiendo-el-futuro

Ramírez, J. (15 de agosto de 2018). Gobierno de AMLO 'aborta' la idea de crear Guardia Nacional. Política Expansión. Retrived from https://politica.expansion.mx/mexico/2018/08/15/gobierno-de-amlo-abortan-la-idea-de-crear-guardia-nacional

Rienner, C. B. (2007). Migration control in Europe after 9/11 explaining the absence of securitization. Retrived from Journal of Common Market Studies Vol. 45 No. 03, pp 589-610.

Rodríguez, G. (2020). Las Fuerzas Armadas de México frente a la pandemia COVID-19. Centro de Estudios Estratégicos del Ejército del Perú. Retrive from https://www.casede.org/index.php/biblioteca-casede-2-0/autores-casede/gerardo-rodriguezsanchez-lara/549-las-fuerzas-armadas-de-mexico-frente-a-lapandemia-covid-19/file

Rojas, A. (2 julio 2018). López Obrador gana las elecciones en México: 3 claves que llevaron a AMLO a arrasar en las presidenciales. BBC. Retrived from https://www.bbc.com/mundo/noticias-america-latina-44678664

Secretaría de Seguridad y Protección Ciudadana. (2019). La Guardia Nacional marcará el inicio del fin de la violencia en nuestro país: Alfonso Durazo. Retrived from https://www.gob.mx/sspc/prensa/la-guardia-nacional-marcara-el-inicio-del-fin-de-la-violencia-en-nuestro-pais-alfonso-durazo

Storr, S. (15 de julio de 2020). Informe sobre: Militarización en la 4T 2018-2020. CASEDE. Retrived from https://www.casede.org/index.php/biblioteca-casede-2-0/defensa-y-fuerzas-armadas/relaciones-civico-militares/559-militarizacion-en-la-4t-2018-2020

Waever, O. (1995). Securitization and Desecuritization. in Ronnie D. Lipschutz, On Security, Columbia University Press, New York, pp. 103-132.

Weaver, O. (1996). European security identities. Journal of Common Market Studies. Vol. 34 No.1, pp. 103-132.

Wolfers, A. (1962) Discord and collaboration: essays on International Politics. Baltimore: Johns Hopkins University Press.

Zavala, O. (24 marzo 2019) "La Guardia Nacional y el lenguaje de la pacificación". Proceso. Retrived from https://www.proceso.com.mx/ensayo/2019/3/24/la-guardia-nacional-el-lenguaje-de-la-pacificacion-222136.html

OBSERVARE
Universidade Autónoma de Lisboa

e-ISSN: 1647-7251
Vol. 13, Nº. 1 (May-October 2022)

JANUS.NET
e-journal of International Relations

RIGHTS OF NATURE AS A POTENTIAL FRAMEWORK FOR THE TRANSFORMATION OF MODERN POLITICAL COMMUNITIES

CARLOTA HOUART
carlotahouart@gmail.com
Bachelor's degree in International Relations and a master's degree in IR – Peace, Security and Development Studies from the Faculty of Economics of the University of Coimbra. She was a junior researcher at the Centre for Social Studies of the University of Coimbra and is currently a PhD researcher at Wageningen University (Netherlands) as part of the ERC-funded research project "RIVERHOOD – Living Rivers and New Water Justice Movements". Her current research interests include Critical Political Ecology; Rights of Nature and Multispecies Justice; Critical IR Theory and Post-Anthropocentrism; and Indigenous Ontologies and Knowledge Systems.

Abstract

This article focuses on the present context of the climate and environmental crises and how these fundamentally challenge the inherently anthropocentric norms, conceptions and practices of international politics and IR. I argue that, in order to confront the hegemonic, anthropocentric mode of relationship with non-human nature that has led to these crises, alternative frameworks need to be developed that might lead to a gradual transformation of modern political communities. Departing from Critical IR Theory, I suggest that Andrew Linklater's and Robyn Eckersley's critiques of Westphalia and proposals for its transformation might be useful to understand how the emergent Rights of Nature movement may promote such transformation. I look at two paradigmatic cases from the Rights of Nature movement – the Whanganui River case in Aotearoa New Zealand, on a local level; and Ecuador's 2008 Constitution, on a national level – to briefly reflect on the alternative understandings of concepts such as community, subjecthood, agency, voice, rights, participation and representation that they encourage. By expanding these concepts as to include the more-than-human world, these RoN frameworks invite a transformation of modern systems of thought and practice, and – to a certain extent – constitute a potential for the transformation of modern political communities in ways that might enable a better response to the global climate and environmental crises.

Keywords

International Relations; Political Community; Rights of Nature; Non-Human Beings; Climate Crisis.

How to cite this article

Houart, Carlota (2022). Rights of Nature as a potential framework for the transformation of modern political communities. In Janus.net, e-journal of international relations. Vol13, Nº. 1, May-October 2022. Consulted [online] on the date of the last visit, https://doi.org/10.26619/1647-7251.13.1.9

Article received on June 15, 2021 and accepted for publication on March 5, 2022

RIGHTS OF NATURE AS A POTENTIAL FRAMEWORK FOR THE TRANSFORMATION OF MODERN POLITICAL COMMUNITIES

CARLOTA HOUART

Introduction

The climate and environmental crises pose significant challenges to international politics and International Relations (IR). Global-warming, sea-level rise, extreme weather events, ecosystem destruction and the sixth mass extinction phenomenon all render the inseparability and interdependence of human societies and non-human life undeniably clear. These processes of rapid global change directly challenge the Cartesian dualism that arose in Europe during the Enlightenment period (Merchant, 1980) and that views humanity as separate from and in control of nature – a belief which has been central to IR and its study of world politics ever since the development of the modern-states system and of the capitalist world economy (Kavalski and Zolkos, 2016; Tickner, 1993). The lack of timely, concerted and robust responses to these interweaving crises and all of their ecological, social, economic and political impacts is not indissociable from the pervasive anthropocentrism that perceives human beings as the central point of reference in world processes; and of the dominant economic system associated with it which conceives of non-human nature as a passive object for endless human exploitation and consumption (Pereira and Saramago, 2020). The present context therefore calls for post-anthropocentric proposals for the transformation of this hegemonic mode of relationship with non-human nature, which has arisen primarily in the industrialised nations of the Global North.

It is important to note that the transformation of this mode of relationship may inevitably promote a gradual transformation of modern political communities – or the Westphalian system of nation-states – which have, from the start, been fundamentally informed by anthropocentric conceptions of the world and its agentic beings. In fact, the defining norms of Westphalia – e.g., sovereignty, territoriality, citizenship, nationality – are all inherently anthropocentric given that they establish the ontological, moral, legal and political boundaries of community almost exclusively around human beings (Pereira, 2017). Calls for some form of *interspecies relations* (Youatt, 2014); for a new understanding of *planet politics* instead of international politics (Burke et al., 2016); for inclusive, intersectional and cosmopolitical frameworks for *multispecies justice* (Celermajer et al, 2021); for new kinds of political community (e.g., *zoopolis*) which embrace non-human animals as co-citizens, denizens or sovereigns (Donaldson and

Kymlicka, 2014) – among others – have been appearing over the last two decades in response to the exclusive character of world politics and IR, and their inability to adequately respond to the climate and environmental emergencies. In fact, as Joana Castro Pereira argues, "IR should abandon the traditional grounds upon which it is based because the current 'international' notion demands not only a holistic conception but also new ontologies, epistemologies, and methodologies" (Pereira, 2017: 5). Part of this process would necessarily include the recognition of the world's multiple agentic beings, which – I would add – would also involve recovering and/or learning from *old* ontologies, epistemologies and methodologies, such as those held and shared by Indigenous peoples.

Another proposal with the potential to affect and perhaps reshape modern political communities is that of the emergent Rights of Nature (RoN) movement, generally understood to have been first advanced in the 1970s through Christopher Stone's article, "Should Trees Have Standing? – Toward Legal Rights for Natural Objects" (Stone, 1972). Since then, and mainly during the last twenty years, the RoN movement has been evolving within different frameworks, cultures and geographies, arguing for the recognition of non-human nature's inherent rights, either to nature as a whole or to particular ecosystems and species. Although many small, localised legal and political transformations have started being enacted under the RoN umbrella over the past few years, some of its most paradigmatic achievements include Ecuador's 2008 Constitution (the first in the world to recognise RoN); the draft for a Universal Declaration of Rights of Mother Earth written during the World People's Conference on Climate Change and the Rights of Mother Earth in 2010 in Cochabamba, Bolivia; or Aotearoa New Zealand's Te Awa Tupua Act of 2017 (the first in the world to attribute legal personhood status to a river).

Despite the fact that it most directly pertains to the universe of law, the RoN movement holds profound and potentially radical implications for human societies on multiple levels, including politically. As Cormac Cullinan states: "While the regulatory function of law is easy to see, we often overlook the fact that law plays an equally important role in constituting and forming society itself" (Cullinan, 2011: 55). Indeed, law shapes and informs society by defining what should be the multiple relationships between individuals, groups, and society as a whole, as well as between different societies (Cullinan, 2011). These legally defined relationships determine, for instance, how a society is ordered and how power is exercised within it (Cullinan, 2011). As such, "law is used by a society as a means of creating and defining itself in accordance with its worldview" (Cullinan, 2011: 57). By advancing the idea that non-human nature has inherent rights to live and thrive, the RoN movement rejects the foundational Eurocentric paradigm created by Cartesian dualism: it views humanity as deeply embedded in and interdependent with the more-than-human world; and challenges dominant conceptions of political community, subjecthood, agency, voice, rights, participation and representation. It should also be understood as attempting to bring together some of the tools of the contemporary international system (e.g., modern or international law) with ecocentric or nature-centred worldviews that are closer to Indigenous cultures and knowledge systems (Stewart-Harawira, 2012). Indeed, it may be argued that the idea of nature's rights is not new at all, having been shared among native cultures for thousands of years through their own relationships with the land and non-human beings (Lake, 2017); which is the reason why I argued that the evolution of IR's understanding of the world and its agentic beings requires both *new* and *old* ontologies, epistemologies and methodologies. To clarify, then, when I refer to the *emergent* RoN movement, I refer to these new initiatives, campaigns, and evolutions in law that seek to recognise rights and/or legal personality status to non-human beings and ecosystems.

Critical IR Theory is useful to understand the RoN movement's potential to gradually push modern political communities in a post-anthropocentric direction. Therefore, in the second section of this article, I will briefly look at Andrew Linklater's and Robyn Eckersley's critiques of Westphalia and proposals for its transformation. In the third section, I will reflect on how they might apply to two cases from the RoN movement that were mentioned above: the Whanganui River case in Aotearoa New Zealand (representing RoN on a local level); and Ecuador's 2008 Constitution (representing RoN on a national level). Through critical discourse analysis, I will look at the official documents from each case (the Te Awa Tupua Act of 2017; and Ecuador's Constitution) and see how their language and narrative potential encourage an alternative reading of concepts like community; subjecthood; agency; voice; rights; participation; and representation. In the last section I present some concluding remarks, namely that – by significantly broadening these concepts as to include the more-than-human world – the emergent RoN movement indeed encourages different frameworks for the potential transformation of modern political communities beyond anthropocentric Westphalia.

Beyond Westphalia

Linklater's call for the transformation of modern political communities is associated with his criticism of the Westphalian states-system as one premised on the inclusion of those deemed as "insiders" or "citizens" and the exclusion of those deemed as "outsiders" or "aliens" – a premise derived from the process of state-formation and that is part of the nation-state's "totalising project" (Linklater, 1998: 6). The success of modern states over other forms of political organisation promoted the development of a powerful discourse combining the concepts of sovereignty, territoriality, citizenship and nationality, based on the belief that "ideally, all citizens should subscribe to one national identity conveyed by a common language and culture" (Linklater, 1998: 29). From the beginning, then, the Westphalian states-system was one which tried to erase difference within and beyond its national boundaries; and for Linklater, the essential problem of modern political communities is precisely their *exclusion of difference and otherness* – both between "citizens" and "aliens", and between "citizens" and subaltern groups within the state (Linklater, 1998).

Nevertheless, the Westphalian state and its totalising project do not go unchallenged. According to Linklater, sovereign political communities are challenged on two fronts by, on the one hand, "morally universalistic claims that call for amplifying the role of authorities above the nation-state"; and, on the other hand, by the "politics of recognition" of Indigenous groups and minority nations, which call for "reducing the influence which sovereign states exert over local communities and subordinate cultures"

(Linklater, 1998: 26-27). The tendencies of globalisation and fragmentation that have evolved in opposition to and in response to each other in latest decades, along with the social and economic changes they produced, have been having serious impacts on the modern state's capacity to perpetuate its totalising project (Linklater, 1998). Indeed, by promoting the homogenisation of international society, globalisation actually fuels the politics of identity and community: where there is no convergence between cultural and political boundaries (e.g., in the case of Indigenous peoples living in colonial settler states), there have been increasing pressures to transform "traditional conceptions of community and citizenship which are hostile to the creation of group-specific rights" (Kymlicka, 1989 apud Linklater, 1998: 32). Minority nations, migrant communities and Indigenous peoples therefore promote the "politics of recognition", relying also on "transnational political activity" that is made possible by globalisation, and thus seeking "global support for their project of reconstructing national communities" (Linklater, 1998: 32). The growing prominence of the politics of recognition is, in Linklater's view, a central indicator of movement beyond the Westphalian era (Linklater, 1998).

Linklater's proposal for overcoming the social deficits brought about by the Westphalian nation-state's totalising project involves the widening of the moral boundaries of political community in order to include previously excluded "others". This expansion of boundaries is part of Linklater's envisioned triple transformation of political community, one that seeks to "secure greater respect for cultural differences, stronger commitments to the reduction of material inequalities and significant advances in universality" (Linklater, 1998: 3). According to him, such transformation may be achieved through the establishment of dialogic relations, or the construction of some form of universal communication community, that engage both "citizens" (*all* citizens) and "aliens" in dialogue about matters of vital interest to all. Indeed, the dialogic ideal "envisages post-nationalist communities which are sensitive to the needs of the systematically excluded within and outside traditional borders", making it "one of the principal ethical foundations of the post-Westphalian era" (Linklater, 1998: 51). In Linklater's view, making dialogue central to social life would essentially mean being "troubled by the ways in which society discriminates against outsiders unfairly by harming their interests while denying them representation and voice" (Linklater, 1998: 7). In these communities, then, new social bonds may develop which can "unite citizens around the common aim of eradicating unjustifiable exclusion and promoting deep diversity" (Linklater, 1998: 83).

Still, as appealing as it may be for the inclusion of those subjects whose voices, needs and concerns are traditionally excluded from political decision-making, Linklater's proposal seems unable to extend to non-human nature. This is partly because his understanding of normative validity, which is inspired by Habermas' conception of discourse ethics, rests on the notion of communicative competence; or the fact that norms should be considered valid *insofar* as all those potentially affected by them participate in rational discourse and can (or not) give their consent to those norms (Linklater, 1998; Eckersley, 2004). Such a provision that apparently instantly excludes non-human beings is the result of an anthropocentric system of theory and practice that does not even consider non-human nature as part of the picture. After all, "outsiders", "aliens" and subordinate/subaltern groups within the Westphalian states-system refer to *human* groups such as the global poor, refugees, minority nations or Indigenous peoples

(Linklater, 1998). Insofar as non-human nature is rendered invisible in the dominant world-picture (Burke et al., 2016), no significant transformation of modern political communities to embrace the more-than-human world may be achieved *within* Westphalia, or as long as they adhere to its hegemonic norms and conceptions.

In such context, one might ask: what are the implications of thinking about these "aliens" or "others" beyond the species boundary of the human? In a planet that is currently experiencing a global climate emergency, with unprecedented levels of ecosystem destruction, species extinction and catastrophes affecting both human *and* non-human beings, are we not indeed harming everybody's interests by denying the latter representation and voice in the course of decision-making? What would happen if people *were* troubled by the ways in which modern human societies tend to continuously dismiss the needs and interests of non-human nature – something which may be said to lie at the centre of the climate and environmental crises? Viewing non-human nature as part of the group of systematically excluded and devising frameworks for engaging in dialogue with its multiple beings may be a crucial first step in order to overturn the current situation.

Eckersley does this through her proposal for an ecological democracy, or some form of post-Westphalian green state, which builds on Linklater's work but goes importantly further. Her politically challenging proposal for the transformation of modern states establishes that: "All those potentially affected by a risk should have some meaningful opportunity to participate *or otherwise be represented* in the making of the policies or decisions that generate the risk" (Eckersley, 2004: 111). This formulation is closely aligned with Linklater's claim that dialogue promotes moral progress, especially when one understands it as an expansion of the circle of subjects who have rights to participate in dialogue, and the commitment that only those norms can be regarded as universally valid that have (or could have) the consent of all those potentially affected (Linklater, 1998). However, Eckersley's formulation steps outside the anthropocentric cage by suggesting that the opportunity for participation or representation should be extended to *all those* potentially affected, including *all* of nature, non-human beings, and future generations (Eckersley, 2004).

To engage with non-human beings in the dialogic relations that may enable the development of more inclusive, fair, and ecological societies, Eckersley transforms Habermas' conception of normative validity – the one which claims that norms should be considered valid *insofar* as all those potentially affected participate in rational discourse (Eckersley, 2004). By replacing the word "insofar" with "as if", Eckersley suggests that although many non-human beings may not be able to consent to proposed norms, acting *as if* they were may help to ensure that their needs, interests and well-being are respected, regardless of how useful they are to human beings (Eckersley, 2004). This alternative perspective gives much more importance to the role of *representation* in the democratic process. In fact, Eckersley claims that "representative claim making on behalf of nature" is "ultimately an exercise in persuasion, concerned with exposing practices of exclusion and defending practices of inclusion"; and it can therefore be seen "as an effort to extend or radicalize democracy rather than curtail it" (Eckersley, 2011: 241).

In Eckersley's formulation of an ecological democracy, the demos is "no longer fixed in terms of people and territory", providing "a challenge to traditional conceptions of democracy that have presupposed some form of fixed enclosure, in terms of territory and/or people" (Eckersley, 2004: 113). Here one can see how her proposal may directly challenge Westphalia's central (anthropocentric) norms of territoriality, sovereignty, citizenship or nationality, since the "relevant moral community" that should be considered when making risk-generating decisions is neither ontologically, geographically nor temporally bounded (Eckersley, 2004: 113). Instead, it should be understood as that which is "tied together not by common passports, nationality, blood line, ethnicity, or religion but by the potential to be harmed by the particular proposal" (Eckersley, 2004: 113). The boundaries of the political community would thus "rarely be determinate or fixed but instead have more of the character of spatial-temporal zones with nebulous and/or fading edges" (Eckersley, 2004: 113). This proposal might be better suited to respond to planetary, borderless phenomena, such as climate change, instead of a dominant world-picture of separate, autonomous states that can respond to the crisis each at their own pace and will.

Of course, such a proposal carries many significant and complex challenges (in theory and in practice). Although this is not the place to reflect on them, suffice it to note how challenging Eckersley's formulation is to the Westphalian states-system's main norms and principles, notably because "it does not regard the boundaries of the nation-state as necessarily coterminous with the community of morally considerable beings" (Eckersley, 2004: 114). Regarding the question of how to include non-human beings (and future generations) in the dialogic processes of decision-making, Eckersley proposes the concept of political trusteeship, whereby persons and groups are chosen to represent the needs and interests of those who may not be able to speak for themselves. This closely resembles Christopher Stone's suggestion for the designation of guardians (or a system of guardianship) who can speak on behalf of ecosystems in order to uphold their legal rights (Stone, 1972). The representatives taking on this trusteeship role should include those with firsthand knowledge or experience of non-human nature, including Indigenous peoples, environmental organisations, scientific experts, etc. (Eckersley, 2004).

Naturally, cases of uncertainty, complexity or conflict may arise which can render the decision-making process more difficult. In these cases, Eckersley claims that the green democratic state must not be neutral. Environmental justice in an ecological democracy necessarily requires "rights and decision rules that positively favour the disadvantaged (…) over well-resourced and strategically oriented economic actors" (Eckersley, 2004: 135). One way to achieve this would be through the creation of green democratic constitutions that might recognise, protect, and reward "ecologically responsible social, economic and political interactions among individuals, firms and communities" (Eckersley 2004: 140). In effect, such democracy would encourage states to assume a form of "ecologically responsible statehood" (Eckersley, 2004: 2). The development of a diverse and wide-ranging green public sphere that can inspire practices of transboundary democracy, working towards common goals of ecological, climate and social justice on a global level, is another important aspect (Eckersley, 2004).

Linklater's and Eckersley's proposals for the transformation of modern political communities beyond their traditional modes of exclusion may therefore pave the way for the inclusion, representation and participation of non-human nature, namely through the development of some form of post-Westphalian green states. I will now turn to the RoN movement and analyse how it may suggest a potential transformation of certain communities in this direction.

The Rights of Nature movement

The RoN movement was born from a common perception that existing governance systems are by themselves incapable of responding to the current trends of ecosystem destruction, biodiversity loss and climate change, given competing interests from different actors (e.g., industries; corporations; states) and the fundamental rules of the contemporary economic and political system (Barcan, 2019). As such, "environmental law has become a fertile site for creative experiments", one of which includes the recognition of non-human nature's subjecthood, agency and voice, and fundamental rights (Barcan, 2019: 5). As Youatt claims, the particular feature of RoN seems to be that "they name new, collective, legal and political subjects that are mostly nonhuman" (Youatt, 2017: 2). This can constitute "the latest round of an outward expansion of rights to the previously marginalized, building on the recognition of rights along the axes of race, class, gender, and species" – reminding us of Linklater's proposal (Youatt, 2017: 2). In such scenario, through initiatives and movements like RoN, non-human nature can increasingly acquire actorness or political subjecthood in global life.

Furthermore, the RoN movement has often (although not exclusively) been spearheaded by Indigenous peoples and communities, which is corroborated by the fact that some of its best-known successes (e.g., Ecuador's 2008 Constitution; Aotearoa New Zealand's Te Urewera and Te Awa Tupua Acts) have been taking place in countries with Indigenous populations and active grassroots mobilisation for the recognition of Indigenous voices, claims, and rights. This is tied to the fact that non-Western, Indigenous modes of relationship with non-human nature have historically been radically different from the capitalist, anthropocentric mode of relationship prevalent in the Western world. Actually, despite their diversity in cultures, ontologies and epistemologies, Indigenous peoples around the world tend to share a core set of principles of relationality, interdependence, intercommunication, respect and harmony with the Earth and all beings (e.g. Heinämäki, 2009; Stewart-Harawira, 2012; Inoue, 2018). One significant difference between Western, hegemonic and Indigenous, counter-hegemonic understandings of nature is that between looking at ecosystems (e.g., forests, mountains, rivers) as landscapes, natural resources or carbon sinks – or as "worlds in and of themselves" (Inoue, 2018: 28). This latter understanding underlies Indigenous ontologies that view humans as caretakers of the Earth, explaining why – in spite of comprising less than 5% of the world human population – Indigenous peoples protect and preserve around 80% of the planet's remaining biodiversity (IUCN, 2019). Indigenous cultures and knowledge systems have therefore tended to reject anthropocentric notions of community, subjecthood, agency, voice, and rights long before the modern RoN movement was born. We will now see how these alternative understandings of such concepts have been advanced through this movement on two different scales.

1. The Whanganui River case

In 2017, the Te Awa Tupua Act became the world's first piece of legislation to declare a river to be a legal person (Collins and Esterling, 2019). It resulted from a long effort by the Maori people, since 1873, to have their right to ownership of the Whanganui River restored – a right which was taken from the Whanganui tribes by the Treaty of Waitangi, through which the British Crown annexed the territory of Aotearoa (New Zealand) in 1840 (Rodgers, 2017; Collins and Esterling, 2019). The attribution of legal personality to the Whanganui represents the latest legal tool being used for the protection and management of rivers; but it also represents a political settlement acknowledging Maori *tikanga* (customary law) and viewing the river and its tributaries in a broad, holistic perspective (O'Donnell and Macpherson, 2019).

As demonstrated in pages 14 and 15 of the Act[1], Te Awa Tupua is defined as "an indivisible and living whole, comprising the Whanganui River from the mountains to the sea, incorporating all its physical and metaphysical elements" (Te Awa Tupua Act, 2017: 14). Tupua Te Kawa refers to all the intrinsic values that represent the essence of Te Awa Tupua, including "Ko au te Awa, ko te Awa ko au: I am the River and the River is me", which in turn means that "the Iwi and the hapü of the Whanganui River have an inalienable connection with, and responsibility to, Te Awa Tupua and its health and well-being" (Te Awa Tupua Act, 2017: 14-15). The Act reflects a Maori ontology by identifying Te Awa Tupua (the whole of the river) as including both the river and the people, the Whanganui tribes, "as a single unit, not just as a matter of recognition but also as a matter of governance" (Youatt, 2017: 11). This conception of community consequently views humans as inseparable from and interconnected with the more-than-human world (the river and all other beings inhabiting it). It also represents an attempt to dismantle systems of governance built by Western colonial powers that use language, discourse and law to govern human and non-human nature according to their objectives and worldviews (Youatt, 2017).

This Indigenous view of the Whanganui River as a broad community is in line with Eckersley's proposal for an ecological democracy in which the boundaries of the demos are redrawn to include a larger moral constituency; one that challenges the Westphalian nation-state's traditional norm of territorial sovereignty as a fundamentally nationalist and anthropocentric one (Eckersley, 2004). In this case, the Whanganui River – although being geographically located within the borders of the state of Aotearoa New Zealand – belongs not to the state *but to itself*, which includes the Maori tribes and the non-human beings living in interdependence with the river. Ownership would in this case be better understood as guardianship. As noted by Rodgers, "traditional Maori concepts of stewardship reflect a different relationship (…) to that in most Western legal systems" (Rodgers, 2017: 270). The difference lies in the Maori concept of *kaitiakitanga*, whose

[1] The Te Awa Tupua (Whanganui River Claims Settlement) Act 2017 can be consulted here: https://www.legislation.govt.nz/act/public/2017/0007/latest/whole.html

main premise is "the understanding that people live in a symbiotic relationship with the earth and all living organisms and have a responsibility to enhance and protect its ecosystems" (Rodgers, 2017: 270). An example of this is clearly illustrated by the phrase "I am the River and the River is me" (Te Awa Tupua Act, 2017: 15).

The next pages of the Act show what it establishes in terms of the recognition of legal personality to Te Awa Tupua and the defined system of guardianship. The Whanganui River is thereby declared to be a "legal person and has all the rights, powers, duties, and liabilities of a legal person" (Te Awa Tupua Act, 2017: 15). Te Pou Tupua are its appointed guardians, in accordance with Eckersley's concept of trusteeship, to ensure that the interests and needs of non-human nature are represented and upheld. The appointed guardians are to be the "human face of Te Awa Tupua and act in the name of Te Awa Tupua" (Te Awa Tupua Act, 2017: 17). This system of guardianship consists of naming one member of the Whanganui tribes and one member of the Crown to act as trustees or spokespersons, and to uphold the intrinsic values (Tupua te Kawa) that represent the essence of the whole of the river. By electing both one Indigenous and one non-Indigenous New Zealander as representatives, the Act may be understood to try to promote a convergence of cultural and political boundaries, thereby encouraging what Linklater advocates as a transformation of political community that seeks to secure greater respect for cultural differences and a greater universality (Linklater, 1998).

It also effectively broadens the scope of representation in the political community that is the state of Aotearoa New Zealand, regarding this local ecosystem, by including both: 1) traditionally marginalised human communities (the Maori); and 2) non-human nature (Te Awa Tupua). Ultimately, the conception of humanity's relationship with non-human nature that underlies this Act is radically different from the one that permeates dominant narratives in the modern states-system. It: a) recognises legal and political subjecthood to a river; b) claims that the physical and spiritual community formed by Te Awa Tupua is made of both human and non-human beings, thereby crossing the territorial and ontological boundaries of the river; c) establishes that Te Awa Tupua is *its own sovereign;* d) and attempts to ensure that the river's voice is heard, even if through its appointed human guardians. Hence, regardless of potential challenges to its practical implementation (which are likely to exist, since it marks such new ground in Western law and politics), it clearly promotes counter-hegemonic conceptions of community, subjecthood, agency, voice, rights, participation and representation that are non-anthropocentric and better suited to respond to the current context of environmental destruction exacerbating the climate crisis. The transformative potential of the Act is also that, even if on a local level, the inscription of this piece of legislation into the institutions of the state indeed creates a precedent for a new system of governance and pushes it toward a form of ecologically responsible statehood (Eckersley, 2004).

2. Ecuador's 2008 Constitution

We now turn to that which is perhaps the world's most famous example of the RoN movement on a national level. In 2008, Ecuador became the first country in the world to officially enshrine RoN into its Constitution, recognising nature in its whole as a rights-bearing entity. In fact, it may be argued that this is the "hitherto most radical constitution of the world" in what concerns RoN (Lalander, 2016: 624). Chapter 7, through Articles 71 to 74, describes the concept and its legal and political implications for the state[2].

The Constitution claims that "Nature, or Pacha Mama, where life is reproduced and occurs, has the right to integral respect for its existence and for the maintenance and regeneration of its life cycles, structure, functions and evolutionary processes" (Constitution of Ecuador, 2008). Here, then, nature is defined as a whole, recognising no separation between human and non-human worlds and highlighting the interdependence of human and non-human beings. Through these words, one can see recognition of nature's legal and political subjecthood as a living universal entity with inherent rights and inherent agency. The 2008 Constitution can thus be seen as an example of Eckersley's "green democratic constitutions" (Eckersley, 2004: 140).

The inscription of RoN into the Constitution might also be seen as an example of Linklater's claim that transitioning to a system where new forms of political community arise does not necessarily imply the disappearance of conventional state structures, but rather the fact that "states should assume a number of responsibilities which have usually been avoided in the past" (Linklater, 1998: 4). One of these, laid out in Article 72, is that the state must ensure nature's right to restoration (from severe or permanent environmental harm) and establish proper mechanisms to "eliminate or mitigate harmful environmental consequences" (Constitution of Ecuador, 2008). Furthermore, Article 73 explicitly holds the state accountable for applying "preventive and restrictive measures on activities that might lead to the extinction of species, the destruction of ecosystems and the permanent alteration of natural cycles" (Constitution of Ecuador 2008). By making it clear that the state is responsible for enforcing RoN, the Constitution seeks to cast it in the new role of "ecological steward" (Eckersley, 2004: 2).

Obviously, whether or not the state acts accordingly is another matter, but the language and narrative potential underlying Chapter 7 describe this new framework for state practice in a way that invites a critical reflection on the concepts of community, subjecthood, agency, voice, and rights in a non-anthropocentric perspective. The Constitution indeed defines an enlargement of Ecuador's moral, legal and political boundaries to include non-human actors who have become repositories of rights that must be ensured by the state – and thus represents a potential post-Westphalian (post-anthropocentric) transformation of this particular political community.

Concerning the selected system of trusteeship, Article 71 establishes that "all persons, communities, peoples and nations can call upon public authorities to enforce the rights of nature" (Constitution of Ecuador, 2008). This means that, in a sense, anybody can act as a guardian or trustee and speak on behalf of non-human nature to make its needs and interests heard. Such provision also broadens the potential scope of representation of non-human nature by naming not only individual but also collective actors (communities and nations) that are part of a rather indeterminate overall community. Besides, the Constitution not only has this more representative dimension regarding non-

[2] The 2008 Constitution of Ecuador can be consulted here: https://pdba.georgetown.edu/Constitutions/Ecuador/english08.html

human nature but also regarding Indigenous peoples, who are part of the traditionally excluded subaltern groups or "aliens" referred to by Linklater.

This is evident in the preamble and corroborated by Youatt's remark that "the rise of indigenous political forces in Ecuador (…) clearly shaped the particular language in these articles, especially the use of Pachamama and *sumak kawsay*" (Youatt, 2017: 10). The preamble refers to Pacha Mama, the Kichwa word generally translated as Mother Earth, and to the sovereign people of Ecuador's commitment to "building a new form of public coexistence, in diversity and in harmony with nature, to achieve the good way of living, the sumak kawsay" (Constitution of Ecuador, 2008). The inclusion of an Indigenous paradigm such as sumak kawsay or buen vivir – which represents an alternative to the Western concept of (economic) development – may thus represent an attempt to bring political and cultural boundaries into convergence, in line with Linklater's proposal. The use of concepts such as Pacha Mama and sumak kawsay (which would deserve a far longer article focused solely on their meanings and implications) in the Constitution consequently infuses it with an Indigenous worldview based on notions of interdependence, interrelationship, harmony and respect between humans and non-human beings. According to Eduardo Gudynas, the 2008 Constitution promotes a *biocentric posture*, where both human and non-human lives have value in themselves (Gudynas, 2011); and it therefore rejects a mechanical, reductionist, instrumentalist view of nature, which has been central to the processes of development of the state and the market and hence inherent to modern political communities (Tickner, 1993).

Nevertheless, it is important to note that the Constitution emerged out of a very particular political and social context. It was approved "in the aftermath of a period of profound political turmoil", at a time when leftist president Rafael Correa had just been elected with promises of fundamental changes for the country, including a greater representativeness of Indigenous rights and attention to environmental concerns (Espinosa 2019: 608). An analysis of the implementation of RoN in the country shows that, despite being a radically new step taken by a state, upholding Rights of Nature in Ecuador has not become common practice since 2008 (Lalander, 2016; Laastad, 2019). There are contradictions within the Constitution itself, namely on what concerns the state's responsibility for the country's economy (highly dependent on extractivism and on the exploitation of non-renewable resources); and its duty to uphold RoN (Lalander, 2016). These find a parallel in the state's practice, which continues to rely heavily on resource extraction despite calls for the protection of nature (Lalander, 2016). Considering that Ecuador is one of the poorest countries in South America, the state seems to be trapped between the need to rely on extractivist industries for social welfare; and the need to protect its ecosystems and beings. This apparent dilemma means that "in practice, strategic economic and political interests of the State clash with indigenous and environmental rights" (Lalander, 2016: 625).

It might be tempting to argue that this difficulty in upholding RoN in Ecuador casts doubt on the potential success of the entire movement. However, what is particularly interesting here is how the language used – and its underlying understandings of the political community, of nature's subjecthood and rights – point at least to the *possibility* of transforming Ecuador's boundaries and system of governance in a post-anthropocentric direction. There are, after all, signs that including RoN in the national Constitution has indeed promoted a growing ecological conscience within civil society (Laastad, 2019). Perhaps it is also connected to some recent achievements in Indigenous and environmental rights' movements, such as the decision by the Constitutional Court of Ecuador in late 2021 to refuse mining concessions in the protected forest of Los Cedros – a decision based on the understanding that such activity would violate the rights of nature of this particular ecosystem (Global Alliance for the Rights of Nature, 2021). As stated in the documentary *The Rights of Nature: a Global Movement*, "the rights of nature are thus represented as less of a legislative tool than an instrument to change how people think and act" (Goeckeritz, Crimmell, and Berros, 2020). A change in consciousness can thus represent the first step towards transforming state practice.

Secondly, the fact that it seems impossible to uphold RoN in the current economic and political system highlights how this system is not built in a way that genuinely allows for the protection of non-human nature, as it is necessarily premised on the continuous exploitation of ecosystems, peoples and beings. As long as modern political communities are built on hegemonic conceptions of the world and its agentic beings, and rely on an economic system that demands the exploitation and destruction of a nature viewed as passive object, it may not be possible for these communities to become ecologically balanced and to effectively respond to the climate and environmental crises. Given that these crises are rapidly worsening, and that they hold such devastating potential to transform global society, looking at the dilemmas that countries such as Ecuador seem to face while trying to uphold RoN and still play by the rules of the current system may propel a call to action towards the transformation of political community beyond its capitalist and anthropocentric structures.

Concluding Remarks

Having analysed these two paradigmatic RoN cases, I would argue that the movement is aligned with Linklater's and (especially) Eckersley's proposals for the transformation of modern political communities beyond their traditional exclusionary character. Both the Te Awa Tupua Act of 2017 and Ecuador's 2008 Constitution seem to be good examples of the politics of recognition that seek to achieve a greater convergence between cultural and political boundaries; that encourage members of the two political communities to be sensitive to the needs and interests of the systematically excluded (in this case, with a particular focus on non-human beings and ecosystems); and that promote deep diversity by extending the moral boundaries of the community to very different "others" – all in line with Linklater's proposal (Linklater, 1998). They also hold important representative dimensions that attempt to create spaces (either through a new legislative Act, or through the national Constitution) for non-human nature's voice to be heard, even if through appointed human guardians or trustees; and encourage practices of ecologically responsible statehood, either locally or through the development of what might be considered a green constitution – in line with Eckersley's proposal (Eckersley, 2004).

Still, two important observations should be made. While these two cases focus on a local and on a national level, I believe that thinking of the RoN movement on a potentially global scale indicates that the discussion surrounding nature's rights probably becomes more abstract, complex, and harder to implement in practice as one moves from a local to a national to a global level. Suffice it to think of how challenging it would certainly be to try to turn the Universal Declaration of Rights of Mother Earth that was written in 2010 in Cochabamba, Bolivia, into an "international normative framework" similar to the Universal Declaration of Human Rights of 1948 – as was the intention of its proponents when they presented it to the UN General-Assembly (Espinosa, 2014: 393). The fact that the Declaration was not yet accepted as an official framework speaks for itself. Attempting to establish RoN on a global scale poses far greater challenges, as they would have to be accepted by a much larger and more diverse set of actors (with different economic circumstances, political regimes, cultures, needs and interests); and they would directly challenge some of the foundational structures, norms and rules of the contemporary international system, including the capitalist world economy. On the other hand, although questions, challenges and tensions exist in both the Whanganui River case and regarding the Ecuadorian Constitution, and perhaps more evidently in the latter, RoN frameworks were officially adopted in both instances and they are to some extent already having an impact. What this suggests is that the RoN movement might potentially achieve greater success by first focusing on smaller, localised changes and gradually, potentially encourage a growing network of RoN frameworks. Working on paradigmatic change or consciousness raising on smaller levels might contribute to spreading counter-hegemonic conceptions and systems of practice through a grassroots, bottom-up approach.

Secondly, it is important to note how the contexts in which the RoN movement has had more success until now are in the Global South, and specifically in regions with Indigenous peoples and active Indigenous mobilisation (or struggle) for the recognition of their cultural, political, and legal rights. Some of the cases where the RoN frameworks seem to have been more boldly introduced so far, in Ecuador and in Aotearoa New Zealand, involved very particular circumstances through which Indigenous peoples made their voices and their claims (and therefore their cultures, ontologies, and language) heard and incorporated into official legislation. What this seems to suggest is that, in those spaces where the moral boundaries of political community are widened to the extent that they allow for a greater inclusion, participation and representation of traditionally marginalised human communities (particularly Indigenous peoples), one can expect to more easily see a corresponding expansion of those boundaries to include systematically excluded non-human nature. This makes sense, in fact, if one thinks of Indigenous peoples' traditional relationships to the more-than-human world; and it also suggests that the development of more inclusive political communities can be a good scenario for both human *and* non-human beings. If it enables a more timely, concerted, and robust response to the climate and environmental crises, it certainly will.

Finally, regardless of potential challenges to its practical implementation, I would argue that the RoN movement does indeed hold the potential for (at least) a gradual transformation of political community in a post-anthropocentric, post-Westphalian direction. Through their language and narrative potential, RoN frameworks invite a critical reflection on concepts of community, subjecthood, agency, voice, rights, participation and representation that have almost exclusively centred around humans; and consequently push for an enlargement of the moral, legal and political boundaries of community as to include the more-than-human world. By inviting a transformation of a prevailing, exploitative, anthropocentric mode of relationship with non-human nature, the RoN movement also enables a potentially robust, more representative, inclusive, fair, and ecological response to the climate and environmental crises.

References

Barcan, Ruth (2019). "The campaign for legal personhood for the Great Barrier Reef: Finding political and pedagogical value in a spectacular failure of care". *Environment and Planning E: Nature and Space*, 0(0), 1-23. https://doi.org/10.1177/2514848619886975

Burke, Anthony, Stefanie Fishel, Audra Mitchell, Simon Dalby, Daniel J. Levine (2016). "Planet Politics: A Manifesto from the End of IR". *Millennium: Journal of International Studies*, 44(3), 499–523. https://doi.org/10.1177/0305829816636674

Celermajer, Danielle, David Schlosberg, Lauren Rickards, Makere Stewart-Harawira, Mathias Thaler, Petra Tschakert, Blanche Verlie, Christine Winter (2021). "Multispecies justice: theories, challenges, and a research agenda for environmental politics". *Environmental Politics*, 30: 1-2, 119-140, https://doi.org/10.1080/09644016.2020.1827608

Collins, Toni, Esterling, Shea (2017). "Fluid Personality: Indigenous Rights and the Te Awa Tupua (Whanganui River Claims Settlement) Act 2017 in Aotearoa New Zealand". *Melbourne Journal of International Law*, 20(August), 1–24.

Cullinan, Cormac (2010). "The Legal Case for the Universal Declaration of the Rights of Mother Earth", 1–6. Available at: https://therightsofnature.org/wp-content/uploads/pdfs/Legal-Case-for-Universal-Declaration-Cormac-Cullinan.pdf.

Cullinan, Cormac (2011). *Wild Law – A Manifesto for Earth Justice*. Cambridge: Green Books.

Donaldson, Sue, Kymlicka, Will (2014). *Zoopolis – A Political Theory of Animal Rights*. Oxford University Press.

Eckersley, Robyn (2011). "Representing nature". In S. Alonso, J. Keane, & W. Merkel (Eds.), *The Future of Representative Democracy* (pp. 236-257). Cambridge: Cambridge University Press, https://doi.org/10.1017/CBO9780511770883.011.

Eckersley, Robyn (2004). *The Green State: Rethinking Democracy and Sovereignty*. London: The MIT Press.

Espinosa, Cristina (2014). "The Advocacy of the Previously Inconceivable: A Discourse Analysis of the Universal Declaration of the Rights of Mother Earth at Rio+20". *Journal of Environment and Development*, 23(4), 391–416. https://doi.org/10.1177/1070496514536049.

Gudynas, Eduardo (2011). "Debates sobre cooperación y modelos de desarollo. Perspectivas desde la sociedad civil en el Ecuador". *Centro de Investigaciones CIUDAD y Observatorio de la Cooperación al Desarollo*, Quito, 83-102.

Heinämäki, Leena (2009). "Protecting the Rights of Indigenous Peoples – Promoting the Sustainability of the Global Environment?". *International Community Law Review*, 11, 3–68. https://doi.org/10.1163/187197309X401406.

Inoue, Cristina Yumie Aoki (2018). "Worlding the Study of Global Environmental Politics in the Anthropocene: Indigenous Voices from the Amazon". *Global Environmental Politics*, 18:4. https://doi.org/10.1162/glep_a_00479.

International Union for the Conservation of Nature (2019). *IUCN Director General's Statement on International Day of the World's Indigenous Peoples 2019*. Available at: https://www.iucn.org/news/secretariat/201908/iucn-director-generals-statement-international-day-worlds-indigenous-peoples-2019.

Kavalski, Emilian, Zolkos, Magdalena (2016). "The Recognition of Nature in International Relations". *Recognition and Global Politics*, 139–156. https://doi.org/10.7228/manchester/9781784993337.003.0008.

Laastad, Synneva Geithus (2019). "Nature as a Subject of Rights? National Discourses on Ecuador's Constitutional Rights of Nature". *Forum for Development Studies*, 0(0), 1–25. https://doi.org/10.1080/08039410.2019.1654544.

Lake, Osprey Orielle (2017). "Recognizing the Rights of Nature and the Living Forest". In Movement Rights, Indigenous Environmental Network and Women Environment and Climate Action Network, *Rights of Nature & Mother Earth: Rights-Based Law For Systemic Change*, 20-23.

Lalander, Rickard (2016). "The Ecuadorian Resource Dilemma: Sumak Kawsay or Development?" *Critical Sociology*, 42(4–5), 623–642. https://doi.org/10.1177/0896920514557959.

Linklater, Andrew (1998). *The Transformation of Political Community: Ethical Foundations of the Post-Westphalian Era*. Cambridge: Polity Press

Merchant, Carolyn (1980). *The Death of Nature: Women, Ecology and the Scientific Revolution*. San Francisco: Harper & Row Publishers.

O'Donnell, Erin, Macpherson, Elizabeth (2019). "Voice, power and legitimacy: the role of the legal person in river management in New Zealand, Chile and Australia". *Australian Journal of Water Resources*, 23(1), 35–44. https://doi.org/10.1080/13241583.2018.1552545.

Pereira, Joana Castro, Saramago, André (2020). *Non-Human Nature in World Politics – Theory and Practice*. Switzerland: Springer.

Pereira, Joana Castro (2017). "The limitations of IR theory regarding the environment: lessons from the Anthropocene". *Revista Brasileira de Política Internacional*, 60(1): e018, 2017. https://doi.org/10.1590/0034-73292017001019.

Rodgers, Christopher (2017). "A new approach to protecting ecosystems". *Environmental Law Review*, 19(4), 266–279. https://doi.org/10.1177/1461452917744909.

Stewart-Harawira, Makere (2012). "Returning the Sacred: Indigenous Ontologies in Perilous Times", in L. Williams, R. Roberts & A. McIntosh (Eds.), *Radical Human Ecology: Intercultural and Indigenous Approaches*. UK: Ashgate, pp. 73-88.

Stone, Christopher (1972). "Should Trees Have Standing? - Towards Legal Rights for Natural Objects". *Southern California Law Review*, 45, 450–501.

Tickner, J. Ann (1993). "States and Markets: An Ecofeminist Perspective on International Political Economy". *International Political Science Review*, 14(1), 59–69. https://doi.org/10.1177/019251219301400104.

Youatt, Rafi (2014). "Interspecies Relations, International Relations: Rethinking Anthropocentric Politics". *Millennium: Journal of International Studies*, 43(1), 207–223. https://doi.org/10.1177/0305829814536946.

Youatt, Rafi (2017). "Personhood and the rights of nature: The new subjects of contemporary earth politics". *International Political Sociology*, 11(1), 39–54. https://doi.org/10.1093/ips/olw032.

Global Alliance for the Rights of Nature (2021). "Ecuador's Constitutional Court enforced Rights of Nature to Safeguard Los Cedros Prot ected Forest". Available here: https://www.garn.org/los-cedros-rights-of-nature/

OBSERVARE
Universidade Autónoma de Lisboa

e-ISSN: 1647-7251
Vol. 13, Nº. 1 (May-October 2022)

JANUS.NET
e-journal of International Relations

COMMON BUT DIFFERENTIATED RESPONSIBILITIES REGARDING CLIMATE CHANGE. DIFFERENT INTERPRETATIONS WITHIN THE BRAZILIAN NATIONAL CONTEXT

CHRISTOPHER KURT KIESSLING

ckiessling@conicet.gov.ar

Ph.D. in Social Sciences from FLACSO, Argentina. Postdoctoral fellow in the National Scientific and Technical Research Council (CONICET) co-financed by the Universidad Católica de Córdoba (Argentina). Teacher and researcher at this house of studies and in Universidad Blas Pascal. Member of the Observatory of Argentine Climate Policy, ARG1.5º.

AGUSTINA PACHECO ALONSO

apacheco234@gmail.com

Master's candidate in Law and Economics of Climate Change (FLACSO, Argentina). Bachelor of Arts in International Relations (Universidad Católica de Córdoba) and Bachelor of Arts in Political Science (Universidad Católica de Córdoba). Lecturer at Universidad Siglo XXI. Coordinator of the Climate Change and Sustainable Development area in Asociación Sustentar, member of the FLACSO research team on cities and climate change and the Observatory of Argentine Climate Policy, ARG1.5º. In turn, she is a member of different national and regional climate networks, such as the Latin American Observatory for Climate Action (OLAC), the Latin American Youth and Climate Change Platform (Clic!), and the Alliance for Argentine Climate Action (AACA).

Abstract

The following paper aims to reconstruct the evolution of this dynamic by tracing the interpretations and reinterpretations of the norm done by Brazilian state actors through the process of localization of the norm in the domestic discourse on climate change in Brazil from 2005 to 2010. The theoretical perspective is based on the literature about norms internalization that attempts to specify the conditions under which international norms find salience in particular domestic contexts.

Two main interpretations coexist within the Brazilian political arena in the period within the entry into force of the Kyoto Protocol until the signature of the Paris agreement that influenced the climate politics in Brazil in that period. The first stand around the norm was a traditional interpretation of the principle defending a position of historical responsibilities that implies that Brazil did not have to take greenhouse gas reduction measures. The second position is a more progressive interpretation of the norm that argues that Brazil, as an emergent country, can and must adopt emissions reductions. The tie between both positions allows us to understand the alleged ups and downs in climate policy in the time frame studied.

Keywords

Climate Change; Brazil; Common but Differentiated Responsibilities; Localization

How to cite this article

Kiessling, Christopher Kurt; Alonso, Agustina Pacheco (2022). Common but differentiated responsibilities regarding climate change. Different interpretations within the Brazilian national context. In Janus.net, e-journal of international relations. Vol13, Nº. 1, May-October 2022. Consulted [online] on the date of the last visit, https://doi.org/10.26619/1647-7251.13.1.10

Article received on September 9, 2021 and accepted for publication on February 20, 2022

JANUS.NET, e-journal of International Relations
e-ISSN: 1647-7251
Vol. 13, Nº. 1 (May-October 2022), pp. 152-170
Common but differentiated responsibilities regarding climate change. Different interpretations within the Brazilian national context
Christopher Kurt Kiessling, Agustina Pacheco Alonso

COMMON BUT DIFFERENTIATED RESPONSIBILITIES REGARDING CLIMATE CHANGE. DIFFERENT INTERPRETATIONS WITHIN THE BRAZILIAN NATIONAL CONTEXT

CHRISTOPHER KURT KIESSLING

AGUSTINA PACHECO ALONSO

Introduction

The principle of Common but Differentiated Responsibilities and Respective Capabilities (CBDR–RC from now on) emerges as a fundamental norm of global environmental governance at the interstate level, as a result of the international negotiations that led to the adoption of the United Nations Framework Convention on Climate Change (UNFCCC from now on) in 1992. The traditional interpretation of the norm held that different levels of environmental protection should be expected between developed and emerging or developing countries, or at a minimum, a grace period should be granted to developing countries to address reforms leading to reduce their environmental impact in the medium term. In contrast, mitigation actions should be addressed as soon as possible for developed countries.

The principle's rationale is that Northern states are primarily responsible for past environmental degradation, and they continue to consume an overwhelming proportion of the planet's resources and possess superior technological and financial capabilities to protect the environment. However, many Northern states have refused to accept responsibility for their historical contribution to global environmental degradation. They interpret the principle as imposing only future, not past, responsibilities (Rafiqul Islam, 2015). In this way, the CBDR-RC principle derives from the historical divide between the Global North and Global South on environmental politics and consolidate itself as a compromise between the needs of Northern and Southern countries, recognizing the call to adopt differential norms in certain circumstances given the heterogeneity of the international society (Atapattu, 2015). However, the debates surrounding the adoption of this principle proved unfinished, as some Northern countries, as the United States in particular, sought to cast this principle as a reflection of the North's "superior" technical and financial capacity rather than its duty to provide redress for past harm (Atapattu & Gonzalez, 2015). Despite this debate, the CBDR-RC principle remains a norm of global justice in the international society (Kiessling & Pacheco Alonso, 2019).

Regarding climate change, this norm allowed to establish a division of responsibility between developed and developing countries by defining the former as the main responsible for regulating climate change within environmental governance. With the signature of the Kyoto Protocol in 1997, this norm was institutionalized by establishing that the developed states of the Global North, referred to as Annex I, were those responsible for adopting measures to mitigate climate change. While countries of the Global South (not Annex I) only committed to cooperate within the framework of the climate change negotiations and submit periodical reports to contribute to the UNFCCC goals (Bodansky, Brunée, Rajamani, 2017).

The ambiguity with which the norm was institutionalized within the international arena, precisely the intent of broadening the participation of all countries, led to discussions about the differentiation between the Parties and the way it should be applied. Thus, discussions were held on whether the basis of implementation of the norm should be the changing and dynamic capacities of the countries or the historical contributions regarding GHGs emissions, a debate that has not yet been settled (Bodansky, Brunée, Rajamani, 2017). Being unclear if the CBDR-RC regulates historical responsibilities for past harm on the environmental arena, wealth and technical capacities to diminish the environmental impact, or represent an adaptation of the principle of the common heritage of humankind, all these meanings can coexist in the global discourses regarding the environment.

Since the origin of the principle in the early 90s, this international norm had an exclusively interstate character in consolidating liberal environmentalism as a normative complex of the global governance of climate change (Bernstein, 2001). Brazil was a protagonist in this process by closing ranks in the negotiations with China and India to ensure that they would not adopt legally binding mitigation commitments in the emerging climate governance regime. This alliance laid the foundations for the future work of the G77+China, within the climate negotiations, based on an internal work division where Brazil held the leadership regarding scientific issues.

The performance of G77+China in this scenario was fundamental to lead to a generalized interpretation of the norm that privileged the idea of historical responsibilities and a strong separation between Annex I and non-Annex I countries; and to maintain, among the Global South, the position of not accepting legally binding commitments, based on a rigid identity definition as developing countries. However, at the beginning of the 2000s, global climate governance gained complexity with the emergence and involvement of new actors that led to innovative dynamics within the regime. A paradigmatic case was the process of internalization of the CBDR–RC in the Global South, where the involvement of non-state actors, whether accepting or contesting the content and interpretations of the international norm, shaped the way the principle appeared in the domestic discourse.

The following paper aims to reconstruct the evolution of this dynamic by tracing the interpretations and reinterpretations of the norm done by Brazilian state actors through the process of localization (Acharya, 2004) of the norm in the domestic discourse on climate change in Brazil from 2005 to 2010. The temporal delimitation responds to the entry into force of the Kyoto Protocol in 2005 and the subsequent years through which the domestic climate governance was consolidated until the sanction of the Climate Change Law in 2009 and the National Climate Change Policy in 2010. As identified in previous research, the proposed temporal delimitation responds to the emergency of a domestic climate change governance arena in Brazil (Kiessling, 2018; 2019; 2021). However, it should be noted that the climate governance scenario in Brazil has undergone drastic detrimental changes, both in its structure and in the ambition and robustness of its regulatory body, especially since the arrival of Bolsonaro to the government in 2018. As before this moment, Brazil led climate action in the region - particularly between 2005 to 2010 -, and the processes developed in this period continue to represent an example to follow in Latin America; this paper focuses on the analysis and reflection on this particular moment in the construction of Brazilian climate governance.

The article is structured in seven sections besides this introduction; the first one frames the theoretical-methodological approach; the second and third ones describe the context of the climate change international negotiations and the discussion of the CBDR–RC in the Brazilian domestic context, respectively. The fourth and fifth sections illustrate the two different interpretations of the norm approached by the Brazilian policymakers. The sixth section presents the empirical discussion that sets forth the article's main argument. Finally, the final reflections that recover the article's main findings are presented.

Theoretical-methodological approach

The theoretical perspective that guides this article is based on the literature about norms internalization that attempts to specify the conditions under which international norms find salience in particular domestic contexts. Kratochwil defines *norms* as speech acts through which communication is established (Koslowski & Kratochwil, 1994). In any case, more operational definitions are usually referred to by the literature, such as standards of appropriate behavior for actors with a given identity (Katzenstein, 1996), prescriptions for action in situations of choice (Cortell & Davis 2000), or in more specific; ideas with varying degrees of abstraction and specification concerning fundamental values, organizational principles or standardized procedures that have gained support from states and global actors, and take place prominently in multiple forums including state policies, laws, treaties or international agreements (Krook & True, 2010).

An essential aspect of the diffusion of international norms is their internalization in particular national contexts. In the internalization process, the international (ideas) are connected with the domestic (identities). Sociology and social psychology define the internalization of norms as a process that transforms the motivations and interests of an agent to comply with social norms, transforming adherence to the norm as a way of avoiding punishment or obtaining rewards into compliance as an end in itself (Andrighetto et al., 2010). Traditionally, in the literature of International Relations, it is indicated that the states are the primary agents “generators of norms” or “acceptors of norms” (Rule-makers vs. Rule-takers). However, with new studies on emergency, consolidation, and internalization processes of international norms (e.g., Argomaniz, 2009, Xiaoyu, 2012), the complexity of these dynamics has begun to be understood.

From an interpretive epistemological approach, ideas, norms, and discourses acquire centrality as objects of analysis. The role of ideas has been recognized in International Relations by authors of various theoretical currents. Two major meta-theoretical approaches inform the studies about norms internalization: rationalism and constructivism (Cortell & Davis, 2000; Boekle, Rittberger, Wagner, 1999; e.g.). From rationalism, it is argued that international norms modify the actors' incentives by providing solutions to coordination problems and reducing transaction costs. In this context, that implies that adherence to international standards will depend on a cost-benefit calculation and the possibilities that the rules provide to maximize the profits of these actors.

On the other hand, in a constructivist sense, it is affirmed that international norms provide a language and a grammar of international politics, constituting the social actors themselves through shaping their identities and interests. For constructivism, social actors are guided by the logic of the appropriate, opposing the assumption rooted in the rationalist tradition where it is supposed that social action is guided only by the logic of the consequence. Rationalists read cost-benefit calculation as the leading guide for social action. At the same time, for constructivists, the logic of what is appropriate implies recognizing that, for the actors, it is more critical that their practices are recognized, by other agents and by themselves, as legitimate and appropriate to a given social context (March & Olsen, 2008). If considerations of "appropriateness" prevail to guide the social agency, the modalities under which climate change is initially framed as a problem that define the "adequate" actions to address it will generate dependent trajectories (David, 2007) of these interpretations, impacting on the discourses and the future policy itself.

The latter implies considering international norms as discursive processes (Krook & True, 2010). Recognizing the discursive dimension of the norms allows us to question the assumption that international norms maintain their essence and meaning unaltered during internalization. Precisely, the integrity of an international norm can be questioned after its rhetorical acceptance (Stevenson, 2013). Thus, internalization processes necessarily imply processes of reinterpretation of the norm based on their dynamism. Two sources of the norm's dynamism can be recognized: external and internal ones. The external dynamism of a norm is generated by the broader universe of existing norms and the conflicts or alignments between them, that is, the competition that is generated around the adoption of a particular norm or another potential alternative competitor, whether in the same thematic area or not (Krook & True, 2010).

The internal dynamism is observed in its potential to establish competition between the different meanings that the adoption of the norm implies itself. On the other hand, the internal dynamism of a norm is defined by the connection made between the international norm and its domestic reception or with the correspondence between said norm and existing domestic norms. In other words, domestic actors are active agents in reinterpreting the content of the norm in their adoption and not merely passive recipients of an international system that modifies them.

To refer to the internal dynamism of international norms, it is necessary to bring up the complementary concept of normative congruence. This concept refers to the internalization of international norms in national contexts as a dynamic and unpredictable process that oscillates between perceptions of congruence and incongruence between global norms and domestic conditions (Stevenson, 2013: 11). Following Stevenson (2013), the construction of normative congruence can potentially take different forms and incorporate a wide range of state and non-state domestic actors. These actors can (consciously or unconsciously) promote change processes based on their disagreement with the perception of incongruence (or congruence) about the international norms.

On the other hand, the concept of localization seeks to describe how the internalization of international norms occurs in the Global South when the content of that norm has (or is feasible to build) some linkage with preexisting domestic norms, whether they are directly or indirectly related to the topic. A key element is that localization occurs if there is a process of accommodation so that norms can converge with each other. Thus, the localization of norms starts from the paradox that implies both acceptance and contestation of the norm, enabling the construction and (re)construction of normative convergence. Faced with this situation, localization, not the complete acceptance or total rejection, results in most cases of normative response in the Global South domestic contexts (Acharya, 2004). The hypothesis that guides this study is that along the process of localization of the principle of common but differentiated responsibilities in the Brazilian domestic context, Brazilian governmental actors were redefining their interpretations on the subject along the lines of the different ministries that has competence over the issue of climate change[1].

In methodological terms, the following article recognizes the importance of discourse analysis to understand the framing process of international standards. This concept can be defined as a process tending to select aspects of a perceived reality and make them more salient in discourse to promote somehow a specific definition of a problem, its causal interpretation, moral evaluation, and recommendation for its treatment (Stevenson, 2013). The primary sources of this research are semi-structured interviews with state and non-state actors in Brazil, such as diplomats, members of the Ministers of Environment, Science and Technology, NGO activists, people in business, among others; complemented by a review of secondary sources such as official documents and academic articles. Reading the interviews and official documents under a constructivist lens allows us to understand how the agency of social actors of the Brazilian government and state officials is constituted based on ideas and discourses that construct interpretations on the scope and meaning of the international standards that regulate the global climate governance arena. In this sense, the interviewees' words are presented as illustrations or snapshots of major meaning structures related to the modalities under which the social actors embody the CBDR–RC as a valid norm, the prevailing interpretations on the same, and its changes in time.

[1] This article aims to study the localization process of the CBDR-RC in the Brazilian domestic context. In this sense, the executive branch's role in Brazil is mainly explored and its links with other state and non-state actors. For more detail on the processes of internalization of the CRDB-RC in Brazil by non-state actors, see Kiessling (2019; 2021).

Brazil, the CBDR–RC and the international context in the post-Kyoto stage

The CBDR–RC, proposed by the G77+China countries, was a pillar of the Brazilian government's position at the climate negotiations, even before the signing of the UNFCCC. The formulation of this norm responded to a conception of justice within international society; this meant that the countries that had caused the problem should be the main ones responsible for addressing it and helping the less developed countries to adapt to its inevitable impacts. Brazil's conventional position at the international climate change negotiations was based on an interpretation of this norm that denied the possibility of Brazil adopting any mitigation commitments in climate governance. However, changes in the relationship between developed and emerging countries of the Global South in international negotiations undermined the foundations on which this interpretation was based. From 2005 with the entry into force of the Kyoto Protocol, and especially after 2007 at COP13 in Bali, Indonesia, the developed countries began to seriously question a top-down agenda for negotiations, which only established binding commitments to Annex I countries. In this Conference of the Parties, the countries presented a new way of negotiations that reflected the changes in the international system. With the Bali Action Plan, countries recognized that climate change responsibilities are dynamic in the long term. This plan also established a second negotiation route, separated from the Kyoto Protocol, where a working group of developed countries (including the United States) will negotiate future quantified emission reduction commitments (Lessels, 2013; Albuquerque, 2019).

As a result of this breakdown and the subsequent failure of the COP15 in Copenhagen in 2009 to sign a new Kyoto-style binding treaty, the dynamic of the international negotiation agenda is transformed by adopting a bottom-up approach that enables (and requires) all states to submit national mitigation contributions to the UNFCCC.

In this context of a change of global governance between 2005 and 2009, the CBDR–RC is reinterpreted at the international level to abandon interpretations that only associate this concept with the idea of historical responsibilities leading to a clear separation between them Annex I and non Annex I countries. This international process triggered local processes of reinterpretation of this norm insofar as states could legitimately support traditional interpretations in the context of the new configuration of the climate regime (Albuquerque, 2019).

Common but Differentiated Responsibilities in Brazilian post-Kyoto political context

Since the signing of the Kyoto Protocol in 1997, Brazil has consolidated a position in international negotiations that can be characterized as the traditional Brazilian position on climate change (Johnson, 2001, Viola, Franchini, & Lemos Ribeiro, 2012). In general terms, Viola, Franchini, & Lemos Ribeiro (2012) argue that during the negotiation of the Kyoto Protocol, Brazil held five visions that have been key in defining this position:

- Unwavering commitment to the right to development as the framework in which the climate change policy is inserted.
- Defense of the notion of sustainable development to integrate economic processes with environmental defense.
- Brazil's global leadership on climate change.
- Avoid linking climate change with the regulation and preservation of forests and jungles.
- The radical interpretation of the principle of common but differentiated responsibilities.

During the first decade of the 2000s, there was a political change regarding the power and attributions of the ministries linked to the environmental agenda[2]. While at the beginning of 2000, the Ministry of Science and Technology could be recognized as the leading actor, there was a transition in the second half of the decade that placed the Ministry of Environment at the center of the agenda. This transition was linked to the internalization of the CBDR-RC and to disputes over the meaning and interpretations that this norm should have. By 2010, four Ministries led the climate agenda in Brazil; Environment, Finance, Foreign Affairs, and Science and Technology. These four ministries can be briefly classified into two groups:

- On the one hand, those Ministries sought to sustain the status quo in terms of preserving the institutions and practices already established to regulate climate change in Brazil. Here we can locate the Ministry of Foreign Affairs (MFA) and the Ministry of Science and Technology (MST). The first traditionally sought to limit the interference of other Ministries in the definition of the climate policy in Brazil. They defended the identification of Brazil as an emerging developing country, member of the G77+China that should not completely abandon the CBDR-RC even if voluntary commitments were assumed, as they were only demonstrations of predisposition from a developing country to act. The MST, responsible for administering the Clean Development Mechanism (CDM) since the mid-2000s, also accompanied this position. From its scope of action, the Ministry was favorable to preserve the environmental integrity of the mechanism, as one of the pillars of Brazilian foreign policy on the subject (Kiessling, 2018).
- On the other hand, by 2012, the Ministries of the Environment (ME) and Finance (MF) were leading the way to reinterpret the principle. The ME promoted a radical reinterpretation of the norm, oriented to ensure greater levels of commitment, which was supported and accompanied by other social actors such as the private and the third sector. The preferred modality to face these new obligations, which the Ministry

2 Although several Ministries in Brazil compete in the framework of the climate change agenda, when the UNFCCC was signed, a tacit alliance was established between Itamaraty and the Ministry of Science and Technology. This alliance would have exclusivity in the definition of Brazilian climate policy (Kiessling, 2018). In that sense, only Itamaraty participated in the formulation of the traditional Brazilian position; as it was considered not only to be the agent who represented more consistently the Brazilian national interest but also the one that had the most significant capabilities to do so (Viola, Franchini, Lemos Ribeiro, 2012).

interpreted would be increasing, was adopting economic instruments much more generalized than solely based on the flexibilization mechanisms foreseen by the Kyoto Protocol (the CDM). Thus, the ME became favorable and promoted mechanisms such as REDD+, among other initiatives. The MF played an important role here, accompanying and generating the practical tools that the logic underlying the speeches of the ME required, conforming to a symbiosis that was going to be visible, from the year 2010, in the figure of Minister Izabella Teixeira.

In both cases, the progressive interpretations of the norm are compatible with the reinterpretations that, in the first years of 2010, were privileging on a global scale, as described in the previous section. The different visions are then presented in the following table:

Table Nº1 - Interpretations of the principle of common but differentiated responsibilities by Ministries in Brazil

	Principle of common but differentiated responsibilities
Traditional interpretation of the principle	Ministry of Foreign Affairs - Ministry of Science and Technology
Progressive interpretation of the principle	Ministry of the Environment - Ministry of Finance

Own Elaboration

The following sections will explore both interpretations in greater detail from this outline.

The traditional interpretation of the principle: the Itamaraty flag

As mentioned above, between 2007 and 2009, categorical differentiation based on annexes was abandoned, not without resistance and contestations, in pursuit of self-differentiation (Bodansky, Brunée, Rajamani, 2017); based on a reinterpretation of the CBDR-RC, which shifts from the focus on historical responsibility towards one focused on the capacities of the countries. With the recognition of this change throughout the negotiation rounds of Bali, Itamaraty identifies that it can not continue adopting a defensive position as it had done with the G77+China in the first round of negotiations of Kyoto. The direct consequence of this recognition is a flexibilization of the conventional position towards the recognition of the importance of the large developing countries in the solution of climate change and the new role of Brazil as a great player in the global economy:

> *"Developing countries like Brazil must also take action under the Convention"[3].*

[3] Luis Rebelo Fernandes, Executive Secretary of the MST. Excerpt from the speech given at COP 12, 2006.

> *"All of us must take bigger and bolder steps to reduce emissions"... "Responsibilities are and should be differentiated, but we can not forget that they are also common"*[4]*.*

> *"Our emissions, although they are newer and smaller, also help suffocate and submerge the only land we have to inhabit"*[5]*.*

Itamaraty, like the rest of the countries that would later shape the BASIC bloc, was in favor of the two-track negotiation approach that was consolidated at COP13 in Bali (2007) as they recognized that within the second track of the Bali Action Plan, their actions would always be self-determined. This approach would allow Brazil, India, China, and South Africa to increase their contributions voluntarily, responding to domestic pressures, without these contributions being considered binding targets derived from the convention (Lessels, 2013).

These talks between the three large developing countries occurred from the beginning of negotiations within the G77+China. During this period (2005-2009), while recognizing the transformations within the negotiations, Itamaraty closed ranks with India and China to support the voluntary nature of any action Brazil could take. In this context, regular meetings were held with China and India to coordinate even scheduled aspects, such as the delivery dates of the National Communications to the Secretariat of the Convention[6].

Once BASIC was established, the idea of voluntary contributions constituted in the second track became extremely important to maintain cohesion within the coalition. It meant that a partner country could make voluntary GHGs reductions without compromising the others (Lessels, 2013). This way, the partners could keep the coalition united and maintain an international identity based on their emerging status while allowing margins of action to define domestic policies with a certain autonomy. Thus, with the conformation of BASIC, these countries were able to slow down, or at least reduce, the speed of transformations within the structure of global climate governance. Through this joint action, BASIC members were able to uphold the CBDR-RC, even in the transformation of the commitments from a top-down model to a bottom-up approach (Albuquerque, 2019).

As one respondent points out, the CBDR-RC continued to be a defensive principle despite the transformations:

---

4 Celso Amorin, Minister of Foreign Affairs. Excerpt from a speech given at COP 12, Bali, 2007.

5 Carlos Minc, Minister of the Environment, Excerpt from a speech given at COP 14, Poznan, 2008.

6 As early as 2004, Brazil, India, and China agreed to deliver their first National Communications of the UNFCCC during COP 10 in Buenos Aires, although the National Communication of Brazil had already been prepared before. Although India did not comply with the stipulated and submitted its communication a few months before the other countries, the idea was that the three would delay the delivery of communications to avoid attention to their domestic situations and domestic policies. Delivering them jointly sought to strengthen their position against a potential claim by the Annex I countries (Lessels, 2013).

> *"So at the beginning of those discussions, there was ... the Brazilian government used a lot of that to say that it was not going to do anything, that it was only going to wait for several moments. For example, the Brazilian government sometimes said ... how many developed countries did not publish their emission inventories, we are not going to publish either, how many countries do not send their contributions, those developed countries with Kyoto obligations, we are not going to do either, and over time the Brazilian government became less ... it became a little more flexible, it always remembers that principle, but in a certain way it relaxed a bit …"*[7].

From 2005 to 2010, Brazil continued to strengthen its position within the G77+China; where it was still the reference regarding the scientific topics of the negotiations, but also sought to increase its influence by constructing the idea that Brazil, although a developing country, could assist in the transfer of technology and knowledge to the less developed countries within the frame of South-South and regional cooperation programs (Lessels, 2013):

> *"(...) (Brazil) was a pioneer in worldwide technological developments of clean energy alternatives such as alcohol-based ethanol fuel. We are willing to share this experience with other countries, especially with our sister developing countries"*[8].

> *"(...) and we are willing to share this technology with other developing countries in Africa, Asia, Latin America, and the Caribbean."*[9]

> *"Also, we have been able to create south-south cooperation programs for technology transfer"*[10].

> *"We are not going to exclude it (the idea of transferring financing to less developed countries). It is not a problem for Brazil to contribute to other countries. However, it is clear that the main burden can not be on emerging countries"*[11].

7 Excerpt from the interview with André Rocha Ferretti (Climate Observatory) by videoconference on August 15, 2016.

8 Luis Rebelo Fernandes, Secretary-General of the MST, excerpt from the speech given at COP 12, Nairobi, 2006. Citation extracted from Lessels (2013).

9 Celso Amorin, Minister of Foreign Affairs, excerpt from the speech given at COP 13, Bali 2007. Citation extracted from Lessels (2013).

10 Izabella Mônica Teixeira, Minister of the Environment, excerpt from the speech given at COP 16, Cancun 2010. Citation extracted from Lessels (2013).

11 Celso Amorin, Minister of Foreign Affairs, interview with O Globo on October 14, 2009. Citation extracted from Lessels (2013).

At COP 15 in Copenhagen in 2009, Brazil demonstrated a willingness to help finance the adaptation and mitigation programs for the least developed countries. In the words of Luis Inácio Lula da Silva:

> *"If there is another sacrifice to be made, Brazil is willing to put money also to help other countries. We are willing to participate in the financing if we reach an agreement on a final proposal here at this meeting"*[12].

At the same time, the Brazilian government, as a whole, both the MMA and Itamaraty, began to be much more receptive to enabling instances and spaces for the participation of the organized civil society.

In 2009, Brazil announced at COP15 that it would take voluntary mitigation actions to reduce GHGs. Based on this Brazilian decision, some concerns were unleashed within the BASIC coalition and some G77+China countries, as it could lead to a growing demand for more significant efforts from developing countries and substantial pressure on the idea of mandatory goals for BASICs. However, Itamaraty maintained that the voluntary emissions reduction was part of a national decision that was not legally associated with any agreement of the UNFCCC, and therefore, did not imply that the other members of the BASIC coalition should do the same; since the second way opened after Bali could allow this alternative (Lessels, 2013).

However, this definition was not necessarily shared by the entire Brazilian government. Thus, the ME interpretation on the process of adopting voluntary goals can be understood from the words of an interviewee:

> *"Only here, even that position (the traditional Brazilian position on climate change) in 2005, 2006, had a hegemonic weight in the government, was sustained several times by Lula. With the release of the IPCC report, the documentary by Al Gore, the internal movements, the information that emissions from the developing world, India, China, Brazil came to be equivalent to emissions from the countries of the North, that Brazil went to Copenhagen with a quite expressive change, and arrived with voluntary goals. This has to do with the general political movement of Lula, based on the alignment of China with the US. When China aligns itself with the United States, Lula made an inflection towards Sarkozy and the EU and relaxed at two points in which Brazil was absolutely inflexible: the acceptance of goals and adherence to the proposal of the World Environment Organization that Brazil always resisted until 2006, although with Marina Silva we defended that the government should change its position. Lula changes and becomes the main head of the state in Copenhagen... it was an evolutionary process from 2003 to 2007..."*[13].

[12] Luís Inácio Lula da Silva, President of the Republic of Brazil, 2009, COP 15, Copenhagen. Citation extracted from Lessels (2013).

[13] Excerpt from the interview conducted by Asher Lessels on October 14, 2011 with a high-ranking official of the Brazilian Ministry of the Environment responsible for leading the Brazilian delegation at COP 9.

In this way, it is observed that within the Brazilian government started to emerge and coexist with the classic interpretation of the CBDR-RC, an approach closer to the position held by civil society at the time (Kiessling, 2019); that would end up questioning Itamaraty's traditional view of Brazil's responsibility in mitigating climate change. This process will be developed in greater detail in the next section.

Progressive interpretation of the principle: the responsibilities we can adopt

From 2003, with the arrival of Marina Silva to the ME, the hegemony of the MFA and the MCT on the subject was broken. New voices are enabled within the sphere of discussion that privileged the environmental aspects of climate change over Itamaraty's traditional interpretation of the issue as a problem of development and energy use (Kiessling, 2018). The participation of other voices in the Brazilian government continued to grow, making a great lip with the Interministerial Committee on Climate Change (ICCC) by decree Nº 6263/07. The ICCC is coordinated by the Civil House of the Presidency of the Republic and consists of seventeen federal agencies structured under an Executive Group (EG) coordinated by the Ministry of Environment and composed of eight ministries and the Brazilian Forum of Climate Changes. The CIM, through the EG, prepared in 2008 and 2009, respectively, the National Plan on Climate Change and the National Policy on Climate Change. Thus, the characterization of the CBDR-RC begins to be reinterpreted within the government itself in a way that focuses its attention on the common character of responsibilities rather than on their differentiated character. This norm begins then to be more proactively addressed (the responsibilities we can adopt) than in a defensive way (historical responsibility) (Kiessling, 2018).

The responsibility transition from the MST to the ME, regarding the lead on the issue, occurred gradually and continued from 2005 to 2009-2010. The Brazilian negotiators at the COPs continued to be MFA officials, even though they intended to sustain the traditional Brazilian position on climate change, despite suffering pressures from both the internal changes that were impacting the official position of the country and the transformations that were taking place within the international negotiations themselves. On the other hand, as indicated by Lessels (2013), the technical team of the MST, little by little, began to lose power and influence within the delegation. As of 2010, the MST nearly no longer participates in decision-making processes on climate change, having closed almost all operations related to the climate agenda. However, the MST he kept within his competencies, responsibility regarding the Brazilian National Communications to the UNFCCC, and the CDM projects' management, the regulatory and oversight authority of this matter.

Regarding the ME, as Lessels (2013) indicates, probably for Marina Silva, the most significant concern was not so much the issue of climate change itself, even being Marina, an environmentalist, but that the UNFCCC negotiations were presented as an opportunity to force changes in the country’s performance respecting forest management. Marina

Silva was convinced that it was necessary for Brazil to establish a strong linkage between climate and forest openly and to promote the idea that common but differentiated responsibilities did not mean that Brazil had no responsibilities (Lessels, 2013). Thus, in early 2005, the ME had already broken the association and identified climate change exclusively as a matter of energy use. Under Marina's direction, the ME also opened the first ministerial department dedicated to climate change, giving the Ministry capabilities to address policies on the subject.

This change had enormous importance in the subsequent years since, even though the interpretations of the norm within the Brazilian government remained open, a proactive interpretation of the CBDR-RC, associated with the responsibilities that Brazil can assume based on its capabilities, was the protagonist in the governmental debates. To adopt such an interpretation, previously, it required that climate change was framed as a joint responsibility of humanity, where the current capacities of the states are the necessary standard to establish mitigation goals and not their institutionalized status as a developed or developing country.

This position was accompanied by organized civil society and the academy sector working on this problem, who were favorable, along this process of reinterpretation of the norm, to Brazil changing its domestic and foreign policy on climate change to adopt GHGs reduction commitments (Kiessling, 2019). In this sense, it is worth mentioning the existence of a micro-process of intra-case socialization, which did not involve international actors but had a significant impact on the socialization of state actors. With the arrival of Lula da Silva to the Presidency of Brazil, especially the Ministry of Environment began a process of hiring specialized personnel, which to a certain extent, impacted the agendas, policies, vision, and capabilities of the Ministry. As one interviewee indicates:

> *"... I went there in 2004, more until 2003 (the MMA) had a tiny technical body. (...), with the arrival of Marina Silva, she brought many professionals who acted in the third sector to compose the Ministry team and there she did the first contest, for environmental analysis, she made the contest for (. ..), which was what I did, I worked there, and from there it was starting to build that technical body of the Ministry that did not exist before. And the people who were free in the market to work on that issue are the people who came from the third sector, who were in the third sector and who went to the Ministry to make that transition, to build, to help build that own technical body. Then, not only (the MMA) had many alliances with the private sector and with the third sector, but it had many people who were from the third sector and who had gone to the Ministry to help in that construction..."*[14]

[14] Excerpt from the interview with Beatriz Martins in São Paulo on September 26, 2016.

Discussion and results

As the domestic discourse on climate change was resignifying and questioning the CBDR–RC's centrality in the interpretation of Itamaraty, this movement was accompanied by the emergence of a growing number of governmental agencies formulating options consistent with the CBDR–RC. As argued in the literature, this signal shows the increasing importance of an international norm in a domestic context (Cortell & Davis, 2000; Kiessling, 2021).

The general objective of the program was to identify, plan, and coordinate the actions and measures that could be undertaken about mitigation and adaptation to climate change. Thus, in the first place, the formulation of the National Climate Change Plan in 2007 should be highlighted. This plan was presented as a relevant framework for integrating and harmonizing public policies concerning the subject. The importance of the plan lies in the assumption that this plan represents a transition in the positioning of the government of Brazil: from an identification of the country as a developing country, not Annex I, to a position defined by the objective of beginning to plan voluntary mitigation and adaptation actions through the identification of economic mitigation opportunities[15].

However, the "postulates of the norm" and their meanings were also contested within the government of Brazil itself, between a vision of climate change as a problem of humanity as a whole, as an economic problem of externalities, and as a national problem of development and use of energy.

At the federal level, a bill was submitted to the Congress of Brazil in 2008 that opened a debate in the congress that began to accelerate towards mid-2009 when the Brazilian government began to signal that it was going to adopt emission reduction targets in Copenhagen[16]. This proposal was based on a draft made by the Climate Observatory *(Observatório do Clima)*. It was supported by the Executive becoming the basis of the law that was finally sanctioned and even keeping extracts from the original project of the Climate Observatory.

That represents the institutionalization of cooperation mechanisms between state and non-state actors to consolidate the norm in the domestic context. This cooperation preexisted the sanction of climate law. However, it increased significantly between 2007 and 2009 across the convergence of public, private, and third sector actors towards the definition of the demand for an approach of national regulation of climate change that would transcend the interpretation of CBDR–RC as historical responsibilities.

After a negotiation process within the government, the Brazilian Senate approved the National Climate Change Policy on November 25, 2009. By the end of 2009, Carlos Minc managed to organize a series of small meetings where the most important government

[15] The sectors identified as mitigation opportunities will be the basis of the future sectoral plans defined by the National Policy in 2009.

[16] Itamaraty confirms that Brazil will have a goal against global warming. Folha de São Paulo. 08/12/2009 (https://www1.folha.uol.com.br/ambiente/2009/08/608523-itamaraty-confirma-que-brasil-tera-meta-contra-aquecimento.shtml). Last online consultation: 09/09/2021.

actors came together to discuss Brazil's possible voluntary reductions of GHG emissions. In these four private meetings in the Planalto Palace in Brasilia were present, among others, Lula, president of the Republic; Dilma Rousseff, Chief of the Civil House of the Presidency; Carlos Minc, Minister of the Environment; Sergio Rezende, Minister of Science and Technology; and Celso Amorim, Minister of Foreign Affairs (Lessels 2013). By the end of the third meeting, the political actors converge in favor of adopting announced voluntary goals. Then, formally, the National Climate Change Policy was approved and sanctioned as a law by the president of the Republic on December 20, 2009[17]. This policy announces reductions of between 36.1% and 38.9% concerning the emission levels expected for 2020 in a BAU scenario.

> *"We made a commitment, and we approved it in the National Congress, transforming into law the fact that Brazil, until 2020, will reduce greenhouse gas emissions from 36.1% to 38.9% based on what we consider important: change in the Brazilian agriculture system; change in the Brazilian steel system, change, and improvement of our energy matrix, which is already one of the cleanest in the world; and we assume the commitment to reduce the deforestation of the Amazon by 80% until 2020"*[18].

Thus, with the enactment of the law in December 2009, it can be observed that the two indicators that Cortell and Davis (2000) recognize to analyze this institutionalization empirically were met; namely, changes in the national discourse, as well as modifications in institutions and state policies (Cortell & Davis, 2000).

Final thoughts

This article described the modalities under which the Common but Differentiated Responsibilities principle was internalized and localized in Brazilian national politics. It was demonstrated that this norm was adopted early by Brazilian diplomacy to prevent Brazil from adopting binding greenhouse gas reduction targets. In general terms, towards the year 2003, with the arrival of Marina Silva to the Ministry of the Environment, this norm begins to be reinterpreted within the government itself in a way that focuses its attention on the shared nature of responsibilities rather than on its differentiated character. In this sense, more proactive approaches to the principle (the responsibilities we can adopt) started to gain traction versus defensive approaches (historical responsibilities). This reinterpretation of the norm reached a high point in 2009 with the enactment of the climate change law and the adoption of voluntary commitments by the Brazilian government. However, this reinterpretation was not consolidated as hegemonic

[17] President Lula vetoed three articles of the original law in an action that some observers interpreted as a defense of the oil sector (For example https://www1.folha.uol.com.br/ambiente/2009/12/672320 -lula-must-sanction-lei-do-clima-mas-protects-setor-do-petroleo.shtml).

[18] Luis Inácio Lula da Silva, President of Brazil, 2009, Excerpt from the speech given at COP 15, Copenhagen. Citation extracted from Lessels (2013).

within the country, mainly due to Itamaraty holding a more rigid interpretation of the norm[19].

Since then, Brazil's climate policy and governance have undergone major changes, mainly due to two significant milestones, the signing and entry into force of the Paris Agreement and the rise to power of Jair Bolsonaro.

With the signing of the Paris Agreement in 2015 and its subsequent entry into force in 2016, the CBDR–RC underwent transformations that reduced its centrality as a guiding principle of global climate governance. However, in the national arena, the debates around the different interpretations of the principle once again became relevant in the elaboration of Brazil's Nationally Determined Contribution.

A few years later, the rise to power of Jair Bolsonaro meant setbacks in the ambition and robustness of Brazilian climate policy. Both in discursive terms and the actions that were taken, the position of the new government on the climate crisis meant the dismantling of environmental regulations, the disappearance of the issue from the government agenda, and the space for leadership in climate action by non-state actors - at the internal level - and from other countries - at the regional level -.

Thus, future research could address the following questions arising from this article: 1) How did the signing of the Paris Agreement influence Brazilian domestic discussions and debates on the CBDR–RC? 2) How did this interpretation of the CBDR–RC by the Ministry of Foreign Affairs influence the possibilities of exercising Brazilian regional leadership on climate change? Furthermore, 3) How did the location impact the arrival to the government of Jair Bolsonaro in Brazil in 2018 and the process of contesting the environmental protection regulations?

References

Acharya, Amitav (2004). How Ideas Spread: Whose Norms Matter? Norm Localization and Institutional Change in Asian Regionalism. *International Organization.* Vol 58, no. 2: 239-275.

Albuquerque, Felipe Leal (2019). Coalition Making and Norm Shaping in Brazil’s Foreign Policy in the Climate Change Regime. *Global Society*. Vol 33, no 2: 243-261.

Andrighetto, Giulia, Daniel Villatoro, Rosalia Conte (2010). “Norm Internalization in Artificial Societies.” *AI Communications.* Vol 23, no. 4: 325-339.

Argomaniz, Javier (2009). When the EU is the ‘Norm-taker’: The Passenger Name Records Agreement and the EU’s Internalization of US Border Security Norms. *Journal of European Integration* Vol 31, no. 1: 119-136.

Atapattu, Sumudu (2015). The Significance of International Environmental Law Principles in Reinforcing or Dismantling the North-South Divide by Shawkat Alam, Sumudu

[19] From 2009 to 2012, both interpretations coexisted and remained in dispute in the implementation of the National Climate Change Policy's goals and the elaboration of the sectoral plans, acting as the discursive basis of the future Brazilian proposal of the “concentric circles” in the year 2014.

Atapattu, Carmen G. González and Jona Razzaque (eds.), *International Environmental Law and the Global South.* New York: Cambridge University Press: 74-108.

Atapattu, Sumudu, Carmen G. González (2015). The North-South Divide in International Environmental Law: Framing the Issues by Shawkat Alam, Sumudu Atapattu, Carmen G. González and Jona Razzaque (eds.), *International Environmental Law and the Global South.* New York: Cambridge University Press: 1-22.

Bernstein, Steven (2001). *The compromise of liberal environmentalism.* New York: Columbia University Press.

Boekle, Henning, Volker Rittberger & Wolfgang Wagner (1999). Norms and Foreign Policy: Constructivist Foreign Policy Theory. Tübinger Arbeitspapiere zur Internationalen Politik und Friedensforschung. Center for International Relations/Peace and Conflict Studies. Available at https://publikationen.uni-tuebingen.de/xmlui/handle/10900/47193

Bodansky, Daniel, Jutta Brunnée, Lavanya Rajamani (2017). *International Climate Change Law*. Oxford: Oxford University Press.

Checkel, Jeffrey (1999). Norms, Institutions and National Identity in Contemporary Europe. *International Studies Quarterly* Vol 43, no. 1: 83-114.

Cortell, Andrew, James Davis (2000). Understanding the Domestic Impact of International Norms: A Research Agenda. *International Studies Association.* Vol 2, no. 1: 65-87.

David, Paul (2007). Path dependence – a foundational concept for historical social science. *Cliometrica — The Journal of Historical Economics and Econometric History,* Vol 1, no.2: 1-23.

Islam, Rafiqul (2015). History of the North-South Divide in International Law: Colonial Discourses, Sovereignty, and Self-Determination by Shawkat Alam, Sumudu Atapattu, Carmen G. González and Jona Razzaque (eds.), *International Environmental Law and the Global South.* New York: Cambridge University Press: 23-49.

Johnson, Ken (2001). Brazil and the Politics of the Climate Change Negotiations. *Journal of Environment & Development.* Vol 10, no. 2: 178-206.

Katzenstein, Peter (1996). Introduction: Alternative Perspectives on National Security by Peter Katzenstein (ed.), *The Culture of National Security: Norms and Identity in World Politics.* New York: Columbia University Press: 1-32.

Kiessling, Christopher Kurt (2018). Brazil, Foreign Policy and Climate Change (1992-2005). *Contexto Internacional.* Vol 40, no. 2: 387-408.

Kiessling, Christopher Kurt (2019). Internalización del principio de las responsabilidades comunes, pero diferenciadas: interpretaciones desde la sociedad civil brasileña. *Letras Verdes. Revista Latinoamericana de Estudios Socioambientales.* No 25: 8-28.

Kiessling, Christopher Kurt (2021). Principio de las Responsabilidades Comunes pero Diferenciadas: un análisis de la internalización de la norma por parte del sector privado en Brasil (2005–2015). *Estudios Internacionales.* Vol 53, no 198: 63-88.

Kiessling, Christopher Kurt, Agustina Pacheco Alonso (2019). Escuela inglesa y gobernanza climática global: un diálogo necesario. *Relaciones Internacionales*, no 41: 53-72.

Koslowski, Rey, Friedrich Kratochwil (1994). Understanding Change in International Politics: the Soviet Empire's Demise and the International System. *International Organization.* Vol 48, no. 2: 215-247.

Krook, Mona Lena, Jacqui True (2010). Rethinking the Life Cycles of International Norms: The United Nations and the Global Promotion of Gender Equality. *European Journal of International Relations.* Vol 18, no. 1: 103-127.

Lessels, Asher (2013). *Cambiando el Clima, el Efecto de Lula sobre la Posición de Brasil en las Negociaciones de la UNFCCC*. Buenos Aires: Flacso Argentina. Universidad de San Andrés. Universitat de Barcelona.

March, James, Johan Olsen (2008). The Logic of Appropriateness by Robert E. Goodin, Michael Moran, and Martin Rein (eds), *The Oxford Handbook of Public Policy*, Oxford: Oxford University Press.

Stevenson, Hayley (2013). *Institutionalizing Unsustainability: The Paradox of Global Climate Governance.* Berkeley: University of California Press.

Viola, Eduardo, Matias Franchini, Thaís Lemos Ribeiro (2012). *Sistema Internacional de Hegemonia Conservadora: Governança Global e Democracia na era da Crise Climática.* Brasilia: Universidade de Brasilia.

Xiaoyu, Pu (2012). Socialization as a Two-way Process: Emerging Powers and the Diffusion of International Norms. *The Chinese Journal of International Politics.* Vol 5, no 4: 341–367.

OBSERVARE
Universidade Autónoma de Lisboa

e-ISSN: 1647-7251
Vol. 13, Nº. 1 (May-October 2022)

JANUS.NET
e-journal of International Relations

PHARMACEUTICAL PATENTS AND THE RIGHT TO HEALTH - PORTUGAL AND BRAZIL

RUBEN BAHAMONDE DELGADO
rbahamonde@autonoma.pt
Associate Professor at the Law Department of Universidade Autónoma de Lisboa (Portugal). Coordinator and Integrated Researcher at *Ratio Legis* – Centre for Research and Development in Legal Sciences of Universidade Autónoma de Lisboa [Project: *Self-tutelage and implementation of Private Law*].

Abstract

The defence of the patent system's legitimacy, namely in the pharmaceutical field, is consolidated, although it is not exempt from criticism. Historically, when the patent law, a legal monopoly right, is confronted with the right of access to health, which includes the right to the medicines necessary for its care, the mechanisms that have been established are scarce and weak. Nonetheless, one must recognize due merit in the search for a balance between the exclusive right of the holder of the legal monopoly and the right of the community to generalized access to medicines necessary to fulfil the right to health. In the current context of the covid-19 disease, where access to health care for all countries, rich and poor, is at stake, it seems that there is a greater will to make the right to health prevail over the property right of the holder of a pharmaceutical patent.

Keywords

Pharmaceutical patents; right to health; access to essential medicines

How to cite this article

Delgado, Ruben Bahamonde (2022). Pharmaceutical patents and the right to health – Portugal and Brazil. In Janus.net, e-journal of international relations. Vol13, Nº. 1, May-October 2022. Consulted [online] on the date of the last visit, https://doi.org/10.26619/1647-7251.13.1.11

Article received on September 29, 2021 and accepted for publication on February 18, 2022

PHARMACEUTICAL PATENTS AND THE RIGHT TO HEALTH - PORTUGAL AND BRAZIL[1]

RUBEN BAHAMONDE DELGADO

Introduction

The problem resulting from the confrontation between the right to health and industrial property rights is not new, nor exclusive to the Portuguese-Brazilian reality. However, the new challenges, namely those resulting from covid-19, require a greater and better clarification of this confrontation[2]. Indeed, the traditional paradigm of the interaction between the right to health and industrial property that has as its object medicines has focused on the confrontation of interests between rich or developed countries, where there are several companies holding pharmaceutical patents, and poor or less developed countries, where there are few economic and financial means to guarantee access to such medicines and where there are serious and widespread health problems. In the current context, one can say that covid-19 has levelled state economies, as many countries traditionally considered rich or developed do not have the industrial property necessary to produce a drug/vaccine to treat covid-19, thus becoming dependent on the solutions that appear on the market, obviously protected by industrial property, in order to be able to provide timely and adequate access to healthcare for its citizens. In these cases, although the countries concerned have the means to acquire the medicines protected by patents, they may not be available in the desired quantities, prices and dates. This situation reveals a scenario of high selling prices of the solutions found, protected by pharmaceutical patents, assuming that the normal and free functioning of the market will allow access to such solutions to those countries that are in the best conditions to pay a higher price, thus relegating to the background countries that have fewer economic resources. Covid-19 is not HIV/AIDS, nor bronchitis, nor tuberculosis. It affects all layers of society in all societies in all countries of the world in very worrying numbers and without there being a standard of very clear prevention/protection in terms of effectiveness. The problem is not new, but the fact that in the current context a significant number of human beings belonging to rich or more developed countries are

1 Article translated by Carolina Peralta.
2 Covid-19 is the official name of the disease caused by the severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2), first identified in 2019, and which in this work we will refer only as covid-19. https://www.volp-acl.pt/index.php/item/covid-19

affected, should generate greater pressure/availability to face this situation from another perspective.

Patents in the international context

Patents have as their object inventions and consist of an exclusive right or legal monopolies conferred by the corresponding entities to those who apply for them, provided that the enabling legal requirements for that purpose are met (Bahamonde, 2016, pp. 163-167). In order for an invention to be granted this protection, it will be necessary that the requirements of novelty, inventive capacity and industrial use are cumulatively met[3]. Inventions for which patent protection can be claimed may concern objects, a particular substance or a device, or they may concern procedures, where what is protected is not the result, but the sequence of steps taken to achieve this particular result. In this context, inventions regarding medicines or specific procedures to obtain substances useful for the treatment of diseases are also likely to benefit from the protection conferred by the patent system.

The patent system is characterized by being nationally based, i.e. the patent is granted by the competent authority of a state and is valid for that state. However, due to the important role that patents play in economic legal traffic, and specifically for the development of markets tending to be characterized by the need to promote their growth through internationalization and globalization, the need to homogenize this matter arose. Thus, it can be said that the first positive interest in creating a system that would allow homogenizing the patent system was at the Paris Union Convention for the protection of Industrial Property of 1883[4]. Without intending to refer exhaustively to the aforementioned legislation, it is worth highlighting its main characteristics related to our topic. In this sense, the unionist priority was established (Article 4/C-1). It was the possibility of granting compulsory licences in the face of abusive exercise of the exclusive right granted by the patent (5A-2) and the possible introduction of patent expiry as a subsidiary measure to the system of compulsory licences (5A-3)[5].

Much more recently, in the Final Act of Marrakech of 1994, which contained the results of the Uruguay Round negotiations, within the scope of the World Trade Organization (WTO), and had its precedents in the General Agreement on Customs and Trade (GATT)[6], the Agreement on Trade-Related Industrial Property Rights (TRIPS) was adopted. Since the main scope of the aforementioned agreement is the adoption of measures and procedures that allow the reduction of distortions to international trade related to the

3 In Portugal, see Article 1 of Decree-Law no. 110/2018, of 10 December, which approved the new Industrial Property Code. In Brazil, see Article 1 of Law No. 9.297, of 14 May 1996, diploma that regulates rights and obligations related to industrial property

4 Paris Convention for the Protection of Industrial Property of 20 March 1883, last amended on 2 October 1979, available at https://www.wipo.int/edocs/pubdocs/pt/wipo_pub_201.pdf.

5 The expiry action can only be activated two years after the granting of the first compulsory licence. With regard to compulsory licences, based on speech or insufficient use, they cannot be requested before the expiry of the period of four years from the filing of the patent application, or three years from the granting of the patent. The longest term will be applicable (5A-4).

6 General Agreement on Tariffs and Trade established in 1947, which, through the Uruguay Round, gave rise to the World Trade Organization in 1994 (Marrakech Declaration of 15 April 1994). For additional information, see https://www.wto.org.

effective protection of intellectual property rights, the special needs of the least advanced signatory countries are expressly recognized, requiring, in these cases, a more flexible application of the rules in question so that a viable technological base can be created. In this context, the agreement establishes the possibility for the signatory countries to exclude the patentability of inventions whose commercial use in their territory must be prevented in order to protect the health or life of people and animals. It also provides for the possibility of using the patent granted without the holder's consent in national emergency situations[7].

Despite the aforementioned mechanisms, the relationship between the pharmaceutical industry and the signatory States, namely those less evolved in terms of ownership of industrial property rights in the pharmaceutical field, increased the tension between the protection of property and the right to health that the States must guarantee to their citizens. In this context, the DOHA Declaration on the TRIPS Agreement and public health was made on 14 November 2001[8]. This declaration was based on the seriousness of the public health problems that affected many developing countries, with particular relevance to HIV/AIDS, tuberculosis, malaria and other epidemics, namely in Brazil, South Africa and India (Orsi, 2007: 1997-2003; Polônio, 2006: 68; Cullet, 2003: 147-154). Despite the recognition of the fundamental importance of intellectual property protection for the development of new medicines, the legitimacy of the Member States to adopt measures aimed at protecting public health is also underlined, imposing the obligation that the TRIPS agreement be interpreted in the sense of supporting the right of WTO Members to protect health. The document reiterates the possibility for States to grant compulsory licences and their right to determine what constitutes, in each case, a national emergency or other circumstances of extreme urgency. To avoid further confusion, it is specifically recognized that public health crises, including those related to HIV/AIDS, tuberculosis, malaria and other epidemics, may represent a national emergency or other circumstances of extreme urgency[9]. Finally, the most relevant aspect of this document is the recognition of the inefficiency of the compulsory licensing system when it comes to countries whose manufacturing capacities in the pharmaceutical sector are insufficient or non-existent, which will necessarily lead to more creative solutions in this type of situation (Pontes, 2017: 49). To try to overcome this difficulty, after the DOHA Declaration, several decisions were adopted in order to allow cheaper generic medicines manufactured under compulsory licences in case the importing countries are not able to

7 Article 27(2) of the TRIPS requires that this deviation from the rule, in addition to being supported by the corresponding legislation, must be based on the reasons provided for the protection, among others, of health. In addition, and without prejudice to the protection of the invention through a patent, article 31 establishes several situations in which the right in question can be used by third parties without the authorization of the holder. Namely, paragraph b) refers to national emergency situations or situations of extreme urgency or cases of public non-commercial use.
Article 27(2) of the TRIPS requires that this deviation from the rule, in addition to being supported by the corresponding legislation, must be based on the reasons provided for the protection, among others, of said health. In addition, and without prejudice to the protection of the invention through a patent, article 31 establishes several situations in which the right in question can be used by third parties without the authorization of the holder. Namely, paragraph b) refers to national emergency situations or situations of extreme urgency or cases of public non-commercial use.

8 WTO Ministerial Conference (DOHA, 2001): TRIPS, WT/MIN/(01)DEC/2, 20 November 2001, available at https://www.wto.org/spanish/thewto_s/minist_s/min01_s/mindecl_trips_s.htm

9 See point 5(c) of the Declaration on the TRIPS Agreement and public health.

manufacture them themselves. Thus, exporting countries were exempted from the obligations arising from subparagraph f) of article 31 of the TRIPS, allowing any Member country to export generic pharmaceutical products manufactured under compulsory licences to satisfy the needs of importing countries, provided that certain conditions are met[10]. In 2017, it was decided to add article 31bis to the Agreement, thus allowing importing countries to distribute the imported medicinal product under licence in countries belonging to the same economic area and facing the same health emergency situation[11].

Following this path, the European Union has also sought to clarify the problem of the supply of generic medicines manufactured using compulsory licences when its Members are States experiencing public health problems (Fernández-Nóvoa, 2017: 201-206)[12].

It is also important to mention that the problems resulting from the exercise of rights arising from pharmaceutical patents are not limited exclusively to the least developed countries. Indeed, as far as the most advanced countries are concerned, and with the means to produce the drugs in question, the question arises in terms of assessing from which moment the knowledge protected by a pharmaceutical patent can be used, to give initiation to the necessary legalization procedures, aimed at the production and subsequent commercialization of a generic drug. This issue gave rise to the well-known "Bolar provision", which relates to the interpretation of Article 30 TRIPS and the possibility, widely contemplated in legal systems, of allowing the use of knowledge protected by a patent for experimental or research purposes[13]. The Bolar provision goes beyond this situation, establishing an exception that allows the experimental use of a product protected by patent to carry out the necessary administrative procedures aimed at authorizing the marketing of the generic product in question, essentially based on the requirement to respond to social needs , namely the rapid introduction of affordable medicines (Tudor, 2018: 300-308)[14].

Alongside these instruments, and collaborating in the search for solutions to the exposed problems, there are other important international organizations such as the World Intellectual Property Organization (WIPO)[15] or the World Health Organization (WHO), namely through the Commission on Intellectual Property Rights, Innovation and Public

[10] Decision of 6 December 2005 — Amendment of the TRIPS Agreement; Decision to extend the deadline for accepting the amendment to the TRIPS Agreement, 2015; Decision on application by least developed member countries — Obligations under Article 70(8) and (9) of the TRIPS Agreement relating to pharmaceuticals, 2015 and Decision on the extension of the transition period under Article 66(1) of the TRIPS Agreement for least developed member countries in relation to certain obligations relating to pharmaceuticals, 2015.

[11] See Article 31bisd in full, updated in March 2020 https://www.wto.org/english/res_e/publications_e/ai17_e/trips_art31_bis_oth.pdf

[12] Regulation (EC) No 816/2006 of the European Parliament and of the Council of 17 May 2006 on the granting of compulsory licences for patents relating to the manufacture of pharmaceutical products intended for export to countries with public health problems.

[13] See. subparagraph c) of no. 1 of article 103 of the Portuguese Industrial Property Code and item II, article 43, of Law no. 9.297, of 14 May 1996, which regulates rights and obligations related to industrial property in Brazil.

[14] In any case, the aforementioned clause does not preclude the need for the basic patent or the complementary protection certificate to be expired in order to start marketing the generic product.

[15] See https://www.wipo.int/patent-law/en/developments/publichealth.html

Health[16], which, with their studies and recommendations, have greatly contributed to the evolution of the treatment given to pharmaceutical patents when related to access to the right to health in developing or less developed countries. Industrial property, as a property right or as a protection for the authorship of creations, finds a legal basis in the Universal Declaration of Human Rights of 1948, namely in article 17 on the right to property and in paragraph 2 of article 27 on moral and material interests of authors[17], and in the International Covenant on Economic, Social and Cultural Rights, (1966/1976) which recognizes, in paragraph c) of point 1 of article 15, the protection of authors' interests[18].

In the latter case, it should be noted that the Committee on Economic, Social and Cultural Rights, in the general observation of Article 17, specifies in its introduction the need to differentiate between human rights as such and intellectual property regimes, making it clear that intellectual property rights should not be equated with the human right recognized in paragraph c) of point 1 of article 15 of the Covenant[19]. To justify this position, among other arguments, the Committee specifies that human rights are fundamental because they are inherent to the human person as such, whereas intellectual property rights are mainly means used by States to stimulate creativity and inventiveness, protecting itself through intellectual property regimes, namely commercial and business investments. The Charter of Fundamental Rights of the European Union of 2000 (Article 17) also protects the right to property in the terms that were already provided for in the European Convention on Human Rights of 1950[20].

It should also be noted that the treatment of patents at international level has been given wide prominence, namely through the Patent Cooperation Treaty (PCT), whose objective is to simplify the procedures for obtaining protection of inventions through patents in the various signatory States. In the current context of covid-19, the WIPO International Secretariat has made some rules more flexible, namely interpreting the current pandemic situation as being covered by the tolerance of delays in meeting the PCT deadlines[21]. At supranational level, we have in the European context the Munich Convention on the European Patent Organization (EPO) of 1973, whose objective is also to simplify the procedures for obtaining protection for inventions in the signatory States and the much more ambitious project of the European Patent with Unitary effect, where the ultimate

---

16 See https://www.who.int/intellectualproperty/en/

17 Everyone has the right to the protection of the moral and material interests linked to any scientific, literary or artistic production of their authorship.

18 The States Parties to this Covenant recognize the right of every person to (…) benefit from the protection of the moral and material interests that correspond to them by virtue of scientific, literary or artistic productions of which they are the author.

19 UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 17: The Right of Everyone to Benefit from the Protection of the Moral and Material Interests Resulting from any Scientific, Literary or Artistic Production of Which He or She is the Author (Art. 15, Para. 1 (c) of the Covenant), 12 January 2006, E/C.12/GC/17. https://www.refworld.org/docid/441543594.html

20 The European Convention on Human Rights and Fundamental Freedoms (Rome, 04.11.1950) introduced, through its additional protocol in 1952, article 1 on the protection of property, which states: "*No one may be deprived of his or her possessions except in the public interest and in the cases and under the conditions provided for by law*".

21 Patent Cooperation Treaty made in Washington on 19.06.1970, last modified on 30.10.2001. See PCT Rule 82Q.

objective would be to create a single procedure for the protection in several Member States of an invention through a patent[22].

With this contextualization, it is evident that the protection of inventions through patents has achieved a significant homogenization at international level, promoted mainly by commercial interests (Bahamonde, 2016: 167-171). However, as a counterpoint to commercial interests, the analysed rules also state a clear concern with the protection of social interests, namely in the field of health, with several mechanisms being foreseen to achieve the desired balance between all the interests at stake.

Patents in the Portuguese-Brazilian national context

As seen above, without being exhaustive, there is a vast international treatment of the protection of inventions as one of the typologies of industrial/intellectual property[23], so the majority of national legal systems tend to be quite homogeneous, namely in the Portuguese-Brazilian case. Still, it will be interesting to analyse the mechanisms specifically provided for in each of the legal systems in question, to ensure a certain balance with regard to patents and other interests.

The Portuguese Industrial Property Code (CPI) establishes, in line with other codes on the matter, that patents can be obtained for any inventions, whether products or processes, in all fields of technology, as long as they are new inventions, imply an inventive step and are susceptible of industrial use[24]. Article 50(5) of the CPI also provides for the possibility of protecting the same invention either through a patent application or through a utility model application. However, with regard to the specific field of protection of pharmaceutical products or procedures, it is established that inventions that affect pharmaceutical substances or compositions and pharmaceutical processes cannot be object of a utility model[25]. Thus, inventions that relate to pharmaceutical products or procedures can only be protected through a patent, thus guaranteeing a more rigorous system for the protection of these inventions (Sousa e Silva, 2011: 87-90)[26].

The legal monopoly right granted to the patent holder is not absolute, and, in this line, the Portuguese legislator has established several mechanisms to limit it in situations of justified interest. As seen above, the right conferred by the patent does not allow its holder to prohibit acts for testing or experimental purposes (103/1/c), thus allowing the

---

[22] Decision 2011/167/EU of the European Council, of 10 March 2011, authorizing enhanced cooperation in the field of the creation of unitary patent protection. Regulation (EU) No 1257/2012 of the European Parliament and of the Council of 17 December 2012, which regulates enhanced cooperation in the field of the creation of unitary patent protection and Regulation (EU) No 1260/2012 of the Council of 17 December 2012, which regulates enhanced cooperation in the field of the creation of unitary patent protection with regard to the applicable translation regime and the Agreement on the Unified Patent Court of 19 February 2013.

[23] Intellectual property generically refers to copyright and industrial property itself, so when dealing with the matter of patents we believe it is more appropriate to use the term industrial property.

[24] See Article 1 of Decree-Law No. 110/2018, of 10 December, which approved the new Industrial Property Code.

[25] Subparagraph d) of no. 1 of article 121 of the CPI.

[26] In fact, inventions protected through the utility model have a lower requirement for inventive step, which translates into faster protection, but at the same time more tenuous and precarious.

protected and published knowledge to immediately contribute to the scientific development of the respective area of application. Subparagraph b) of the same norm also excludes from the patent holder's powers the possibility of preventing the preparation of medicines made at the time and for individual cases or preparatory procedures. Article 108 of the CPI also provides for the possibility of granting compulsory licences in the event of lack of or insufficient use of the patented invention (109th), in the event of dependence between patents (110) and for reasons of public interest (111). In the latter case, the licence will be granted by order of the member of the Government responsible for the matter, considering that there is a reason for public interest when the increase or generalization of the use of the invention, or the improvement of the conditions under which such utilisation takes place, are of paramount importance to public health. The possibility of loss or expropriation of the patent is also foreseen in the case of having to answer for obligations contracted with others or for public utility, situation in which the rules of the Code of Expropriations will apply[27].

All these limitations result from the balance between the nature of the law in question and that of other areas of law where friction can occur. It is true that the qualification of the industrial property right as a property right, i.e., within the scope of article 62 of the Constitution of the Portuguese Republic (CRP), is not pacific in terms of doctrine, as it consists, at the limit, of a *sui generis* property right. However, even with specificities, what is undeniable is that our legal system recognizes its nature, hence, it can be expropriated, which corresponds to one of the possible limitations of the property right. On the other hand, this right could also find protection within the scope of paragraph 2 of article 42 CRP (Freedom of cultural creation)[28]. In this sense, regarding the nature of the industrial property right in Portugal, when confronted with the right to health, the Constitutional Court ruled in judgment no. 216/2015 that *despite the evident constitutional protection of patents and the rights arising from them, it is unequivocal that they yield to the fundamental right of health protection*"[29].

[27] See Article 107 CPI

[28] On the one hand, paragraph 2 of article 42 CRP is a fundamental right that enjoys the enhanced protection of article 18, and the property right established in article 62 CRP is a fundamental right of a similar nature. In this sense, see the ruling of the Southern Central Administrative Court (TCAS) of 05.06.2010 in the scope of case No. 06154/10, where the Rapporteur was Dr Teresa de Sousa, establishing that "*The property right enshrined in art. 62 of the CRP, which covers industrial property rights, including rights based on drug patents, has been considered a fundamental right similar in nature to the rights, freedoms and guarantees for the purposes of applying the contents of articles 17 and 18 of the CRP".* This decision is very relevant as it was pronounced with the losing vote of Dr Benjamin Barbosa, whose reasoning was later confirmed by the Constitutional Court ruling below.

[29] Decision No. 216/2015 of the Constitutional Court, 2nd section, delivered within the scope of case 207/2013. The decision in question assessed the constitutionality of Law no. 62/2011 of 12 December with regard to the procedure for the Marketing Authorization (MA) and the Retail Price (RRP) of generic drugs that could infringe a patent. In this procedure, INFARMED could not assess the violation of a previous patent, so the marketing of a generic drug could be approved, although it could later be demonstrated that it violated a previous right. Quoting Professor Paulo Otero, he echoes the point that "*the proximity and essentiality of guaranteeing health with the dignity of the human person, in a State model where people are worth more than things or property, and the understanding that the limitation or restriction of exclusive rights arising from patents translates into an expansion of freedom, in a State model that privileges freedom over property, lead to an abstract constitutional solution that gives preference to the position that defends the introduction of generic medicines into the market, in view of the patrimonial content position defended by patent holders on reference medicines*."

In turn, the Brazilian Industrial Property Law also establishes several limitations to the patent holder's right in the same way as the Portuguese legal system. In fact, the patent holder cannot prevent acts performed by unauthorized third parties, with experimental purposes, related to scientific or technological studies or research (43/II), nor prevent the preparation of medicines according to medical prescription for individual cases performed by a qualified professional, as well as the drug thus prepared (43/II). A central role in this set of limitations is the compulsory licence that may be imposed when the object of the patent is not used in Brazilian territory, due to lack of manufacture or incomplete manufacture of the product (68 §1/I) and when the commercialization of the protected object or process does not satisfy the needs of the national market (68 §1/I) and, likewise, in the event of dependence between patents (70). Finally, in situations of national emergency or public interest, declared in an act of the Federal Executive branch, as long as the patent holder or its licence holder do not meet this need, a compulsory licence may be granted[30].

With regard to the constitutional protection of patents in Brazil, it is worth noting the greater clarity with which the Brazilian constituent expressed it when specifically enshrining in Title II of the Constitution of the Federative Republic of Brazil (CRFB), on fundamental rights and guarantees, the guarantee that "*the law will grant the authors of industrial inventions a temporary privilege for their use, as well as protection of industrial creations, the ownership of trademarks, company names and other distinctive signs, with a view to social and technological interest and the country's economic and technological development*"[31]. In other words, the Brazilian Magna Carta directly views patents not as a property right, but as a temporary privilege, subjecting their attribution and exercise to the technological and economic social interest.

At first glance, we can point out the following relevant differences between the Portuguese and the Brazilian legal systems. In the Portuguese one, the possibility of expropriation of the patent right was expressly foreseen when based on reasons of public utility, which is not provided for in Law n. 9.279 of 14 May 1999 (LPI) in Brazil. This is evaluated positively, as it recognizes a preventive function, allowing patent holders to be aware of the serious consequences that can arise from a deficient use of their right, also making it easier to justify drastic decisions in extreme situations, such as during the current pandemic, within its corresponding regulatory framework[32].

In Brazil, the legislator specifically provided for the possibility of granting compulsory licences if the patent holder abusively exercises the rights arising therefrom, or through it practices abuse of economic power, proven under the law, by administrative or judicial decision (68). In this case, we do not find a similar principle in the Portuguese CPI, perhaps because if this behaviour were to occur, we would be faced with a possible

---

[30] This issue was developed by Decree No. 3.201, of 6 October 1999, which provides for the granting, *ex officio*, of a compulsory licence in cases of national emergency and public interest, as provided for in art. 71 of Law No. 9.279 of 14 May.

[31] See item XXIX of article 5 of the CRFB.

[32] Despite the goodness of the rule, at present, it is not known any situation when the Portuguese State has applied it in practice.

situation of abuse of a dominant position within the scope of article 11 of the Competition Law or article 102 of the Treaty on the Functioning of the European Union[33].

However, as there is a wide interaction and/or complementarity (Pérez, 2018: 372-393; Bahamonde, 2016: 166-167) between industrial property law and competition law, this provision in the Brazilian legal system seems to us to be systematically relevant, as it reinforces legal certainty in the application of this mechanism, unlike what happens in Portugal[34].

Both legal systems focus their reaction mechanism in the face of lack of use or insufficient use by the patent holder in the field of compulsory licences (Palmela, 2016). Regarding them, it is necessary not to be too encouraging with the prospects for the future, because in fact, it has never been used in Portugal, and in Brazil (EFAVIRENZ) it was only used once[35]. However, we believe that the mere affirmation of the possibility of compulsory licencing will allow any negotiations between the parties involved to be more compromised.

The central role of compulsory licences

From the above, it follows that compulsory licences are the most common mechanism to offset possible imbalances arising from the exclusivity right conferred by a pharmaceutical patent[36].

The compulsory licencing regime in Brazil and Portugal basically provides for two modalities with regard to patents related to medicines. Firstly, a compulsory licence, which requires confirmation of insufficient use of the invention to supply the national market. In these circumstances, the Portuguese rule requires, prior to its granting, that the applicant has made efforts to obtain from the patent holder a contractual licence under acceptable commercial conditions, and that such efforts are not successful within a reasonable period (108/3). In turn, the Brazilian rule requires that the applicant has a legitimate interest and technical and economic capacity to carry out the efficient use of the object of the patent (68/§2). In fact, these two rules coincide in the need to confirm that the applicant is a serious candidate and that he has the conditions and commitment to use the licence to supply the market. In both systems, this licence is expected to be non-exclusive, non-sublicensable, revocable, and remunerated[37].

Secondly, we have compulsory licences justified by national emergency situations or public interest, in which case pre-requisites for granting them are waived. In these

[33] Law No. 19/2012, of 8 May, which established the new legal system for competition.

[34] This was also the option of the Spanish legislator provided for in article 94 of Law 24/2015, of 24 July, on Patents.

[35] Through the publication in the Official Gazette of the Union of Decree no. 6.108, of 4 May 2007, which granted the compulsory licencing, in the public interest, of the patents related to EFAVIRENZ, for the purpose of non-commercial public use.

[36] See articles 30 and 31 of the TRIPS agreement, article 109 of the CPI and article 68 and following of Law No. 9.279, of 14 May 1996. However, its use is very scarce, so it is common to say that it fell far short of the expectations placed in it (Fernández-Nóvoa, 2017: 197-206).

[37] This similarity of the norms under analysis results from the imposition that arises for the States of the TRIPS agreement, specifically from article 30.

situations, the Brazilian legislator allows the granting of a compulsory licence when it is shown that, in the face of a national emergency or public interest, the patent holder does not meet this need (Remédio, 2011: 399-400; Couto, 2005: 116-119). For its part, the Portuguese legislator also requires a public interest reason for the use of this measure. However, it differs from its Brazilian counterpart in that it is not required that the owner improperly uses the invention, i.e., the owner of the invention may be making every effort to satisfactorily use the invention, and even to be succeeding, but even then, for reasons of public health, he may be obliged to grant a compulsory licence. Apparently, the Portuguese norm is a little more restrictive than the Brazilian norm, although an extensive interpretation of this norm allows reaching the same understanding in Brazil.

The Portuguese-Brazilian compulsory licencing system is clearly the result of a "transposition" of article 31 TRIPS, resulting from both countries' membership of the World Trade Organization. In practical terms in Portugal, compulsory licences have not gone beyond paper, insofar as they are only the subject of academic study, as none have been enforced to date.

In turn, in Brazil there is only one specific situation when a compulsory licence (EFAVIRENZ) was granted. However, in the global context, the reality is more encouraging, as it appears that compulsory licences are used more than what is generally thought or known.

In fact, in a study carried out on the subject, 81 compulsory licences were identified between 2001 and 2016, which also include developed countries, as a result of the high price of certain medicines (Hoen, 2016: 186-187).

We can thus conclude that compulsory licences have been used in a very timid way, having the potential to constitute an adequate response to overcome the barriers that pharmaceutical patents may pose to the realization of the right to access medicines and, in turn, to the right to health. Additionally, it can always be argued that its legal provision gives it a preventive and dissuasive use of deviant behaviour on the part of the patent holder, which undoubtedly has encouraged the granting of voluntary licences.

The "recent" possibility of drug protection through patents

It is important to point out that both Brazil and Portugal joined the WTO on 01.01.1995, and that, until that date, protection of medicines through patents was not allowed in Brazil (Nunes, 2009, pp. 13-18). Indeed, as a result of its accession to the WTO, the LPI, in the sole paragraph of article 229 of Title VIII, of the transitional and final provisions, states[38]:

> *"To the requests relating to pharmaceuticals and agricultural chemicals, which were filed between 1 January 1995 and 14 May 1997, the patentability criteria of this Law apply on the effective date of filing of the application in Brazil or of priority, if any, ensuring protection from the date of granting the*

[38] Law No. 9.279, of 14 May 1996, whose content was inserted by Law No. 10.196, of 2001.

> *patent for the remaining period from the day of filing in Brazil, limited to the period provided for in art. 40".*

In Portugal, Decree 30679 of 24 August, which approved the Industrial Property Code of 1940, provided that the following could not be subject to patents (Article 5, no. 3:

> *"food, as well as pharmaceutical products and preparations, intended for humans or animals, although the devices or systems for their manufacture may be patented".*

However, with the accession to the European Patent Convention (EPC) in 01/01/1992, Portugal became the recipient country of a pharmaceutical product patent application. Indeed, Articles 52 and 53 of the Convention allow for patent protection of a pharmaceutical invention, with no specific exclusion preventing it.

Paradoxically in this period, in Portuguese territory it is possible to apply through the European Patent for the protection of a medicine, although its patent protection through the national route is not allowed.

Although Portugal is obliged to implement the TRIPS Agreement only as of 01/01/1996, as provided for in article 65, no. 1, its compliance was anticipated with the approval of the Industrial Property Code, through Decree-Law no. 16/95, of 24 January, which came into force on 01/06/1995 (art. 9) and adjusted national legislation to the TRIPS Agreement, allowing the patenting of pharmaceutical products (Articles 47 to 49).

In this analysis, it is important to remember that, prior to the TRIPS Agreement and despite the existence of rules regarding the protection granted by patents, the CUP enabled signatory countries to establish their own internal rules, namely, establishing what could or could not be the subject of patent. In other words, the signatory countries could choose to protect in their national territories the drug inventions through patents or, on the contrary, they could prohibit the protection through patents of drug inventions. In practice, this implied that the fact that an inventor could patent a drug in a given national territory did not prevent third parties from using the knowledge underlying that patent in another territory where the invention was not patentable.

From the above, it is clear that there is a national and international regulatory framework for the protection of inventions of medicines through patents. However, it should not be forgotten that the inclusion of drug inventions in the protection of patents is very recent, and that the aforementioned protection was achieved, not so much by virtue of the patent system to promote the right to health and innovation, but rather as a condition for benefiting from the economic prerogatives deriving from accession to the WTO.

The Right to Health

Health in the international context

The Charter of the United Nations signed in San Francisco on 26 June 1945, at the end of the United Nations Conference on the International Organization, entered into force on 24 October 1945, and established the need to promote the solution of international economic, social, health and related problems, as well as international cooperation, of a cultural and educational nature as a means of maintaining and preserving peace between peoples (55/a). The Economic and Social Council was also established, whose function is, among others, to prepare studies and reports on international matters of an economic, social, cultural, educational, health and related nature, being able to make recommendations on such matters to the General Assembly[39], members of the United Nations and interested special organizations.

In turn, the Universal Declaration of Human Rights (1948), in its article 25/1, establishes that everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, especially food, clothing, housing, medical care and the necessary social services[40].

The World Health Organization emerged as a specialized body, under the terms of article 57 of the United Nations Charter. Health is seen as a state of complete physical, mental and social well-being, not merely the absence of disease or infirmity. It is also stated that enjoying the best possible state of health is one of the fundamental rights of every human being, without distinction of race, religion, political creed or economic or social condition[41].

It is also underlined that the health of all peoples is essential for achieving peace and security and depends on the closest cooperation of individuals and States. The results achieved by each State in the promotion and protection of health are of value to all. The uneven development in different countries in terms of promoting health and combating diseases, especially contagious ones, constitutes a common danger[42].

Also within the scope of the United Nations, the International Covenant on Economic, Social and Cultural Rights is highlighted. Its article 12 clearly shows the commitment between the signatories to widely protect the right to health, recognizing all people the right to enjoy the highest level of physical and mental health and imposing concrete measures for their protection (Helfer, 2015: 317-318; Sellin, 2015: 445-473).

In turn, the Treaty on the Functioning of the European Union, in its Article 9, sets out as an objective the promotion of a high level of employment, the guarantee of adequate social protection, the fight against social exclusion and a high level of education, training and protection of human health. In the same regulation, article 168 provides that in the definition and implementation of all Union policies and actions, a high level of health protection will be ensured. Union action, which will complement national policies, will

---

[39] Constituted by all members of the United Nations (9/1)
[40] Adopted by the United Nations on 10 December 1948.
[41] Preamble to the Constitution of the World Health Organization.
[42] Accordingly, the primary objective of the World Health Organization is the acquisition, by all peoples, of the highest possible level of health (Article 1).

focus on improving public health and preventing human illness and disease and reducing causes of danger to physical and mental health. This action will cover the fight against major scourges, encouraging research into their causes, forms of transmission and prevention, as well as health information and education and surveillance of serious threats to health with a cross-border dimension, alerting in the event of such threats and the fight against them.

The Charter of Fundamental Rights of the European Union, in article 35 on the protection of health, establishes that everyone has the right to access prevention in health matters and to benefit from medical care, in accordance with national laws and practices. In the definition and implementation of all Union policies and actions, a high level of human health protection is ensured.

In other words, there is no doubt that the protection of the right to health occupies a pre-eminent position in the various international instruments, not only as an end, but also as a means of ensuring peace between peoples and the dignity of the human person. This right should supersede others of a more materialistic nature.

Health in the Portuguese-Brazilian context

In the Portuguese context, the right to health is enshrined in Article 64 of the CRP, which establishes that everyone has the right to health protection and the duty to defend and promote it[43]. Paragraph 2 of the same document prescribes that the protection of the right to health will take place through a universal and general national health service, which tends to be free of charge. It establishes the achievement of economic, social, cultural and environmental conditions that guarantee the protection of childhood, youth and old age. Subparagraphs c) and e) of paragraph 3 of article 64 CRP deserve special interest in the matter that concerns us. They imposes on the State the priority task of guiding action towards the socialization of the costs of medical and drug care and also disciplining and controlling the production, distribution, marketing and use of chemical, biological and pharmaceutical products and other means of treatment and diagnosis.

In line with the above in the international context, it is clear in the Portuguese national domain that the right to health allows the realization of other constitutionally enshrined fundamental rights, such as the right to life and the right to moral and physical integrity, as well as the realization of the principle of human dignity (Monge, 2019: 78; Miranda, 2010: 1309).

In the Brazilian context, health is enshrined in article 196 of the CRFB, as a right of all and a duty of the State, guaranteed through social and economic policies aimed at reducing the risk of disease and other aggravations and at universal and equal access to actions and services for their promotion, protection and recovery. Within the competences attributed to the unified health system, it is worth mentioning the one that

[43] As stated by the doctrine "The right to health protection comprises two aspects: one, of a negative nature, which consists of the right to demand from the State (or third parties) that it refrain from any act that harms health, the other, of a positive nature, which means the right to state measures and benefits aimed at disease prevention and treatment. … in the second case, it is a social right itself, with the corresponding constitutional configuration" (Canotilho, 2014: 825).

refers to controlling and inspecting procedures, products and substances of interest to health and participating in the production of medicines, equipment, immunobiological products, blood products and others[44]. This right fits within the social rights provided for in article 6 of the Brazilian Constitution, which guarantees individuals' autonomy, enabling them to exercise other rights freely through access to educational training, work, housing, and heath care (Carvalho, 2019: 25-28).

Without having the opportunity to delve further into the legal treatment given to this right and the consequent obligation imposed on the State, this paper shows that we are dealing with a right that goes beyond its own borders as an end and is also essential for the realization of many other rights. Accordingly, when compared with the property right, it seems evident that the latter must yield to the former, and this superiority does not imply the elimination or annulment of the property right.

Final considerations

As a result of the analysis carried out in this work, it would be logical to conclude on the relevant role of compulsory licences as a means to allow greater and broader access to health when used in a situation where pharmaceutical patents exist. However, if this has already proven not to be very effective when targeting access to medicines by less developed countries, in the current context, in which the problem of access to a medicine or treatment protected by patent that can treat covid-19, extends to most advanced countries, the role to be played by compulsory licences is manifestly null (Hoen, 2016: 185-193)[45].

Indeed, the recent context of covid-19 has shown that the main tool to promote the rapid and effective gaining of a pharmaceutical solution to fight the pandemic has been based on voluntary collaboration between economic agents, in an increase in permissiveness on the part of pharmaceutical patent holders so that the object of their protection can be freely used in the production of more effective medicines or vaccines and solidarity initiatives to finance the acquisition and donation of vaccines (Bartels, 2020: 11-12). There are several strategies to democratize access to patent-protected medicines in a "normal " context, i.e., non-pandemic conditions. Indeed, within the scope of the mechanisms to boost this access, and as mentioned above, TRIPS enables the possibility of compulsory licences based on the lack of sufficient use by the holder, and also compulsory licences based on a situation of national urgency or public interest and non-commercial purposes. There is also provision for flexibilization of exports from producing countries, albeit with compulsory licences, to less developed countries without production capacity and the possibility of exporting these medicines between a country that receives this aid and another country in the same economic area.

In most countries, there are expropriation regimes that can be brought against the patent right holder when faced with situations of public utility and interest. Voluntary licences

[44] See. Title I of Article 200 CRFB.
[45] These authors advocate that a wider use of compulsory licences would be essential to guarantee better and broader access to health, both in poor and rich countries.

also play an important role, as does the currently very limited ability of non-WTO member countries to exclude vaccines from patentability. We also have altruistic initiatives, such as the COVAX programme, whose objective is to raise funds to acquire vaccines and equipment and distribute them to countries with greater difficulties in dealing with the pandemic situation[46].

Despite all these mechanisms, it has been found that the solution to the pandemic situation based on the goodwill of patent holders is not enough to build an effective, rapid and global response, with very "embarrassing" situations occurring with regard to the vaccination levels of the population[47]. As a result of this situation, several proposals were presented to the WTO to suspend the WTO TRIPS agreement on vaccines, treatment and equipment related to covid-19 and increase production and manufacturing capacity in developing countries[48].

These proposals were evaluated in the Proposal for a Resolution presented by the European Parliament of 2 June 2021 on how to face the global challenge of covid-19[49]. Roughly speaking, this document opposes a possible suspension of patents related to the treatment of covid-19, stating that the patent system is essential to fostering innovation and safety in the invention ecosystem and that this safety is essential to be able to invest in finding solutions for new variants of covid-19[50]. Alternatively, the aforementioned document recommends that the emphasis should be on encouraging the donation of vaccines and on permitting the export of vaccines from producing countries to countries in need of vaccines, among other measures.

This stance is to be regretted, since there are several reasons that would impose a decision to the contrary[51]. All existing mechanisms contribute to overcome the pandemic situation at a global level, but all of them have proved to be insufficient and far from real needs. Extraordinary situations require extraordinary approaches that lead to extraordinary solutions.

The protection of medicines through patents is relatively recent and the acceptance of this protection by several States was based not so much on the conviction of its advantages, but because it is a necessary requirement to benefit from other advantages

46 https://www.gavi.org/covax-facility

47 In fact, the vaccination rate is very high in rich countries, and non-existent or low in less developed countries. Rich countries "monopolize" vaccines to satisfy their national needs first, and there is a race between rich countries to that end. Many unnecessary doses were withheld by rich countries. In the free market, solutions could be sold to the top payer with priority, as was the case of Israel, which paid almost twice as much for the vaccine as the European Union. https://www.elindependiente.com/vida-sana/salud/2021/01/21/el-precio-del-milagro-israeli-con-la-vacuna-pagar-mas-y-dar-datos-a-pfizer/. The WHO has asked rich countries to delay the administration of a third dose of the vaccine and allow for an increase in vaccination in countries where the first doses have not yet been administered https://elpais.com/sociedad/2021-08-04/la-oms-pide-una-moratoria-mundial-para-la-tercera-dosis-de-las-vacunas-contra-la-covid-19.html. Furthermore, pharmaceutical companies did not have any problems in increasing vaccine prices in contracts signed with the European Union, which is certainly justified by commercial opportunism. https://www.lavozdegalicia.es/noticia/sociedad/2021/08/01/pfizer-moderna-suben-precio-vacunas-contra-covid/0003162782605126512 5579.htm

48 See https://www.wto.org/english/news_e/news21_e/trip_23feb21_e.htm

49 See https://www.europarl.europa.eu/doceo/document/B-9-2021-0311_PT.pdf

50 See Recital L.

51 See the Human Rights Watch article of 03.06.2021 entitled Seven Reasons the EU is Wrong to Oppose the TRIPS Waiver. https://www.hrw.org/news/2021/06/03/seven-reasons-eu-wrong-oppose-trips-waiver

arising from membership of the WTO. In addition, the ability of the patent system in the pharmaceutical sector to stimulate innovation is far from being peaceful, with studies showing precisely the opposite effect (Gold, 2010). Another factor to consider is the fact that many medicines protected through patents are also the result of public investment, in its various forms, which questions the democratization of investment and the monopolization of eventual profits (Cross et al., 2021)[52].

In our understanding, the provisional suspension of patents that protect vaccines is the extraordinary measure that this extraordinary situation requires to build a solid and rapid response to the global emergency. We disagree with the understanding advocated by the Chairman of the Board of GAVI – Global Alliance for Vaccines and Immunization, José Manuel Durão Barroso, in maintaining that this measure would have a negative impact on research and innovation. Another argument given is the absence of knowledge or secret know-how to put into practice the use of suspended patents, which is also difficult to understand (Barroso, 2021: 66). Firstly, as we have seen, there are situations when a large part of the funding needed to obtain vaccines is public, so an eventual suspension of patents obtained with that funding would allow for adequate economic compensation that would reward the public effort made. Secondly, an essential pillar of the patent system is the publicity of the invention to be protected in such a way that the owner of the patent right will have to reveal all the necessary procedures for any expert in the field to reproduce the protected invention. In this context, it is not clear how it can be argued that there will be an "important know-how" that would prevent verifying the quality of vaccines produced with the knowledge of suspended patents.

Indeed, if the vaccine is protected by patent, any expert in the field will be able to reproduce the vaccine following the instructions made public with the patent application. If, on the contrary, the reproduction of the procedure protected by the patent does not result in exactly the same vaccine whose protection was requested, due to the lack of important know-how, then the vaccine could not be protected by patent, and would be freely used.

References

Bahamonde, Ruben (2016). *El derecho de la competencia y los acuerdos de transferencia de tecnología.* Aranzadi.

Bartels, Hans Georg (2020). Global Challenges Division, IP and COVID-19, WHO, WIPO, WTO Study. Promoting Access to Medical Technologies and Innovation, Geneva. https://www.who.int/publications/i/item/9789240008267

Carvalho Filho, José dos Santos, Severo and Sousa Dabés Leão, Simone Letícia (2019). A Concretização do direito à saúde pela jurisprudência do Supremo Tribunal Federal, *Revista de Direito Sociais e Políticas Públicas*, V. 5, No. 2: 25-28.

[52] See also the Human Rights Watch article entitled "Seven Reasons the EU is Wrong to Oppose the TRIPS Waiver". https://www.hrw.org/news/2021/06/03/seven-reasons-eu-wrong-oppose-trips-waiver

Couto Gonçalves, Luís M. (2005). Manual de Direito Industrial, Patentes. Marcas. Concorrência Desleal: Almedina.

Cullet, Philipe (2003). Patent and medicines: the relationship between TRIPS and the human right to health, *International Affairs*, 79, I: 139-160.

Durão Barroso, J.M. (2021). «Propriedade Intelectual e Vacinas anti COVID-19», *Boletim*. Ordem dos Advogados, no. 32: 65-66.

Fernández-Nóvoa, Carlos, Otero Lastres, José Manuel and Botana Agra, Manuel (2017). *Manual de la Propiedad Industrial*, 3rd ed., Marcial Pons.

Gold ER, Kaplan W, Orbinski J, Harland-Logan S, N-Marandi S (2010). «Are Patents Impeding Medical Care and Innovation?» PLoS Med 7(1): e1000208. https://doi.org/10.1371/journal.pmed.1000208

Gomes Canotilho, J. J., Moreira, Vital (2014). *Constituição da República Portuguesa Anotada*, Vol. I, 4rd Ed., Coimbra Editora.

Helfer, Laurence R (2015). «Pharmaceutical Patents and the Human Right to Health. The Contested Evolution of the Transnational Legal Order on Access to Medicines, Transnational Legal Orders» Terence. C. Halliday & GREGORY Shaffer, ed.: 311 -339.

Human Rights Watch (2021). «Seven Reasons the EU is Wrong to Oppose the TRIPS Waiver». https://www.hrw.org/news/2021/06/03/seven-reasons-eu-wrong-oppose-trips-waiver

Miranda, Jorge, Medeiros, Rui (2010). *Constituição Portuguesa Anotada*, Vol. I, 2nd Ed., Coimbra Editora.

Monge, Cláudia (2019). «O direito fundamental à protecção da saúde», *Revista Electrónica de Direito Público*, Vol. 6, no. 1: 75-100.

Nunes, A. J. Avelâs, Marques, J. P. Remédio, Abreu, J.M Coutinho de, Cunha, LP (2009). «A inconstitucionalidade das patentes "pipe-line" brasileiras (ARTICLES 230 and 231 do CÓDIGO DA PROPRIEDADE INDUSTRIAL DE 1996)», *Revista Electrónica do IPB*, Patentes Pipeline, Ed. Especial, Instituto Brasileiro de Propriedade Intelectual.

Orsi, Fabienne, D´Almeida, Cristina, Hasenclever, Lia, Camara, Mamadou, Tigre, Paulo and Coriat, Benjamin (2007). TRIPS post-2005 and access to new antiretroviral treatments in southern countries: issues and challenges, *AIDS,* Vol. 21, Issue (15), pp. 1997-2003, DOI: 10.1097/QAD.0b013e328273bbe4 .

Palmela Fidalgo, Vítor (2016). *As licenças Compulsórias de Direitos de Propriedade Industrial*. Almedina.

Pérez Martinez, Miriam (2018). «Derecho de Patentes Versus Derecho de Defensa de la Competencia en la Unión Europea: ¿Una relación de complementariedad?», *Cuadernos de Derecho Transnacional,* Vol. 10, no. 1: 372-393.

Polônio, Carlos Alberto (2006). «Patentes farmacêuticas e acesso a medicamentos: regras comerciais, direito à saúde e direitos humanos», *Revista de Direito Sanitário*, São

Paulo, V.7, n. 1/2/3 p. 163-182. https://doi.org/10.11606/issn.2316-9044.v7i1-3p163-182

Pontes, C.E.C. (2017). «Patentes de medicamentos e a indústria farmacêutica nacional: Estudo dos depósitos feitos no Brasil», *Revista Produção e Desenvolvimento* (RPD), v. 3, n.º 2: 38-51.

Remédio Marques, J.P. (2011). *Contratos de Direito de Autor e de Direito Industrial*, (Org. Ferreira de Almeida, Carlos, Couto Gonçalves, Luís e Trabuco, Cláudia, Almedina: 399-400.

Samuel Cross, Yeanuk Rho, Henna Reddy, Toby Pepperrell, Florence Dodgers, Thiannon Osborne, Ayolola Eni-Olotu, Rishi Banerjee, Sarai Keestra (2021). «Who funded the research behind the Oxford-AstraZeneca Covid-19 vaccine?». https://doi.org/10.1101/2021.04.08.21255103

Sellin, J.A. (2015). «Does One Size Fit All? Patents, the Right to Health and Access to Medicines». *Neth Int Law Rev* 62: 445–473.

Sousa e Silva, Pedro (2011). *Direito Industrial, Noções Fundamentais*, 1st ed., Almedina.

Hoen, E. F. M., Veraldi, J., Toebes, B. and Hogerzeil, H. V. (2018). «Medicine procurement and the use of flexibilities in the Agreement on Trade-Related Aspects of Intellectual Property Rights, 2001–2016», *Bulletin of the World Health Organization* 96: 186–187. http://dx.doi.org/10.2471/BLT.17.19936

Tudor, Elena Cristina (2018). «La cláusula Bolar como excepción a los derechos conferidos por una patente farmacéutica en Europa». *Revista de Estudios Europeos*, no. 71: 300-308.

OBSERVARE
Universidade Autónoma de Lisboa

e-ISSN: 1647-7251
Vol. 13, Nº. 1 (May-October 2022)

JANUS.NET
e-journal of International Relations

BALANCING THE PRIVACY V. SURVEILLANCE ARGUMENT: A PERSPECTIVE FROM THE UNITED KINGDOM

VAIBHAV CHADHA
vchadha@jgu.edu.in
Assistant Professor of Law at Jindal Global Law School, O.P. Jindal Global University (India). He holds a master's degree in Law from Queen Mary University of London and bachelor's degree in commerce as well as law from University of Delhi. He has written international articles on anticipatory bail law in India, copyright law and freedom of speech and expression. Before moving to academia, Vaibhav worked at the Offices of Advocate General of State of Nagaland, India, and Additional Solicitor General of India. His areas of interest include free speech, media law, and criminal law.

Abstract

In the aftermath of revelations made by ex-NSA employee Edward Snowden about violation of privacy of individuals by states in the name of surveillance, right to privacy became one of the highly debated rights. There is no doubt that the state must secure privacy of its citizens, but it also has a responsibility towards safety of the citizens. There exist different views related to privacy and surveillance. One view is that the state has no right to look into the private affairs of an individual while the other view is that there is no harm in putting someone suspicious under the surveillance as it is the duty of the State to prevent any untoward act in the society. Considering the contrasting views about privacy and surveillance, this article explores the position existing in the United Kingdom and aims to answer several questions pertaining to the Privacy v. Surveillance debate.

Keywords

Privacy; Surveillance; Investigatory Powers Act; General Data Protection Regulation and Data Protection

How to cite this article

Chadha, Vaibhav (2022). Balancing the Privacy v. Surveillance argument: a perspective from the United Kingdom. In Janus.net, e-journal of international relations. Vol13, Nº. 1, May-October 2022. Consulted [online] on the date of the last visit, https://doi.org/10.26619/1647-7251.13.1.12

Article received on August 15, 2021 and accepted for publication on January 27, 2022

BALANCING THE PRIVACY V. SURVEILLANCE ARGUMENT: A PERSPECTIVE FROM THE UNITED KINGDOM

VAIBHAV CHADHA

1. Introduction

Right to privacy remains one of the paramount possessions of human beings. Since its coming into existence, the right to privacy has momentously progressed and has developed into an established right across majority of modern democracies.[1] Right to privacy is granted under Article 12 of Universal Declaration of Human Rights 1948, which states that there shall be neither "arbitrary interference" with anyone's "privacy, family, home or correspondence" nor an attack on an individual's "honour and reputation". Article 17 of the International Convention of Civil and Political Rights 1966 provides that no one's "privacy, family, home or correspondence" shall be subjected to "arbitrary or unlawful" intrusion. The legal basis of privacy as a right in Europe evolves from Article 8(1) of the European Convention of Human Rights (ECHR), which provides for right to respect for private and family life and Article 8(2), which provides that there shall be no interference in this right by public authority except in accordance with law.

Right to privacy in Europe has been further strengthened with the enforcement of General Data Protection Regulation (GDPR) in May 2018. GDPR is one of the most stringent privacy and security laws in the world. Despite being enacted by the European Union (EU), it casts a duty on all organizations situated anywhere in the world as far as they "target or collect" data of people in the EU region. GDPR also imposes heavy fines against those violating the privacy and security standards laid down by it.[2]

There is an intrinsic relationship between privacy and national security because there are restrictions as to how much people are willing to trade privacy in pursuit of national security.[3] Article 23 of GDPR provides that subject to the union or member state law, rights given in Articles 12 to 22 (rights of data subject) and Article 34 (communication of a personal data breach to the data subject) can be restricted by way of legislative

---

1 Eric Caprioli, Ygal Saadoun and Isabelle Cantero, 'The Right to Digital Privacy: A European Survey' (2006) 3 Rutgers Journal of Law & Urban Policy 211.
2 'What is GDPR, the EU's new data protection law?' *GDPR.EU* available at https://gdpr.eu/what-is-gdpr/ accessed on 12 May 2020
3 Fred H Cate, 'Government Data Mining: The Need for a Legal Framework' (2008) 43 Harvard Civil Rights-Civil Liberties Law Review 435, 484.

measure on the grounds of national security, defence, public security and prevention, investigation, detection or prosecution of crimes.

In the United Kingdom (UK), Data Protection Act 2018 (DPA, 2018) was enacted to implement GDPR. Before enactment of the DPA 2018, Data Protection Act 1998 regulated the domestic processing of personal data by intelligence agencies. A new structure has been created by DPA 2018, which provides a distinct mechanism to supervise the processing of personal data by intelligence agencies. This mechanism is based on the international standards that will be laid out in a revised Council of Europe "Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data" (the "modernised Convention 108"; amended Protocol was adopted by the Council of Europe on 18 May 2018). It is pertinent to note that national security does not come in the purview of European Union law. As a result, neither GDPR nor Law Enforcement Directive (LED) covers in its ambit the processing of personal data for the purpose of national security. Consequently, the terms of GDPR and LED were not intended to be applicable to processing of personal data by the intelligence agencies.[4] LED concerns with the processing of personal data with the motive of "prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties" by the competent authorities.[5]

A specific mechanism for the intelligence agencies is provided by Part 4 of the DPA 2018 (intelligence services processing). It warrants that the processing of personal data by intelligence agencies is subjected to suitable and corresponding standards that acknowledge the serious task of the intelligence agencies in dealing with present-day and prospective threats to national security.[6] Also, section 110 of the DPA 2018 provides exemption to intelligence agencies from certain provisions of the Act where it is essential to safeguard national security.

2. Background

Privacy concerns all individuals in their most personal and private affairs. It is a fundamental human right that remains under continuous threat due to the modern technological advancements.[7]

Privacy should not be considered as an individual right in opposition to the larger societal good. Issues of privacy require equilibrium at both edges of the scale as privacy entails safeguarding against a range of various dangers or troubles, the worth of privacy varies

---

4 Home Office, Government of United Kingdom, *Data Protection Act 2018, Factsheet – Intelligence Services Processing,* p. 1, available at < https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/711233/2018-05-23_Factsheet_4_-_intelligence_services_processing.pdf > accessed on 19 June 2020.

5 Directive (EU) 2016/680 of the European Parliament and of the Council (27 April 2016), p. 1.

6 Home Office, Government of United Kingdom, *Data Protection Act 2018, Factsheet – Intelligence Services Processing,* p. 2, available at < https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/711233/2018-05-23_Factsheet_4_-_intelligence_services_processing.pdf > accessed on 19 June 2020.

7 Ilina Georgieva, 'The Right to Privacy under Fire Foreign Surveillance under the NSA and the GCHQ and Its Compatibility with Article 17 ICCPR and Article 8 ECHR' (2015) 31 Utrecht Journal of International and European Law 104.

based on the specific trouble or danger that is being safeguarded. All privacy issues are not alike, and some issues are more dangerous than others; thus, an abstract value cannot be assigned to privacy.[8] The conflict between surveillance and privacy is a consequence of our vast troubles adjusting with progress in technology.[9]

The importance of the right to privacy was highlighted when ex – National Security Agency (NSA) employee Edward Snowden made revelations that under a secret order of a court, records of millions of US citizens were being collected by NSA indiscriminately irrespective of the fact whether those individuals were involved in any illegal act or not.[10] This led to a huge outcry amongst the public and there were strong objections raised to such surveillance by the state. Public felt it was an intrusion into their personal lives by the state and became more aware and cautious in issues pertaining to their privacy.

In our society, surveillance technology is prevalent and that often results in a strong debate between the advocates and opponents of surveillance technology. Specifically, government surveillance has been brought more and more under scrutiny of the public with supporters asserting that it enhances security while opponents denouncing it for infringing privacy.[11] From the viewpoint of a society, it is important to preserve requisite balance between security concerns and privacy and intrinsic civil rights of citizens.[12]

3. Surveillance by State Agencies

Surveillance is not only for the governments. A substantial wealth is generated by private companies by gathering, utilizing, and selling personal data of individuals.[13] Surveillance, in simple terms means "watching over". It relates to "monitoring, tracking, observing, examining, regulating, controlling, gathering data and invading privacy." The term surveillance originates from the French word "veiller" and the Latin word "vigilare."[14]

Professor David Lyon defines surveillance as "the focused, systematic and routine attention to personal details for purposes of influence, management, protection or direction." As per Professor Lyon, surveillance is "focused" as it pays attention on individuals. The term "systematic" denotes that scrutiny of personal details is intentional and relies on some "protocols and techniques" and by term "routine," Professor Lyon means that it happens in all modern societies as a 'normal' part of day to day life

8 Daniel J. Solove, ''I've Got Nothing to Hide" and Other Misunderstandings of Privacy' (2007) 44 San Diego Law Review 745, 763.
9 H. Akin Ünver, 'Politics of Digital Surveillance, National Security and Privacy' (Centre for Economics and Foreign Policy Studies, 2018) 7.
10 Glenn Greenwald, 'NSA collecting phone records of millions of Verizon customers daily' *The Guardian* (United Kingdom 6 June 2013).
11 Michelle Cayford & Wolter Pieters, '*The effectiveness of surveillance technology: What intelligence officials are saying'* (2018) The Information Society 34(2), 88 DOI: 10.1080/01972243.2017.1414721.
12 Stefan Schuster, Melle Berg , Xabier Larrucea, Ton Slewe and Peter Ide-Kostic, 'Mass Surveillance and technological policy options: Improving security of private communications' (2017) 50 Computer Standards & Interfaces 76, 77.
13 Neil M Richards, 'The Dangers of Surveillance' (2013) 126 Harvard Law Review 1934, 1938.
14 Kelly Gates, 'Surveillance' in Laurie Ouellette and Jonathan Gray (eds), *Keywords for Media Studies* (NYU Press 2017) 186.

dependent on administrative set-up and certain information technology.[15] Surveillance, as per him, is also invariably attached to a particular "purpose."[16]

Surveillance is not only for the communist and dictatorial states. In the aftermath of 9/11 attacks, 2005 London bombings and various other heinous crimes, huge investments have been made even by democratic states in surveillance technologies.[17] Presently, surveillance includes technologies, forms, operations, and established code of procedure for replicating and scrutinizing pictures, sounds, scripts, and transaction- generated and different kinds of data.[18] Electronic surveillance is an advantageous instrument in the hands of law enforcement agencies. It can enhance security of citizens, assist in criminal investigations, and supply strong evidence in a prosecution.[19]

3.1. Investigatory Powers Act 2016

On 29 November 2016, the Investigatory Powers Act 2016 (IPA) came into force. To regulate the usage and oversight of investigatory powers by law enforcement and the security and intelligence agencies, the act lays out a new framework.[20] IPA repeals part one of Regulation of Investigatory Powers Act 2000 (RIPA), which had 25 sections and it replaces the same with 272 sections on interception regulation. Foremost objective of the IPA is to revamp the system under which law enforcement and intelligence agencies of the UK can be permitted to carry out "interception, equipment interference or bulk communications data acquisition."[21]

As Secretary of State is responsible for "security and terrorism"[22], he/she issues the "bulk equipment interference warrant" based on an application made by the head of the intelligence service.[23] However, the Secretary of State personally takes the decision of issuing a bulk equipment interference warrant.[24]

These specific and detailed provisions try to fill in the gap and seek to prevent misuse by providing a need for warrant from the Secretary of State before authorising any bulk equipment interference. This indicates that issuing of such warrants is well regulated and cannot be used indiscriminately by officials below Secretary of State without his authorization for purpose other than the one specified. Section 176 to section 183 of the Investigatory Powers Act 2016 deals with "bulk equipment interference warrants". "Bulk

15 David Lyon, *Surveillance Studies: An Overview* (1st edn, Polity 2007) 14.
16 David Lyon, *Surveillance Studies: An Overview* (1st edn, Polity 2007) 15.
17 Neil M Richards, 'The Dangers of Surveillance' (2013) 126 Harvard Law Review 1934, 1938.
18 Kelly Gates, 'Surveillance' in Laurie Ouellette and Jonathan Gray (eds), *Keywords for Media Studies* (NYU Press, 2017) 187.
19 Edward Balkovich, Don Prosnitz, Anne Boustead and Steven C Isley, 'The Electronic Surveillance Challenge' In *Electronic Surveillance of Mobile Devices: Understanding the Mobile Ecosystem and Applicable Surveillance Law* (2015) RAND Corporation 1.
20 Investigatory Powers Act, *available at* https://www.gchq.gov.uk/information/investigatory-powers-act accessed on 15 June 2020.
21 Thomson Reuters Practical Law, *Investigatory Powers Act 2016: Overview* by Practical Law Business Crime and Investigations, p. 1.
22 Secretary of State for the Home Department, Responsibilities https://www.gov.uk/government/ministers/secretary-of-state-for-the-home-department accessed 3 March 2020.
23 Investigatory Powers Act 2016, s 178.
24 Investigatory Powers Act 2016, s 182.

equipment interference warrant" authorises the person to whom it is addressed to obtain interference with any kind of equipment for the aim of obtaining "communications, equipment data and any other information."[25]

27 June 2018 onwards, under the IPA, the interception of communications operations became legitimized. Only Secretary of State can issue warrants authorising interception, and they are required to be ratified by an independent Judicial Commissioner from the Investigatory Powers Commissioner's Office. Prior to issuing of an interception warrant, the Secretary of State must "believe" that a warrant is "necessary" on some grounds and the interception corresponds to the purpose it aims to accomplish. Interception is considered "necessary" on the grounds of "national security", "economic well-being of the UK" or "prevention or detection of serious crime". To restrict the usage of intercepted information and associated communications data, IPA requires arrangement of safeguards.[26]

The IPA 2016 caused a noteworthy change in the way some investigatory powers are approved and supervised. The introduction of what it is informally called "double lock" method is the most remarkable change brought in by the IPA 2016. "Double lock" mechanism implies that following authorization by the Secretary of State, an IPA warrant cannot be issued unless a Judicial Commissioner authorises it.[27] The inception of 'double lock' mechanism has initiated a pivotal new feature to judicial oversight of the UK's intelligence and security agencies, giving the task of independently analysing approvals requested under the IPA 2016 to Judicial Commissioners.[28]

Hailing the passage of IPA 2016, Home Secretary Amber Rudd stated, "This Government is clear that, at a time of heightened security threat, it is essential our law enforcement, security and intelligence services have the powers they need to keep people safe." She further observed, "The internet presents new opportunities for terrorists and we must ensure we have the capabilities to confront this challenge. But it is also right that these powers are subject to strict safeguards and rigorous oversight." Pointing towards transparency and privacy protection set out in the Act, she asserted that "The Investigatory Powers Act is world – leading legislation that provides unprecedented transparency and substantial privacy protection."[29]

3.2. Operations by the State Agencies

Interception is a method where a person other than the sender or recipient of that communication oversees the communication during the course of its transmission with

[25] Investigatory Powers Act 2016, s 176.

[26] Investigatory Powers Act, *available at* https://www.gchq.gov.uk/information/investigatory-powers-act accessed on 15 June 2020.

[27] Government of UK, 'Annual Report of the Investigatory Powers Commissioner' (2018) p. 10, *available at* https://ipco.org.uk/docs/IPCO%20Annual%20Report%202018%20final.pdf accessed on 16 June 2020.

[28] Government of UK, 'Annual Report of the Investigatory Powers Commissioner' (2018) p. 9 [2.3], *available at* https://ipco.org.uk/docs/IPCO%20Annual%20Report%202018%20final.pdf accessed on 26 June 2020.

[29] Home Office (Government of UK), 'Investigatory Powers Bill receives Royal Assent' (28 November 2018) *available at* https://www.gov.uk/government/news/investigatory-powers-bill-receives-royal-assent accessed on 15 June 2020.

the purpose of making its contents accessible.[30] Employment of data mining technologies in national security is an effort to automate some systematic work to permit finer and well timed examination of prevailing datasets with the object of being able to avert terrorist activities by recognizing and categorizing several "threads and pieces of information," which may be in existence already but are overlooked due to use of methods of investigation that are traditional.[31]

A radical transformation in surveillance by state is ignited by the digital age, both in terms of how surveillance is carried out and the kinds of insights it is intended to promote. The transformation in surveillance by state is represented by the usage of "bulk communications data techniques" that comprise of extensive gathering, holding and successive analysis of communications data. Now, such techniques are an integral aspect of surveillance by state.[32] Contrary to the targeted data collection, bulk communications data surveillance denotes extensive "collection" and "retention" of communications data. It is used by both intelligence and law enforcement agencies today.[33]

Data mining is the method of exploring new information in the already existing data.[34] Data mining usually determines "patterns or relationships" in the data items or records, which were earlier not recognized but are disclosed in the data only.[35] Data mining provides favourable opportunities for overcoming the gap in the informational requirements of the government and the huge datasets of information available to it. The available data can be converted into knowledge with data mining.[36] The procedure of data mining essentially demands automatic review and assessment of profiles comprising personal information of various persons.[37]

A serious threat from surveillance is programmes like 'Data Mining.' 'Data mining' presents instruments for automatically analysing the data.[38] Huge quantities of data is retained by the government agencies, which then examines them with the intention of gaining knowledge for creation and storing of important information.[39] Interesting thing about data mining is that it aims to predict our future actions and those individuals who match some specific profiles are considered involved in "similar pattern of behaviour". In

[30] Intelligence and Security Committee of Parliament: Privacy and Security: A modern and transparent legal framework (2015) 17 https://info.publicintelligence.net/UK-ISC-MassSurveillance.pdf accessed 12 June 2020.
[31] KA Taipale, 'Data Mining and Domestic Security: Connecting the Dots to Make Sense of Data', (2003-2004) 5 Columbia Science and Technology Law Review 1, 21.
[32] Murray D and Fussey P, "Bulk Surveillance in the Digital Age: Rethinking the Human Rights Law Approach to Bulk Monitoring of Communications Data" (2019) 52 Israel Law Review 31.
[33] Daragh Murray and Pete Fussey, "Bulk Surveillance in the Digital Age: Rethinking the Human Rights Law Approach to Bulk Monitoring of Communications Data" (2019) 52 Israel Law Review 31, 36.
[34] KA Taipale, 'Data Mining and Domestic Security: Connecting the Dots to Make Sense of Data', (2003-2004) 5 Columbia Science and Technology Law Review 1, 22.
[35] KA Taipale, 'Data Mining and Domestic Security: Connecting the Dots to Make Sense of Data', (2003-2004) 5 Columbia Science and Technology Law Review 1, 22-23.
[36] Tal Z Zarsky, 'Governmental Data Mining and its Alternatives' (2011) 116 Pennsylvania State Law Review 285, 294.
[37] Tal Z Zarsky, 'Governmental Data Mining and its Alternatives' (2011) 116 Pennsylvania State Law Review 285, 295.
[38] Stijn Vanderlooy, Joop Verbeek and Jaap van den Herik, 'Towards Privacy-Preserving Data Mining in Law Enforcement' (2007) 2(4) JICLT 202.
[39] Stijn Vanderlooy, Joop Verbeek and Jaap van den Herik, 'Towards Privacy-Preserving Data Mining in Law Enforcement' (2007) 2(4) JICLT 202.

those circumstances, the actions that have yet not been committed would be difficult to refute and it shall be more onerous for us to dismiss future activity predictions done by data mining.[40]

Many privacy advocates warn that gathering and retaining of unlimited 'metadata' of communication activities of people by the government is the most intrusive form of surveillance.[41] Metadata, in simple terms, is data about data. Ordinarily, information comprises of semantic tags applicable to data. Metadata contains semantically tagged data, which are utilized to explain data.[42] Metadata is also known as 'communications data' and the UK High Court in *Davis and Others v Secretary of State for the Home Department* explained 'communications data' in the following words:

> *The phrase "communications data" does not include the content of a communication. Such data can be used to demonstrate who was communicating; when; from where; and with whom. They can include the time and duration of a communication, the number or email address of the originator and recipient, and sometimes the location of the device from which the communication was made. They do not include the content of any communication: for example the text of an email or a conversation on a telephone.*[43]

The court further stated that in the course of investigations concerning national security and organised and serious crime, the intelligence and law enforcement organizations use communications data. The data helps investigation agencies in identifying associates of a criminal nexus, placing them at particular locations at predetermined times and in some cases to comprehend criminal activity they are involved in.[44] When "combined" and "aggregated" to yield detailed record of communication and internet – based activity of an individual, communication data is considered specifically advantageous for the intelligence and security agencies.[45]

4. Evaluating the Privacy vs Security argument

A chilling effect is said to be created by surveillance when individuals desist from taking part in activities due to apprehension that some consequences will follow if they observe such activity.[46] Surveillance prevents an individual from enjoying his/her freedom to

---

40 Daniel J. Solove, ''I've Got Nothing to Hide" and Other Misunderstandings of Privacy' (2007) 44 San Diego Law Review 745, 764.

41 Glenn Greenwald, 'NSA collecting phone records of millions of Verizon customers daily' (*The Guardian,* 6 June 2013) https://www.theguardian.com/world/2013/jun/06/nsa-phone-records-verizon-court-order accessed 4 March 2018.

42 Tony Hey and Anne Trefethen, 'The Data Deluge: An e-Science Perspective', available at https://eprints.soton.ac.uk/257648/1/The_Data_Deluge.pdf accessed on 25 April 2020.

43 Davis and Others v Secretary of State for the Home Department [2015] EWHC 2092 [13].

44 Davis and Others v Secretary of State for the Home Department [2015] EWHC 2092 [14].

45 Daragh Murray and Pete Fussey, "Bulk Surveillance in the Digital Age: Rethinking the Human Rights Law Approach to Bulk Monitoring of Communications Data" (2019) 52 Israel Law Review 31, 34.

46 Daragh Murray and Pete Fussey, "Bulk Surveillance in the Digital Age: Rethinking the Human Rights Law Approach to Bulk Monitoring of Communications Data" (2019) 52 Israel Law Review 31, 43.

liberty and speech. One cannot move or speak freely when he/she knows that state is following him/her at each step and is seeing all his/her acts. This leads to creation of a society which is quite similar to the one described by George Orwell in the famous novel 'Nineteen Eighty-Four'. The society described by Orwell had a situation where everyone lived in the constant fear of being watched by the State at every moment and had to act or think in a way expected by the state and not in the manner; they themselves would like to think.[47] This Orwellian society restricts the movements, thoughts, conduct of citizens in their daily lives and makes them robots who are supposed to follow the instruction of the state, which can be very harmful for the existence of a free society itself.

In 2013, Edward Snowden exposed Government Communication Headquarters' (GCHQ) operation codenamed 'Tempora' that he termed as "the largest programme of suspicion less surveillance in human history".[48] Under the operation 'Tempora', large volumes of data taken from fibre optic cables could be stored for 30 days for analysing the data by the GCHQ. The data included phone records, email message contents, Facebook entries, internet history and many more details not only of the suspected targets but also of innocent people.[49] Finally, on 6 February 2015, the Investigatory Powers Tribunal held that the regulations that gave access to GCHQ to email and phone records intercepted by NSA breached Article 8 and Article 10 of the ECHR.[50]

The judiciary came forward and protected the rights of the citizens who were under threat from the state in matters relating to their privacy. The state may try to justify such massive and indiscriminate surveillance in the name of security and safety of citizens but it must not be forgotten that there must be drawn a line to prevent the state from interfering in personal activities of innocent citizens in the name of safety and security. Programmes like 'Tempora' give powers to the state agencies to collect mass data and provides them access to personal details like the email message.

We must never forget that government agencies do not comprise of one individual but many. There may be many officers working with integrity and would be following guidelines or safeguards provided under the statute while using the personal data for the purpose of surveillance. However, there remains a probability that some officers who may get access to such a high volume of data meant for security purpose may do away with safeguards provided during the period of "emergency or crisis" and misuse such data.[51] Misuse of data secured is not only an intrusion but an act which is illegal. The

47 Neil M. Richards, 'The Dangers of Surveillance' (2013) 126 Harvard Law Review 1934, 1948.

48 Ewen MacAskill, Julian Borger, Nick Hopkins, Nick Davies and James Ball, 'GCHQ taps fibre-optic cables for secret access to world's communications' (*The Guardian*, 21 June 2013) https://www.theguardian.com/uk/2013/jun/21/gchq-cables-secret-world-communications-nsa accessed 13 May 2020.

49 Ewen MacAskill, Julian Borger, Nick Hopkins, Nick Davies and James Ball, 'GCHQ taps fibre-optic cables for secret access to world's communications' (*The Guardian*, 21 June 2013) https://www.theguardian.com/uk/2013/jun/21/gchq-cables-secret-world-communications-nsa accessed 13 May 2020.

50 Owen Bowcott, 'UK-US surveillance regime was unlawful 'for seven years' *The Guardian* (6 Feb 2015) https://www.theguardian.com/uk-news/2015/feb/06/gchq-mass-internet-surveillance-unlawful-court-nsa accessed 13 June 2020.

51 Adam D. Moore, 'Privacy, Security and Government Surveillance: Wikileaks and the new Accountability' (2011) 25(2) Public Affairs Quarterly 141, 145.

most unfortunate part of data mining is that the individual or the masses who are under surveillance are not even aware that they are under surveillance and that their acts including google search, bank details and other details are being observed by the State. If such acts are to happen in vibrant democracies like the UK, then it would be difficult to imagine the worst forms of surveillance that might be carried out by the dictatorial regimes where such bulk interception may be misused to muzzle the voices opposing the government.

Article 8 of the ECHR is fundamental because it outlines one's right to have his/her privacy respected by any organization while at the same time it furnishes conditions under which the State is permitted and sometimes authorized to "exert certain prerogatives." "National security, public safety, [and] the prevention of disorder or crime" are among the grounds on which a state can intervene in the right to privacy. Thus, it can be suggested that for those who drafted the ECHR, security superseded privacy.[52]

The intelligence and security agencies are committed to a mission, ensuring safety and security of the citizens is the main reason for their role and assertion on the country's significant and governmental resources.[53] This suggests that the intelligence agencies need access to private information of an individual for securing the society and one must not worry if he is not committing any illegal act.

There is another argument that favours surveillance and holds view that there can be no intrusion of privacy by mere automatic gathering and organising of data. As the data gathered is in bulk, such data initially passes through the computers that search for phone number, names and other details of persons who are of intelligence worth to the government agencies. The automatic 'sifting' of data by the computer prevents perusal of private data by an intelligence officer and thus it does not intrude into privacy.[54] This argument speaks in favour of surveillance and assures that certain protocols are followed for surveillance so as not to intrude the privacy.

Many concerns have also been raised regarding the bulk interception capability of GCHQ and it has been alleged that it observes all communications on the internet. But as per the Intelligence and Security Committee of Parliament, that is not correct because GCHQ's bulk interception capability is used for only scrutinizing those individuals who pose threat or used for the object of creating new intelligence leads like tracking any cyber-attack or terror plot.[55] Another issue that report dealt with was a charge made against GCHQ that it does interception "indiscriminately". Refuting such allegation, the committee responded: *GCHQ first choose the bearers to access (a small proportion of those they can theoretically access) and then use specific selectors, related to individual*

52 Eric Caprioli, Ygal Saadoun and Isabelle Cantero, 'The Right to Digital Privacy: A European Survey' (2006) 3 Rutgers Journal of Law & Urban Policy 211, 213.

53 Charles D. Raab, 'Security, Privacy and Oversight' in Andrew W. Neal (ed) *Security in a Small Nation: Scotland, Democracy, Politics* (Open Book Publishers, 2017) 81.

54 Richard A. Posner, 'Our Domestic Intelligence Crisis' *Washington Post* (21 December 2005) *available at* https://www.washingtonpost.com/archive/opinions/2005/12/21/our-domestic-intelligence-crisis/a2b4234d-ba78-4ba1-a350-90e7fbb4e5bb/accessed on 14 May 2020.

55 Intelligence and Security Committee of Parliament: Privacy and Security: A modern and transparent legal framework (2015) 28, para F https://info.publicintelligence.net/UK-ISC-MassSurveillance.pdf accessed 15 May 2020.

targets, in order to collect communications from those bearers.[56] It clarified that it targeted the individuals and did not do surveillance at a massive scale that may have included several innocent persons and thus, maintained limits by not intruding their privacy.

The advantages of "bulk interception" can be seen from the report submitted by Intelligence and Security Committee of Parliament in 2015, which stated "We were surprised to discover that the primary value to GCHQ of bulk interception was not in reading the actual content of communication, but in the information associated with those communications."[57] Communications data surveillance virtually enables in keeping an eye on each and every action of all individuals, to uncover and assess their relationships with other individuals, and to attain extensive understanding into the lives of those individuals.[58]

These observations by the committee of Parliament try to instil a sense of security in minds of the citizens that they are not subject to absolute and unchecked bulk interception by intelligence agencies and these interceptions are motivated towards those suspects who pose threat to the UK.

It is important to mention that issue necessarily doesn't have to be of 'privacy' or 'security', as successful planning, consistent implementation, and meticulous supervision of extensive safeguard measures by law makers can harness the advantage of technology to achieve both privacy and security.[59]

5. Conclusion

It would not be correct to say that both privacy and surveillance are against each other, or one trumps the other, no state can deny the need of either absolutely. Unless the state has sufficient evidence of one being involved in a crime, the law enforcement agencies should refrain from intercepting communications of those individuals. 'Those who have nothing to hide have nothing to fear' argument does not give an absolute right to intelligence agencies to intercept all communications of citizens indiscriminately but only with checks and balances.

At the same time, we must not forget that terror plotting these days is not limited to physical locations but has expanded to the digital platforms as well, necessitating surveillance. Thus, the government, before framing more efficient and non-intrusive surveillance laws, must do due deliberations and consultations not only with law enforcement agencies but also with organisations outside the government.

---

[56] Intelligence and Security Committee of Parliament: Privacy and Security: A modern and transparent legal framework (2015) 28, para G https://info.publicintelligence.net/UK-ISC-MassSurveillance.pdf accessed 15 May 2020.

[57] Intelligence and Security Committee of Parliament, 'Privacy and Security: A modern and transparent legal framework' (2015) p. 32 [80].

[58] Murray D and Fussey P, "Bulk Surveillance in the Digital Age: Rethinking the Human Rights Law Approach to Bulk Monitoring of Communications Data" (2019) 52 Israel Law Review 31, 52.

[59] John P. Heekin, 'Leashing the Internet Watchdog: Legislative Restraints on Electronic Surveillance in the U.S. and U.K.' (2010) 28(1) American Intelligence Journal 40.

References

Balkovich, Edward; Prosnitz, Don; Boustead, Anne and Isley, Steven C. (2015). 'The Electronic Surveillance Challenge' In *Electronic Surveillance of Mobile Devices: Understanding the Mobile Ecosystem and Applicable Surveillance Law*. RAND Corporation 1.

Balkovich, Edward; Prosnitz, Don; Boustead, Anne; Isle, Steven C. (2015). Electronic Surveillance of Mobile Devices: Understanding the Mobile Ecosystem and Applicable Surveillance Law. RAND Corporation 1, https://www.rand.org/content/dam/rand/pubs/research_reports/RR800/RR800/RAND_RR800.pdf

Berger, J.M. and Morgan, Jonathon (2015). 'The ISIS Twitter Census Defining and describing the population of ISIS supporters on Twitter'. The Brookings Project on U.S. Relations with Islamic World (Analysis Paper) 2.

Bowcott, Owen (2015). 'UK-US surveillance regime was unlawful 'for seven years' In *The Guardian* (6 Feb 2015).

Caprioli, Eric; Saadoun, Ygal and Cantero, Isabelle (2006). 'The Right to Digital Privacy: A European Survey'. In *Rutgers Journal of Law & Urban Policy*, Vol 3:2, 211-218.

Cate, Fred H. (2008). 'Government Data Mining: The Need for a Legal Framework' (June 2008). In Harvard Civil Rights-Civil Liberties Law Review (CR-CL), Vol. 43, No. 2, 2008, Available at SSRN: https://ssrn.com/abstract=1151435

Cayford, Michelle & Pieters, Wolter (2018). '*The effectiveness of surveillance technology: What intelligence officials are saying'.* In The Information Society 34(2), 88 https://doi.org/10.1080/01972243.2017.1414721.

Davis and Others v Secretary of State for the Home Department (2015). EWHC 2092. https://vlex.co.uk/vid/david-davis-mp-and-793030889

Dearden, Lizzie (2017). 'Khalid Masood: Suspected Isis supporter used WhatsApp two minutes before London attack'. In *The Independent* (24 March 2017).

Directive (EU) 2016/680 of the European Parliament and of the Council (27 April 2016), p. 1., http://data.europa.eu/eli/dir/2016/680/oj

Feldstein, Steven (2019). *The Global Expansion of AI Surveillance*. Washington DC: Carnegie Endowment for International Peace. Working paper 11.

Gates, Kelly (2017). 'Surveillance'. In Laurie Ouellette and Jonathan Gray (eds), *Keywords for Media Studies*. NYU Press: 186.

Greenwald, Glenn (2013). 'NSA collecting phone records of millions of Verizon customers daily'. In *The Guardian* (6 June 2013).

Hey, Tony and Trefethen, Anne (2020). 'The Data Deluge: An e-Science Perspective', available at https://eprints.soton.ac.uk/257648/1/The_Data_Deluge.pdf, accessed on 25 April 2020.

Home Office, Department for Digital, Culture Media & Sport. (2018). *Data Protection Act 2018, Factsheet – Intelligence Services Processing.* Government of United Kingdom. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/711233/2018-05-23_Factsheet_4_-_intelligence_services_processing.pdf.

Ilina Georgieva, 'The Right to Privacy under Fire – Foreign Surveillance under the NSA and the GCHQ and Its Compatibility with Art. 17 ICCPR and Art. 8 ECHR' (2015) 31(80) Utrecht Journal of International and European Law 104, DOI: http://dx.doi.org/10.5334/ujiel.cr

Intelligence and Security Committee of Parliament. (2015). *Privacy and Security: A modern and transparent legal framework.* Government of United Kingdom. https://isc.independent.gov.uk/wp-content/uploads/2021/01/20150312_ISC_PSRptweb.pdf.

Investigatory Powers Commissioner's Office. (2018). *Annual Report of the Investigatory Powers Commissioner's Office*. Government of the United Kingdom. https://ipco-wpmedia-prod-s3.s3.eu-west-2.amazonaws.com/IPCO-Annual-Report-2018-final.pdf.

Moore, Adam D. (2011). 'Privacy, Security and Government Surveillance: Wikileaks and the new Accountability'. Public Affairs Quarterly, Vol 25, N2: 141-156.

Posner, Richard A. (2005). 'Our Domestic Intelligence Crisis'. In *The Washington Post* (21 December 2005).

Raab, Charles D. (2017). 'Security, Privacy and Oversight' in Andrew W. Neal (ed) *Security in a Small Nation: Scotland, Democracy, Politics* (Open Book Publishers 2017), https://www.openbookpublishers.com/resources/9781783742684/Security-Small-Nation-ch3.pdf.

Investigatory Powers Act

GDPR.EU (2022). 'What is GDPR, the EU's new data protection law?', https://gdpr.eu/what-is-gdpr/

Heekin, J. P. (2010). Leashing the Internet Watchdog: Legislative Restraints on Electronic Surveillance in the U.S. and U.K. *American Intelligence Journal*, *28*(1), 40–58. http://www.jstor.org/stable/44327129.

Lyon, D. (2007). *Surveillance Studies: An Overview*. Polity. University of Michigan: Wiley, 1st ed.

MacAskill, Ewen; Borger, Julian; Hopkins, Nick; Davies, Nick and Ball, James (2013). 'GCHQ taps fibre-optic cables for secret access to world's communications'. In *The Guardian* (21 June 2013).

Murray, D., & Fussey, P. (2019). Bulk Surveillance in the Digital Age: Rethinking the Human Rights Law Approach to Bulk Monitoring of Communications Data. *Israel Law Review, 52*(1), 31-60. https://doi.org/10.1017/S0021223718000304.

Palmer, Danny (2019). 'What is GDPR? Everything you need to know about the new general data protection regulations' (*ZDNet*, 17 May 2019), https://www.zdnet.com/article/gdpr-an-executive-guide-to-what-you-need-to-know/

R (Liberty) v. Secretary of State for the Home Department and another (National Union of Journalists intervening), EWHC 2057 (Admin). (2019).

Richards, Neil M. (2013). 'The Dangers of Surveillance'. In Harvard Law Review, Vol 126, N7: 1934.

Schuster, Stefan; Berg, Melle; Larrucea, Xabier; Slewe, Ton and Ide-Kostic, Peter (2017). 'Mass Surveillance and technological policy options: Improving security of private communications'. Computer, Standards & Interfaces, Vol. 50: 76-82, https://www.sciencedirect.com/science/article/pii/S0920548916300988.

Solove, Daniel J. (2007). 'I've Got Nothing to Hide" and Other Misunderstandings of Privacy'. In San Diego Law Review, 44: 745.

Szeghalmi, Veronika (2015). 'The Definition of the Right to Privacy in the United States of America and Europe'. In Hungarian Yearbook of International Law and European Law, 397.

Taipale KA (2003) Data mining and domestic security: connecting the dots to make sense of data. Columbia Sci Technol Law Rev 5(2):83.

Thomson Reuters Practical Law, *Investigatory Powers Act 2016: Overview* by Practical Law Business Crime and Investigations, p. 1.

Ünver, H. Akin (2018). 'Politics of Digital Surveillance, National Security and Privacy'. Centre for Economics and Foreign Policy Studies, 2018/2: 17.

Vanderlooy, S., Verbeek, J. P. G. M., & van den Herik, H. J. (2007). Towards privacy-preserving data mining in law enforcement. *Journal of International Commercial Law and Technology*, *2*(4), 202-210.

Zarsky, Tal Z. (2011). 'Governmental Data Mining and its Alternatives', Pennsylvania State Law Review, Vol116:2, 285-330.

OBSERVARE
Universidade Autónoma de Lisboa

e-ISSN: 1647-7251
Vol. 13, Nº. 1 (May-October 2022)

JANUS.NET
e-journal of International Relations

THE RELATIONSHIP BETWEEN CASH DIVIDEND AND EARNINGS GROWTH OF LISTED COMPANIES IN TEHRAN STOCK EXCHANGE

MASSOUD KHEIRANDISH
ecomkh@gmail.com
Department of Economic, Faculty of Humanities, Gonbad Kavous University, Gonbad (Iran).

MOHSEN MOHAMMADI KHYAREH
m.mohamadi@gonbad.ac.ir
Department of Economic, Faculty of Humanities, Gonbad Kavous University, Gonbad (Iran).

Abstract

Dividend policy is one of the most important financial decisions managers encounter. This study contributes to empirical studies examining the relationship between cash dividends and earnings growth of companies listed on the Tehran Stock Exchange during the period 2007-2020. As a result, 131 companies have been examined with the multiple regression estimation model. The findings show a significant relationship between cash dividends per share and future earnings growth. Furthermore, there is a significant relationship interaction term between the dividend payout ratio and the investment growth assumption. This relationship is also observed for return on equity and dividend payout ratio.

Keywords

Efficiency; future earnings growth; dividend policy

How to cite this article

Kheirandish, Massoud; Khyareh, Mohsen Mohammadi (2022). The relationship between cash dividend and earnings growth of listed companies in Tehran stock exchange. In Janus.net, e-journal of international relations. Vol13, Nº. 1, May-October 2022. Consulted [online] on the date of the last visit, https://doi.org/10.26619/1647-7251.13.1.13

Article received on November 6, 2021 and accepted for publication on March 16, 2022

THE RELATIONSHIP BETWEEN CASH DIVIDEND AND EARNINGS GROWTH OF LISTED COMPANIES IN TEHRAN STOCK EXCHANGE

MASSOUD KHEIRANDISH

MOHSEN MOHAMMADI KHYAREH

1. Introduction

Forecasting is a key factor in making economic decisions. The economic decisions of investors, creditors, managers, and other parties depend on expectations and forecasts. Since investors and financial analysts use profit as one of the main criteria for evaluating a company, and they tend to evaluate future profitability to make decisions to maintain or sell shares, they judge a company's performance based on profit because the resources allocation to business units and divisions is made through profitability forecasts (Shafai et al., 2019). It is also important to potential investors. They forecast future earnings and cash flows based on the investment and allocation of capital resources (Asadi and Oladi, 2015). Dividend policy is one of the most important issues in financial management, because cash dividends represent the main cash payment of an enterprise and are one of the most important choices and decisions faced by managers. The manager should decide the amount that is considered to be distributed profit and the amount that will be reinvested in the company in the form of retained earnings. Dividends are paid directly to shareholders, and they affect a company's ability to accumulate profits to take advantage of growth opportunities. According to his own belief, every investor buys shares of companies with desirable dividend policies. Dividends proposed by the board of directors often contain important information about managers' expectations about the company's future profitability (Mehrani et al., 2010). In this regard, this paper investigates the impact of changes in dividend payments on revenue-growing companies listed on the Tehran Stock Exchange. When a company has reasonable investments to be developed in the following few years or when a company forecasts its financial needs for the following year, it provides distributions or dividends to a general meeting of shareholders. If the general assembly agrees with the board, the benefits are distributed among the shareholders, transferred to retained earnings or savings accounts, and given to shareholders in the form of bonus shares after the project has been run. Otherwise, profits are distributed among shareholders and then capital is increased after the procedure if the management determines that the company needs cash financing (Jahankhani & Ghorbani, 2005). Several factors may affect a company's profit distribution policy and may limit dividends. These factors are determined for the company within the mandatory framework of laws and regulations, or the company undertakes to provide the performance of these factors. Generally, these factors can be divided into three categories: legal, contractual, and internal. The tax laws of some countries also prohibit excessive non-profit dividends. While the definition of uncontrolled dividends is somewhat ambiguous, it is generally defined as the maintenance of residual income for current and future investment needs. The tax code is designed to prohibit tax evasion by companies without dividends. Penalties will be imposed on companies if the tax authorities detect a significant amount of relevant non-dividend tax. Therefore, when a company reaches a large cash position, it must provide the tax authorities with a good reason for maintaining these funds; otherwise, it should distribute additional funds to shareholders in the form of dividends. The law may also impose additional restrictions on the payment of dividends. These limits may be reflected in minimum dividends, or they may be proposed as limits on loans received, which are determined based on dividends. Additional legal restrictions are imposed on preferred shares; preferred shareholders receive profits first, and the company may not distribute profits until the deferred earnings of preferred shareholders have not been paid. With these clues, the main question of this study is the relationship between cash dividends and earnings growth of companies listed on the Tehran Stock Exchange. The question is whether the change in benefits will affect the company's revenue.

2. Theoretical Foundations

2.1. The Concept of Dividend

The concept of profit has come under criticism in the development and management of institutions in recent years, and economic theorists have replaced it with other concepts such as utility. For this reason, profit is often rejected in criticism and claims that profit is not the only reason for a company to be formed, but rather to introduce other welfare, social, political, and economic reasons as the main goal of company formation (Flint et al., 2010). Economists also know that capital formation is effective for growth and economic development. Capital formation comes either from the government or from the private sector. Governments consider factors in their investments such as infrastructure projects, economic guidance policies, provision of facilities to participate in regulating the supply and demand of goods and services... and profit in support of political and military objectives.

The relationship between dividends and returns: As profits are distributed, companies must pay higher fees for issuing stock to fund new investments. Dividend return theory explains this aspect of dividend policy ambiguity. Since managers know more about a company's future profitability than outside investors, they can have better business prospects for dividend returns as dividends increase, and they can often experience higher share prices in the market. Additionally, financial managers may use dividend policies to determine the quality of earnings due to their informational content. In this regard, since outside investors have less information about a company's future profitability, dividend performance is seen as information derived from expected future cash flows, as stock prices in the market respond quickly to dividend decisions. Ross (1987) studied the characteristics of dividend payments in signal models. In signaling theory, cash dividends provide the prospect of a company's future profits. The company is receiving cash dividends by paying to provide more information about the company's future market profitability. Higher profits allow the company to leave more cash behind through dividends; therefore, dividends reflect the company's steady state profitability.

2.2. Income growth

Income growth is the change in income over a specific period. Information asymmetry related to growth opportunities is higher than that related to assets (Penrose and Penrose, 2009). Thus, when all retained earnings have been made, hierarchy theory (Fama & French, 2001, Myers & Majluf, 1982) predicts the debt priority of firms with high growth opportunities. According to Roth (1977), creditors are aware of high growth opportunities for companies, and they offer them ideal credit terms. Therefore, according to signaling theory, the expected relationship between a firm's growth opportunities and liabilities is positive. According to agency theory, the relationship between growth opportunities and liabilities can be positive or negative.

2.3. Review of Literature

Parker (2005) showed that at the level of market indices in the United States, Canada, and Australia, dividend payout ratios are negatively correlated with future earnings growth, as stock profits and dividends are characteristic of large companies. Higher dividend payout ratios lead to higher future profit growth, which was the weakest relationship in Australia during the 1956-2005 period.

Sava (2006) studied dividend signaling theory on the Deutsche Börse, and he found some evidence on the relationship between a reduction in cash dividends and a company's future performance, but his findings did not verify that an increase in cash dividends has an impact on future companies' performance. Both studies (Mayers, 1984; Gul, 1999; Gordon, 1962) confirm that high dividend payout ratios can be detrimental to future income growth.

ap Gwilym et al., (2006) studied the relationship between future earnings growth and dividend payout ratios and concluded that the dividend payout ratio is a broad topic for researchers in theoretical modeling. Although the researchers ignored dividend payout ratios, there was a positive correlation between dividend payout ratios and future dividend growth. A delayed negative relationship or negative coefficient was found in variable profit growth. According to free cash flow theory, dividend payments are inversely related to the level of investment GDP and GDP.

Izadinia (2009) studied 11 factors to evaluate dividend policy. These variables are company leverage, company size, last year's dividends, investment opportunities, cash earned by the company's operating activities, expected profits for the following year, average interest paid by competing companies, inflation rate, percentage of free float, and average profit growth over the previous five years rate and company earnings per share. Significant relationships were identified for factors such as firm size, last year's dividends, investment opportunities, following year's expected profits, and inflation, but not for other variables.

Freshteh Eftekhar Nejad (2009) studied the effect of retained and distributed earnings on future profitability and return on equity. This paper divides profits into two parts: retained earnings and distributed dividends; then, it analyzes the effects of retained earnings and distributed earnings on the future profitability and return on equity of companies listed on the Tehran Stock Exchange. Retained earnings include current operating accruals, non-current operating accruals, accumulated cash flow and distribution income, including cash flow to shareholders and cash flow from debt. 50 companies listed on the Tehran Stock Exchange, companies in the period 2007-2012 were analyzed by multiple regression analysis and panel analysis (Eftekhar Nejad, 2009).

Dewasiri et al. (2019) identified the determinants of dividend policy in emerging and developing markets. Their results showed that past dividend decisions, earnings, investment opportunities, profitability, free cash flow (FCF), corporate governance, country ownership, company size, and industry influence as key determinants of the propensity to pay dividends. Additionally, past dividends, investment opportunities, profitability and dividend premiums are identified as determinants of dividend payments.

Fakhari and Yousef Ali Tabar (2010) conducted a study titled "The relationship between dividend policy and corporate governance of companies listed on the Tehran Stock Exchange"; they studied the relationship between dividends and corporate governance as a proxy for resolution problem tool. According to a checklist, they divided corporate governance into eight categories: disclosure, business ethics, training, compliance with legal requirements, auditors, ownership, board structure, management, asset and liquidity ratios, calculations and divisions. The results show that stock companies use dividends for reputation and prestige. Regarding the important relationship between corporate governance and dividends, corporate governance has a lower impact on dividends (Fakhari & Yousef Ali Tabar, 2010).

In their study Jahankhani and Ghorbani (2005) researched the determinants of DP in companies listed on the Tehran Stock Exchange. They concluded that there was no significant association between firm growth and development, ownership concentration, and the amount of cash and dividend decisions, whereas increased risk, investment opportunities, firm size, and increased debt in the capital structure were all significantly lower the company's dividend payments.

Etemadi and Chalaki (2005) researched the relationship between the Tehran Stock Exchange's performance indicators (operating cash flow, operating income, and earnings per share) and cash dividends. The results show a significant relationship between a company's current performance and its cash dividend payments. Based on the results, the most important determinants of dividends appear to be EPS, operating income, and operating cash flow, respectively.

Mashayekh and Abdollahi (2011) examine the relationship between ownership concentration, performance indicators, and corporate dividend payments. The results show that ownership concentration can improve corporate performance, and the higher the ownership concentration, the better performance indicators such as ROA and Tobin's Q. Based on the second hypothesis, there is a positive relationship between firm performance and payment policy. However, the results of the third hypothesis assert that no significant relationship is observed between ownership concentration and dividend decisions. This means that in Iran, most of shareholders cannot significantly influence dividend payment decisions.

Abbaszadeh, Vadeei, and Pakdel (2012) examine the association of institutional ownership, cash flow, and dividend policy. The results show a significant positive relationship between levels of institutional ownership, active institutional ownership, and dividend policy. However, the relationship between inactive institutional ownership and payment policy is negative. Furthermore, the findings show a positive and significant association between operating cash flow and corporate dividend decisions.

Asadi and Oladi (2015) studied 133 public companies from the 10-year period from 2001 to 2010 and showed that the most important dividend determinant is market risk, which is negatively related, followed by market and book value, and firm size, which is positively related.

Kheirkhah et al. (2019) studied the relationship between the market concentration and power of the Tehran Stock Exchange and the company's dividend policy between 2010 and 2015. Their results showed that there is a significant positive correlation between market concentration and the power of payment decisions. On the other hand, the relationship between market power and concentration and the dividend payout ratio is also statistically significant.

2. Research Methodology and Data

In terms of relevance and research methodology, this is post hoc quasi-experimental research in the field of empirical accounting; it is a form of applied research because it is conducted with real data and can be used to manipulate data. By its nature and purpose, this study is practical. The research is based on real-world data from the stock market, financial statements, notes to financial statements, and company meeting reports. The necessary data to test hypotheses was gathered by pulling the required data directly from financial statements, Tadbir Pardaz databases and stock exchange websites. After screening and classification of industry sample companies, some calculations were performed using Excel software. The classification of stocks is considered when grouping companies in different industries. Multiple linear regression models were used for statistical analysis; EViews and Stata software were used for data analysis.

2.1. Data

The sample for this study is 131 companies from various industries active on the Tehran Stock Exchange from 2007 to 2020, with the following characteristics:

1) Fiscal year ends on 30 December.

2) The company should not change its financial year;

3) The company should not be an industry company due to the nature of the industry being different from other member companies;

4) Due to the need to roll back to 12 months, the securities (common shares) are traded at intervals of 4 months from the beginning of the period.

5) Information should be available.

2.2. Developing Theoretical Hypothesis

This study uses the method reported by Zhou and Ruland (2006) to investigate the relationship between dividend payout ratio and future income growth. Under a balanced dividend policy, there is a significant positive relationship between dividend payments and future income growth. Therefore, we introduce the Model (1) as follow:

$$EPSGR_{t+1} = \beta_0 + \beta_1 Payout_t + \beta_2 Size_t + \beta_3 ROA_{t+1} + \beta_4 Beta_{it} + \beta_5 AG_{t+1} + \beta_6 DivYield_t + \beta_7 EPSGR_t + e_t;$$

Where:

$EPSGR_{t+1}$ is future earnings growth. It is the annual financial measure of common stock from year t to year t+1 as the next revenue growth.

$Payout_t$ is Dividend payout ratio. It is measured by dividing the ratio of the profits in foreign exchange earnings from year t to year t+1.

$Size_t$ is measured using the natural logarithm of total assets at end of year t;

ROA_t is the forecasted return in year t+1; it is a proxy as an indicator when the first quarter return in year t+1 is divided by the next quarter's total assets.

$Beta_t$ is the market risk factor (e.g., the beta of an individual firm) for year t;

AG_{T+1} is future asset growth; it measures the annual growth rate of total assets in t+1;

$DivYield_t$ is the dividend yield (dividend at the end of year t divided by the current stock price). It is current income growth, measured as the annual increase in after-tax income from common stock from year t-1 to year t.

Earnings per share (EPS), return on assets (ROA), and return on equity (ROE) are often used to measure future income. Since EPS is familiar to most investors, this study takes EPS as the priority, and selects ROA and ROE for strong testing (ap Gwilym et al., 2006). In fact, researchers succeed when there is a positive correlation between dividend payout ratios and future earnings growth. Therefore, the following model (2) is used to measure the interaction between dividend payout and dividend ratio. Earnings per share (EPS), return on assets (ROA) and return on equity (ROE) are often used to measure future income. Since EPS is familiar to most investors, this research gives priority to EPS and selects ROA and ROE for robustness check. In fact, the researcher shown that there is a positive correlation between dividend payout ratio and future earnings growth. Therefore, the following Model (2) is used to measure the interactions between dividend payments and the ratio of dividends:

$$EPSGR_{t+1} = \beta_0 + \beta_1 Payout_t + \beta_2 Size_t + \beta_3 ROA^e_t + \beta_4 Beta_t + \beta_5 AG_{t+1} + \beta_6 DivYield_t + \beta_7 DivYield_t * Payout_t + \beta_8 Epsgr_t + e_t;$$

where; $DivYield_t * Payout_t$ is the interaction term between dividend yield and dividend payout ratio. Combining the results of model (2), in this paper, we look for dividend reasons for future earnings growth in model (3) a follow

$$EPSGR_{t+1} = \beta_0 + \beta_1 Payout_t + \beta_2 Size_t + \beta_3 ROA^e_t + \beta_4 Beta_t + \beta_5 AG_{t+1} + \beta_6 DivYield_t + \beta_7 M_t/A_t + \beta_8 M_t/A_t * Payout_t + \beta_8 EPSGR_t + e_t;$$

where; M_t/A_t is the interaction term between dividend payout ratio and investment growth opportunity. In fact, the above model examines the relationship between dividend payments and stock income growth in two different directions.

3. Empirical Results

3.1. Descriptive Statistics

Table 1. Descriptive Statistics

Variables	EPSGRt+1	Payoutt	ROAt	Betat	AGT+1	DivYieldt	SIZE	ROE
	Future revenue growth	Dividend payout ratio	Expected return on assets for the year t+1	Market Risk Index	Asset growth in the future	Yield profit	Firm size	Return on equity
Mean	0.163	522	0.75	-0.0072	0.12	0.042	25125	0.23
Median	0.152	433	0.77	0.014	0.14	0.166	88966	0.201
Maximum	0.435	4000	0.87	2.307	0.15	0.29	22419	0.13
Minimum	0.115	0	0.65	-6.24	14	0.0006	-84942	0.11
Std. Dev	0.81	166972	0.07	0.704	0.0042	0.007	41824	0.032
Jarque-Bera	2.56	622	2.25	1.5	1.73	1.2	2.1	0.9
Probability	0.32	433	0.38	0.56	0.47	0.67	0.41	0.8

Normality of the variables has been investigated in the last two rows of Table 1. It is seen in the row of Jarque-Bera statistic that the level of scores are mentioned wether the variables are normal or not normal. In the next row, or last row, the error probability of each variable is stated to investigate the above hypothesis. In this regard, no variable is normal at the probability level of less than 1 percent. It means that the null hypothesis is verified for all variables. Time-series regression method is used to test the research hypotheses.

Normality of variables is investigated in the last two rows of Table 1. As can be seen, in the Jarque-Bera statistic, the score level is mentioned whether the variable is normal or Non-normal. In the next or last line, the probability of error for each variable is stated to study the above hypothesis. In this regard, none of the variables are normal at probability levels below 1%. This means that the null hypothesis is verified for all variables. Time series regression methods are used to test research hypotheses.

3.2. Estimation Results of Model (1)

The first test aims to investigate effective measuring for dividend payout ratio in the companies listed in Iran stock market. Its statistical hypothesis is defined as follows:

According to a balanced dividend policy, there is a positive relationship between dividend payout ratio and future revenue growth.

H_0: There is a positive relationship between dividend payout ratio and future revenue growth at the company level in companies listed in Tehran Stock Exchange.

H_1: There is no significant relationship between dividend payout ratio and future revenue growth at the company level in companies listed in Tehran Stock Exchange.

The regression model (1) is used at the corporate level and the combined data for testing the first hypothesis.

The first test aims to investigate a valid measure of the dividend payout ratio of companies listed on the Iranian stock market. Its statistical assumptions are defined as follows:

According to the balanced dividend policy, the dividend payout ratio is positively related to future revenue growth.

H0: For companies listed on the Tehran Stock Exchange, the payout ratio is positively correlated with future revenue growth at the company level.

H1: Among companies listed on the Tehran Stock Exchange, there is no significant relationship between company-level dividend payout ratios and future revenue growth.

The regression model (1) was used at the firm level and the combined data was used to test the first hypothesis. The estimation results reported in Table 2.

Based on the presented results, since t-statistics for every variable is 0.000, it is possible to argue that all variables are verified at the level of below 1 percent; the null hypothesis, indicating each variable is zero, is rejected. On the contrary, the main research variable has a high t-statistics (2.88) indicating that companies' dividends payment ratio affects the future earnings growth at the error probability less than one percent; they have positive relationship. Therefore, H_1 hypothesis is verified, and one can assert that there is significant relationship between dividends payment in the companies listed in Tehran Stock Exchange and the company's future earnings growth. As a result, the first hypothesis is verified at the 99% confidence level. In this manner, if paying dividends for companies listed in Tehran Stock Exchange increases one percent, the company's future earning will increase with the rate of 2.6. There is a positive relationship between firm size, predicting return on assets for the year ahead, and future asset growth to future revenue growth of companies. There is a negative relationship between market risk index and performance of dividend to companies' future earnings growth.

Table 2: **Regression result of model (**1)

Dependent Variable: EPSGRt+1 Future revenue growth			
Method: Pooled EGLS (Period weights)			
Variable	Coefficient	Std. Error	t-Statistic
C Intercept	-5.62	4.0	-3.51
$Payout_t$	2.6	0.9	2.88
SIZE	0.0018	2.84E-08	63.38
ROA_t	13.97	0.01	17.46
Betat	-0. 49	0.002	-24.5
AG_{T+1}	2.46	0.28	8.78
$DivYield_t$	-7.01	0.30	-23.36
$EPSGR_t$	0.01	0.003	3.33
Weighted Statistics			
R-squared	0.92	Mean dependent var	724.59
Adjusted R-squared	0.92	S.D. dependent var	1512.47
S.E. of regression	76.207	Sum squared resid	37127396
F-statistic	13833.87	Durbin-Watson stat	1.82
Prob(F-statistic)	0		
Unweighted Statistics			
R-squared	0.106	Mean dependent var	163.91
Sum squared resid	37842275	Durbin-Watson stat	1.46

Based on the presented results, since the t-statistic for each variable is 0.000, it can be said that all variables are validated at the level below 1%; the null hypothesis that each variable is zero is rejected. Conversely, the main study variable has a high t-statistic (2.88), indicating that the firm's dividend payout ratio affects future earnings growth with less than 1% probability of error; they have a positive relationship. Therefore, the H1 hypothesis is verified, and it can be asserted that there is a significant relationship between the dividend payments of companies listed on the Tehran Stock Exchange and the company's future earnings growth. As a result, the first hypothesis was validated at the 99% confidence level. Thus, if the dividend payment of a company listed on the Tehran Stock Exchange increases by 1 percentage point, the company's future earnings will increase by a factor of 2.6. There is a positive correlation between company size, predicted return on assets for the next year, and future asset growth and the company's future revenue growth. Market risk index and dividend performance have a negative correlation with a company's future earnings growth.

3.3. Estimation Results of Model (2)

The second test aims to study the relationship between the interaction terms of dividend yield and dividend payout ratio and future income growth in the stock market. where $DivYield_t$ $*Payout_t$ is the interaction term between dividend yield and dividend payout ratio, and its statistical assumptions are defined as follows:

H0: For companies listed on the Tehran Stock Exchange, the interaction term of dividend yield and dividend payout ratio has a significant relationship with future revenue growth.

H1: For companies listed on the Tehran Stock Exchange, the interaction term of dividend yield and dividend payout ratio is not significantly related to future revenue growth. The regression model (2) was used at the industry level and the combined data was used to test the second hypothesis.

Estimation results of this study also confirms previous model except that the variable "$DivYield_t$ $*Payout_t$" is added. Variable "$DivYield_t$ $*Payout_t$" is negative.

Table 3: Regression Results of Model (2)

Dependent Variable: EPSGRt+1 Future revenue growth			
Method: Pooled EGLS (Period weights)			
Variable	Coefficient	Std. Error	t-Statistic
C Intercept	-0.527	2.5	-2.1
$Payout_t$	1.6	0.6	2.66
SIZE	0.0021	0.0011	1.90
ROA_t	11.67	0.7	16.67
Betat	-0. 48	0.1	-4.8
AG_{T+1}	2.32	0.4	5.8
$DivYield_t$	-6.015	0.79	-7.61
Payoutt*DivYieldt	-5.39	0.86	-6.26
EPSGRt	0.012	0.002	6
Weighted Statistics			
R-squared	0.970788	Mean dependent var	992.9963
Adjusted R-squared	0.970756	S.D. dependent var	3220.122
S.E. of regression	73.55683	Sum squared resid	34584606
F-statistic	30345.88	Durbin-Watson stat	1.820631
Prob(F-statistic)	0		
Unweighted Statistics			
R-squared	0.123862	Mean dependent var	163.9166
Sum squared resid	37094783	Durbin-Watson stat	1.53669

Based on the presented results, since the t-statistics for dividend yield and dividend payout ratio are 0.000, it can be said that these variables are validated at a level below 1%; therefore, the null hypothesis is validated, and it can be asserted that the Tehran Stock Exchange there is a significant relationship between a listed company's dividend payment and the company's future earnings growth. As a result, the second hypothesis was validated at the 99% confidence level. However, there is a negative correlation between these two variables. In this regard, the model's coefficient of determination indicates that the model explains 97% of the abnormal return variation. If the interaction between dividend yield and dividend payout ratio increases by one unit, the future income growth rate decreases by 5.39 units. This means negative relationships for them. The relationship of other variables is the same as that of Model 1, and the labels remain unchanged.

3.4. Estimation Results of Model (3)

The third test investigates the interaction term between dividend payout ratios and investment firm growth opportunities, and its impact on future earnings growth of Tehran Stock Exchange-listed firms. When At/Mt is the interaction term between payout ratio and investment growth opportunities, its statistical assumptions are defined as follows:

H0: There is a significant relationship between the dividend payout ratio interaction term and the investment growth opportunities of companies listed on the Tehran Stock Exchange.

H1: There is no significant relationship between the dividend payout ratio interaction term and the investment growth opportunities of companies listed on the Tehran Stock Exchange.

The regression model (3) was used at the industry level and the combined data was used to test the third hypothesis. To test the third hypothesis based on the above model and the results are summarized in Table (4).

Table 4: Regression Results of model (3)

Dependent Variable: EPSGRt+1			
Method: Pooled EGLS (Period weights)			
Variable	Coefficient	Std. Error	t-Statistic
C	-3.59	0.76	-4.72
$Payout_t$	2.4	0.98	2.448
SIZE	0.028	0.009	3.11
ROA_t	10.03	2.90E+00	3.45
Betat	-0. 46	0.2	-2.3
AG_{T+1}	1.99	0.7	2.84
$DivYield_t$	-6.78	1.5	-4.52
Mt/A	2.19	1.7	1.28
Mt/A *Payoutt	-4.08	2.11	-1.93
EPSGRt	0.021	0.004	5.25
Weighted Statistics			
R-squared	0.98	Mean dependent var	1027.4
Adjusted R-squared	0.98	S.D. dependent var	3717.3
S.E. of regression	73.13	Sum squared resid	34180011
F-statistic	42778	Durbin-Watson stat	1.77
Prob(F-statistic)	0		
Unweighted Statistics			
R-squared	0.124	Mean dependent var	163.92
Sum squared resid	37071107	Durbin-Watson stat	1.53

Based on the presented results, since the t-statistic for each variable is 0.000, it can be said that all variables are validated; since the t-statistics probability of the combined variable between the dividend payout ratio of the companies listed on the Tehran Stock Exchange and the investment growth opportunity Less than 0.10 in the industry, so H0 is validated. Dividend payout ratios and corporate investment growth opportunities have a negative impact on future corporate earnings growth. The resulting coefficients show that if the ratio between "dividend payout ratio" and "opportunity for company investment growth" increases by one-unit, future revenue growth will decrease by a ratio of 4.08.

4. Conclusion

Dividend policy is one of the most important corporate fiscal policies considered by researchers due to its impact on financing and investment policies. Various theories have been proposed to describe it in modern financial management, thereby studying new aspects of payment effects and implications along with other important factors in the stock market and public companies. Companies must consider many factors to decide how much cash dividends to pay. Cash dividends are an interesting aspect since many investors are willing to predict future investments and decide to hold or sell their shares in the future.

Findings show that the impact of cash dividends on company earnings and stocks can be very helpful. this paper aims to investigate the relationship between dividends and future income growth of companies listed on the Tehran Stock Exchange. According to the theoretical basis of the research, the main research model is established to test the relationship between the dividend rate and future income growth. For this, the researchers used information from the Tehran Stock Exchange from 2007 to 2020. Since the payout ratio has multiple dimensions, the relationship between the payout ratio dimension and future revenue growth is tested in the form of three hypotheses. Using these three assumptions, the combined variable of the dividend payout ratio is calculated and the relationship between the variable and future income growth is investigated. This article is useful for the Tehran Stock Exchange organization as well as for investment companies on the stock exchange. Additionally, managers can use this article to implement their policies in the company.

listed companies take advantage of retained earnings to assist listed companies in financing, increase shareholder utility through dividends on time, and increase listed companies' earnings. Generally, the following suggestions can be made: Growth of the company.

- It is recommended that managers, investors, etc. pay more attention to dividend payments, as this has a significant impact on future earnings growth.

- Advise managers, investors, and others to pay more attention to dividend payments, as the interaction term of dividend yield has a significant relationship with future earnings growth through dividend payout ratio.

- Advise managers, investors, and others to pay more attention to dividend payments as it has a significant impact on future income growth by increasing the growth of investment opportunities.

References

Abbaszadeh, M.; Vadeei, M., & Pakdel, G. (2012). *The Empirical Research of Ownership Institution and Cash Flow effects on Dividend Policy in Tehran Stock Exchange*. 10th Accounting Conference. Alzahra University: Tehran.

ap Gwilym, O., Seaton, J., Suddason, K., & Thomas, S. (2006). International evidence on the payout ratio, earnings, dividends, and returns. *Financial Analysts Journal*, *62*(1), pp.36-53.

Asadi, A. & Oladi, M. (2015). Dynamic determinants of dividend in affiliated and unaffiliated firms to government in Tehran stock exchange (TSE). *Iranian Journal of Management Studies*, *8*(1), pp.139-155.

Dewasiri, N.J., Koralalage, W.B.Y., Azeez, A.A., Jayarathne, P.G.S.A., Kuruppuarachchi, D., & Weerasinghe, V.A. (2019). Determinants of dividend policy: evidence from an emerging and developing market. *Managerial Finance*, *45*(3), pp.413-429.

Eftekhar Nejad, F. (2009). *Effect of retained and distributed earnings on future profitability and return on equity*. MS Thesis, University of Science and Research.

Etemadi, H. & Chalaki, P. (2005). The relationship between performance and cash dividend payment of listed companies in Tehran Stock Exchange over 1998 to 2002. *Journal of Accounting and Auditing studies, 12* (29), pp. 29-47.

Fakhari, H. & YousefAlitabar, N. (2010). The study of relationship between dividend policy & corporate governance in Tehran Stock Exchange, *Accounting and Auditing Review*, 17(4), pp. 69-152.

Fama, E.F. & French, K.R. (2001). Disappearing dividends: changing firm characteristics or lower propensity to pay?. *Journal of Financial economics*, *60*(1), pp.3-43.

Flint, A., Tan, A., & Tian, G.G. (2010). Predicting future earnings growth: A test of the dividend payout ratio in the Australian market. *The International Journal of Business and Finance Research*, *4*(2), pp.43-58.

Gordon, M.J. (1962). *The investment, financing, and valuation of the corporation*. RD Irwin.

Gul, F.A. (1999). Government share ownership, investment opportunity set and corporate policy choices in China. *Pacific-Basin finance journal*, *7*(2), pp.157-172.

izadinia, N. (2009). 'Assess the factors affecting the dividend policy in listed companies in Tehran Stock Exchange', *Empirical Studies in Financial Accounting*, 7(26), pp. 147-163

Jahankhani, A. & Ghorbani, S. (2005). To Identify determinants of dividend policy in listed firms of Tehran Stock Exchange. F*inancial Research Journal*, 20 (1), pp. 27-48.

Kheirkhah, R., Asadi, A., & Zendehdel, A. (2019). The Relation of Market Concentration and Power with Dividend Policy of Listed Companies in Tehran Stoch Exchange. *Iranian Journal of Trade Studies*, *23*(92), pp.113-140.

Mashayekh, S. & Abdollahi, M. (2012). The Investigation of relationship between ownership concentration, firm performance, and dividend policy in Tehran Stock Exchange. *Journal of Financial Accounting Research*, 3 (4), pp. 71-86.

Mehrani, S., Moradi, M., & Eskandar, H. (2010). The relationship between institutional ownership and accounting conservatism. *Financial Accounting Research, 2*(1), pp. 47-62.

Myers, S.C. & Majluf, N.S. (1982). *Stock issues and investment policy when firms have information that investors do not have* (No. w0884). National Bureau of Economic Research.

Parker, K.C. (2005). *Do higher dividends lead to higher earnings growth?* (Doctoral dissertation, Faculty of Business Administration-Simon Fraser University).

Penrose, E. & Penrose, E.T. (2009). *The Theory of the Growth of the Firm*. Oxford: Oxford University Press.

Ross, S.A. (1987). The interrelations of finance and economics: Theoretical perspectives. *The American Economic Review*, *77*(2), pp.29-34.

Shafai, N.A., Nassir, A.M., Kamarudin, F., Rahim, N.A., & Ahmad, N.H. (2019). Dynamic Panel Model of Dividend Policies: Malaysian Perspective. *Contemporary Economics*, *13*(3), pp.239-253.

Zhou, P. & Ruland, W. (2006). Dividend payout and future earnings growth. *Financial Analysts Journal*, *62*(3), pp.58-69.

OBSERVARE
Universidade Autónoma de Lisboa

e-ISSN: 1647-7251
Vol. 13, Nº. 1 (May-October 2022)

JANUS.NET
e-journal of International Relations

NOTES

PRESERVATION OF EUROPEAN CULTURAL HERITAGE: EXPERIENCE AND MODERN TRENDS

ALEXANDRA BORISOVNA EGOREICHENKO
arsvitae133@gmail.com
Cand.Sc. (Political Science) and an Assistant of the Department of International Humanitarian Relations, Faculty of International Relations at the Saint Petersburg State University (Russian Federation). Her professional experience is more than 3 years. The sphere of her scientific interests includes such topics as international cultural heritage, European culture, cultural communication, multiculturalism and urban studies
.

1. Introduction

European cultural heritage is a rich and diverse mosaic of cultural and creative manifestations, a legacy from past generations. It includes natural, built and archaeological sites, museums, monuments, works of art, historical cities, literary, musical and audiovisual works, as well as the knowledge, practices and traditions of European citizens.

Policy in this area primarily depends on the EU member states, regional and local authorities, supranational institutions, as well as their strategies and programs. The EU seeks to popularize cultural heritage sites and provide wide access to them, trains specialists in this field, develops conservation and restoration methods, as well as coordinates the efforts of European states and private actors.

According to the 2017 Eurobarometer survey on cultural heritage, 73% of respondents live near cultural heritage sites, 51% regularly visit them, 68% think that the presence of a cultural heritage site can have an influence on their holiday destination, 68% would like to know more about cultural heritage, and 84% consider cultural heritage to be important to them personally and for the community as a whole (Eurobarometer Report 466, 2017).

There are many world cultural heritage sites on the territory of Europe, which make up almost half of the UNESCO tangible cultural heritage list. Italy, Spain, France and Germany are at the top of the list of countries with the largest number of such sites. Italy is a leader in the number of World Heritage Sites.

The cultural heritage of the prehistoric era is represented in Europe by such objects as the Lascaux Cave (France), the rock drawings of Valcamonica (Italy), the Altamira Cave (Spain), the megalithic monuments of Stonehenge and Avebury (England). The cultural heritage of Ancient Greece includes the ruins of the city of Delphi, the ensemble of the Acropolis of Athens, the archaeological sites of Delos, the monasteries of Meteora, the city of Rhodes, etc. The cultural heritage of Ancient Rome includes the Villa Adriana at Tivoli, the Villa Romana del Casale, the archaeological areas of Pompeii and Herculaneum, ancient Syracuse, etc. The cultural heritage of Medieval Europe includes Speyer Cathedral (Germany), Chartres Cathedral. The cultural heritage of the Renaissance includes the historical center of Florence (Italy), Venice, Rome, Verona, Siena, Pisa, the Church of Santa Maria delle Grazie with "The Last Supper", etc. The cultural heritage of the modern age includes the ensemble of the Palace and Park of Versailles, the palaces and parks of Potsdam and Berlin. The cultural heritage of the contemporary age includes the work of Antoni Gaudi in Barcelona, Le Havre (France), the architectural work of Le Corbusier, the Rhaetian Railway in the Albula, as well as the Auschwitz concentration camp, which was added to the World Heritage List not because of its architectural significance, but for the memory of cruel acts in order to attract the attention of young generations to the problems of Nazism and discrimination (World Heritage list, UNESCO).

European cultural sites also occupy a significant part (a quarter) of the UNESCO intangible cultural heritage list. These include, for example, Flamenco dance (Spain), French cuisine (France), beer culture (Belgium), falconry (Austria), etc. The intangible heritage list is aimed at overcoming the extinction of local cultures and strengthening the role of traditions and customs, because unlike tangible monuments that can be restored, intangible ones can disappear by nature (Intangible World Heritage list, UNESCO).

Human activity often has a negative impact on world cultural heritage sites. The list of world heritage in danger is expanding due to human actions, such as economic activity or environmental conditions. With regard to this problem in the European region, in 2016 the question arose of removing the city of Vienna from the UNESCO World Heritage List due to the violation of height restrictions, which is now a common problem for many cities with a historical center. It was also demanded that the city authorities of Prague reconsider their plans for the construction of high-rise buildings, which could disrupt the architectural ensemble of the city center and jeopardize being on the list. In 2009, UNESCO excluded the city of Dresden from the world cultural heritage list due to the fact that the city authorities decided to build a transport bridge over the River Elbe, thereby disrupting the historical appearance of the city[1].

2. International and European legislation in the field of cultural heritage protection

International legislation in the field of the protection of cultural heritage monuments develops ethical and legal principles for state activities, calls for cooperation between

[1] Dresden removed from UNESCO World Heritage List (2009). (online). Available at https://www.bbc.com/russian/rolling_news/2009/06/090625_rn_dresden_unesco.

state structures and civil society institutions, and encourages the protection of cultural heritage in order to maintain sustainable development.

The UNESCO World Heritage List is a register of cultural monuments, each of which meets one or more criteria. The status of a World Heritage Site provides the following advantages: raising the level of culture in the region; serving as an additional guarantee of preservation; increasing the prestige of the territory; promoting the popularization of objects and ensuring the influx of tourists and investments; providing adequate financing; ensuring control over the condition of the sites.

The 1972 UNESCO Convention Concerning the Protection of the World Cultural and Natural Heritage is of fundamental importance in the protection of tangible cultural heritage. The Convention defines cultural heritage as monuments (architectural works, works of monumental sculpture and painting, elements or structures of an archaeological nature, inscriptions, cave dwellings and combinations of features, which are of outstanding universal value from the point of view of history, art or science), groups of buildings, and sites that are of outstanding universal value from the historical, aesthetic, ethnological or anthropological point of view (UNESCO Convention, 1972).

A UNESCO document devoted to intangible cultural heritage is the Convention for the Safeguarding of the Intangible Cultural Heritage 2003. According to the Convention, the "intangible cultural heritage" means the practices, representations, expressions, knowledge, skills – as well as the instruments, objects, artefacts and cultural spaces associated therewith – that communities, groups and, in some cases, individuals recognize as part of their cultural heritage. The intangible cultural heritage also includes oral traditions and expressions, including language, and performing arts. It should be noted that not all European countries have acceded to this convention: the UK still does not consider this a priority (UNESCO Convention, 2003).

Going forward, we should turn to the legislative framework of the Council of Europe. It begins with the European Cultural Convention of 1954, the purpose of which was to develop mutual understanding among the peoples of Europe and reciprocal appreciation of their cultural diversity, to safeguard European culture, and to promote national contributions to European common cultural heritage (European Cultural Convention, 1954).

Later, in 1985, the European Convention on the Protection of the Archaeological Heritage was adopted in Granada, the main purpose of which was to strengthen and promote the policy of preserving Europe's heritage. The document also reaffirmed the need for European solidarity regarding the preservation of heritage and was called upon to facilitate practical cooperation between the Parties. In 1992, the document was revised, and a new "European Convention on the Protection of the Archaeological Heritage" was signed in Valetta, Malta. It established a new basic legal standard for Europe, which should be consistent with national policies for the protection of archaeological assets as sources of scientific and documentary evidence, in accordance with the principles of integrated conservation (European Convention, 1992).

The Council of Europe's latest document on cultural heritage is the 2005 Framework Convention on the Value of Cultural Heritage for Society, signed in Faro, Portugal. The aim of the Faro Convention is to draw international attention to cultural heritage as a broad and cross-disciplinary concept that focuses on people and human values, to outline the basic principles of the approach to cultural heritage, and to emphasize "the value and potential of cultural heritage wisely used as a resource for sustainable development and quality of life in a constantly evolving society." The Convention calls on us to recognize that sites and places alone are not what is important about cultural heritage. They are important because of the meanings and uses that people attach to them (Faro Convention, 2005).

The role of the European Commission is based on Article 3.3 of the Lisbon Treaty, which states that the Union "shall respect its rich cultural and linguistic diversity and shall ensure that Europe's cultural heritage is safeguarded and enhanced." The Treaty on the Functioning of the European Union gives the Commission specific tasks to contribute to the flourishing of cultures in the Member States, while respecting their diversity and bringing "the common cultural heritage to the fore" (Article 167). The role of the European Union is to support and complement the actions of the Member States in preserving and safeguarding Europe's cultural heritage. The Commission has developed a number of relevant strategies and programs, and also supports and encourages policy cooperation between the Member States and heritage stakeholders (Lisbon Treaty, 2007).

During the recent presidency of the EU, some countries have been actively discussing cultural heritage issues. At the conference on the "Cultural Heritage and the EU 2020 Strategy - towards an Integrated Approach" in 2013, the Lithuanian Presidency put forward the concept of local and civil society participation in cultural heritage issues and the need to include public opinion in all areas of cultural policy. In the first half of 2014, the Greek Presidency organized a conference linking cultural heritage with sustainable economic and social development in the EU. In the second half of 2015, the Luxembourg Presidency responded to the destruction of World Heritage Sites in Iraq and Syria, including the destruction of cultural heritage and the trafficking of its artifacts as a means of financing terrorist activities. In March 2017, the EU adopted the Rome Declaration, which defined the preservation of cultural heritage, together with the promotion of cultural diversity, as an element of a social Europe. In the second half of 2017, the Estonian Presidency devoted its activities to cultural heritage in the digital age.

In May 2014, EU Ministers for Culture called for the "mainstreaming of cultural heritage in national and European policies" and "the development of a strategic approach to cultural heritage." Responding to this call, in July 2014, the European Commission adopted a Communication: "Towards an Integrated Approach to Cultural Heritage for Europe" (Communication from the Commission, 2014).

3. Contemporary EU initiatives for the protection and promotion of cultural heritage

Currently, there are three EU programs specifically dedicated to cultural heritage: the European Heritage Days, the European Heritage Label, and the EU Prize for Cultural Heritage.

The European Heritage Days is the most widely celebrated cultural event in Europe, which takes place every year in September. The Council of Europe began its initiative in 1985, which later became a joint action organized with the EU. In both organizations, the program is recognized as one of the main flagship initiatives and an example of successful cooperation at the European, national, regional and local levels (European Heritage Days).

The European Heritage Label is a prototype of the World Heritage List, but at the European level. This distinguishing label marks European cultural heritage sites, which is a recognition awarded to buildings, documents, museums, archives, monuments or events that are considered as milestones in the creation of modern Europe. The program is managed by the European Commission (European Heritage Label).

The EU Prize for Cultural Heritage was launched in 2002 by the European Commission in partnership with the Europe Nostra organization (a pan-European federation created to promote and safeguard Europe's cultural heritage). The award recognizes and promotes the best cultural heritage preservation activities, management, research, education and communications in this area. It is designed to attract public attention to cultural issues and is aimed at recognizing cultural heritage as a strategic resource of European society.

During its existence, organizations and individuals from 39 countries submitted a total of 2,883 applications for the Prize. As for the number of applications by country, Spain ranks first, with 516 projects, followed by Italy, with 296 entries, and the UK, with 289 applications (EU Prize for Cultural Heritage).

The EU officially declared 2018 as the European Year of Cultural Heritage. The aim of this initiative is to raise awareness of the opportunities that cultural heritage brings to European communities, mainly in terms of intercultural dialogue, social cohesion and economic growth. From June 18 to June 24, 2018, the European Cultural Heritage Summit was held in Berlin. This Summit, with the motto "Sharing Heritage – Sharing Values," was recognized by the European Union as one of the key public events of the European Year of Cultural Heritage. The key initiatives within the framework of the Year are based on such ideas as engagement, sustainability, protection and innovation (European Year of Cultural Heritage 2018).

4. The "common good" theory and participatory governance of European cultural heritage

The great importance of the community's participation in the preservation of cultural heritage is confirmed by a wide range of literature, including scientific research and institutional conventions. However, there is no comprehensive definition for a "community", as the interpretation of this word varies according to different contexts. Community can be defined as "a people with common interests living in a certain area" or "a body of persons having a common history or common social, economic, and political interests" (Participatory governance, 2015).

In the World Heritage Convention, the word "community" is used interchangeably with "international community", "local and regional governments", "present and future generations of all humanity", "local communities, non-governmental organizations and other interested parties", the general public, civil society, and the local population.

The Council of Europe's Faro Convention suggested the notion of "heritage community" to refer to people "who value specific aspects of cultural heritage which they wish, within the framework of public action, to sustain and transmit to future generations." Members of a civil society as a whole can constitute a "heritage community" if they mutually perceive cultural heritage as an emotional and intellectual platform on which individual and community values are built. Community is essentially valuable, as the cohesion of people ascribes a common interest.

European cultural heritage must be considered from the point of view of the common good theory, since ultimately it belongs to humanity, European society, and is managed by cultural heritage institutions for future generations of Europeans.

In a general sense, the term "common good" describes a specific "good" that is shared by everybody and beneficial. The common good does not belong to anyone; it is common, but beneficial for everybody (Starr, 2013).

Historic city centers, monuments, local museums, parks, and landscapes benefit the community, can be key to local development, helping to improve the quality of life of this community, and, ultimately, provide integration, social cohesion and develop a sense of belonging.

Cultural heritage, which is a common good for the entire European community, needs to be governed, and in this regard, it is necessary to refer to the term "participatory governance", or as commonly called in the Russian tradition, "public-private partnership", that is, the paradigm of the participation of citizens and communities in issues affecting them.

Participatory governance is to strengthen relations between cultural heritage sites and professionals, as well as everyone interested in cultural heritage. The participatory governance of tangible, intangible, and digital cultural heritage is an innovative sustainable approach that makes a real contribution to the governance and valuation of cultural heritage.

The Council of the European Union in its "Conclusions on the Participatory Governance of Cultural Heritage" of November 2014 called for the participation of the public and private sectors at all levels of decision-making. It also called for "increased cooperation among EU Member States in order to identify and disseminate best practices on bottom-up approaches for joint inclusive management of cultural heritage."

The document invites Member States "to develop multilevel and multi-stakeholder governance frameworks which recognize cultural heritage as a shared resource by strengthening the links between the local, regional, national and European levels of governance of cultural heritage, with due respect to the principle of subsidiarity, so that benefits for people are envisaged at all levels; promote the involvement of relevant stakeholders by ensuring that their participation is possible at all stages of the decision-making process; promote governance frameworks which recognize the importance of the interaction between tangible, intangible and digital cultural heritage and which address, respect and enhance its social, cultural, symbolic, economic and environmental values;

promote governance frameworks that facilitate the implementation of cross-cutting policies, enabling cultural heritage to contribute to objectives in different policy areas, including to smart, sustainable and inclusive growth…" (Conclusions on the Participatory, 2014).

European states recognize the importance of protecting historical and cultural monuments and pursue an active policy in this area, based on the concept of participatory governance.

Italy, being the leader in the number of monuments of cultural heritage, gives their protection one of the priorities in cultural policy. The country has created a system of state bodies and institutes for heritage protection: the Ministry for Cultural Assets and Environments (transformed into the Ministry of Cultural Heritage and Activities), the Ministry of Public Works on Restoration of Objects, the Ministry of Tourism, and the Ministry of Civil Protection.

Attracting private investment to heritage protection is widely used in the country. About 60% of Italy's national property is privately owned. Sponsors are banks, enterprises and insurance companies. The successful experience of cooperation has prompted government agencies to create such structural units of governance as mixed private-state funds. Public organizations, such as the Italia Nostra, which has been operating since 1955 to protect cultural monuments, play a large role in the cultural heritage government system (Mironova, 2009).

An example of a successful public-private partnership in Italy is the protection of the World Heritage Site 'The Archaeological Areas of Pompeii, Herculaneum and Torre Annunziata'. These archaeological areas, buried by the eruption of Vesuvius, were for a long time in state ownership and governance, regulated by a centralized state system, and experienced chronic underfunding. During the reform, the local heritage office received financial and administrative autonomy from the ministry, which provided increased funding and reduced bureaucracy. In 2001, a public-private partnership known as the Herculaneum Conservation Project 79 was implemented, which contributed to the conservation and governance of the archaeological area. The success of this initiative brought a number of factors, and the project was based on actions taken by the local heritage office. The Herculaneum Conservation Project, which is jointly coordinated by the Packard Humanities Institute, the British School at Rome and the Soprintendenza Archeologica di Pompei, is engaged in restoration, conservation of organic materials, and documentation (Hammer, 2015).

The UK offers an original approach to heritage protection. Here a special role is played by a charitable organization, completely independent of the state, founded in 1895 – The National Trust. It is based on membership fees, donations and income from various events. The organization's goal is to safeguard protected areas, farmland, archaeological remains, nature reserves, villages, historic houses, gardens and even pubs (National Trust annual report, 2017).

In Germany, the Berlin Museumsinsel, a UNESCO World Heritage Site since 1999, is a good example of the participatory governance of a cultural heritage site. The museum is the most important institution of cultural heritage, becoming more open and democratic, less elitist. Berlin is a very modern and rapidly developing city, and the Museumsinsel has become one of the centers of its cultural and economic development by attracting investment. The museum has collaborated with many international companies for its development: Allianze Group, Bank of America, Merill Lynch, Deutsche Bank. Private investments in the development of the facility reached 2.8 million euros in 2012 (Ioannou, 2013).

As for the initiatives to preserve European cultural heritage "from below," one should mention crowdfunding, the so-called "public funding", which is a voluntary association of grassroots for collective cooperation and financing of any projects. In the field of financing cultural heritage projects through crowdfunding, Europe has made a major breakthrough in recent years (Crowdfunding in the EU, 2016).

By order of the European Commission, to make the crowdfunding tool more accessible for cultural and creative projects, the pan-European Internet Crowdfunding4Culture platform (www.crowdfunding4culture.eu) was created. In France, since 2010, the Ulule platform has been operating, on the basis of which more than 4,000 cultural projects have been implemented. Sweden launched CrowdCulture (www.crowdculture.se), Spain – Goteo (www.goteo.org), Italy – Derev (www.derev.com), Switzerland – Wemakeit (www.wemakeit.com). In Greece, the Act4Greece platform was launched in 2016 with the support of the National Bank of Greece. Within the framework of this platform, the funds were fully collected for the restoration of the Karolos Koun Art Theater.

5. Conclusions

In conclusion, one should note that European culture and its values remain the most important achievement of mankind, which must be simultaneously protected and developed. Europe has been and remains the leader among the regions of the world in the number of cultural heritage sites, which is a determining factor for the development of the European region.

Europe's cultural heritage is what makes its inhabitants European, as it reflects their different and common values, culture and history. This is the true embodiment of the European "unity in diversity", which nourishes a sense of belonging to the local community, and a sense of unity and solidarity in Europe. Cultural heritage connects generations over many centuries of common history, being the basis for a respectful dialogue of cultures and interaction between communities in Europe and other cultures of the world. Cultural heritage is also a key factor in the sustainable development and strengthening of social cohesion; it brings beauty to the environment and, thus, improves well-being and quality of life.

It is safe to say that the topic of safeguarding European cultural heritage is extremely relevant, as many initiatives and programs in this area have been implemented precisely in the last few years.

The key new phenomenon is the concept of participatory governance and a shift from the understanding that the protection of cultural heritage is only a state prerogative to the understanding that society should and is interested in participating in the governance of cultural heritage. Thus, the conceptual basis for the study of European cultural heritage should be the "common good theory" and the "grassroots theory", as the EU legal documents refer to the "community heritage" categories.

As the recognition of the link between cultural heritage and social well-being is growing, the call for wider public participation in conservation practices is gaining strength and momentum. Therefore, the preservation of cultural objects today should be more focused on serving people and on the dominant role of local communities in influencing decisions.

The joint governance of cultural heritage offers opportunities to promote democratic participation, sustainability and social cohesion, as well as to solve social, political and demographic problems; supports the active participation of relevant stakeholders (within the framework of public actions), that is, government agencies, private actors, civil society organizations, non-governmental organizations, and volunteers, in decision-making, planning, developing, monitoring and evaluating cultural heritage policies and programs to increase the accountability and transparency of investment in public resources, as well as to strengthen public confidence in political decisions; promotes awareness of the values of cultural heritage as a shared resource.

References

Bass, S., Dalal-Clayton, B., Pretty, J. (1995). Participation in strategies for sustainable development. *Environmental Planning Issues*, 7. London: IIED.

Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. Towards an integrated approach to cultural heritage for Europe. Brussels (2014). (online). Available at http://ec.europa.eu/culture/library/publications/2014-heritage-communication_en.pdf

Conclusions on the Participatory Governance of Cultural Heritage of November (2014). (online). Available at https://publications.europa.eu/en/publication-detail/-/publication/8821b9a8-8a6c-11e4-b8a5-01aa75ed71a1/language-en

Council of Europe Framework Convention on the Value of Cultural Heritage for Society. (online). Available at https://rm.coe.int/1680083746

Crowdfunding in the EU (2016). Crowdfunding in the EU Capital Markets Union. Commission Staff Working Document, Brussels, SWD 154 final (online). Available at https://ec.europa.eu/info/system/files/crowdfunding-report-03052016_en.pdf

Dresden removed from UNESCO World Heritage List (2009). (online). Available at https://www.bbc.com/russian/rolling_news/2009/06/090625_rn_dresden_unesco

EU prize for cultural heritage (online). Available at https://ec.europa.eu/programmes/creative-europe/actions/heritage-prize_en

Eurobarometer Report 466 on Cultural Heritage (2017). (online). Available at http://ec.europa.eu/commfrontoffice/publicopinion/index.cfm/ResultDoc/download/DocumentKy/80882

Europa Nostra (online). Available at http://www.europanostra.org/

European Heritage label (online). Available at https://ec.europa.eu/programmes/creative-europe/actions/heritage-label_en

European Year 2018 of cultural heritage (online). Available at https://europa.eu/cultural-heritage/

Governance of the world cultural heritage. Information Guide (2013). (online). Available at https://www.mkrf.ru/upload/mkrf/mkdocs2014/17_12_2014_1.pdf

Hammer, J. (2015). *The Fall and Rise and Fall of Pompeii* (online). Available at https://www.smithsonianmag.com/history/fall-rise-fall-pompeii-180955732/#Q3KUuJfiOtXi6lck.99

ICOMOS (1964). Venice Charter. Venice.

ICOMOS (1990). Charter for the protection and management of the archaeological heritage. Lausanne.

Ioannou, D. (2013). *Transformations of the urban culture and the urban territory* (online). Available a: http://courses.arch.ntua.gr/fsr/109782/Ioannou.doc

Italia Nostra: associazione Nazionale per la tutela del Patrimonio Storico (online). Available at www.italianostra.org

Lisbon Treaty (2007). (online). Available at http://eulaw.ru/treaties/lisbon

Little, B., Shackel, P. (2014). Archaeology, Heritage, and Civic Engagement. Working Toward Public Good, Left Coast Press, Viv Golding and Wayne Modest (eds.), *Museums and Communities: Curators, Collections, and Collaboration*, Bloomberg.

Mironova, T.A. (2009). *Preservation of Cultural and Natural Heritage as the Main Feature of Cultural Policy of the European Region Countries: Italy*. Knowledge. Understanding. Skill, 2, pp. 41-48.

Mnatskanyan, R.A., Murashkina, S.I. (1995). *The experience of National Trust in the protection of the natural and cultural heritage of Great Britain.* In R. A. Mnatskanyan (Ed.), Protection of heritage abroad: Past experience and current problems. A collection of articles. Moscow: Russian Research Institute for Cultural and Natural Heritage, pp. 43-51.

National trust annual report (2017). (online). Available at https://www.nationaltrust.org.uk/documents/annual-report-201718.pdf

Participatory governance of cultural heritage, 2015. European expert network on culture. Ad hoc question. April 2015

Starr F. (2013). *Corporate responsibility for cultural heritage: Conservation, Sustainable Development, and Corporate Reputation.* Routledge

The European Convention on the Protection of the Archaeological Heritage (1992). (online). Available at https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168007bd4d

The European Cultural Convention (1954). (online). Available at https://www.coe.int/ru/web/conventions/full-list/-/conventions/rms/090000168006 45e8

UNESCO Convention (1972). UNESCO Convention Concerning the Protection of the World Cultural and Natural Heritage (online). Available at https://whc.unesco.org/archive/convention-ru.pdf

UNESCO Convention (2003). Convention for the Safeguarding of the Intangible Cultural Heritage (online). Available at http://www.un.org/ru/documents/decl_conv/conventions/cultural_heritage_conv.shtml

World Heritage list (online). Available at www.whl.unesco

World Intangible heritage list (online). Available at https://ich.unesco.org/Intengible

How to cite this note

Egoreichenko, Alexandra Borisovna (2022). Preservation of European Cultural Heritage: experience and modern trends. In Janus.net, e-journal of international relations. Vol. 13, Nº 1, May-October 2022. Consulted [online] in date pf last visit, https://doi.org/10.26619/1647-7251.13.1.01

OBSERVARE
Universidade Autónoma de Lisboa

e-ISSN: 1647-7251
Vol. 13, Nº. 1 (May-October 2022)

NOTES

INTERNATIONAL ANARCHY REVISITED: THE ONTOLOGICAL CHALLENGES OF A POST-SOCIAL CONCEPTION

CAROLINA ENCARNAÇÃO CORREIA
carolinacorreia53@gmail.com
Master's student in Politics and International Relations, with specialization in International Relations, NOVA-FCSH (Lisbon, Portugal). Graduate in Politics and International Relations. Founding Member and Chairwoman of the Board of The Orbis-International Relations Studies Association. She was a member of the Center for Politics and International Relations and the Youth Association of Geopolitical Understanding.

Introduction

The concept of international anarchy is introduced with great relevance in the variants of realism and is one that different theories of International Relations identify as common. It is in its consequences and interpretation that views tend to contrast. However, the present excursion attempts to reflect critically on these same ontological assumptions of international anarchy – especially those presented by the realistic school, specifically the neorealist strand.

Within the realistic literature, the assumptions of international anarchy tend to vary in its interpretation, highlighting Raymond Aron's classical realistic vision of Kantian inspiration and Kenneth Waltz's hobbesian-inspired structuralist vision. The differences between these thinkers are based on the focus of analysis: Aron holds a more historicist vein and pays attention to the inner heterogeneity of States to conceptualize international anarchy ontologically; Waltz, with a strain inspired by economic methodology, seeks a theoretical construction of International Relations through the interconnection between factors and concepts, the most prominent being the concept of international anarchy.

Waltz draws it as this lack of coercive power at the supranational level, which inevitably results in violence (Waltz, 1979). The first part of the definition does not tend to be challenged by the other schools; the discussion tends to focus on the results that anarchy generates internationally. In this sense, this expedition seeks to broaden the focus of discussion to ontological assumptions, distancing itself from the evaluation of its structural consequences.

The constructivist approach raises essential questions for the discussion of the ontological assumptions of international anarchy and represents a challenge to the neorealist interpretation of anarchy. Alexander Wendt, in "International anarchy is what States make of it", highlights the importance of the social process in the conception of anarchy, allowing a post-social phenomenology disconnected from a relationship with the nature of States. This is the fundamental point where this outing goes beyond Wendt's thinking and differs from the Waltzian perspective.

Conceptualization and mobilization of the concepts of international anarchy, state of nature, structure, and structural power

The publication of *Theory of International Relations*, by Kenneth Waltz, in 1979, shaped the theoretical debate of International Relations as a discipline and established neorealism as the dominant school of thought at the time. Its contributions highlighted the scientific basis that provided realistic thinking interconnected with philosophical foundations, which contributed to the strengthening of theories of International Relations (Buzan, 1993: 1).

In this work, Waltz draws inspiration from realistic principles, but tries to avoid classic realms, identifying himself as neorealist. Classical realism was constructed through a literary tradition based on the theory and practice of international relations after World War II, especially with contributions from Carr, Morgenthau, Raymond Aron, Niebuhr, among others. These thinkers were considered as "realistic” because they predisposed themselves to analyze the objects of study according to what they were and not what they would like them to be (Buzan, 1993: 1-2).

Therefore, according to Buzan (1993), as to Waltz's assuming as a neorealist, the first response of the discipline's thinkers was to seek to find the common ground between classical realism and neorealism, highlighting the coherence between Waltz's thinking with a realistic tradition that could go back to Hobbes and Thudides (Buzan, 1993: 2). Three common premises stand out among these currents: the nature of international relations is essentially conflicting; the essence of social reality is the group, rather than the individual, particularly the State or conflictgroup; the main human motivation in political life is power and security (Gilpin apud Keohane, 1986: 304-305).

The second answer, highlighted by Buzan (1993), was to seek the distinctions between the two theoretical currents, especially the differences between the hermeneutic tradition of classical realms and the structuralist basis of neorealism. Walker (1987) highlighted the classical predisposition to focus on the historical approach in the analysis of social reality that allows understanding the development of the practices of social actors, in contrast to the neorrealistic predisposition to analyze social reality in a stabilized and structured way. His statements imply that classical realists focus more on the agent, while neorealists place their perspective on the structure. However, this argument lacks development because it does not measure agent-structure relations (Buzan, 1993: 2).

Buzan (1993) also advances a third answer: the criticism that both classical realism and neorealism need to extend and develop their theoretical foundations.

The focus on literature in the 1980s was mainly related to the need to find the common points between classical realism and neorealism, to differentiate this school of thought from the neoliberal current or new institutionalism. Nevertheless, there were also theorists who sought to find a point of reconciliation between the realist current and the neoliberal current (Niou & Odershook, 1991 apud Buzan, 1993: 2-3); an example can be found in the work of Hedley Bull (1995) on international society and international anarchy. This led some field theorists to accuse the discipline of losing its orientation, falling on a lack of substantive progress (Holsti, 1985: 1-2; Fergunson & Mansbach, 1988; Onuf, 1989: 8 apud Buzan, 1993: 3-4). For the reflection intended to be made, the most relevant criticism about the loss of orientation of the discipline was the fact that all theories developed on erroneous premises, such as international anarchy being considered the central and fundamental principle of International Relations, when it comes to Onuf (1989) of an empty concept (Onuf, 1989: 14).

It is necessary to clarify that although Kenneth Waltz (1979) was a pioneer in the application of structuralism in International Relations, specifically within the Realistic School, structuralism was a movement that dominated social sciences in the 20th century. Structuralists insisted that social sciences must go beyond self-conceptions because individuals are constrained by structural forces over which they have no control and may not even know exist (Buzan, 1993: 5). Buzan (1993: 6) advances that this structuralist approach makes it possible to break with the state of nature assumptions to ground the behavior of agents, according to a realistic logic.

Still, for Kenneth Waltz, the structure has three dimensions: ordering principles (*i.e.,* anarchy), differentiating principles, and capacity distribution (Waltz, 1979: 79-101 apud Wendt, 1995: 134). These aspects, although they highlight the disposition of the agents, do not allow us to understand their behavior, since this factor depends mainly on intersubjectivity (Wendt, 1995: 134), a concept that is unrelated to waltzian theory.

Waltz's criticism is not related to the structuralist character of his theory, but to the fact that it is characterized as anarchic and the approach to conflictgroups as an object of study, to achieve the realistic premises mentioned and justify the logic of power of the international system. Criticism is specifically directed at the realistic assumptions and not at the generality of its structuralist approach. This criticism is based on the Wendtian assumption that the structure consists of material conditions, interests, and ideas (Wendt, 1999: 139), which with intersubjectivity imply that the structure is socially constituted – *i.e.,* dependent on a process of socialization.

From the assumptions presented about structuralism, there is a relationship between the concepts of structure and state of nature that deserves its proper clarification, understanding what is considered a process of socialization and as post-social.

The order of thought should be inspired by Waltz (1979) and Aron (1968) and, like these thinkers, from anthropological assumptions, inspired by Rosseau, to view the state of nature as a non-systemic state where there is no social structure, because political units are isolated, unaware of the existence of others. Only when political units begin to interact with each other – when the process of socialization begins – the international system is formed (Buzan, 1993: 68-70) and the structures that characterize it emerge. As for Waltz, the ordering principle of the structure that characterizes the international system is international anarchy, so this can only be constituted after interaction between political units – that is, after the beginning of the social process, being therefore post-social. The process of socialization based on wendtian constructivist assumptions of international anarchy also demonstrates this.

Up to this point, the lens has not yet focused directly on the concept of international anarchy, the object under analysis, but it is already possible to highlight some relevant points: first, international anarchy, whether in the Waltzian approach or in the Wendtian one, is a characteristic of the international structure; second, being characteristic of the international structure, international anarchy cannot exist in the state of nature, having as a necessary condition the interaction between units – *i.e.*, the process of socialization; third, and considering the second point, international anarchy is post-social.

There are neorealist assumptions in which the concept of state of nature arises wrongly associated with the concept of international anarchy, being instrumentalized to explain the origin of an anarchic arena based on the nature of the constituent units (Little, 1993: 136-138). This type of analysis mainly uses comparations with the state of Hobbesian nature to explain the logic of self-help and the principle of safeguarding safety and self-sufficiency of States. And yet, if the logic behind the concept of anarchy is intertwined with the nature of political units, then if there is a transformation in the nature of the units, it is also possible to transform the logic of anarchy (Little, 1993: 136-138).

International anarchy is defined by Waltz (2014: 130) as "the absence of a central Monopoly of legitimate force" above political units; for Wendt (1995), anarchy is socially constructed. However, its definition and operationalization are too limited, revealing itself as a concept that sustains everything, but which explains little, as Onuf (1989) argued. The lexical meaning of the word 'anarchy' refers to disorder, lack of rules or even lack of a normative structure (Fernandes, 2012: 88). Paradoxically, the meaning employed in International Relations implies the opposite.

But the absence of coercive power above States does not necessarily imply that they are in a state of nature, as we have previously examined. Moreover, when referring to the legitimate monopoly of force, reference is made to coercive force; nonetheless, this does not imply that political units are not limited by structural forces, which act above them and condition their behavior. This type of power, to exist, can only be formed at the structural level –above States – as a characteristic of the international structure. If there is such a force, is there still international anarchy?

Barnett & Duvall (2005) developed a taxonomy on the concept of power, based on the conceptualization of agent-structure duality, seeking to focus on the relationship between social context and human action. One of the typologies addressed is the conceptualization of Structural Power, which operates in a direct, specific, and mutually constitutive way in the social relations of agents (Barnett & Duvall, 2005: 48-49). This concept, while recognizing the transformative capacity that agents can have, emphasizes the conditioning role of the structure on the agency (Barnett & Duvall, 2005: 49). It is this characterizing power of the structure that defines nature and what kind of social agents the political units will be, establishing the intersubjective norms that define the interests that sustain actions (Barnett & Duvall, 2005: 53).

Therefore, the same structure that, for Waltz, is characterized by international anarchy as an ordering principle, may also prevent the application of a structural power that shapes the behavior of political units. Being, in lexical terms, 'anarchy' and 'power', opposite terms, international anarchy, being characteristic of the structure – and, thus, the result of the process of socialization (which makes it post-social) – falls on a paradox.

Moreover, understanding international anarchy because of the socialization process, so it is a characteristic of the structure, the former institutionalized as a norm that composes the latter. Just as structural power is channeled through the process of socialization to limit human action, international anarchy is also channeled to (not) limit the action of States. This institutionalization of an absence of a monopoly of legitimate force above the States (norm of 'non-norm') is applied through mechanisms of structural force that condition the actions of political units.

Analysis of realistic assumptions of international anarchy developed by Raymond Aron and Kenneth Waltz

The classical realistic view highlights international anarchy as a unique characteristic element of relations between States, which is the explanation of the occurrence of conflicts between them (Aron, 1966: 724). Consequently, in a collectivity of sovereignties, each one will be governed by its own law and the sovereigns must not recognize another obedience. The State, being the holder of the legitimate monopoly of violence, applies its power externally without constraints (Aron, 1968: 28).

For Aron (1968), man is naturally a social animal that reaches its full potential through society, which allows the accumulation of knowledge and power amongst generations. Inspired by Kant's criticism of Rosseau, Aron uses the anthropological methodology of the latter to empirically strengthen his thinking with the example of the development of Neolithic societies, which through the formulation of a framework of values, lifestyle, and a way of seeing the world, began to identify their peers and "foreigners". This strangeness and identification of difference does not necessarily imply a hostile environment between socialites; it means that each sociality has developed conscious of its originality and its own culture, celebrating the discovery of being different from others. Given this presupposition, international relations are denoted from culture and, therefore, do not derive from the natural state, and conflicts are an integral part of civilizations and a form of relationship between States also do not come from the state of nature, but from culture (Aron, 1968: 30).

The philosophical distinction between state of nature – "where everyone can count only on himself" – and civil society – "where law rules, justice is served through the courts and where the police suppress violence" (Aron, 1968: 31) – does not imply that relations between States continue to represent a primary state of war for all (Aron, 1968: 31); that is, of a primitive enmity that arises spontaneously in contact with difference. This distinction is the result of historical experience: the city-states and empires were built through violence, without a higher entity that would suppress it. Since that moment, historical experience has shown that all international systems have been anarchic, as they have not been subjected to sovereignty. This authority, when recognized, would nullify the autonomy, independence, and sovereignty of States. For this reason, the order of relations between States is anarchic and this anarchy has been fostered by historical experience (Aron, 1968: 30-32).

The neorealist school, which gains momentum in the figure of Kenneth Waltz, inherits the contributions of classical realms, but is inspired by the assumption that "Between States, the state of nature is a state of war" (Waltz, 2014: 130). This principle permits comparison with the Hobbesian assumption of state of nature; if there is no coercive government of international fury, which has a monopoly on violence in the Weberian sense, it is unknown when a conflict can start. Consequently, international anarchy is the absence of supranational rules associated with the occurrence of violence (Waltz, 2014: 130); States interact in an environment of constant insecurity, where they seek their own gains, risking the survival of their peers (Bull, 1981: 721).

Therefore, in the anarchic sphere, the "similar units" (Waltz, 2014: 131) co-act, trying to maintain an autonomy in a self-help logic, where each unit invests in the production of means for its protection, understanding that each unit will serve what dictates its interests. If in a rational calculation, one State considers that attacking another is what suits it best, then it will do so and there will be nothing to stop it (Waltz, 1959: 232). In the international system only force relations can, thus, result due to their anarchic character. But not all relations between States are conflicting and a conflict is one of the typologies of the relationship between two units.

Analysis of Wendtian constructivist assumptions of international anarchy

Alexander Wendt's constructivist ideas assume Waltzian assumptions from a State-centered and holistic theory, where the State, as the main actor in the international scene, channels the behaviors of other actors and defines the structure according to its ever-changing identity.

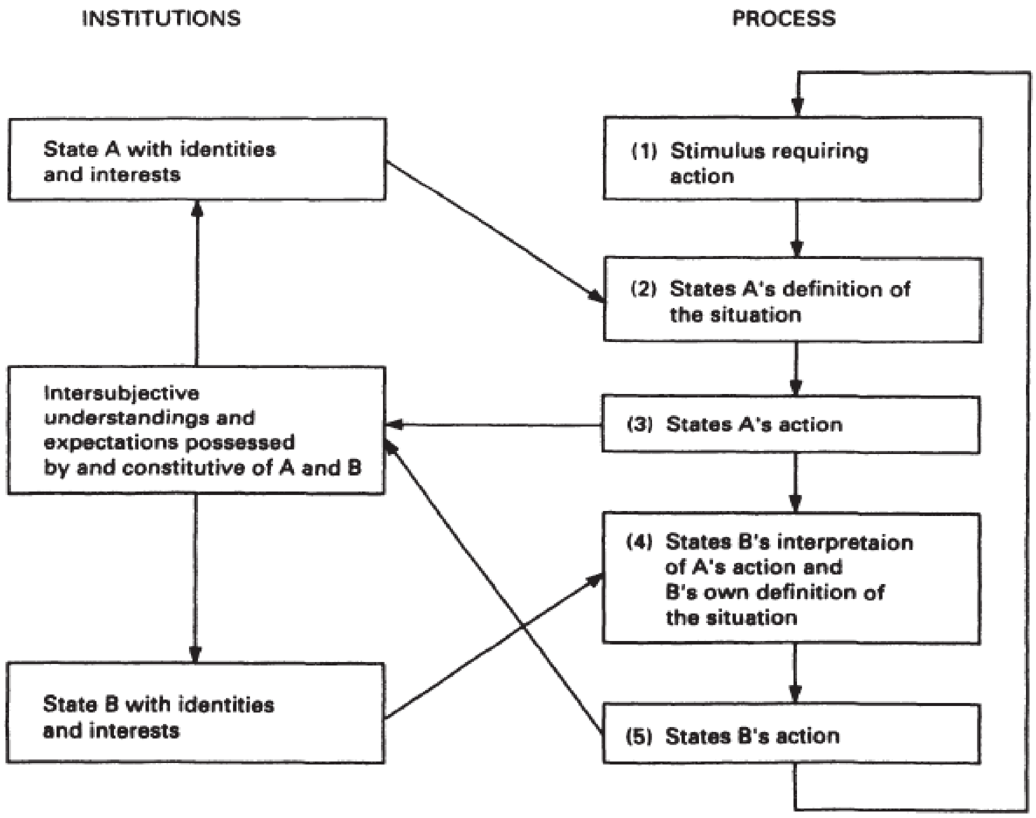
The focus on structure is necessary to challenge the causation powers of anarchy if the process and institutions are not subordinate to it. If "anarchy is what States make of it" (Wednt, 1995: 132) and if "a system of self-help and political power is socially constructed under anarchy" (Wednt, 1995: 132), this anarchy is mutually constitutive in an agent-structure relationship, starting from the social process of agents.

The international structure, in this sense, does not come from international anarchy since it is insufficient to explain relations between States. The process of identity formation is mainly concerned with self-preservation, which explains the existence of different interests between different agents. The self-help system is a form of institution of a type of structure that can occur under international anarchy; however, it is not unique, depending on the interactions between States and their positions towards the others. The logic of anarchy and power distribution depends on this cognitive variable of institution, so the realistic characterization should be added to the intersubjectivity of a structure of identities and interests in constant transformation (Wendt, 1995: 133-138).

The implications of this thought lead Wendt (1995) to affirm that States, before performing interactions with one another, do not conceptualize themselves or others, having no security interests before any interaction (Wendt, 1995: 139-140).

The institutions of structures transform the interests and identities of the States, but these also transform those, and both variables are changeable (Wendt, 1995: 153). The relationship between institutions and the socialization process is explained by the existence of an intersubjective understanding and expectations between A and B, that is, a structure. State A has its own interests and identity, such as State B. These components of structure, State A and State B, result in the institution. The process, in turn, consists of five stages, with a causal relationship, the latter being causality of the former, inusing a circular circuit. First, there is a stimulus that requires action. State A outlines the situation in its perspective, defining itself. State A acts, creating subjective expectations and understandings that influence both A and B. From the action of A, B withdraws its interpretation of A's action, considering its own interests and identity, with a view to a definition of the situation. Depending on its interpretation, B reacts to the Action of A, contributing to intersubjectivity and allowing A to define B (Wendt, 1995: 153-155).

Figure 1 - Dynamics of the socialization process and institutions



Source: "Anarchy is what states make of it" by Alexander Wendt (1995)

Wendt explains how anarchy is socially constructed as part of the structure.

Conclusion

For Aron (1968) and Wendt (1995), international anarchy is not a characteristic that comes from States being in a state of nature; it results from the establishment of relations between them. This disassociation factor between international anarchy and a state of nature discards Waltzian assumptions of characterization of international anarchy and highlights the process of socialization as an explanatory factor.

It is, thus, understood that the international structure is socially constructed, that through the processes of socialization throughout the historical experience institutionalizes international anarchy as a rule of 'non-rule'. Conflicts do not arise naturally between States, and they do not tend towards self-preservation due to the state of nature. A structure defined in neorrealistic terms may occur if a behavioral pattern in the socialization process leads to it, but this is not necessarily the case because the agent can transform the structure.

Being there no structure before the socialization process, there can also be no international anarchy within these conditions, as this is characteristic of that. By accepting anarchy as "what states make of it" (Wendt, 1995: 132), it will only make sense to interpret anarchy as the fruit of the interaction between States. This idea is not absurd because a State, before receiving a stimulus that leads to interaction with another, has no perception of this, being isolated. In this abstract scenario of only one State, there is no anarchy, as there is no room for relations between actors. It is particularly now that this State receives the stimulus to initiate interaction with another that realizes that there is no conditioning to its action. Only in the process of socialization it is, thus, possible to recognize international anarchy. The other, which will react to this first initiative, will have the same realization, giving rise to a mutual recognition of international anarchy.

So, international anarchy is internalized by actors as a rule of 'non-rule', becoming a norm of shared behavior in an intersubjective way, which channeled by the process of socialization, becomes a common norm. A common understanding of anarchy is transferred between States, resulting in a cognitive network of institutionalization. Anarchy, when institutionalized and recognized by agents, becomes an element of the structure. However, State A, with its own identity and interests, is a receiver of the intersubjective understandings shared between A and B, and international anarchy is one of those understandings that will infiltrate the identities and definition of interests of both, conditioning the way in which they carry out their actions. For that, anarchy exercises a structural power – *i.e.,* the ability of the structure to condition the action of the actor and his interests (Barnett & Duvall, 2005: 52-55) – on States, to the extent that it standardizes and conditions their behaviors. The concept of international anarchy is, thus, designed as a paradox of the norm *of* non-norm*,* which is still limiting.

Overall, international anarchy can only be built ontologically through mutually constitutive relations between agents and structure. This disconnection from the Waltzian view empowers an exercise of abstraction, where international anarchy is institutionalized as a norm, being applied as a structural power. It is this cover-up of a non-standard and this application of structural power that makes it important that the concept of international anarchy is revisited.

Finally, it is important that the debate around the concept of anarchy decentralizes from the different analyses of its consequences and focus on the core of the problematization: the ontological assumptions of a concept that explains everything, but itself.

References

Aron, R. (1968). The Anarchical Order of Power, in: *History, Truth, Liberty: Selected Writings of Raymond Aron*. Chicago: University of Chicago Press, 27–52.

Aron, R. (1966). Peace and War: A Theory of International Relations. Routledge.

Barnett, M., Duvall, R. (2005). Power in International Politics. *International Organization* 59, 39–75.

Bull, H. (1995). Society and Anarchy in International Relations, in: *International Theory: Critical Investigations*. London: Palgrave, 75-93.

Bull, H. (1981). Hobbes and the International Anarchy. *Social Research* 48, 717–738.

Buzan, B. (1993). Overview, in: *The Logic of Anarchy: Neorealism to Structural Realism*. Columbia University Press.

Fergunson, Y. H., Mansbach, R. W. (1988). The Elusive Quest: Theory and International Politics. Columbia: University of South Carolina Press.

Fernandes, A. H. (2012). A Anarquia Internacional Crítica de um Mito Realista. *Relações Internacionais* 36, 87-104.

Holsti, K. J. (1985). The Dividing Discipline, in: *Hegemony and Diversity in International Theory*. Boston: Allen & Unwin.

Keohane, R. O. (1986). Neorealism and its Critics. NY: Columbia University Press.

Little, R. (1993). The Structure and Logic of Anarchy, in: *The Logic of Anarchy: Neorealism to Structural Realism*. Columbia University Press.

Niou, E. M. S., Odershook, P. G. (1991). Realism versus Neoliberalism: A Formulation. *American Political Science Review* 35 (2), 481-511.

Onuf, N. (1989). World of Our Making: Rules and Rule in Social Theory and International Relations. Columbia: University of South Carolina Press.

Walker, R. J. B. (1987). Realism, Change and International Political Theory. *International Studies Quarterly* 31, 65-84.

Waltz, K. (2014). Anarchic orders and balances of powers, in: *Realism Reader*. Routledge, NY, pp. 130–141.

Waltz, K. (1979). Theory of International Politics. Reading Mass.

Waltz, K. (1959). Man, the State, and War. NY: Columbia University Press.

Wendt, A. (1999). Social Theory of International Politics. Cambridge University Press.

Wendt, A. (1995). Anarchy is what states make of it: The social construction of Powers Politics, in: *International Theory: Critical Investigations*. London: Palgrave, 129–180.

International Theory: Critical Investigations. London: Palgrave, 129–180.

How to cite this note

Egoreichenko, Alexandra Borisovna (2022). Preservation of European Cultural Heritage: experience and modern trends. In Janus.net, e-journal of international relations. Vol. 13, Nº 1, May-October 2022. Consulted [online] in date pf last visit, https://doi.org/10.26619/1647-7251.13.1.02

OBSERVARE
Universidade Autónoma de Lisboa

e-ISSN: 1647-7251
Vol. 13, Nº. 1 (May-October 2022)

NOTES

ONLINE DISPUTE RESOLUTION - FANTASY OR REALITY?

OTABEK PIRMATOV
pirmatov.otabek.89@inbox.ru
Acting Assistant Professor of Tashkent State University of Law (Uzbekistan).
Doctor of Philosophy in Law.

I. Introduction

This article discusses the issues of online dispute resolution, which allows to expand the use of judicial remedies, innovations in traditional methods of dispute resolution, the application of technology. Online dispute resolution is one of the ways to resolve disputes using Internet technologies. Dispute resolution online is used to resolve problematic situations of any complexity. At the same time, it is characterized by high cost-effectiveness and a wide range of functions (data transfer, coordination of meeting schedules, e-mail delivery of agreed decisions, speed).

The Internet has served as a tool that has revolutionized many areas of life in the 21st century. It performs many functions and lays the foundation for many industries to operate as a common source of information, means of communication and global trading platform.

The internet also has an impact on legislation. Its rapid expansion has led to many positive developments, such as the digitization of certain areas of law. New methods of communication have improved many areas of law, including the modernization of out-of-court dispute resolution processes, such as the creation of online dispute resolution systems.

The emergence of online conflict resolution began in the United States. Disputes are still being considered online at the online dispute bureau at the Center for Information Technology and Conflict Resolution at the University of Massachusetts in the United States (Wahab, 2012).

The COVID-19 pandemic crisis has forced courts to take an innovative and creative approach in real time, including measures taken today to introduce modern information technology to courts or address shortcomings in them. Virtual court hearings, ODR and other digital litigations are examples.

The first appearance of online dispute resolution was done email. This method of dispute resolution is done online. Once the application was accepted for resolution, the other party responded to the application. If no agreement is reached, the parties are directed to the negotiation stage. This was done through an electronic means of communication - e-mail. Their relationship was mediated by a mediator or arbitrator.

The number of entities providing ODR services in the EU has been increasing in recent years. Examples include ombudsmen in Austria and Germany, and online mediation systems in Italy and the United Kingdom.

II. Literature review

According to the Dutch scholar and judge Dori Reiling, online dispute resolution means the use of information and communication technologies in resolving disputes between parties. The technology can also be used in mediation and arbitration courts. It can also be seen as an alternative form of conflict resolution. ODR can also bolster the improvement of traditional methods of conflict resolution through innovative online technologies. In the past, ODR was mainly used for e-commerce disputes, but today more online communication is being used as a form of ODR (Reiling, 2017).

According to the American scholar Amy Schmits, the ODR offers great opportunity for expanding access to court remedies or achieving justice. In the United States and abroad, ODR has developed mainly in e-commerce companies such as eBay and Alibaba, most state courts are still in the traditional process, providing practical services to increase the efficiency of the use of information technology in the courts and expand its capabilities (Schmitz.

According to Indian researcher Chitranjali Negi, online dispute resolution (ODR) is a form of conflict resolution that uses technology to facilitate the resolution of disputes between the parties.

Online dispute resolution may involve the resolution of disputes in each of the negotiation, mediation, or arbitration courts, or in three alternative disputes.

ODR includes the following legal traditions:

1) Legal confidence: the ability of the parties to choose an arbitrator or arbitrator.
2) Use of Justice: Everyone involved in a dispute has the right to use ODR.

ODR will also create a mechanism that provides timely solutions and rational means of efficiency.

ODR allows for a civilized (peaceful) resolution of disputes between citizens.

The ODR also allows the parties to apply to state courts[1].

[1] Chitranjali Negi. Concept online dispute resolution in India. Electronic copy available at: http://ssrn.com/abstract=2596267.

According to Mimoza Sadushi, resolving disputes online is, in simple terms, resolving disputes over the Internet. In Canada, the United States, and European countries, ODRs are organized in various forms and through the establishment of forums.

The term ODR means automated processes. Sometimes ODRs are fully automated and even if they are only conducted online, some also involve the human factor.

Online dispute resolution allows you to resolve disputes quickly and easily.

Automated negotiations in the ODR also include processes such as neutral assessment of disputes, mediation or conciliation.

Online dispute resolution will be an alternative form of mediation or arbitration courts (Sadushi, 2017).

It is clear from the opinion of the above scholars that ODR can be an alternative type of dispute resolution such as mediation, arbitration courts.

However, some scholars believe that it is possible to introduce procedures related to ODR processes in state courts, especially civil courts.

According to the American scholar Lise Embley, virtual trials and ODRs are opening up new opportunities in the courts, which not only ensure that courts operate during a pandemic, but also help settle many problems[2].

According to the Ergul Serpil, one of the key issues is to prevent an increase in the number of applications that need to be considered in court and to see the delayed trials as soon as the threat of the COVID-19 virus passes and people have the opportunity to gather in public. These issues can be resolved through ODR and virtual court hearings. Judges and court staff may also conduct ODR and virtual court hearings from the courthouse to continue adjourned proceedings. This allows the parties to participate in the trial remotely (Serpil, 2020).

III. Discussion and analysis

According to the above scholars and judges, disputes can also be resolved online in civil courts.

Hence, online dispute resolution can also be applied to civil litigation.

Online Dispute Resolution (ODR) is an online dispute resolution that uses alternative dispute resolution methods. Dispute resolution online involves disputes that have been partially or fully resolved over the Internet.

Online dispute resolution is done using existing platforms that allow access to the Internet. Like other alternative ways of resolving disputes is to reach an agreement between the parties.

Online dispute resolution is an alternative form of dispute resolution that allows the use of the Internet. Like other alternative methods of resolving disputes online, the parties

[2] Lise Embley. Judicial Perspectives on ODR and Other Virtual Court Processes. JTC Quick Response Bulletin: 4.

are required to have a third party (mediator, arbitrator) in the process of reaching an agreement.

The state pays great attention to the use of digital technology and new technologies in the management and resolution of large-scale complex litigation in civil courts. The new technology provides the opportunity to conduct court proceedings cheap and short time, as well as to resolve civil cases, including the admission of parties, consideration of claims, payment of state duties, court hearings and the announcement of decisions.

Reforming the civil justice system is a crucial way to improve the system and ensure that the public meets the expected results. The process of increasing the application of digital technologies in all spheres of life is underway. Digital technologies play an important role in achieving justice in civil litigation, improving efficiency and results, and reducing costs.

Dispute resolution online is done on a dedicated digital platform and covers the process from the initiation of the claim to the resolution of the dispute. An online conflict resolution platform can work based on human input data or artificial intelligence algorithms.

From traditional dispute resolution with online dispute resolution:

1) not to enter into face-to-face negotiations with the parties;
2) automatic recording of negotiations and storage of information about all disputes;
3) the intelligence of the machine can increase efficiency.

The effectiveness of the judiciary can be achieved by seeing disputes less important and smaller in size by ODR.

Alternative methods of dispute resolution, including the relationship of the opposing parties in their online form, play a key role. The voluntary nature of online dispute resolution also makes it easier for the supporting parties or the person (arbitrator) to decide on the disputed issues. ODR is very important for parties that are separated by a very long distance.

The ODR encourages the use of modern technology in defending their rights in the community and reduces legal barriers.

The ODR can allow the parties to resolve disputes early, which frees the court from resolving complex issues such as filing a lawsuit, participation. The ODR can simplify litigation and expand the ways in which it participates.

Dispute resolution online can be a way for lawyers to familiarize their clients with civil disputes without leaving the office or home.

It would be advisable to resolve disputes online or virtually in our civil courts.

In foreign countries, court proceedings can be conducted by videoconferencing on special platforms or public platforms. These proceedings are done by Zoom in SAR, Uganda, Microsoft teams in New Zealand and through a special court platform in China. The platforms used by the above countries can also be used by the public and the parties are very comfortable.

It would be advisable for civil courts to use platforms that are accessible to all when video proceedings are conducted by videoconference.

It would have prevented citizens from spending money and time going to court to participate in court hearings via videoconferencing.

Beijing, Guangzhou and Huangzhou Internet Courts established today in the PRC[3], e-Estonia platform in Estonia, online courts through India's platform[4], Virtual court hearings are held in countries such as the Netherlands.

The preamble to the Beijing Internet Court's Special Instruction on Conducting Internet Trials on the Tianping Chain Platform states that Beijing Internet Court hearings will be held on the Tianping Chain platform, which is based on blockchain technology.

IV. Conclusion

The statement of claim submitted and the documents attached to it if the procedural legislation does not meet the requirements, a notice of correction of the statement of claim shall be sent in due time and the time of receipt of the statement of claim shall be recalculated from the day following the day of In our country, many sites operate under the domain name Uz. Under these domains we can create special sites for ODRs.

If the parties and other participants in the litigation use the court platform, they will be verified by biometric identification.

In Beijing, Guangzhou and Huangzhou Internet courts set up in the PRC, the parties are verified by biometric identification.

India's platform[5] number can be accessed by dialing the number.

We propose to include in our civil procedure legislation the rules for the procedure for receiving claims:

The online court will accept the statement of claim and the documents attached to it by the plaintiff online, and within 10 days after the receipt of the statement of claim, the online court will take the following actions: those who meet the requirements of procedural law register the claims and send a notice receipt of the statement of claim. If the plaintiff does not make corrections to the statement of claim in accordance with the requirements of procedural law within the prescribed period, the court shall issue a ruling on the return of the statement of claim.

In the online court system, claims are completed on an electronic platform. Therefore, the number of rulings by the courts on the return of claims is reduced.

The inclusion of the above proposals in the civil procedure legislation would pave the way for the stable operation of civil courts in the event of a pandemic and the protection of the rights and interests of our citizens.

3 Beijing Internet Court http://tpl.bjinternetcourt.gov.cn.
4 http://vcourts.gov.in.
5 http://vcourts.gov.in.

References

Embley, Lise (s.d.). Judicial Perspectives on ODR and Other Virtual Court Processes. *JTC Quick Response Bulletin*: 4.

Negi, Chitranjali (s.d.). *Concept online dispute resolution in India*. Electronic copy available at: http://ssrn.com/abstract=2596267

Reiling, Dory (2017). Beyond Court Digitalization With Online Dispute Resolution. *International Journal For Court Administration* | Vol. 8 No. 2, May. ISSN 2156-7964 .URL: http://www.iacajournal.org.

Sadushi, Mimoza (2017). The theory and practice of dispute resolution in the digital age. *Global Journal of Politics and Law Research*. Vol.5, No.7, pp. 57- 69, December.

Schmitz, Amy J. (2019). Expanding Access to Remedies through E-Court Initiatives. 67 *Buffalo Law Review*, 89 (2019): 89.

Serpil, Ergun (2020). *Coronavirus and the Courts, Webinar II*. National Center for State Courts. NCSC.org/pandemic. 15 April.

Wahab, M.S. Abdel; Katsh, E.; Rainey, D. (2012). *Online dispute resolution: Theory and practice. A treatise on technology and dispute resolution.* Hague: Eleven International Publishing.

How to cite this note

Pirmatov, Otabek (2022). Online dispute resolution - fantasy or reality?. In Janus.net, e-journal of international relations. Vol. 13, Nº 1, May-October 2022. Consulted [online] in date pf last visit, https://doi.org/10.26619/1647-7251.13.1.03

OBSERVARE
Universidade Autónoma de Lisboa

e-ISSN: 1647-7251
Vol. 13, Nº. 1 (May-October 2022)

JANUS.NET
e-journal of International Relations

CRITICAL REVIEW

Akyüz, Emrah (2021). *Nuclear Power and Human Rights in Japan: The Fallout of Fukushima*. London: Lexington Books. ISBN: 9781793637819, 270 pp[1]

EMRAH ATAR
emrah.atar@erdogan.edu.tr
PhD in Development Policy and Management at Global Development Institute at The University of Manchester, which focuses on the impact of the refugee crisis on public service delivery in hosting countries such as Turkey. He is Assistant Professor at the Department of Political Science and Public Administration, Recep Tayyip Erdogan University (Turkey). His focus topics and research interests to further escalating his prospects on politics, governance, migration, policy development and human resource management, urbanization policies. Emrah is also an interview editor of the Political Reflection Magazine, and Commissioning Editor of the E-International Relations.

Since the first half of the 20th century, technological innovations have transformed war methods and created prolifications of nuclear powers worldwide. The two world wars and the subsequent Cold War period cause a peak in this race. These developments, however, caused many tragedies; among those was the nuclear power plant accident in Fukushima in 2011. 'Nuclear Power and Human Rights in Japan: The Fallout of Fukushima', by Dr Emrah Akyüz from Lexington Books, attempted to examine the event from the axis of human rights. This book consists of seven main sections with each chapter's introduction and conclusion, which helps the reader to formulate a general assessment.

The first part of the book maps the nuclear accidents experienced worldwide and offers information about the effects of nuclear accidents, with a specific focus on Ontario, Chernobyl and Fukushima, trying s to understand this process with a seven-stage pyramid (pp. 2-5). In the continuation of this section, the details of Fukushima, which is the book's focal point, are presented (pp. 5-7). In the continuation of Fukushima, he details the Environmental Human Rights Approach to The Fukushima Nuclear Accident and brings up that Fukushima has substantial risks in terms of environment and human health, and states the following: "Undoubtedly, the environment and public health are the two core areas to which Fukushima will continue to pose a risk, and is a likely explanation for why the literature focuses on these two aspects when discussing the

[1] Texto traduzido por Cláudia Tavares.

accident" (p. 8). In this chapter, the author also emphasizes human rights in terms of environment and health.

In the second part of the book, the conceptual framework: environmental human rights is discussed. The interrelation between human rights and ecological rights is presented (p. 20). When referring to environmental rights, pointing out the meetings held in Stockholm and Rio also helps us to build a detailed conceptual analysis —emphasizing that human rights are divided into three inclusive internationally accepted categories; socio-economic, civil-political and solidarity human rights (pp. 21-28).

The third part analyzes Japan's Nuclear Energy and Human Rights Policy related to environmental human rights. Considering Japan's energy policies before and after Fukushima, discussing how effective/ineffective the country's human rights policies are in this direction (pp. 71-74). Emphasizing that the Fukushima disaster brought along major reforms in Japan's energy policy, the work informs us about these reforms (pp. 80-90). While explaining the reforms, the author draws attention to Safety as a Key Principle, The Decrease in Dependency on Nuclear Energy, Renewable Energy, and Transparency.

Through thematic analysis of interviews with Fukushima inhabitants, Chapter 4 examines the impacts and hazards connected with the FNA on/to human rights, particularly the right to life, health, and property. In this direction, official reports and past work on the hazards and impact of the accident on the rights to life, health, and property are discussed in this chapter (pp. 98-104). Then, thematic analysis of human rights issues relating to radioactive pollution in Fukushima has been talked about. In this section, people's experiences are given in line with the data obtained from the fieldwork. Basic results such as Living with Fear, Violation of the Right to Health, Mental Health Problems, Physical Health Problems, Social Isolation, Loneliness, Risks to Health Associated with Water Contamination, Risks to Health Associated with Food Supply Contamination, Violation of Right to Property set forth and discussed here (pp. 107-121). This information provides imperative contributions to the literature about the difficulties experienced by the region's people during this process and the processes they need to overcome in dealing with these difficulties.

The study 'Fukushima Residents' Experiences of Procedural Rights' concerning Japan's Energy Policy looked at how and to what extent Fukushima residents used procedural rights in response to the Fukushima nuclear disaster and Japan's nuclear energy policy (pp. 136-174). As the author indicates "there is no comprehensive study to date that has investigated the Fukushima residents' experiences of PHRs (including the right to information, the right to participation, and the right to access to justice) in the Fukushima matter" (p. 134). This study is one of the few studies examining strengthens this argument by giving more detailed information. The author also put some sub-themes to provide better insight on this issue: No Attempt to Access to the Information Before the Accident; Passive access to the information related to nuclear energy after the 2011 accident; Access to the Information; Reliability of Information; Timely sharing of Information related to the accident; Active access to the information related to nuclear energy after the 2011 accident; Complexity of Information; Public Participation in Decision Making Process; A Lack of Interest in Nuclear Energy and no Invitation before the Accident; Public Participation in Decision Making Process Tokenism; Referendum Demand; People's Interest in Public Participation after the Fukushima Accident; Access to the Court; Judicial Redress with Respect to the Impact of Environmental Decisions; Judicial Review with Respect to Environmental Decision Making; Barriers to Access to the Court and Socially Fair Results.

Chapter six provides a detailed discussion to interpret the book's principal findings regarding past research on the FNA and EHRs. It is divided into three sections: first, it discusses the extent to which the FNA represents a human rights problem in terms of its environmental impact, which is the central research question addressed in the empirical chapters; second, it examines the relationship between substantive and procedural rights in Fukushima, and critically evaluates the challenges and opportunities of an energy policy that recognizes public participation in decision-making, which is propagate in the empirical chapters; and third, it examines the relationship between substantive and procedural rights in Fukushima. Finally, some of the study's limitations are discussed and suggested future research fields. The main findings of the study were discussed here, and a detailed analysis was obtained. In this direction, the following topics are emphasized: The Relationship Between Human Rights, the Environment, and Nuclear Energy in Japan; Cross-Cutting Issues between Japan's Human Rights and Nuclear Energy Policy; Human Rights Violations Raised by the Fukushima Nuclear Accident; Reinterpretation of Human Rights Versus Right to the Environment; The Linkage Between Substantive and Procedural Rights; The Linkages Between Violation of the Right to Information and the Enjoyment of the Right to Health; The Lack of the Right to Public Participation and the Enjoyment of the Right to Health (pp. 174-205).

This work, which I had the opportunity to evaluate in detail above, appears as a candidate to make significant contributions in its field. In particular, it is observed that this highly accessible guide is up-to-date and makes a noteworthy contribution to the literature in terms of bringing environmental issues and human rights issues together. Dr Akyüz reveals that there is a positive interaction between ecological problems and human rights, especially from a Japanese perspective. While demonstrating this, he not only remained under the monopoly of Japan but also added a broad perspective by addressing similar problems that had been experienced before. The academic world, which constantly points to ancient events and accidents in the analysis of environmental issues, will now have the opportunity to understand better the issues of the region's people in the face of much more recent negativities with such accidents. Of course, this work, which was revealed only with the example of Fukushima, will not be enough on its own. However, this work would definitely encourage especially young academics to examine more current events regarding environmental issues.

The method in which the study was presented, the language used, and the detailed presentation of the findings can be seen as one of the most important advantages. It is also noteworthy that an empirical method was used in the study, and those policy recommendations were given as a result of the findings. The results obtained in work bring a different perspective to the current understanding of the relationship between human rights and the environment. In addition, a discussion of Japan's contribution to nuclear energy policy and management and the theoretical, methodological and empirical study of nuclear accidents will also be valuable to scientists working in this field. Overall, the book is well-written, and most readers will find it both interesting and educational, in which Dr Akyüz examines and clarifies a case about a nuclear disaster. He also analyses the topic of challenges and challengers excellently. Therefore, I strongly recommend that this book, which offers a different perspective on Fukushima's environmental risk analysis, ought to be read by people from all platforms.

How to cite this critical review

Atar, Emrah (2022). Recensão crítica de Akyüz, Emrah (2021). *Nuclear Power and Human Rights in Japan: The Fallout of Fukushima*. London: Lexington Books. ISBN: 9781793637819, 270 pp. In Janus.net, e-journal of international relations. Vol. 13, Nº 1, May-October 2022. Consulted [online] on date of the last visit, https://doi.org/10.26619/1647-7251.13.01.1

OBSERVARE
Universidade Autónoma de Lisboa

e-ISSN: 1647-7251
Vol. 13, Nº. 1 (May-October 2022)

JANUS.NET
e-journal of International Relations

CRITICAL REVIEW

Innerarity, Daniel (2019). *Política para Perplexos.* Lisboa: Porto Editora, ISBN 978-972-0-45-03232-4, 214 pp.

JOÃO CARLOS SOUSA
joao.carlos.sousa@iscte-iul.pt
Ph.D. student in Communication Science at ISCTE-Instituto Universitário de Lisboa (Portugal) and holder of a grant from the Foundation for Science and Technology (FCT). He has a Master Degree in Sociology: exclusions and social policies (University of Beira Interior) and a Bachelor Degree in Sociology. He was a Research Fellow (2010-2015) in the projects Citizens' Agenda: Journalism and Civic Participation in Portuguese Media and Public and Private Mobile Communications, conducted at LabCom, Faculty of Arts and Letters of the University of Beira Interior. Since June 2016, he has been a researcher at OberCom.

Daniel Innerarity in "Politics for the Perplexed" continues the reflection begun in the aftermath of the Great Recession (Innerarity, 2016) on the current challenges facing contemporary democracies, examining the ethical and cultural foundations for the possibility of a new social contract. This social contract is to be based on trust between citizens, but also between them and the various institutions that support liberal democracy. To this end, we are proposed to replace a majority democracy with a negotiation democracy, continuing an "old" theoretical opportunity of the author (Innerarity, 2012). As a desideratum of contemporary societies, negotiation democracy corresponds, in the first place, to an objective and correct diagnosis of the pathologies and dysfunctions of today's western democracies.

For those who read the 214 pages that make up the work, it is clear that the Basque author is endowed with a unique observational acumen of reality, which allows him to translate into simple and clear text, accessible to non-specialist readers, but eager to gain knowledge of community life, a whole reflection about the current political situation. The reading of the work under analysis is relevant not only for specialists in political communication or political science, but also for those who are interested, who question the representations that are constructed in everyday life in the context of co-presence (for example, interaction in a café or family context), but above all those with whom we contact on a daily basis, through the different traditional and/or digital media. The work is structured in six parts, each of which divided into several chapters.

I The End of Certainties - The perplexed condition results from the limitless opening of the horizons of the possible. Faced with structural changes, there are those who have absolute certainties and end up being fanatical. On the other hand, the so-called "politically correct" gains public expression. Uncertainty spreads through the various domains of social activity. Politics in times of perplexity is expressed in: predictive incapacity of polls that monitor political behaviour; the primacy of subjectivity in the analysis of political phenomena; and outdated concepts in the face of current requirements. In this context, there are two forms of reaction on the part of political actors: on the one hand, the conservative appeal to authenticity and non-intervention in reality (conformists); on the other hand, the radical critique that results in a misunderstanding of reality, as exemplified by populist proposals all over the world. The author argues that the contemporary left should focus on redistributing and mitigating the inequities created by the process of economic and capitalist globalization. The right focuses on state action in combating crime, giving priority to security issues.

Both the left and the traditional right bequeath their incapacity and inertia, in the political domain, to the unregulated role of financial globalization. Thus, the right assumes globalization and the ineffectiveness of state action as an "indisputable reality". The left, for its part, assuming a clear stance of resistance to the process of economic globalization, insists, according to Innerarity, on not understanding the emerging guiding frameworks of contemporary political action.

In the public sphere, the "old" left and right are discursively distinguished. The right resorts to facts and data with the guise of objectivity, tending to limit the aspirational horizons of the debate itself. On the other hand, inside the left, appeals to imagination and criticism succeed one another at a dizzying pace. In an increasingly spectacularized public space, in which the status of citizen has progressively been replaced by that of consumer, journalism finds itself facing competition from an increasing number of specialists participating in the public debate.

II Emotional Deregulation – Innerarity begins the second part of the essay by postulating that emotions have increasingly guided activity in spheres as diverse as the economy, war and, more markedly, politics. Social structures where states of anxiety, anger and trust are expressed constitute the axes of social transformation. In this circumstantial framework, the media play a pivotal role. In the foreground, the author places the traditional media as definers of the agenda that emanates emotional states. Downstream, there are social media that foster the existence of emotional bubbles around particular cases. In fact, the actors who differentiate themselves and succeed in the public space have multiplied due to their discursive aggressiveness and inconsistent sincerity: "those who are more offensive gain more attention in the public sphere" (2019: 66). Innerarity (2019: 66-67) asks "(...) what if the media were enhancing and feeding democratic impotence, that is, inflaming our expectations, emphasizing collective incapacities, amplifying our fears and paying greater attention to provocateurs?"

III Politics in an Area of Poor Signalling – The author starts with a reflection on populism based on the conceptual distinction made by Chantal Mouffe between populism of democratic radicalization and authoritarian populism, associating them with the political left and right, respectively. However, she claims that this distinction does not consider democratic plurality. Both populisms exclude more than they integrate. After all, all populisms adopt a rhetoric based on exclusion: people vs elite; them vs us; caste vs people etc.. As populism is the most striking contemporary political expression, the traditional left and right reiterate their anti-populism. For the left, populism is still unattractive insofar as it is insensitive to the inequalities and inequities produced in social and political processes that evoke the reconstruction of social structures; on the other hand, the stability-obsessed right see the reform drive at the institutional level of the populists as a threat to the desired stability. Brexit, as a political phenomenon, is the typical political event. For the author, it results from a "flight forward" on the part of the British and, in particular, their political elites, dispensing with any method of representative democracy, assuming plebiscitary contours. Thus, this process must be seen as a double paradox: the first is that, contrary to what is claimed by Brexit supporters, the United Kingdom will not be completely outside the European Union, as is the case with European Union legislation; the second manifests itself in the growing tension between the plebiscitary impulses and the procedures of representative democracy. Direct democracy translated into the holding of a referendum has the power to pierce the citizen's sense of empowerment, although in the end they are always dependent on the enforcement and execution by the various institutions of democracy.

IV Democracy in the Age of Trump – The last US presidential elections were mainly guided by the civic republicanism vs liberal-conservative elitism axis. The first had in Trump and Sanders its main representatives, while the second had its most representative forces in the Republican and Democratic parties. In the case of Trump, by focusing on proprietary capitalism in the face of financial globalization, he reaffirms the exhaustion of the multicultural paradigm, albeit without coherence and objectivity, explaining the discontent of the people. He combines communication and telegenic simplism with this strategy, taking advantage of the decay of civic culture itself. On the one hand, this new cleavage is marked by classical capitalism and, on the other hand, by creative financial capitalism. In this axis, the ideas of an essentially national industrial development are confronted and their main interlocutor is the nation-state. At the antipodes stands the financialized economy of global markets whose epicentres are Silicon Valley and Wall Street. The target of the populist movement is above all the multiculturalism ingrained in economic globalization. The author proposes a new conception of justice that should include not only redistribution but also recognition.

V Establishing Intelligent Systems - In recent decades, politics has seen its function radically altered. This metamorphosis is comparable only to that which took place four centuries ago when the nation-state emerged. The transformations occurred at structural level, that is, at the level of global coordinates: globalization of economic activity, emergence of the knowledge society, individualization of lifestyles and the westernization of societies. The implications contribute to three major types of political dysfunctions: first, ineffectiveness of political action within the scope of what would be expected; second, inoperability in the face of unprecedented problems and new formats; third, inability to identify new problems. We are facing a deficit of political intelligence that is daily confronted with the versatility and dynamism of other spheres: technological euphoria vs civic illiteracy; technological innovation vs social redundancy; critical scientific and economic culture vs anachronistic political space. At the end of the line, the author argues that we must improve the systems that defend us against people themselves, against errors produced deliberately or inadvertently, because in the end "fear itself is an instinct that defends us from ourselves" (2019: 191).

VI What Awaits Us – Diagnosis, as a public intellectual's job, is a responsibility of this agent in relation to his fellow citizens and other surrounding community. Even without being able to predict the future, a good diagnosis is essential to reasonably face the current uncertainty and unpredictability. Three leads with prospective potential: first, increasing uncertainty; second, intense volatility of social and political patterns; third, the need to improve the concepts that guide the reflection and definition of strategies. The work ends in a tone of optimism, although one should not whitewash the colossal challenges posed to societies in general and to institutions and political actors in particular. Indeed, optimism to the detriment of pessimism as a basic rule of social reflection is a cornerstone in the assembly of the complex sociopolitical puzzle. There are two good reasons to forego pessimism and give priority to optimism: the narrative of human history may not go downhill; the conclusion is always the enemy of reflection and prospective interpolation of the social and the political spheres.

Notes to keep and expand on

In the work that supports this reflection, the author assumes, even implicitly, the role of public intellectual. As such, he proposes a new cosmopolitan social contract based on principles of tolerance, dialogue between different states and between different nations within the states themselves. Although throughout the work there are some signs of criticism of the steps taken by western democracies and in particular their hesitant responses to the different populist movements, Innerarity at the end denotes moderate optimism, specifically in response to the greatest political challenge of the first decades of the 21st century. – the resurgence of populisms and nationalisms that give it shelter with an ambitious cosmopolitan proposal that acts as an intercultural and political dialogue.

Both the left and the traditional right bequeath their incapacity in the political field, having globalization as an argumentative background. In the particular case of the right, resorting to "indisputable reality" has as its most paradigmatic case the "ordoliberal consensus" that has permeated some institutions of the European Union and Member States, in addition to the patent domain in the public and media spheres in the European continent.

The question Innerarity raises in the second part about the role of the media today impels us to consider the following aspects: first, it involves addressing all the transformations of traditional media in recent decades, such as commodification (Cardoso, 2016); the second point deals with the relationship between these media and social media, in particular Facebook and Twitter; the third point is based on the strong disintermediation of mass communication (Bruns & Humphreys, 2007); a fourth issue and as a consequence of communication disintermediation, political actors, especially populist ones, have taken advantage of the establishment of direct links, with a vast audience and followers, discarding journalistic mediation. This may, in fact, explain the fact that traditional media are a frequent target of the discursive wrath of populist leaders and movements in a wide range of democracies.

It is in this line of reasoning that Innerarity tells us about "emotional dysregulation". The state of emotional anger is expressed in the growing anxiety and distrust that permeate daily life, becoming vectors of social and political change. The fact that an author, such as Innerarity, points out these transformations associated with emotions in the public sphere and particularly in politics, is an important indication that this will be an emerging field of study and that will consolidate itself in the coming decades, particularly in the fields of electoral behaviour and political network communication.

References

Bruns, A. & Humphreys, S. (2007). Building collaborative capacities in learners: The M/cyclopedia project revisited. *Proceedings of the Conference on Object-Oriented Programming Systems, Languages, and Applications, OOPSLA*, pp.1–10.

Cardoso, G., Santos, S. and Telo, D. (2016). *Jornalismo em Tempo de Crise.* Lisbon: Mundos Sociais.

Innerarity, D. (2011). *O Futuro e os seus Inimigos.* Lisbon: Editorial Teorema.

Innerarity, D. (2016). *A Política em Tempos de indignação.* Lisbon: Dom Quixote.

Innerarity, D. (2019). *Política para Perplexos.* Lisbon: Porto Editora.

How to cite this critical review

Sousa, João Carlos (2022). Critical Review of Innerarity, Daniel (2019). *Política para Perplexos.* Lisboa: Porto Editora, ISBN 978-972-0-45-03232-4, 214 pp. In Janus.net, e-journal of international relations. Vol. 13, Nº 1, May-October 2022. Consulted [online] on date of last visit, https://doi.org/10.26619/1647-7251.13.01.2