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THE DEVELOPMENT OF THE EUROPEAN NEIGHBOURHOOD POLICY: THE CASE OF UKRAINE AND ITS EFFECTS ON THE RELATION WITH RUSSIA

César GARCÍA ANDRÉS*

Abstract. *The implementation of the European Neighbourhood Policy in 2004 was an instrument established to achieve a rapprochement between the countries of Eastern Europe and the Southern Mediterranean with the European Union. Since this common policy began, it has evolved very differently in the distinct countries that are part of it. One such country is Ukraine, which has developed special relations with the European Union. So much so that, since the implementation of a specific dimension called the Eastern Partnership in 2009, relations have been fluctuating between Ukraine and the European Union*.

Keywords: *European Union, Ukraine, European Neighbourhood Policy, Regional development, Eastern Partnership, Russia.*

Introduction

To begin with, it should be borne in mind that the EU relations with the countries of Central and Eastern Europe began between the end of the 1980s and the beginning of the 1990s of the last century. For instance, the Cooperation and Trade Agreement between the Soviet Union and the European Community was signed in 1989 (García Andrés, 2018: 108) through Decision 90/116/ECC. These relations were the result of the progressive disintegration of the Soviet Union at that time. There were certain regulations and decisions aimed to assist these countries in their transition to democracy and a market economy.

In this way, certain European policies were implemented in the various neighbouring countries. Even some applications to join the EU were accepted. Therefore, in the first years of the 21st century, the limits of the EU were extended towards other countries. Due to this fact the EU had new borders shared with new countries. 1st May 2004 was one of the most important moments for the EU, with the largest enlargement in its history. Thus, the new borders of EU extended to new Eastern European countries: Belarus and Ukraine. In addition, in the year 2004, the accession processes in Bulgaria and Romania for 2007 were already in operation, so Moldova also got in contact with the new enlarged EU.

Following these enlargements, there was a need to strengthen and deepen relations with those who became the new direct neighbours of EU. Thus, from 2002 onwards, talks were initiated to develop a new policy based on closer ties with the countries of Eastern Europe. The basis for this new initiative was found in the Partnership and Cooperation Agreements (PCA) that were ratified at the end of the 1990s. These PCA initiated bilateral

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relations between the EU and its Eastern neighbours (except Belarus which did not ratify its PCA with the EU).

Due to the great interest generated by the creation of this new policy within the EU institutions, it was taken beyond the land borders. Two nearby regions entered the orbit of this policy: The Southern Caucasus with Armenia, Azerbaijan and Georgia; and the Mediterranean region with Algeria, Egypt, Israel, Jordan, Lebanon, Libya, Morocco, Palestinian Authority, Syria and Tunisia. In the case of the last region mentioned, the first approximation made was the so-called Barcelona Conference of 1995. This was a broad framework of political, economic and social relations between the members of the EU and the countries of the Southern Mediterranean (Treviño Ruiz, 2014: 15).

1. The European Neighbourhood Policy

The process of creating a new policy for the EU neighbouring countries started in 2003. In March, the European Commission (EC) presented a communication to the Council and European Parliament (EP) entitled "Wider Europe Neighbourhood: a new framework for relations with our Eastern and Southern neighbours." The main idea that emerges from this communication was the establishment of a prosperous zone that maintained closer relations based on cooperation (Commission of the European Communities, 2003a: 9).

It was essential to know which the necessary strategies for the creation of the European Neighbourhood Policy were (ENP). In the same way, it had to be considered the different degrees of intensity in the EU relations with these countries. This issue could be reflected in the negotiations and entry into force of the PCA of these countries with the EU (Table 1). In some neighbouring countries progress had been made more than in others. However, the first initiatives should be allocated to general areas in all of them: the democratic situation, respect for human rights and the promotion of the rule of law.

Table 1: PCA with ENP countries

COUNTRY	Signature of agreement	Official publication	Document
Algeria	22 April 2002	18 July 2005	2005/690/CE
Armenia	22 April 1996	**31 May 1999**	**1999/602/CE**
Palestinian Authority	24 February 1997	2 June 1997	97/430/CE
Azerbaijan	22 April 1996	**31 May 1999**	**99/614/CE**
Belarus	6 March 1995	On standby	
Georgia	22 April 1996	**31 May 1999**	**99/515/CE**
Egypt	25 June 2001	21 April 2004	2004/635/CE
Israel	20 November 1995	19 April 2000	2000/384/CE
Jordan	24 November 1997	26 March 2002	2002/357/CE
Lebanon	17 June 2002	14 February 2006	2006/356/CE
Libya	Without agreement		
Morocco	26 February 1996	24 January 2000	2000/204/CE
Moldova	28 November 1994	**28 May 1998**	**98/401/CE**
Syria	19 October 2004	On standby	
Tunisia	17 July 1995	**26 January 1998**	**98/238/CE**
Ukraine	14 June 1994	**26 January 1998**	**98/149/CE**

***Source*:** author's own elaboration with information from the European External Action Service, Treaties Office Database

Considering the unequal point in which the EU relations with the different neighbouring countries were. It had to be understood that the ENP could not be approached as a single policy. Therefore, one of the characteristics of this policy should be based on the differentiation between countries. The EU urged these countries to participate in the EU internal market and to continue with integration and liberalisation to promote the free movement of people, goods, services and capital (European Commission, 2003a: 10). In such a way that the instruments that already existed for a greater collaboration with them were complementing.

Thus, in July 2003, a new communication from the EC came out, entitled "Paving the way for a New Neighbourhood Instrument," in which were considered the objectives that the ENP had to fulfil during the first decade. It analysed the cooperation instruments that had been developing in the neighbouring countries and proposed new neighbourhood programmes (Commission of the European Communities, 2003b: 8-9). As said throughout this chapter, for the achievement of the ENP the regional priorities of each country would be considered. In May 2004 the EC Communication was published, launching the ENP under the title "European Neighbourhood Policy: Strategy Paper." As this strategy says: "The European Neighbourhood Policy's vision involves a ring of countries, sharing the EU's fundamental values and objectives." (Commission of the European Communities, 2004: 5) However, also the EU itself stated that the degree of participation of neighbouring countries in the ENP would depend on their acceptance of these values and objectives.

1.1. Objectives, instruments and financing

With the communications mentioned above the EU interest in maintaining a secure area at its external borders, whether on land or at sea can be ascertained. Taking this premise into account, the main objectives that can be drawn from the ENP are:

A) To create and consolidate an area of stability. It was necessary to consider the political situations developing in the various countries of Eastern Europe and the Mediterranean.
B) To avoid diving lines or socio-economic fractures. This would seek to bring the ENP partner countries closer to the benefits of a stronger link with the EU.
C) To share the benefits of enlargement. The new countries that joined in 2004 began to receive certain Community policies. This objective ensured that neighbours benefiting from these policies due to their proximity to the EU.
D) To intensify relations between the EU and neighbouring countries.

With the approach of the ENP objectives the elements that were part of this policy began to be developed. Two of them should be highlighted: the Action Plans and the European Neighbourhood and Partnership Instrument (ENPI).

As for the first instrument, the Action Plans were defined as the central tools that set out the reforms to be carried out in the countries where the ENP was being developed. The Action Plans are triennial or five-year policy documents defining objectives and priorities for cooperation between the EU and the partner country (Pertusor and Shumylo-Tapolia, 2011: 218). Within these Actions Plans, the main interests of these countries related to the EU values and its priorities were exposed. As a result, the implementation of the different Action Plans depended on the political, economic and social situation in each neighbouring country.

Three stages can be established for the implementation of the ENP in each country. Firstly, periodic reports were to be made to assess the current situation of each

neighbouring country. The EC oversaw the preparation of this reports called: National Reports. Secondly, ENP bilateral Action Plans were established with each country. In these two steps, it was necessary to consider the status of the previous relations of these countries with the EU in order to deepen certain aspects. During the first years of the ENP various Action Plans were implemented. The number of these Plans that were created was 12 (Armenia, Azerbaijan, Georgia, Egypt, Israel, Jordan, Lebanon, Morocco, Moldova, Palestinian Authority, Tunisia and Ukraine) as not all ENP countries had one. Thus, Algeria began conversations to the implementation of an Action Plan a few years ago, while Belarus, Libya and Syria have not even agreed to start negotiations.

Thirdly and finally, regular monitoring of the progress of the Action Plans would be carried out, updating them if the review was favourable. The EC was responsible for publicising the progress being made towards the achievement of these Action Plans. This review would be carried out after analysing the studies provided by the institutions responsible in each of the ENP countries. Thus, taking these assessments into account, new relations between the EU and other countries could be achieved or further improvements could be made. These instruments were welcomed with great enthusiasm by many of the EU partner countries. However, one of the main scarcities of the initial Action Plans was that they did not include specific objectives or deadlines for their fulfilment.

The second instrument on which we will focus is the ENPI. A regulation dealing with the financing of the ENP came into being in 2006 (Official Journal of the European Union, 2006). This regulation established a community amount for the development of the different Action Plans in each neighbouring country. However, until the advent of the ENPI, funding during the early years of ENP development was provided through other community programmes. At the beginning, the EU used the funds allocated to the programme Technical Assistance for the Commonwealth of Independent States (TACIS) with a budget of approximately EUR 3.1 billion. Moreover, the EU used as well part of the EUR 5.3 billion allocated to the programme Financial and Technical measure to accompany the reform of economic and social structures in the framework of the Euro-Mediterranean partnership (MEDA) (Pertusot and Shumylo-Tapiola, 2011: 218).

The period of action covered by the ENPI was from 1st January 2007 to 31st December 2013. The amount allocated to this programme was almost EUR 12 billion, which was a large increase in funding in general terms. Following the creation of this instrument, the EC adopted two plans for the implementation of this assistance in ENP countries: the National Strategic Plan and the National Indicative Plan. The vast majority of the projects were implemented by the ENPI. However, funding was also received through loans from other instruments to the EU institutions: the European Investment Bank (EIB) and the European Bank for Reconstruction and Development (EBRD).

When the period of application of the ENPI came to an end, it was replaced by the European Neighbourhood Instrument (ENI) through a regulation published in 2014 (Official Journal of the European Union, 2014). In this case, the period of action of the new programme was carried out in the multiannual period 2014-2020. With this new mechanism, the financial amount can be extended over EUR 15 billion.

1.2. Regional development

A Communication from the EC to the Council and the EP "on strengthening the European Neighbourhood Police" was published at the end of 2006. This document was the first assessment of the ENP, reflecting the strategic importance of this policy for the EU neighbours (Commission of the European Communities, 2006: 2). However, they also

pointed out that no positive progress had been made in areas such as economic integration, migration flows or political and regional cooperation.

It is from this moment that new regional initiatives were developed within the ENP. Some of them can be highlighted:

A) Black Sea Synergy

With the entry into the EU in 2007 of Romania and Bulgaria, this regional initiative was launched in order to strengthen relations between the countries surrounding the Black Sea. Thus, the Black Sea region became an area of strategic importance for EU policies. At that time, the need was to create an organisation that would focus on coordinated action on issues concerning several countries in the region.

The Black Sea Economic Cooperation Organisation was established in 1999 as a precursor to this initiative and it had been operating as an intergovernmental forum since 1992 (Remiro Bretóns, 2008: 415). In addition, the EU itself had set up in 1993 the Interregional Technical Assistance Programme called Transport Corridor Europe Caucasus Asia (TRACECA). This mechanism was designed to develop the EU-Central Asia transport corridor

Map 1: Black Sea Synergy
Source: author's own elaboration

With the development of these projects, a Communication from the EC to the Council and the EP on Black Sea Synergy came to light in April 2007 as a new regional cooperation initiative. The main areas of cooperation were developed in this Communication, including the following (Commission of the European Communities, 2007: 4-9):

A) Training and exchange programmes and encouragement of regional dialogue with civil society.
B) Initiatives on better migration management and tackling illegal migration.
C) Strengthening confidence-building measures in the "frozen" conflict regions of Transnistria, Abkhazia, South Ossetia and Nagorno Karabakh.
D) Dialogue on energy security.
E) Support for regional transport cooperation in order to improve efficiency and physical and operational security.

F) Enhance the implementation of multilateral environmental agreements.
G) Dialogue on the emerging maritime policy configuration.

Therefore, a complementary initiative to the ENP was established for the integration of the Black Sea region into (Community policies Commission of the European Communities, 2008a). The EU presence in this area broadened the scope of the problems or conflicts that took place there.

A report on the first year of life of the Black Sea Synergy was produced in 2008.This report highlights the usefulness of this initiative and calls for greater long-term cooperation among all participants. In addition, 2010 was a major step forward with the creation of the Black Sea Synergy Environmental Partnership. In this way, with the first review of the ENP in 2011 the revision of the evolution of the Black Sea Synergy occurred. Thereby, a strategic plan that would be coherent with the rest of the actions being carried out at national level in the Black Sea was requested. The next review of the ENP took place in 2015, reaffirming the importance of the Black Sea Synergy in the political and economic reforms it promotes. In the last review of the ENP in 2017, there was little talk of the Black Sea Synergy and it only comment on the continuation of work within the framework for action. While the Council Conclusions on the EU's engagement in the Black Sea area in 2019 reaffirmed the Black Sea Synergy regional initiative as the basis for its development.

B) Union for the Mediterranean

On 13 July 2008, the Heads of State and Government of the EU Member States and the neighbouring Mediterranean countries met in Paris. In this Summit the Joint Declaration for the Mediterranean took place (Union for the Mediterranean, 2008). At first, it was thought that only the EU countries that were bathed by the Mediterranean would be part of this organisation. Finally, it was decided to involve all the EU countries together with the neighbouring Mediterranean countries. In addition to the EU Member States, the Union for the Mediterranean (UfM) was formed by: Albania, Algeria, Bosnia and Herzegovina, Egypt, Israel, Jordan, Lebanon, Mauritania, Morocco, Monaco, Montenegro, Palestinian Authority, Tunisia and Turkey. Syria was originally part of the Union, but since 2011 its participation has been suspended due to the internal situation in the country. As for Libya, it was an observer member from the outset.

As mentioned above, cooperation in the Mediterranean area started with the 1995 Barcelona Process and was driven by the ENP. It was at this time that it was favoured by regional integration with the EU in this geographical area. The main purpose of the Declaration in 2008 was to improve relations in the light of the objectives of the Barcelona Process. To this end, a series of provisions were agreed (Office of the Secretary General of the Union for the Mediterranean, 2008):

1. The holding of biennial meetings of Heads of State and Government to launch regional projects. Similarly, it was proposed that annual meetings be held by Foreign Ministers to assess the progress of these actions.
2. The Summits were to be held alternately in the EU countries and in the neighbouring Mediterranean countries by consensus.
3. Creation of a Euro-Mediterranean Foundation for the Dialogue of Cultures.

The choice of projects should be based on the regional needs of the countries and it should be transnational in nature. In particular, priority should be given to three

objectives: the obtaining of peace, security, stability and economic prosperity. During the Paris Summit in 2008 were held the first negotiations for the implementation of some projects in the UfM framework, including: the fight against pollution in the Mediterranean, the establishment of the so-called Motorways of the Sea to facilitate trade, cooperation in civil protection to struggle natural disasters, and an ambitious plan for the development of solar energy (Sorolla & Santos, 14/7/2008). In 2010, the UfM Secretariat was created in Barcelona with the approval of the Statutes. Through this Secretariat was developed the creation of a series of Commissions: Political Affairs, Economic Affairs, Culture, Women and Energy. From 2012 onwards, the UfM was given a real boost due to the increase in the number of projects. During 2015, the ENP review took place providing new elements to strengthen the UfM.

Map 2: Union for the Mediterranean
***Source*:** author's own elaboration

The major role that this Union could play in cooperation with its Southern Mediterranean neighbours was raised. Among the means proposed the following stand out: the promotion of exchanges on education, training and education policies; the increase of political and economic discussion forums; and the promotion of sub-regional cooperation.

To conclude with the analysis of this regional initiative, a new roadmap entitled "The Union for the Mediterranean: an action-oriented organisation with a common ambition" was launched at the beginning of 2017. This document listed the number of regional projects that had taken place up to that year with a total of 47 (Union for Mediterranean Secretariat, 2017: 9). But the most important thing was to establish deeper and more operational cooperation within the UfM itself.

Thus, the new challenges to be faced were highlighted: strengthening the political dialogue among member States, ensuring the contribution of UfM activities to regional stability and human development, strengthening regional integration, strengthening the UfM capacity for action, and holding an annual UfM Regional Forum. Undoubtedly, the UfM initiative presents many challenges and some associated issues, including the security and stability of the EU's southern border (Casado Raigón, 2009: 266).

C) Eastern Partnership

In the case of Eastern Europe, there was no precedent as in the case of the Mediterranean. The creation of a specific partnership and cooperation of Armenia, Azerbaijan, Belarus, Georgia, Moldova and Ukraine with the EU was therefore a novelty. However, the aforementioned PCA with the countries of Eastern Europe, except with Belarus, which did not enter into force (due to the special political situation in the country) can be seen as a precedent of this Eastern Partnership (EaP).

Map 3: Eastern Partnership
Source: author's own elaboration

The Presidency Conclusions of the Council of the European Union of 19-20 June 2008 in points 68-70 (Council of the European Union, 2008a: 20) spoke of the need to promote regional cooperation between the EU and Eastern neighbours. The EC therefore started to prepare a proposal for the EaP to be ready for the following year. In September of the same year, works on the EaP were accelerated due to the ongoing war emergency in Georgia. Due to this fact, the Extraordinary Council of the European Council of 1st September highlighted the need for the EU to support regional cooperation in the region as soon as possible (Council of the European Union, 2008: 1). Thus, before the end of that year, in December, an EC Communication was presented to the EP and the Council on the EaP setting out the new contractual relations between the Eastern partners and the EU.

After a few months of negotiations and with the bases in operation, the first EaP Summit took place on 7 May 2009 in Prague. The Joint Declaration published the following day sets out the lines of this partnership: the principles of international law and fundamental values, the market economy, sustainable development and good governance. Among the main objectives of the EaP were the creation of good conditions for

accelerating political association and further economic integration (Council of the European Union, 2009: 5-6). In the same way, four thematic platforms were created with the purpose of achieving greater precision in the topics to be dealt with:

1. Democracy, good governance and stability.
2. Economic integration and convergence with EU sectoral policies.
3. Energy security.
4. Contacts between people.

For the development of broader relations, it was established that bilateral cooperation would take place through Association Agreements (AA) and the establishment of Deep and Comprehensive Free Trade Areas (DCFTA) between the EU and these countries. In turn, the Summit encouraged the mobility of citizens of partner countries through visa facilitation agreements. Finally, it scheduled biannual meetings for the EaP Summits in order to promote this ambitious project.

The second EaP Summit took place from 29-30 September 2011 in Warsaw, Poland. The Joint Declaration of the Summit signalled the start of negotiations on AA aimed at implementing the DCFTA. Progress was also noted in the dialogues on visa facilitation regimes (Council of the European Union, 2011: 2).

The third Summit took place in Vilnius, the capital of Lithuania, between 28 and 29 November 2013. The ensuing Joint Declaration discussed the way forward for cooperation between the EU and the EaP. However, the timing of this Summit was marked by the political situation in Ukraine (which will be discussed in the next section) although it was very fruitful for the other Eastern partners (Council of the European Union, 2013: 3). The AA including the DCFTA between EU with Georgia and Moldova were initialled at this meeting. This supported the political and socio-economic reforms carried out in these countries for a global approach to the EU. In the cases of Azerbaijan and Armenia, there was a possibility of starting to negotiate AA, while Belarus remained much further apart from the other Eastern partners.

Table 2: EU-EaP Agreements

COUNTRIES	Visa facilitation	Visa liberalisation	Association Agreement	Deep and Comprehensive Free Trade Area
Armenia	2014	--------	Negotiations concluded in 2017	----------
Azerbaijan	2014	--------	Start of negotiations in 2017	----------
Belarus	Start of negotiations in 2014	--------	----------	----------
Georgia	2011	2017	2016	2016
Moldova	2008	2014	2016	2016
Ukraine	2008	2017	2017	2017

Source: author's own elaboration with information from European Council

On 21st-22nd May 2015, the fourth EaP Summit was held in Riga, Estonia, reviewing the events of the previous meeting and setting new challenges for the next Summit. The fifth Summit was held in Brussels on 24 November 2017. This new meeting opened up a new range of possibilities for Eastern partners. Armenia signed a

comprehensive and strengthened AA; Azerbaijan started negotiations for a new agreement, and as regards Belarus started an intensification of EU commitments in this country (Council of the European Union, 2017: 8-12). Finally, in May 2019, the last summit to date was held in Brussels to celebrate the tenth anniversary of the creation of this initiative, which highlighted the milestones achieved during this time, although much remains to be done.

2. The Implementation of the European Neighbourhood Policy in Ukraine

To learn more about how the ENP has been implemented in the countries that are part of it, the features that define this policy in the case of Ukraine are going to be analysed.

Ukraine proclaimed its independence from the Soviet Union in 1991 and since that moment it has been between two spheres of influence: the EU and Russia. In the first years of its autonomy, it was more closely linked to the Commonwealth of Independent States (CIS), as it was not in Russia's interest to move out of its area of influence. However, due to the serious economic and social crisis in Ukraine at that time, it was necessary to approach the institutions in Brussels. Thus, negotiations for the launch of a PCA began in June 1994, but it was not until March 1998 that the agreement entered into force. This agreement laid the foundations for intensifying relations between the two parties over the next years. As from the implementation of the ENP, the Action Plan for Ukraine started to be proposed at the beginning of July 2004. The process was therefore completed in December 2002 with the proposal for a Council Decision on the establishment of the EU-Ukraine Action Plan.

In the same year 2004, one of the most important events in Ukraine's recent history took place. At the end of that year, irregularities were reported in the results of the presidential elections in the country. The population took to the streets to demand that the elections be repeated and that they be completely free from suspicion of manipulation. It was the so-called "Orange Revolution," which was part of the so-called "Revolutions of Colours" that were taking place in some former Soviet countries and it called for an improvement in the democratic system of their countries. So, the EU saw the ENP as a tool to support these changes that the population was calling for.

A next step was taken at the EU-Ukraine Summit in 2005, where was discussed the replacement of the PCA with Ukraine, which ended in 2008. It was in July 2007 when the EP made a recommendation to open negotiations for a new agreement between the EU and Ukraine. The importance of implementing the revised Justice, Freedom and Security Action Plan was discussed at the next EU-Ukraine Summit in September 2007 (Council of the European Union, 2007: 4). For the agreements to reach all areas, in February 2008 negotiations were opened for the creation of a DCFTA with the EU, by this time the World Trade Organisation (WTO) had accepted the accession of Ukraine (García Andrés, 2018: 401).

In this environment of important EU-Ukraine partnerships, the EaP for further political and economic integration was launched in 2009. Events accelerated, and the EU-Ukraine Association Agenda was published in the same year to prepare and facilitate the implementation of the AA as a fundamental basis for the EaP. The political situation in Ukraine turned around in 2010 with a presidency change, when Yanukovych came to power. The list of priorities of the EU-Ukraine Association Agenda was published in 2011. One such priority became a reality on 30 March 2012 when the AA between the EU and Ukraine, including the DCFTA, was signed. Entry into force was scheduled for 28-29

November 2013 at the EaP Summit in Vilnius, Lithuania. Surprisingly, on 21st November, a decree by the Ukrainian Government suspended preparations for the signing of the Agreement. The reasons given were both the loss of the Russian and CIS markets and the lack of an internal market that would resist competition from Community products (Martín de la Guardia, González Martín, & García Andrés, 2017: 109).

The developments have accelerated since this suspension of the ratification of the AA. The people of some of the cities in Ukraine spoke out against this decision by their Government. The main concentrations took place in the capital, Kiev, where the *Euromaidan* movement began. Already in February 2014, President Viktor Yanukovych had to leave the country and it was proclaimed an Interim Government. Following this event, the illegal annexation of the Crimea to Russia took place in March, worsening relations between Russia and the EU, as we shall see in the following chapter. A few days later, on 21 March, the new Interim Government and the EU initialled the AA in their political provisions, leaving the economic aspect for later. At this very moment the problems in Eastern Ukraine were beginning (*Donbass*) where a group of pro-Russian rebels defied the decisions of the government and demanded to be united with Russia.

The new presidential elections were held on 25 May of the same year, with the pro-European Petro Poroshenko winning. With a legitimately elected government, the remaining provisions that had not yet been signed on 27 June, and those corresponding to the DCFTA, were signed. Some of the items were provisionally applied from 1st November 2014, with strong EU support for Ukraine. Whereas the part relating to the DCFTA was provisionally applied from 1st January 2016.

To conclude this brief review of the implementation of the ENP in Ukraine, the Council Decision of 11 July 2017 on the conclusion of the AA between the EU-Ukraine should be borne in mind. Through this Decision, the AA entered into force on 1st September 2017, thus promoting closer political and economic ties, together with respect for common values. More than two years after the entry into force, the situation in Ukraine remains complicated in both the Crimean Peninsula and the Donbass, but after the April 2019 elections a new framework for improving the situation is opened with the presidency of Volodimir Zelenski.

3. Relations between EU and Russia

Bilateral relations between the EU and Russia started in 1994 when negotiations for the establishment of a PCA began. After years of discussions in the EP and in the national parliaments of the Member States, the PCA entered into force in September 1997 for an initial period of ten years (Official Journal of the European Communities, 1997: 1-2). In June 1999, the Common Strategy for Russia was published, recognising the main objectives to be developed with Russia: the consolidation of democracy, the rule of law and public institutions in Russia, the integration of Russia into a common European economic and social area, the strengthening of stability and security in Europe, and cooperation on common challenges on the European continent (European Parliament, 1999, Annex II).

At the beginning of the 21st century Russia, as it already happened with east countries, began to border the EU. Nonetheless, there was an exception due to the fact that since 1995 Russia had shared a border with the EU following the integration of Finland. Following the entry of Estonia, Latvia and Lithuania in 2004, the north-western Russian provinces were now bordering the EU, and the Russian enclave of Kaliningrad between Poland and Lithuania was surrounded by new EU accessions. Therefore, Russia was

initially within the EU idea for the establishment of the ENP, although its implementation would have a different linkage for Russia.

In this context, another path was taken in relations with Russia, since in May 2003 the EU and Russia had agreed to strengthen their cooperation through the creation of four common spaces: the economic space, the space of freedom, security and justice, the space of external security and the space of research and education inside of the PCA (Nieto, 2016: 200). It was against this background that the Moscow Summit in 2005 created the roadmaps for the development of the four previous spaces.

As said above, the PCA was concluded in 2007, which entered into force ten years ago but was automatically renewed each year until the conclusion of negotiations for the entry into force of a new "Strategic Agreement" between the EU and Russia. Discussions were launched in 2008 to create an agreement covering the areas of EU-Russia cooperation. However, during these years, a series of conflicts occurred that weakened the relations that were being created between the EU and Russia. From 2006, but especially from 2007 to 2009, there was a gas crisis that confronted Russia and Ukraine over the supply of gas, but directly affected the EU countries. The year 2008 also saw Russian intervention in Georgia, which led to the temporary suspension of EU negotiations on the new "Strategic Agreement." Another of the moments that cooled relations between Russia and the EU was the launch of the EaP in 2009 in Eastern Europe and Central Asia.

After overcoming these tense times between the two sides, the EU-Russia Partnership for Modernisation was launched in 2010. Despite this, negotiations stalled again in 2012, mainly for two reasons. The first of these was due to the lack of a consensus between the EU and Russia to reach agreements on trade; and the second was the Agreement between Belarus, Kazakhstan and Russia itself to create an Eurasian Economic Union (EEU) together with the pressure that Ukraine was under to become part of it. But there is no doubt that from the end of 2013 onwards, relations between the EU and Russia experienced one of the most delicate moments. As mentioned above, the Eastern Partnership Summit was held in Vilnius on 28-29 November 2013, at which Ukraine suspended its AA with the EU. From that moment on, and especially at the beginning of 2014, seeing the situation that was being created by the so-called *Euromaidan*, Russia began a series of incitements in various regions of Ukraine to protest the rapprochement with the EU. The most dramatic point came in March when, following an illegal referendum in Crimea, the Ukrainian peninsula was annexed to Russia.

From that moment on, the EU initiated a series of restrictive measures in form of sanctions against Russia. They were initially carried out against Russian officials who had carried out activities against the integrity of Ukraine. But the situation worsened with the outbreak of armed conflict in eastern Ukraine, between the pro-Russian rebels and the Ukrainian military forces. The rebels in eastern Ukraine had Russian military support, and the initial sanctions were extended to other Russian strategic sectors. Similarly, the Russian Government also began to place prohibitions on certain products from the EU and on diplomats from member states.

The situation did not improve with the entry into force of the EEU in 2015, to which Armenia and Kyrgyzstan would join the founding countries. This highlighted the difficulties the EU would face in reaching an agreement with Russia. Thus, in 2016, EU Foreign Ministers met to agree on the five new principles that would become the basis of the EU policy towards Russia (European Parliament, 2016: 2):

1. Insisting on full implementation of the Minsk agreements before economic sanctions against Russia are lifted;

2. Pursuing closer relations with the former Soviet republics in the EU's Eastern Neighbourhood (including Ukraine) and of central Asia;
3. Becoming more resilient to Russian threats such as energy security, hybrid threats, and disinformation;
4. Engaging selectively with Russia on a range of foreign policy issues.
5. Increasing support for Russian civil society and promoting people-to-people contacts.

To conclude with this section, it can be ensured that relations between the EU and Russia are at a difficult moment. On the one hand, restrictive measures have not been absent from relations with Russia, as this situation continues nowadays, with a further extension of EU sanctions for actions against Ukraine territorial integrity in March. On the other hand, Russia's actions in the Syrian War and the cyber-attacks that occur in EU countries from Russia that are contrary to the EU's interests.

To Conclude

As we have seen throughout this paper, the main objective of the ENP is reaching a greater cooperation in relations with the countries that are part of it. It is true, however, that the implementation of the ENP was generally seen as an alternative to EU enlargement, especially in Eastern European countries.

To know the greater or lesser success of the ENP, it is necessary to analyse the countries that are part of it in a particular way. However, there has been much criticism of this policy over the years. First of all, it has not achieved the notoriety that was expected, since many of these countries have experienced serious crises, mainly political ones. And, secondly, the problem of introducing countries of such a different nature into the same policy, which it tried to settle by creating regional initiatives.

The international scenario where the ENP has been developed must be considered. During these years, different factors have emerged highlighting the difficulties in the implementation of its policies. Among those issues it must be highlighted the political mobilisations called "Revolutions of Colours" from 2003 onwards in countries such as Georgia or Ukraine; the so-called "Arab Spring" from 2010 onwards which sought the implementation of democracy and social rights in countries of the Arab world such as Libya, Egypt, Syria or Tunisia; the war in Syria, which began after the "Arab Spring" of that country and continues to develop today; the emergence and extension of the "Islamic State" by the Arab territories that have been part of the ENP since 2013; and, the crisis in Ukraine from 2014 until nowadays with the loss of Crimea to Russia and the war in the East of the country.

The practical application of the ENP to a specific country such as Ukraine may lead to some conclusions. The initial impact of the ENP on Ukraine was not very high, however, since the emergence of the EaP in 2009 there has been a great advance. Despite this, Ukraine's internal situation from 2013 onwards, together with Russian interference, slowed down the great momentum of the relations that were taking place. The idea of losing Russia's influence over Ukraine following the signing of Ukraine's AA with the EU led to the Crimean crisis and the outbreak of war in the east of the country. As a result, relations between the EU and Ukraine continued and were further strengthened with the entry into force of the AA in 2017. Supporting the new policies of the new Ukrainian government related to further integration into the EU.

About relations between the EU and Russia, the EU's energy dependence on Russia must be considered from the outset, as it is one of its main suppliers. That is why

the European institutions have always sought good relations with Russia. However, the integration into the EU of countries that had belonged to the Soviet sphere has caused relations between the two sides to fluctuate. That is why the main problem for good relations is the sphere of influence that Russia wants to maintain in the former Soviet space. This situation was jeopardised by the implementation of the ENP.

To conclude, the ENP can be said to be one of the most important policies being developed in the EU, but the current international context has nothing to do with what it was when it began. As has been stated, this policy has been given a great boost for the last ten years or so by the creation of regional initiatives. We cannot forget the major challenges taking place near the EU, whether in Eastern Europe or in the Mediterranean. That is why there must be more progress in this policy and, above all, an understanding between all parties to achieve greater success.

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EUROPEAN UNION'S MISSION IN SOMALIA. TEN YEARS OF SUCCESSES AND FAILURES (2008-2018)

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Abstract. *The European Union as a global actor has received a growing boost in recent decades. Somalia is the country that has captured more attention in the last ten years as it remains as a Failed State. The phenomenon of piracy and terrorism led the EU to intervene in 2008 for the first time. In order to stabilized the region Brussels has launched three different missions: EU Navfor Atalanta, EUTM Somalia and EUCAP Nestor-Somalia. This paper presents a detailed analysis of the three missions to draw conclusions about the successes and failures of the EU presence in Somalia a decade later.*

Keywords: *Somalia, EUTM, Navfor-Atalanta, EUCAP, EU's Foreign Policy, Africa*

The European Union is becoming increasingly aware of the need to pursue an active foreign policy. Therefore, EU's strategies do not only cover intervention on the ground but also seek to support African states indirectly. This support is provided under a series of conditions which export a liberal-democratic model. Thus, the New Partnership for Africa's Development (NEPAD) launched in 2001 in Abuja, Nigeria, was based on the values of democracy, human rights, good governance and the rule of law. These values match with the essential elements of the EU's external cooperation governed by the Maastricht Treaty and complemented by the Lomé/Cotonou principles. Since the launch of NEPAD, the Union has contributed to the promotion of peace and security, the strengthening of institutions and governance, trade, investment, economic growth and sustainable development (Taylor, 2010: 51-52).

In addition, the EU has become the largest donor of development aid to the Horn of Africa through the European Development Fund (EDF). Thus, in the period 2008-2013, two billion euros were allocated to countries in the Horn through individual agreements, to which must be added 645 million euros for regional organizations such as the IGAD (Intergovernmental Authority on Development). In the humanitarian field, the EU is also the largest donor in the region. The budget for humanitarian purposes reached 800 million euros in the same period. However, as Martín Peralta (2010: 7-8) pointed out, the European institutions were also aware of the need to work together and have therefore created a new framework known as Supporting Horn of Africa Resilience (SHARE). This framework has a budget of 270 million euros which seeks to combine the most urgent humanitarian aid with other more long-term projects.

For two decades the EU has been actively involved in international missions with a multilateral feature. These missions fall under the Common Foreign and Security Policy (CFSP) that was created in 1992 and marked a major step in the coordination of foreign policy. With the entry into force of the Treaty of Lisbon in 2009, the CFSP was not altered

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at first. Nonetheless, by 2014 important steps were taken in the harmonization of certain institutions such as the EEAS (European External Action Service) and defining the status and functioning of the EDA (European Defense Agency), as provided in Article 45(2) of the TEU (Legrand, 2018).

In this way, the EU has intervened in different parts of the African continent. In fact, the CFSP has been used in two ways in Africa: to act in specific crisis and to increase reconstruction capacity especially in the context of the African Security and Peace Architecture (APSA). This has been the case since the adoption of the European Strategy for Africa and the Africa-EU Strategic Partnership Agreement (Vines, 2010: 1091). Nonetheless, one of the regions that has received more attention from the EU in the last decade is undoubtedly the Horn of Africa. Indeed, three military missions have been deployed in Somalia to address the widespread instability. Thus, Navfor-Atalanta (2008), EUTM-Somalia (2010) and EUCAP Nestor-Somalia (2012) were launched in order to try to stabilize the region and combat piracy, terrorism and other illegal activities.

1. Somalia, a Non-State Context

Somalia is widely considered a Failed State since 1991. Earlier that year, the president Mohamed Siad Barre had to flee, and the country was left headless. Thus, the fall of the president can be explained by the change in the international context since 1985 and the end of the Cold War. Hence, it can be said that the Somali disintegration was due to the regional and international context, but also to the post-colonial model imposed in 1960. In addition, dictator's policies of corruption, nepotism and repression fostered the economic, political, and social fragmentation of the state (Arconada-Ledesma, 2018b: 105).

In any case, by 1991 Somalia had no longer any state structure and the vacuum was filled by various irregular forces who monitored small regions. By then, the Somali state had already begun an inexorable journey towards disintegration. In addition to the breakdown of state structures, Somalia suffered a process of territorial fragmentation. Precisely, terms like failed state or non-state should be used when a State is unable or unwilling to assume its basic functions. Normally these non-states are characterized by civil conflict, corruption, economic collapse, lack of infrastructure, poverty, poor rule of law, lack of territorial control and political instability, among others.

In a new international context favorable to interventionism, both the UN and the US announced its intention to lead a multinational peace operation in Somalia. UN launched UNOSOM I (1992-1993) and UNOSOM II (1993-1995) which had longer-term objectives such as achieving national reconciliation, demobilizing guerrillas and revitalizing local and national governments (Menkhaus, 2007: 81). This mission turned into a total crisis causing the death of 24 blue helmets and 18 US soldiers in 1993, which forced the withdrawal of troops in 1995 (Arconada-Ledesma, 2018a: 417).

Due to that bad experience, there were no more interventionist missions in Somalia. Since 1995 warlords made difficult to stabilize the country and recover state structures, but the progress of various Islamic courts managed to contain the situation. Since 2000, the Islamic Courts Union (ICU) developed some state structures and begun to cover basic services for the population and institutionalized a Sharia-based judicial system (Ricci, 2008: 165). Despite its clear authoritarian and fundamentalist tendency, the ICU became the only institution capable to contain insecurity.

However, as stated by Requena (2014: 2) the situation changed when Ethiopia, supported by US, invaded the country expelling the ICU and installing the Transitional Federal Government (TFG) in the capital. Since 2006 the TFG has managed to pacify

some areas. Notwithstanding, its inability to establish some basic state structures and corruption cases exhausted its mandate. Thus, in 2012 a new government was formed setting two urgent goals based on fighting *al-Shabaab* and the reunification of Somalia.

2. Major Challenges Faced by the European Union In Somalia

The disintegration process of Somalia was the perfect breeding ground for piracy and terrorism. Thus, if there is no government with strong state structures, all attempts to end instability are nothing more than remedies. This could undoubtedly help to address other challenges facing the country, such as droughts, famine, the commodification of humanitarian aid and human trafficking, among others. If the state is not fully reconstructed, some of these threats can only be contained temporarily. Piracy is the biggest defiance for the EU. Under Article 101 of the United Nations Convention on the Law of the Sea, agreed in 1982, piracy is defined as:

Any illegal acts of violence or detention, or any act of depredation, committed for private ends by the crew or the passengers of a private ship or a private aircraft, and directed: on the high seas, against another ship or aircraft, or against persons or property on board such ship or aircraft; against a ship, aircraft, persons or property in a place outside the jurisdiction of any State; any act of voluntary participation in the operation of a ship or of an aircraft with knowledge of facts making it a pirate ship or aircraft.

The situation of the Horn of Africa fitted perfectly into this framework. The fact is that the increasing number of ships carrying goods across the Gulf of Aden has grown since the year 2000. However, it is important to reflect on the causes that have led part of the Somali population to set sail with the aim of hijacking and detaining these ships. Trumbull points out that local factors are key to understand what happened. Illegal industrial fishing off the coast of Somalia, the dumping of toxic waste or the unstoppable rise in poverty and its effects are all factors to be taken into account as they have altered the way of life of coastal fishing families (2010: 15).

Chalk (2010: 92-97) mentioned some possible causes: lack of a sovereign entity in Somalia and the fall of Siad Barre in 1991, general impoverishment, humanitarian crisis, lack of opportunities in the region and the flexibility of access to weapons throughout East Africa that made much easier for pirates to obtain a wide variety of weapons, including assault rifles, heavy and light machine guns, and rocket launchers, among others. All this led to a significant increase in piracy activities from 2006 onwards. In 2009, 50 ships were hijacked in the region and there were more than 200 attacks. By 2011, piracy was reaching the coasts of India, the Ormuz Strait and even Mozambique. In addition, in the most critical years, piracy was estimated to cause damage to the global economy in the amount of $7 billion-12 billion per year (Frutos Ruíz, 2012: 1-8).

Moreover, the relationship between piracy, terrorism and trafficking networks has been pointed out by Chinchilla (2017: 9) who suggested that al-Shabaab received 20-50% of the money raised by Somali pirates through the hijacking of foreign ships. Also important is *al-Shabaab's* control over some of the country's ports, which are later used by pirates. Despite this, the payment for the use of the port is more of a rental by the pirates to *al-Shabaab* than an explicit financial support. In this context, and due to the threat posed by piracy to the main maritime trade networks linking Europe, East Africa and Asia, EU chose to send the first naval mission in its history, EUNAVFOR-Atalanta.

The second challenge for the Somali government, the EU, the AU and UN, is terrorism. It should be noted that the influence of terrorist groups in Somalia has varied widely, changing from being a local threat to becoming a global one. Firstly, there were

already fundamentalist groups that flourished under Somalia's uncontrolled situation and access to all kinds of weapons during 1990s. Bruton highlighted the role of *al-Itihaad al-Islamiya* that controlled some areas of the country after the disastrous UN missions. This group was a radical movement with direct links to *al-Qaeda*, although both groups soon came into conflict. Regional *al-Qaeda* leaders confronted nationalist leaders who refused to contribute to the *jihad* and their aspirations were frustrated by the widespread fragmentation of local islamist groups (2009: 82). This led to the death of *al-Itihaad al-Islamiya* in the late 1990s and the loss of *al-Qaeda's* regional brand.

However different Islamic courts began to impose a Sharia-based judicial system and to provide security so that the role of the warlords diminished in the late 1990s. These courts were extremely successful in reducing insecurity and began to take over some state competencies such as health and education (Ricci, 2008: 164-165). Different courts in Mogadishu chose to create the Islamic Courts Union in 2000, which set a precedent and generated a nationwide movement that led to the replication of this model in different parts of the country. Due to this success, Washington encouraged the nascent TFG to negotiate with the ICU. This support lasted until US realized that the ICU was made up of a huge diversity of groups, from moderate to radical, including *al-Shabaab*, the military arm of the ICU (Bruton, 2009: 84).

A confrontation between different groups led the ICU to a more radical position. The interests of the moderate Hawiye clan were contrary to those of the *al-Shabaab* militia, which was gaining influence (Menkhaus, 2009: 225). These positions alarmed both Ethiopia and the US, which in 2006 decided to invade Somalia to overthrow the ICU. The invasion, which was supported by US bombing, succeeded in expelling the courts and installing the TFG in Somalia (Arconada-Ledesma, 2018a: 422). The fall of the courts did not mean the end of the more radical tendencies, quite the contrary. If *al-Shabaab* was controlled under the rule of the ICU, once this union disappeared the terrorist group could act freely. Since then, terrorist attacks have multiplied, and *al-Shabaab* has maintained its influence in the centre and south of the country. Indeed, the group was present in the capital until 2011 when regular Somali soldiers, supported by African Union Mission in Somalia (AMISOM) troops expelled them. Since then *al-Shabaab* has been losing influence in many urban areas, maintaining only some control in rural areas. Without a doubt, the loss of the port of Kismayo in 2012 was a huge blow to their financial capacities as they benefited from the lucrative charcoal trade. Despite the victories over this group, *al-Shabaab* still has the capacity to carry out all kinds of terrorist attacks in Somalia (Requena, 2014: 3).

Since 2015 *al-Shabaab* has changed its strategy due to the continued loss of territory and influence in Somalia, becoming a threat also in other territories such as Kenya, where the attack on Garissa University left a total of 147 students dead (BBC, 2015, 13 April). In Somalia, the targets of the terrorists focused on security forces and politicians. Othman Alkaff and Aziemah Azman has reported that there were attacks on AMISOM troops in Leego the 26 June 2015, in Janale the 1 September 2015 and on various hotels in the capital (2016: 121). As sadly experienced the 14 October 2017 in Mogadishu, fundamentalists killed more than 500 people in what became the worst terrorist attack in the Somalia's history (El País, 2017, 1 December).

3. European Union Missions in Somalia (2008-2018)

Due to the experience of both the US and UN in Somalia in the period 1991-1995 the EU position on Somalia was based on avoiding any direct intervention. Instead of acting directly, the so-called soft power was used, and Brussels began to act indirectly in the region through funding or development cooperation. In this way, the EU development policy had been working on and Somalia, under the agreements with the ACP countries, has received aid through the European Development Fund (EDF) (Sánchez-Barrueco, 2013: 235).

However, this situation turned upside down in 2008. The uncontrolled position on the Somali coast and the pirate threat was so high that hard power was used for the first time. This was a precedent for European foreign policy. The fact is that the EU has shown its interest in the country achieving peace and security, which has become a priority for the Commission with bilateral initiatives as well as the Instrument for Stability and EU Strategy for the Horn of Africa. This is undoubtedly due to the need to secure trade routes and facilitate access to fishing in the waters of the region, but also to the interest in stabilizing the whole Horn of Africa, as the Somali conflict affects other states such as Djibouti, Ethiopia, Eritrea, Uganda and Kenya (Arconada-Ledesma, 2018a: 423). The use of hard-power was again evident in 2011 with the adoption of the Strategy Framework for the Horn of Africa which focused on five areas: building and developing political structures, contributing to conflict prevention and resolution, facilitating the delivery of humanitarian aid to the region, promoting economic development and continuing to fight piracy off the coast of Somalia (Sánchez-Barrueco, 2013: 234).

Although the EU has shifted from non-intervention to sending military missions, the fact is that the AMISOM bear the brunt of most of the operations in Somalia. This mission has been active since 2007 and currently has more than 22,000 military and police personnel from different countries such as Uganda, Burundi, Ethiopia, Kenya, and Djibouti. The EU is therefore the largest international financial contributor to the deployment and maintenance of AMISOM, but all real efforts remain with the AU. Even so, the EU has become the second largest international player on Somali territory due to the deployment of two military missions and one civilian mission (Díez-Alcalde, 2017: 14-15).

3.1. European Union Naval Force Operation Atalanta (2008-2018)

Navfor Atalanta mission was the first EU response to the insecurity in the waters of the Indian Ocean. Since 2005, piracy has taken a qualitative leap forward and the hijacking of two vessels chartered by the World Food Programme to deliver humanitarian aid to the Somali population set off UN alarms. Thus, the Secretary-General's report of 21 February 2006 (S/2006/122) on the situation in Somalia showed that piracy had become a serious problem along the east coast of Somalia, with more than 34 attacks on merchant vessels in the past year and at least seven of them hijacked.

However, the final step towards direct intervention was not taken until 2008, when three UN resolutions, 1801(2008), 1814(2008) and 1816(2008), took up the pressing maritime situation off the coast of Somalia once again. The latest resolution lays the foundations for possible action in the region since the Law of the Sea of 10 December 1982 , sets out the legal framework applicable to combating piracy and armed robbery [...] the relevant provisions of international law with respect to the repression of piracy, including the Convention, and recalling that they provide guiding principles for cooperation to the fullest possible extent in the repression of piracy on the high seas or in any other place outside the jurisdiction of any state, including but not limited to boarding,

searching, and seizing vessels engaged in or suspected of engaging in acts of piracy, and to apprehending persons engaged in such acts.

Finally, in Resolution 1838(2008) the UN called for:

States interested in the security of maritime activities to take part actively in the fight against piracy on the high seas off the coast of Somalia, in particular by deploying naval vessels and military aircraft, in accordance with international law, as reflected in the Convention and [...] States that have the capacity to do so to cooperate with the TFG in the fight against piracy and armed robbery at sea.

Within this framework, the EU decided to send a military mission to the waters of the Indian Ocean and the Council adopted Joint Action 2008/851/CFSP 42 on 11 November 2008, which gave rise to Operation Atalanta. This resolution stipulated that the operation was intended to contribute to the deterrence, prevention, and repression of acts of piracy and armed robbery off the coast of Somalia. The resolution sets out a number of objectives that focus on: protecting vessels chartered by the World Food Programme (WFP), merchant vessels operating in areas where the operation is deployed and monitoring areas off the coast of Somalia, including territorial waters.

The EU was thus moving from its traditional role as a mere peacebuilder to defend its member states interests. It should be noted that the contribution of the European states to Atalanta was made on a voluntary basis, as is the case with all CSPD operations. Accordingly, while some member states sent troops to the battlefield, other countries contributed to the direction of the operations from Northwood headquarters. Denmark, for instance, acted within the framework of NATO and Norway, even though it is not a member, signed cooperation agreements with the EU to participate in the mission (Sánchez-Barrueco, 2013: 242).

It is essential to understand that the EU's decision to intervene in Somalia is not due to altruistic positions, but that there is a whole series of interests. Firstly, the continued attacks on the Gulf of Aden hit the EU's main maritime trade route with the Indian Ocean. Secondly, instability in the waters of Somalia also prevented access to the enormous fishery resources of the western Indian Ocean. Finally, Brussels was aware of the danger posed by instability in such an important geopolitical area as the Horn of Africa, a situation that could spread to its neighbors in the region and the potential danger of Somalia becoming a safe haven for increasingly organized terrorist groups.

Additionally, it should be borne in mind that the EU has always sent missions on a multilateral basis, since it is not possible to provide security in the different countries of Africa without the support of other international organisations such as NATO, the AU or the UN. Alongside Operation Atalanta, NATO sent Operation Ocean Shield' and other Security Council states such as China and Russia also participated on their own, as did Japan, Malaysia, Saudi Arabia, South Korea, India and Yemen. Obviously, this was not a one-off measure by Somalia, but the sum of emergency operations by different states and organisations with common interests in relation to fisheries and trade (Trumbull, 2010: 17).

Atalanta, which was originally designed for one year, has been renewed over the years and reached its twelfth anniversary in December 2020. At first it had about 2000 professionals and it was estimated that the annual cost of this company would be 8 million euros. A total of 19 Member States participated in the mission (all except the Czech Republic, Croatia, Estonia, Latvia, Lithuania, Portugal and Slovakia) as well as non-member countries such as Norway, Montenegro and Ukraine (Julià-Barceló, 2012: 183). During the early years of the mission, the number of attacks did not fall, but even reached an all-time high in 2011. Atalanta's inability to stop piracy soon revealed that the

operation was only able to contain the problem temporarily. Obviously, piracy could not be solved by sending a military mission to Somali waters. Greater efforts were needed to address the root causes of the problem on the ground, such as development cooperation, humanitarian aid and increased support for the peace process and state reconstruction (Düsterhöft & Gerlach, 2013: 19).

Hence, in line with Requena's statement, the mission did not begin to bear fruit until 2012, when the attacks diminished drastically. In this way, pressure from EUNAVFOR and international patrols, the presence of armed guards on ships and the establishment of a system of convoys forced pirates to spread on the Indian Ocean through the use of mother ships (2014: 7). Indeed, the success of the Operation was such that no attacks by Somali pirates on foreign ships were reported between 2015 and 2016 (Chinchilla, 2017: 13). EU Navfor Atalanta proved to be an effective operation, which was producing the expected results as the waters of the Indian Ocean had become completely safe, the arrival of humanitarian aid was facilitated, attacks on trade routes had stopped and safe fishing could be resumed. However, once this operation is dissolved, piracy may flourish again.

This is a fact that has become visible during 2018. NATO chose to withdraw Operation Ocean Shield from the area in December 2016, just three months after the first attacks in two years. Since then, some attacks have been carried out: seven attacks were recorded in 2017 (News 24, 2018, 3 January) and some assaults have also occurred in 2018 (Europa Press, 2018, 23 February). Although none of them were successful and piracy has remained low-profile in recent years, this shows that it is still alive and reflects, likewise, the inability of Somalia to take control of its own waters.

3.2. European Union Training Mission in Somalia (2010-2018)

EUTM Somalia was born with very different objectives from Operation Atalanta as it is based on the training of Somali troops to support the Somali National Army (SNA) and forming competent forces capable of defending the battered security of Somalia and facilitating its governance and stability. It also indirectly fights piracy and terrorism by hindering their movement on the ground.

This mission was born out from the UN's urgent appeal in Resolution 1872(2009) in which it called on the international community to provide technical and financial support to the Somali security forces. The EU responded with the decision of the Council of the EU 2010/96/CFSP approving the dispatch of a new mission of a different nature that would help Somalia build a strong army. Moreover, the SNA was based on a complicated system of clan-based militias. Furthermore, given the situation in Somalia and the importance of Uganda in AMISOM, it was decided that the mission would initially be based in the Bihanga camp west of Kampala. Indeed, the EUTM is part of the cooperation plans with AMISOM, whose mandate includes the training, mentoring, and restructuring of Somali security institutions. To this end, eleven EU member states (Italy, France, Spain, Great Britain, Hungary, Finland, Sweden, the Netherlands, Portugal, and Romania) and a third state, Serbia, have helped to send troops (Sánchez-Barrueco, 2013: 244).

Focusing on the objectives of the EUTM, it must be said that it seeks to transfer training and education knowledge to the Somali National Security Forces. It constitutes effective action in support of the Somali security development sector. Its purpose is to strengthen Somalia's security capacities so that the government can regain its full sovereignty, provide essential security services to the population and be the first and only guarantor of security and sovereignty in Somalia. The intended purpose is to establish a

Somali-led training system, including policies and programmes to train its staff and units and specially designed for Somali needs and requirements (Requena, 2014: 8).

However, it should be noted that the mission of the EUTM does not only include the training of troops, but also includes an important training plan in relation to human rights. This is common to EU missions under the CSDP since 2006. In this way EUTM focuses on some standards such as democracy and equal rights regardless of gender or ethnic origin. The training began with Human Rights topic and soldiers received a total of 10 hours of training on these subjects (Lackenbauer & Jonsson, 2014: 21-22). In the case of Somalia, it makes special sense, as the troops recruited were made up of uneducated young people who could become a potential danger when they returned to Somalia and, in addition, have grown up in cultural spaces where female genital mutilation or the death penalty for homosexuals is tolerated.

Moreover, the mission had to think not only about training but also about the maintenance of these troops. The aim was to ensure that trained soldiers effectively joined the TFG's objectives rather than joining other irregular forces after the mission ended. To do this, it was necessary to ensure that the troops received their wages. Since the start of the mission, Japan and the EU have become the only benefactors to ensure the payment of salaries to some 5000 Somali soldiers (Sánchez-Barrueco, 2013: 244). It should not be overlooked that Uganda is the main contributor to AMISOM and was a key supporter of EUTM. In addition, the Uganda People's Defence Forces (UPDF) are the largest army in East Africa. This is something that the EU has taken into account and has seen the opportunity to create new ties with this country which will be responsible for continuing the activities of the EUTM once it is repealed (Oksamytna, 2011: 5).

However, during the EUTM stage in Uganda, there were some developments that need to be taken stock of. First, the EUTM has made several decisions that can be considered positive. First, the recruitment and training of women in the military is a basic measure against inequality. According to some women, their role in the military strengthened their social position and gave them the opportunity to improve their living conditions and gain respect (Lackenbauer & Jonsson, 2014: 24) Apart from soldiers, female trainers were also included and they were fully integrated with their peers. However, the number was very low, with only 19 women out of 900 trainers counted.

Besides that, the EUTM has paid special attention to the clan origin of the troops recruited with the aim of ensuring fair representation and preventing the army from being dominated by one group particularly. To find the right candidates, recruitment was in the hands of the TFG and supervised by AMISOM, the United States, UPDF and the EU. Another successful measure was the cultural training programme, which included the recruitment of Somali staff from Kenya as translators and mentors to boost troop morale (Oksamytna, 2011: 9).

Notwithstanding, the latter measure had its own obstacles. The need to use translators created a relationship of dependence on the instructors, who had no control over the messages that, once translated, reached the soldiers. This was mainly due to the fact that the interpreters had not received technical training in human rights vocabulary and gender issues**.** Furthermore, the fact that the EUTM was under the auspices of the UPFD complicated the training as it was not possible to intervene in human rights violations committed by the Ugandan army. Some of the reports spoke of malnutrition, poor living conditions and ill-treatment of soldiers, which even led to the danger of mutiny. This, moreover, created a contradictory fact. How would the results of the training

in human rights and gender be produced if the soldiers themselves suffered humiliation? (Lackenbauer & Jonnson, 2014: 25).

Finally, in 2014 the EU made a key decision. Given the new circumstances in Somalia, which had achieved greater stability and security, a new phase of the EUTM was beginning and was displaced to Mogadishu. Since 2010, approximately 3,600 Somali soldiers had been trained in Uganda, but then the training was conducted entirely on Somali territory and in direct liaison with the SNA. With this new formative phase, the armies of the member states are contributing to the efforts of Somalia and the international community to achieve long-term security (Requena, 2014: 8).

On 12 December 2016, the Council of the European Union extended the EUTM Somalia until 31 December 2018 with a budget of around 27 million euros for the period from 1 January 2017 to 31 December 2018. EUTM has provided political and strategic military advice to the Somali authorities within the defense institutions, as well as specific advice and customized training to contribute to the development of the SNA (EUTM-S, 2018). All this has been accompanied by important changes with the new President Mohammed Abdullah Farmajo who, since his arrival in power in February 2017, implemented a series of reforms to strengthen the army and its control over it. Thus, soldiers were banned from taking their weapons with them after their service and the payment of their wages has been standardized so that they can be paid regularly to the troops (Vecsey, 2016: 137-139).

3.3. European Union Mission on Regional Maritime Capacity Building in the Horn of Africa (2012-2018)

This mission, originally known as EUCAP Nestor and renamed in 2016 as EUCAP Somalia, is the third EU-led mission in Somalia. Unlike the Atalanta and EUTM Somalia missions, this operation has a civilian character, not military. EUCAP was launched following the adoption on 16 July 2012 by the Council of decision 2012/389/CFSP. This mission, which was planned for a period of 24 months with the possibility of renewal, will be running 8 years in December 2020 (EUCAP, 2020). Initially it focused on strengthening the maritime coastguard capabilities of five East African countries off the Indian Ocean, which was linked to the expansion of piracy activities to points further off the coast of Somalia. Thus, it was suggested that Djibouti, Kenya, Seychelles, Somalia and Tanzania join the project, although Kenya did not join (EUCAP, 2018).

In the case of Somalia, the aim was to strengthen justice and the rule of law, focusing on some regions such as Somaliland and Puntland. The primary objective of the mission in Somalia was to ensure national capacities in a manner that ensured the security of territorial waters (Díez-Alcalde, 2017: 16) Coastal security forces, prosecutors and judges were trained to facilitate the arrest of pirates. This mission had a budget of 22.8 million euros per year (Sánchez-Barrueco, 2013: 245). In addition to direct collaboration, the EU has supported the reform of the judicial system and financed the salaries of Somali officials.

Without a doubt, one of the great keys to this mission is the joint work with the countries that have access to the sea in the region. The aim of this collaboration would be to form a political, judicial and police structure to act against illegal activities in the Western Indian Ocean. This work focuses on the advice and training of judges, prosecutors, forensic experts, coastal and military agents, so the military profile of this operation is much lower than in the other two operations. The EUCAP Somalia mission is

complementary to the other missions and helps to create structures to combat instability and piracy not only in the maritime but also on land and helps to maintain greater cooperation between the states affected by this phenomenon.

EUCAP does not only work with the central government of Somalia and the surrounding countries, but also with the regional authorities of Somaliland, Puntland and Galmudug. This encourages the synchronization of Somali political institutions at all levels, both federal and regional governments. EU cooperation with the regions could become problematic as Somalia has no *de facto* control over Puntland, whose coasts have become the main refuge for pirates. Similarly, Somaliland has its own government which declared its independence unilaterally in 1991. Consequently, it can be argued if it is legitimate for the Union to work with a power that is not recognized by the central government (Holla, 2014: 58-59).

EUCAP Somalia is a complementary mission to the other two actions in Somalia, but its objectives are not easy to achieve. First, we must be aware of the very broad scope of this mission and the number of actors who collaborate or are part of it. In addition, this operation relies on the Somali institutions that have been "virtually" reconstructed, as their government does not fully control the territory. Also, there is often a lack of local support because piracy is not the main problem for Somali citizens. Its main concerns are security, the political and economic situation, and humanitarian crises. They are also aware of the danger posed by illegal arms trafficking, human trafficking, and the illegal dumping of waste on their coasts (Ejdus, 2017: 10). Moreover, in many regions piracy has wide local support as it has a positive effect on the development of coastal towns (Holzer & Jürgenliemk, 2012: 9).

Although the EU has insisted on respect for local participation in EUCAP Nestor, some authors have stated that one of the main problems with this mission is that it has been implemented by an external actor and with a very clear top-down sense. Instead of negotiating the main objectives of the mission with the premises, the EU designed EUCAP according to its own needs and interests (Ejdus, 2017: 11).

4. Conclusions

EU-Navfor Atalanta began with a rather negative balance, as between 2008 and 2011, the number of pirate attacks and hijacked ships increased exponentially. Between 2012 and 2016, however, the number of attacks decreased, until they almost disappeared in the 2015-2016 biennium. However, between 2017-2018 some unsuccessful attacks were recorded. This proves that Atalanta has been an effective mission since Indian Ocean is much safer than ten years ago. It is also true, however, that there is a clear risk and that it has been reinforced by the exit of the Ocean Shield operation. Once the mission is withdrawn, piracy may once again flourish uncontrollably. Furthermore, in order to eliminate piracy, full coordination with the Somali authorities is needed to find a long-term solution.

EUTM Somalia has clearly achieved its main objective of training 5000 soldiers. In addition, human rights training, the recruitment of female trainers and soldiers and the quota-based selection of the Somali population is undoubtedly a great success and demonstrates that the EU is trying to work with much more complex and multidisciplinary realities. However, big mistakes have also been made. The poor conditions and harassment of the soldiers in Uganda reflects the EU's limited control. Although the inclusion of women has been a success, the total number of female trainers was too low. Likewise, soldiers' salaries continue to depend on external actors such as United States,

Japan or the EU. This poses a risk to the maintenance of the army, as Somalia cannot depend eternally on foreign aid.

With the organisation of EUCAP-Somalia, the EU took a step further in strengthening the position of the Somali government and its cooperation with its neighbours in the region. These ties would facilitate the joint fight against regional threats such as piracy or terrorism. In addition, the training of judges, prosecutors and police officers can also be a positive development. Despite the obstacles that this latter relationship may create, another strength of EUCAP has been its flexibility in working with other Somali regional actors such as Puntland or Somaliland. EUCAP biggest flaw is that it was tailor-made for the EU and not for Somalia and its people. EUCAP is totally focused on the problem of piracy, forgetting that the concern of the Somali population revolves around other terms. Greater involvement of local actors would therefore have helped to bring the objectives of EUCAP Somalia closer to the reality of the country.

The decline in piracy and the diminishing influence of al-Shabaab in Somalia is a fact. Nonetheless, there is a high risk that once the international community withdraws from the country, problems will remerge. It is therefore necessary to continue working and to have an impact on the reconstruction of peace and state reconstruction, creating a model of a strong state. Additionally, the EU has been aware that the remedy to the Somali problem requires a regional solution and the role of the AU is essential. AMISOM fits into the idea that international community must be supportive but cannot lead alone the reconstruction of the country. Indeed, in recent years, the capacity of African actors to find a way out of their conflicts has become increasingly evident. Despite this, there have been some shortcomings in the European intervention. Firstly, it has been considered that EU missions were designed with self-interest in mind, such as protecting maritime trade vital to the European economy, facilitating access to fishing grounds for vessels and continuing the traditional fight against terrorism.

On top of that, it is true that the EU missions have tried to count on local actors and the country's institutions, but the intervention has been designed, in general terms, with a top-down model. This pattern was designed without considering the interests of the Somali population, which are, after all, the ones who must decide how they want their state to be rebuilt. Maybe one of the biggest problems for the EU is the everlasting missions that have been launched in Somalia. These missions have been renewed several times, proving that their objectives are still far from being achieved. This is a serious blow to the image of the EU, which is losing credibility as a peace and stability builder.

What should be the EU role in the Horn of Africa? The shift from traditional soft power to more direct intervention has given the EU more international influence than a few years ago, but this also makes it more visible to international threats such as terrorism. The other option is to continue the traditional low-profile role, based on development cooperation, humanitarian aid or financial and technical support to different institutions and states in the region. Obviously these two options are not mutually exclusive. Be that as it may, it is almost thirty years since Somalia became a failed state, and since then the stability of the country and the total reconstruction of state structures has not been achieved. The main requirement to end up with instability is to recover a stable state with the capacity to act on internal problems. To this end, the EU must not forget that Somalia belongs to its citizens, that reconstruction must be an inclusive project and that there are local examples of success, such as Somaliland, which, despite not having international recognition, does have strong state structures.

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UNDERSTANDING THE GLOBAL DEMOCRATIC DECLINE. CASE STUDY: THE UNITED STATES OF AMERICA

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Abstract. *This paper aims to investigate the global democratic decline and examines specific indicators and qualitative data released by major research bodies around the world (Center for the Future of Democracy, Freedom House, The Economist Intelligence Unit, Idea International). It focuses on the status of democracy, quality of democracy and citizens' satisfaction with democracy. An overall conclusion is that the world experiences the worst democratic decline from the past two decades.*

Furthermore, a closer analysis is being completed for the United States of America situation with the purpose of understanding the democratic erosion from 2016-2020. The current research concludes with a series of recommendations regarding the social polarization, the spread of disinformation and the ultraconservative movements, and improvements needed for the overall health of democracy.

Keywords: *democratic erosion, democracy status, satisfaction with democracy, US presidential elections*

1. Introduction

In a 2015 article, Larry Diamond, founding co-editor of the Journal of Democracy, explained what had happened since 2006, when there was a stagnation in the number of electoral democracies (the number ranging between 114 and 119). He identifies data showing that the number of electoral and liberal democracies declined after 2006 and then reached a plateau. Adding to this, he mentioned that world's level of freedom has failed marginally since 2006.

Diamond suggests there were two ways to interpret the facts and data: a) "see them as constituting a period of equilibrium—freedom and democracy have not continued gaining, but neither have they experienced net declines" and b) "viewing the last decade as a period of at least incipient decline in democracy". The second viewpoint was the one chosen to conduct his research on the democratic decline and to further find out that "democracy has been in a global recession for most of the last decade, and there is a growing danger that the recession could deepen and tip over into something much worse" (Diamond, 2015).

Furthermore, Marc F. Plattner, founding co-editor of the Journal of Democracy, was underlining in a 2016 article: "Democracy's global decline is at an early stage and far from irreversible, but it presents a serious danger. The situation can still be turned around before it becomes truly dire." (Plattner, 2016). The way democracy works or backslides

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has been thoroughly analysed and numerous reports and studies have showed that the world is experiencing a decline in democracy.

On the other hand, Levitsky and Way talked about the "myth of democratic recession" and argued in their research from 2015 that "Perceptions of a democratic recession are rooted in a flawed understanding of the events of the early 1990s. The excessive optimism and voluntarism that pervaded analyses of early post–Cold War transitions generated unrealistic expectations that, when not realized, gave rise to exaggerated pessimism and gloom. In fact, despite increasingly unfavourable global conditions in recent years, new democracies remain strikingly robust." (Levitsky and Way, 2015).

This paper hypothesizes that the democratic decline is not only a perception, but a reality that can be observed in the multiple sets of data gathered by different research centres and renowned publications across the globe. We believe that this decline can be spotted and understood from multiple perspectives.

In this paper, we will utilize data that relates to the satisfaction with democracy, the status of democracy, the quality of democracy, and the impact of the COVID-19 pandemic for democracy. One limitation of the paper is that of theorising and classifying the stages of democratic decline/recession which are subject to other ongoing research.

2. The Overview of the Global State of Democracy

To understand the democratic decline, we begin with examining how citizens feel about democracy. For attaining this objective, we first look at the findings presented by the *Global Satisfaction with Democracy* report, released in 2020. The report acknowledges that "across the globe, democracy is in a state of malaise" and that "this is the highest level of global dissatisfaction since the start of the series in 1995" (Global Satisfaction with Democracy, 2020)

The authors argue that the main reasons for this low level of satisfaction with democracy is based on the happenings and environments that relate to policy crises, economic dysfunctionalities and the level of corruption. The positive (indirect) connection between democracy and the economic growth is supported by others, e.g. Knutsen (2021)., who argue that "democracy affects growth through, for example, enhancing human capital or strengthening the protection of property rights".

The main connections illustrated by the figure are the following: the high levels of dissatisfaction from the 2000s are associated to the economic recession from that period of time; 2004 is connected to the EU enlargement (and shows a decrease in the dissatisfaction that keeps its downward trend for the next couple of years); the year 2008 is associated to the collapse of the financial and banking systems;; 2010 is linked to the eurozone crisis (the level of dissatisfaction was below 50%); the year 2012 is associated to the bailout fund set by the EU and its international partners (pointing an increase in dissatisfaction); 2015 marks the beginning of the refugee crisis in Europe and leads to an increased level of dissatisfaction (in the same period of time the Greeks vote to reject the bailout agreement proposed by the European Union and international partners); 2016 is the year when when the British electorate voted for Brexit and Donald Trump is elected president in the United States; a high level of dissatisfaction is registered in 2018, when a populist coalition (made of the anti-system 5-Star Movement and the far-right, anti-immigrant League part) wins the popular vote in Italy; 2019 marks the highest level in dissatisfaction (since 1995) and one event linked is that of the election of Jair Bolsonaro (former military officer) as president of Brazil.

Figure 1 illustrates the rising dissatisfaction with democracy worldwide and connects the low levels registered with the events that contributed or enhanced this process.

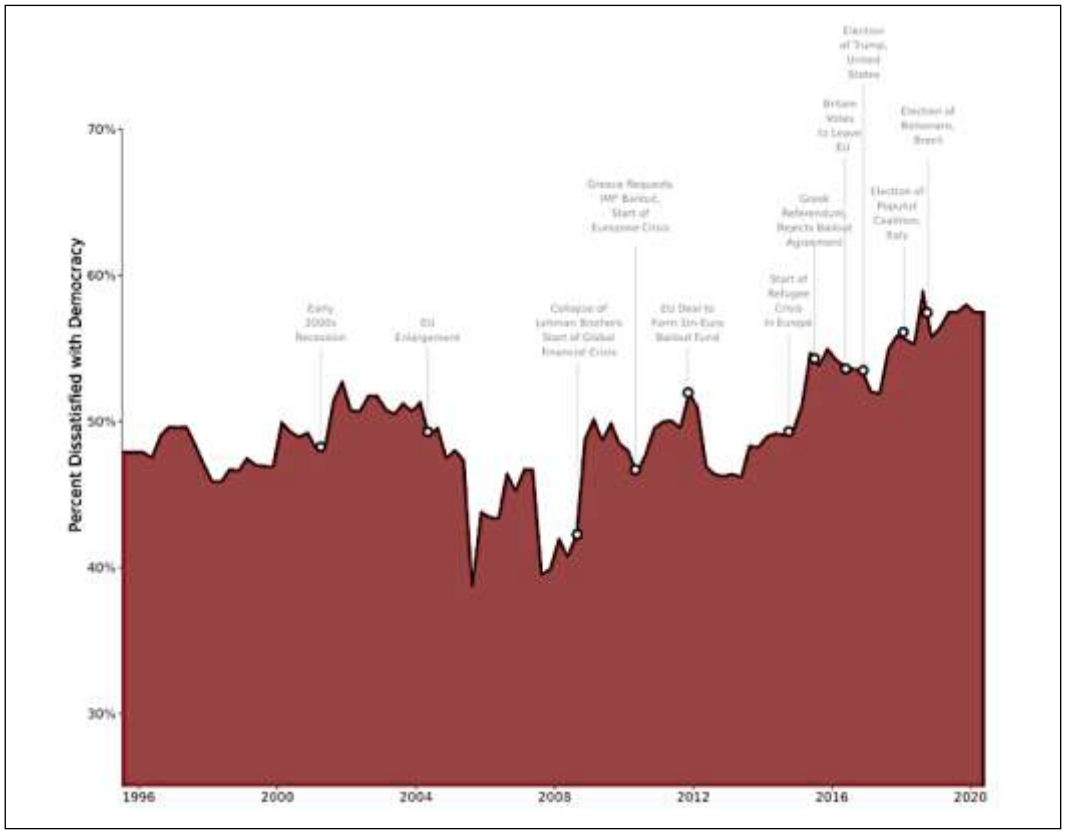

Figure 1 - *Rising dissatisfaction with democracy across the world*
Source: Global Satisfaction with Democracy (2020)

While the graph demonstrates the increasing levels of dissatisfaction with democracy across the globe (the aggregated data typifies 2.43 billion individuals from Latin America, Africa, the Middle East, Europe, North America, East Asia, and Australasia according to the report), the image of the events linked is partially completed as the contexts refer more to Europe, the United States and Brazil (one explanation is because of the available data).

The next reports reviewed for the purpose of this paper are those issued by Freedom House. Firstly, we have examined the qualitative remarks regarding the democratic decline. In this respect, Freedom House points out that "2019 was the 14th consecutive year of decline in global freedom" and that "many freely elected leaders are dramatically narrowing their concerns to a blinkered interpretation of the national interest […] such leaders—including the chief executives of the United States and India, the world's two largest democracies—are increasingly willing to break down institutional safeguards and disregard the rights of critics and minorities as they pursue their populist agendas" (Sarah Repucci, Freedom House, 2020).

In terms of quantitative data, Figure 2 shows the democratic decline between 2005 and 2019.

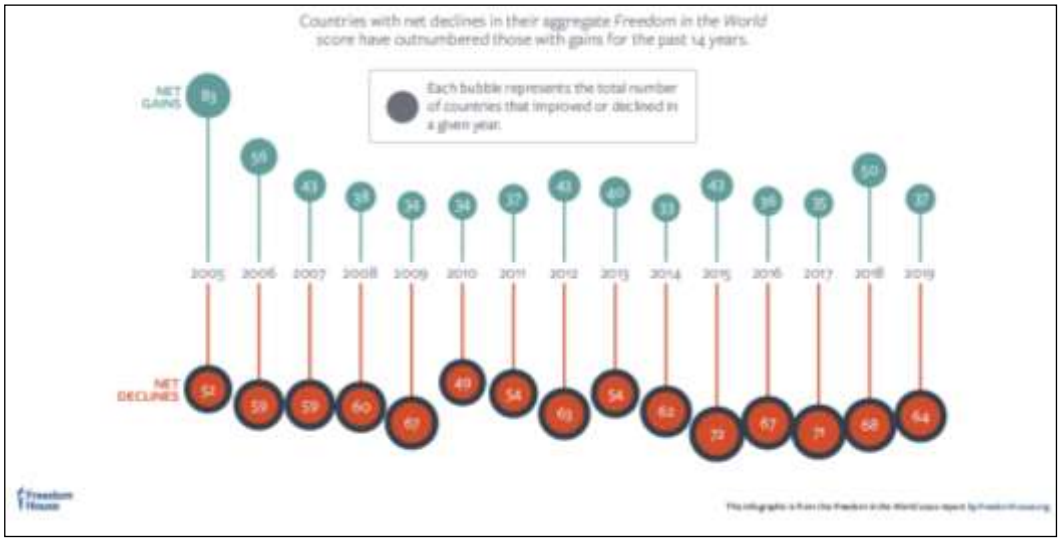

Figure 2 - *The 14 years of consecutive democratic decline in the world*
Source: Freedom in the world, Freedom House (2020)

If we were to overlap the data regarding the level of dissatisfaction with democracy (Center for the Future of Democracy) and the data made available by Freedom House, there are a couple of questions that result from: a) is global dissatisfaction with democracy linked to the democratic decline in the world; a.1) if yes, is there a direct connection or an indirect one; a.2) if yes, which precedes: the level of dissatisfaction can be observed first or the rate of democratic decline is the first indicator of citizens' dissatisfaction with democracy; b) if no, how can we explain the similarities between the low levels of satisfaction from 2009 and the democratic decline registered then (67 countries experienced a decline in that period) or the situation from 2015/2016 or the one from 2019/2020. We will attempt to identify a couple of answers to these questions in the second part of the paper where the focus will on the United States of America.

Another report studied from Freedom House regards democracy scores in the 29 countries from Central Europe to Central Asia that are included in the *Nations in Transit* report (Zselyke Csaky, Freedom House, 2020). The latest data shows that political leaders from these regions are "openly attacking democratic institutions and attempting to do away with any remaining checks on their power" and this process has "accelerated assaults on judicial independence, threats against civil society and the media, the manipulation of electoral frameworks, and the hollowing out of parliaments, which no longer fulfil their role as centres of political debate and oversight of the executive". The report also shows that there are currently fewer democracies in these regions than there used to be at any point between the launch of the report in 1995 and the last data presented.

Figure 3 shows that the worst years in democratic deficits were 2013 (with 17 countries experiencing net declines), 2014 (with 16 countries facing net declines), 2017 (accounting for net declines in 18 countries) and 2018 (when the peak was set for 19 countries experiencing net declines).

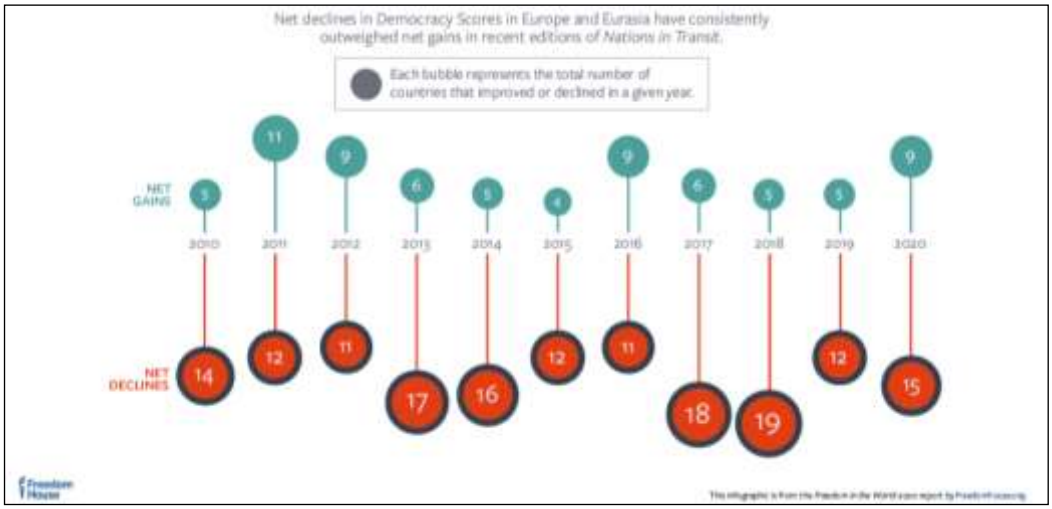

Figure 3 - *The net declines and gains in Democracy Scores for the Nations in Transit countries*
Source: Freedom in the World, Freedom House 2020

The above-mentioned report marks the highest decline for Montenegro, Serbia, Poland, and Hungary. Montenegro has transitioned from a score of 4.21 (out of a maximum 7) registered in 2010 (when it was a semi-consolidated democracy) to a score of 3.86 in 2020 (when it was categorized as a transitional hybrid regime). Serbia has experienced the same change by going from a score of 4.29 in 2010 to a score of 3.96 in 2020. Poland changed its status as a consolidated democracy by losing its score of 5.68 in 2010 to 4.93 in 2020 and thus becoming a semi-consolidated democracy. The biggest fall was listed for Hungary, which passed from a score of 5.61 in 2010 to a score of 3.96 in 2020 and thus moving from a consolidated democracy to a transitional/hybrid regime.

Furthermore, the report (The Economist Intelligence Unit, 2021) exemplifying Democracy Index (*Figure 4*), from the Economist Intelligence Unit, shows that the global average score fell from 5.44 in 2019 (out of a maximum 10) to 5.37 in 2020. This change represents the lowest global score since the launch of the index in 2006.

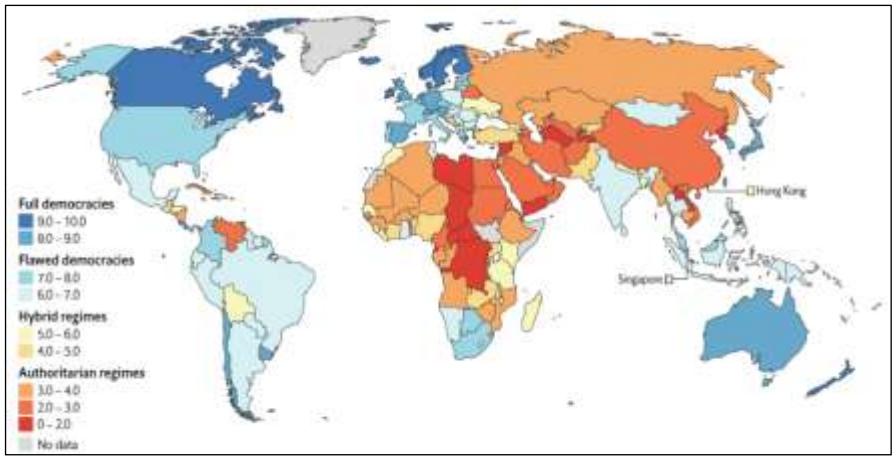

Figure 4 - *Democracy Index for 2020*
Source: The Economist Intelligence Unit (2021)

The authors note that "in 2020 a large majority of countries, 116 of a total of 167 (almost 70%), recorded a decline in their total score compared with 2019" and there were seven negative changes regarding the regime category (out of which we can mention France and Portugal, which were downgraded from full democracies to flawed democracies). The report also focuses on the impact of the COVID-19 pandemic for democracy, by referring to the "the biggest rollback of individual freedoms ever undertaken by governments during peacetime (and perhaps even in wartime)".

The final report considered for this research is that of Idea International which developed the *Global Monitor of COVID-19´s impact on Democracy and Human Rights* (Idea International, 2021). The Global Monitor adds its conclusions to the Global State of Democracy Indices 2019, which show that at that time in the world (data available for 162 countries) there were 99 democracies, 30 hybrid regimes and 33 authoritarian regimes.

The Global Monitor shows that "more than half of the countries covered in the Global Monitor (99 out of 162 countries, or 61%) had implemented measures to curb COVID-19 or experienced developments during the pandemic that presented concerns from a democracy and human rights perspective, with a clear transgression of democratic standards, because they were either disproportionate, illegal, indefinite or unnecessary in relation to the health threat".

Given that during the pandemic, the main instrument used to adopt measures was that of declaring a state of emergency, we consider relevant to include here the observations of Lührmann and Rooney (2020). They have drawn their conclusion from an analysis performed on 60 democracies for a time range starting with 1974 and ending in 2016: "…democracies are 75 percent more likely to erode under a state of emergency. This evidence strongly suggests that states of emergency circumvent democratic processes in ways that might inspire democratic decline.".

Some of the essential findings displayed in the Global Monitor have been summed up in *Table 1*. This depicts the overall image on how the pandemic affected democracy across the globe and illustrates a comparison with the hybrid and authoritarian regimes.

Table 1 - *Essential findings from the Global Monitor of COVID-19´s impact on Democracy and Human Rights*

Criterion	Democracies	Hybrid regimes	Authoritarian regimes
Representative government	53 electoral processes were organized or are scheduled	7 electoral processes were organized or are scheduled	5 electoral processes were organized or are scheduled
Effective parliament	15% of the countries had parliamentary sessions suspended	33% of the countries had parliamentary sessions suspended	27% of the countries had parliamentary sessions suspended
State of emergency (SoE)	72% of the democratic countries declared a SoE	47% of the hybrid regimes declared a SoE	33% of the authoritarian regimes declared a SoE
Freedom of expression	14% of democracies registered worrying developments	43% of hybrid regimes marked concerning developments	52% of authoritarian regimes registered worrying developments

Criterion	Democracies	Hybrid regimes	Authoritarian regimes
Freedom of association and assembly	90% of democratic countries experienced protests	67% of hybrid regimes experienced protests	61% of authoritarian regimes experienced protests

***Source**: author's display based on the data retrieved from Idea International (2021).*

As all the reports reviewed for this paper suggest, the democratic decline was scored high before the COVID-19 pandemic. However, the measures adopted in some cases by the political leaders have generated additional risks for the status and quality of democracy. Same can be said about the citizens' satisfaction with democracy that marked the lowest score a year before the world discovered a common enemy in the SARS-CoV-2 virus.

Reaching the end of this section, we are can summarize it by referring to the conclusion introduced by Professor Ronald Inglehart (University of Michigan) in a 2018 edition of Foreign Affairs: "the world is experiencing the most severe democratic setback since the rise of fascism in the 1930s." (Foreign Affairs, 2018). We believe that the democratic decline has the potential to characterise this decade (2020-2030) and to lead to negative effects that will be hard to tackle in the years to come, be it through policy options or through a more responsible and honest political leadership.

With this mind, we aim to analyse in the following section the US case and to identify the vulnerabilities of the American democracy that have led to a democratic erosion and that can be furthered be understood as a prerequisite for democratic decline.

3. Case study: the United States of America and the democratic decline

In this section, we will focus our analysis on the period of 2016-2020, by addressing the following two subjects: a) the significance of the 2016 elections, b) the mandate of Donald Trump and its impact on the quality of democracy. We will conclude the section by looking at the ultraconservative movements in the US and the 2021 storming of the Capitol.

Back in 1787, James Madison, one of the Founding Fathers of the American democracy, was writing in the Federalist Papers No. 10 that "enlightened statesmen will not always be at the helm" (Madison, 1787) by referring to the clashing interests and the need to correct the political differences in a way that it continues to serve the public good. This assertion could not be truer than in 2016, when the Republican nominee, a businessman in real estate with no political experience, managed to win the electoral race and become the 45th president of the United States.

3.1. The 2016 presidential elections

Prior to his election, Donald Trump has shocked the public by making powerful negative declarations about how to behave with women and was accused of sexual misconduct (BBC, 2016). The inappropriate behaviour and dangerous affirmations were also seen in the 2016 campaign when he incited supporters from a rally in Iowa and told them that "If you see somebody with a tomato, knock the crap out of them." (Time, 2016). At that moment, this was his call to deal with protesters that were present at his public appearances. The contentious attitude was also expressed with relation to his counterpart in the 2016 presidential elections, the Democrat nominee Hillary Clinton. During a presidential debate he characterized Clinton as being "such a nasty woman", while at a

rally he referred to her as being "a monster" adding that she is "not strong enough to be president" (Schreckinger, Politico, 2016).

The 2016 presidential campaign was rich in shocking catchphrases as well. One of the most popular chants of Trump's supporters was that of "Lock her up!" which managed to lift the spirits every time the Democrat candidate was mentioned in a public event: "It fit right in with Trump's core pitch to voters: that Clinton couldn't and shouldn't be trusted. His fans broke out in the chant at any mention of the Clinton Foundation, the email server or any other of his attacks on her" (Stevenson, Washington Post, 2016). This was in response to Hillary Clinton's investigation for setting and using a private email server for both personal and professional correspondence while she was Secretary of State.

Another matter connected to Clinton's staff which lead to a chain of negative events was that of John Podesta's emails. While he was the campaign manager for Hillary Clinton, Podesta's personal email account was hacked, and his correspondence was published by WikiLeaks. Out of the messages made publicly a new conspiracy theory was born - "Pizzagate". The supporters suggested on Twitter and on other online platforms that Podesta's emails contained coded messages about a connection between high-ranking Democrats and US restaurants that that together set up a human trafficking and child sex network (BBC News, 2016).

While the story was later proved to be a false one, many Trump supporters continued to believe in the existence of the trafficking network and the need to speculate the truth they thought to have discovered. For doing this, they have used online platforms such as 4chan, known for free speech, uncensored content and extremist messages. This behavior can be explained by a poll conducted in 2016 that showed Trump supporters were more likely to endorse conspiracy theories than other Republican supporters (Cassino, 2016).

The conspiracy theories do not appeal only to Conservative supporters. A study conducted in 2016 showed that "conservatives are more likely to endorse ideologically motivated conspiracy theories – such as the idea that President Obama was not born in the US – if they have low levels of trust in government and greater political knowledge. Liberals, in contrast, are less likely to endorse liberal conspiracy theories if they have both greater political knowledge and more trust in government" (Miller *et. al*, 2016). This study has connected its findings to a previous research which showed that "half of the American public consistently endorses at least one conspiracy theory and that many popular conspiracy theories are differentiated along ideological and anomic dimensions" (Oliver and Wood, 2014).

While the endorsement of conspiracy theories alone does not constitute a factor of the democratic decline, we believe that it can represent a key to understand the level of trust in politics, the level of political polarization and interference of foreign actors. Conspiracies can also be efficient as drivers of voter manipulation and this was seen in the 2016 presidential elections. That year was called by some authors as the "conspiracy theory election" (Uscinski, 2016) and the Republican nominee brought its contribution to it. In interviews and press declarations, Trump frequently used expressions such as "people are saying", "a lot of people think" or "there is something going on that we don't know about" (Johnson, Washington Post, 2016) together with actively validating various conspiracy theories such as the one focused on Barack Obama's citizenship and religion.

With a presidential candidate that ran on an anti-establishment platform and supporters ready to believe in false stories that confirmed their political biases, it is not

difficult to understand how foreign political actors could have influenced the elections, with the purpose of putting at test the strength of the American democracy.

In this sense, we consider relevant to present the conclusions of the report (US Department of Justice, 2019) on the investigation into Russian interference in the 2016 presidential election, conducted by special counsel Robert S. Mueller. The report was released in 2019 by the US Department of Justice and has two volumes. The first volume sums 448 pages and contains information about: the Russian "active measures" social media campaign, the Russian hacking and dumping operations, the Russian government links to and contacts with the Trump campaign, the prosecution and declination decisions. The following information has been included in the executive summary of the report and will be presented here according to the original:

- The Russian interference was executed through the Internet Research Agency (IRA), a company funded by the Russian oligarch Yevgeniy Prigozhin and based in St. Petersburg, Russia.
- The report finds that the Russian social media campaign conducted by IRA was "designed to provoke and amplify political and social discord in the United States" and that the program initially launched in 2014 with the purpose to undermine the US electoral system grown into a targeted operation to favour candidate Trump and to belittle candidate Clinton.
- The time of switching the focus on Donald Trump and Hillary Clinton by IRA coincides with another form of interference supported by the Russian government namely the hacking and the releasing of materials detrimental to the Clinton campaign (including those of John Podesta). The report mentions that these operations were performed by the Main Intelligence Directorate of the General Staff of the Russian Army.
- The investigation shows that there were contacts established between Trump Campaign officials and people connected to the Russian government. However, the report did not conclude that members of the Trump Campaign conspired with the Russian government for its election interference activities.
- The report shows that "many of the individuals and entities involved in the social media campaign have been charged with participating in a conspiracy to defraud the United States" due to their activities to undermine "through deceptive acts the work of federal agencies charged with regulating foreign influence in U.S. elections, as well as related counts of identity theft".
- The investigation found out that a couple of people affiliated to the Trump Campaign lied to the Office and to the Congress about their connection with Russian connected individuals. Consequently, "former National Security Advisor Michael Flynn pleaded guilty to lying about his interactions with Russian Ambassador Kislyak during the transition period".

The conclusions of this report show a clear foreign interference in the 2016 presidential election and the backing of one candidate detrimental to the other one. Given that free elections represent a core element of a healthy democracy, we believe this can be a strong indicator of a democratic erosion in the United States. However, the action itself cannot explain the big picture of the American elections and we need to consult relevant data to see the respect for democratic institutions and the confidence in the electoral process among the American voters.

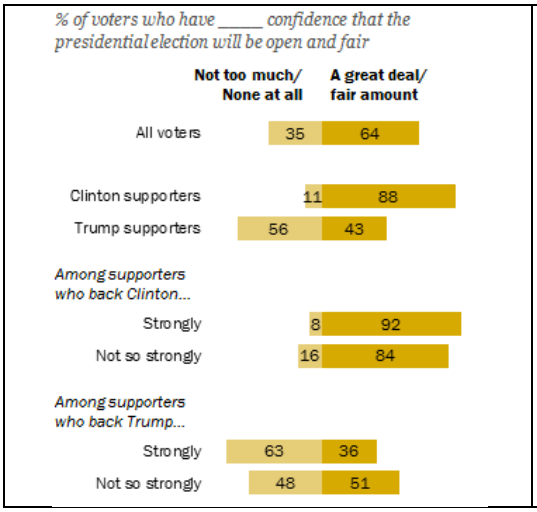

Figure 5 - *Voters' confidence in the elections*
***Source**: Pew Research Centre (2016)*

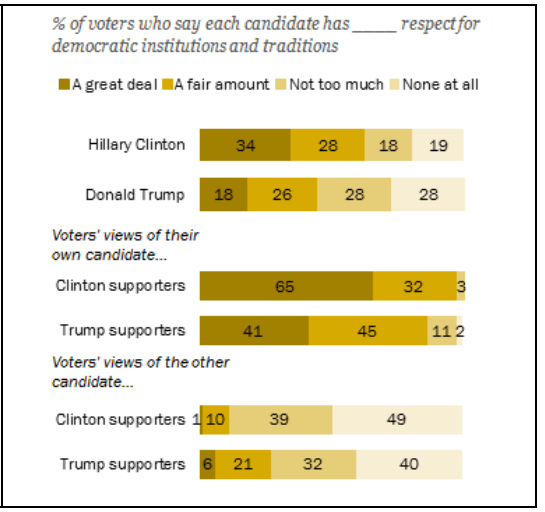

Figure 6 - *Views of candidates' respect for democratic institutions*
***Source**: Pew Research Centre (2016)*

Figure 5 shows that most voters had a great deal/fair amount of trust in the openness and fairness of the 2016 election. However, when looking at difference between supporters, we see a high level of trust among Clinton's supporters (more than 80%) and a low level of confidence among Trump's supporters (less than 50% of them believed that the elections were going to be fair and open).

On the other hand, *Figure 6* displays how voters see each candidate with relation to the respect for democratic institutions and traditions. Hillary Clinton is perceived by 34% of voters to have a great deal of respect for democratic institutions and by 28% of voters to have a fair amount of respect for democratic institutions and traditions. At the end of the spectrum, 19% of voters believe that she has no respect for democratic institutions and traditions. When it comes to Trump, only 18% of voters believe he has a great deal of respect for democratic institutions, while 28% believe he has no respect at all.

The survey made by the Pew Research Centre also includes data (Pew Research Centre, 2016) on what voters say is important to maintaining a strong democracy. 90% of the registered voters questioned said that national elections which are open and free are very important for a strong democracy and 78% affirmed that is very important for people to have the right to non-violent protests, while 77% said that is very important that the rights of the people who do not share the popular views to be protected.

Concluding with the subject of the 2016 elections, we believe that a more in-depth research should be made to better understand the impact of Russian interference in the elections and people's level of support for democratic institutions and free elections. It is thought-provoking to observe that Trump's supporters who had less confidence in the elections and were prone to share conspiracies were those who had the winning candidate. At the same time, it would be worthwhile to document how this chapter of American democracy led to a democratic erosion or even decline.

3.2. Donald Trump's mandate and its impact for the quality of democracy

Trying to answer, at least partially, to the last path for research defined, we will discuss the mandate of Donald Trump by looking at the specific indicators on the status of democracy, quality of democracy and citizens' satisfaction with democracy. The first

observation with relation to the changes in the political system of 2016 is that of a destabilized legitimate opposition. As it was previously expressed, the Trump's campaign sought to weaken the political opposition and eventually to delegitimize it in the eyes of the voters.

The political scientist, Julia Azari (2016), pointed out that that "Strong partisanship with weak parties makes for a couple of fairly serious problems for a democracy. The destabilization of institutions, for one. It is hard for institutions — elected ones like Congress, the presidency, or state governments — to have legitimacy when partisan motives are constantly suspect. […] Citizens view much of what these institutions do through a partisan lens." The partisan issue is also described by a Vox journalist and researcher: "Today, the strongest and most politically important identities are partisan identities. We do not talk about big states and small states, but about red states and blue states. If there is a threat to American unity, it rests not in the specific concerns of Virginians or Alaskans, but in the growing enmity between Democrats and Republicans." (Klein, 2018).

To examine the degree of polarization between Republican and Democrat supporters/voters during Donald Trump's mandate we have looked into the data collected by the Pew Research Centre. A 2017 survey suggested that less than 1/3 of Americans have a mix of liberal and conservative views. Compared to former similar surveys, that have been applied in 1994 and 2004, when ½ of Americans held a mix of values, this represents a major increase in polarization (*Figure 7*). The results of the survey show that: "The median Republican is now more conservative than 97% of Democrats, and the median Democrat is more liberal than 95% of Republicans. By comparison, in 1994, there was substantially more overlap between the two partisan groups than there is today: Just 64% of Republicans were to the right of the median Democrat, while 70% of Democrats were to the left of the median Republican. Put differently, 23% of Republicans were more liberal than the median Democrat in 1994, while 17% of Democrats were more conservative than the median Republican. Today, those numbers are just 1% and 3%, respectively." (Kiley, Pew Research Centre, 2017)

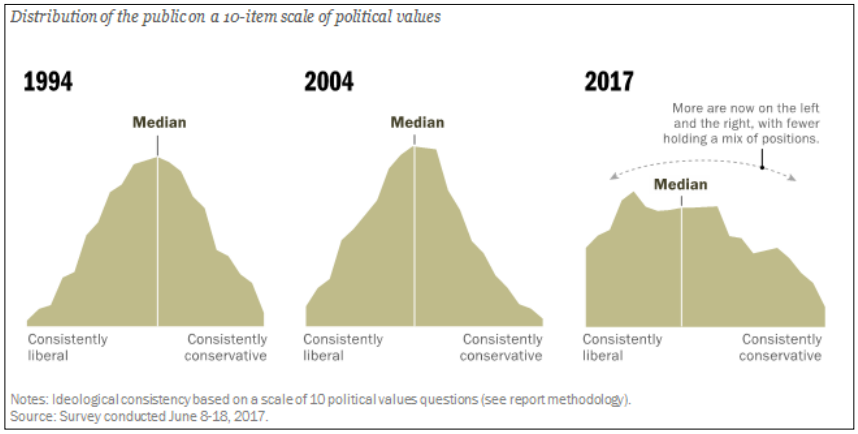

Figure 7 - *The level of polarization between conservatives and liberals in the US*
***Source**: Pew Research Centre (2017)*

Furthermore, we looked at the study case for the United States, presented by the Global Satisfaction with Democracy Report 2020 (Centre for the Future of Democracy, 2020). The authors of the report mention that "in few countries has the decline in

satisfaction with democratic performance been as dramatic or as unexpected as in the United States". They link the increase in the level of dissatisfaction with the moment of the 2008 financial crisis. At the same time, they identify reasons for which the citizens were no longer satisfied to how democracy was improving their life: "rising political polarisation", "government shutdowns", "the widespread use of public office for private gain", a "growing spatial and intergenerational inequality".

The report acknowledges that such a decrease in the level of satisfaction would not be surprising in other countries, but for the United States of America it is an unusual stage to be at. Donald Trump is also being seen as a changemaker for the "American exceptionalism" which is no longer about promoting democracy in the world, but rather about putting "America First". Consequently, the slogan "Making America Great Again" was not about the US influence in the world and its commitment to build a culture of democracy and respect for human rights, but rather on how it can benefit the most from the relations with third countries, democracies or not.

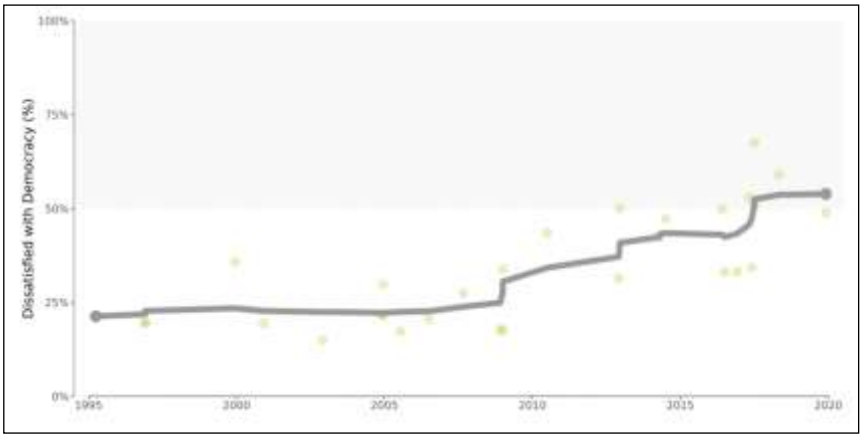

Figure 8 - *The level of dissatisfaction with democracy in the US*
***Source**: Global Satisfaction with Democracy Report (2020)*

This shift in the "American exceptionalism" can also be seen in the citizens' attitudes towards the foreign policy of the United States. In the 2019 research commissioned by Eurasia Group Foundation shown that "the public confidence in America's example is apparently eroding" and compared with 2018 "fewer Americans believe the US is exceptional for what it represents, and more believe the U.S. is not an exceptional country" (Hannah and Gray, 2019). The research also concluded that the rise in anti-exceptionalism belief is attributed more to the younger Americans (*Figure 9*).

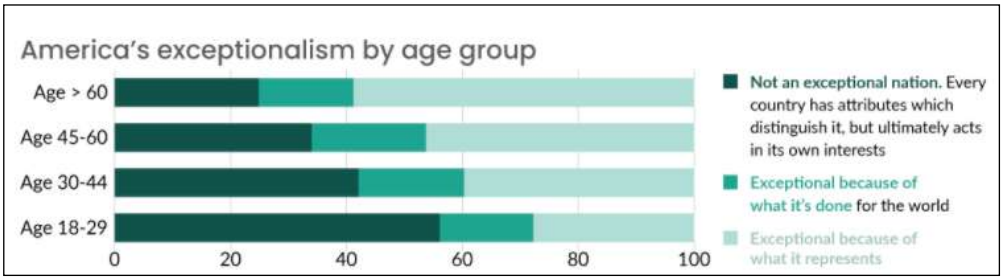

Figure 9 - *American exceptionalism explained by age group*
***Source**: Eurasia Group Foundation (2019)*

Even though the erosion of the "American exceptionalism" during the Trump mandate does not constitute an indicator for the democratic decline, we believe that the data can be integrated in the overall debate on the US global role for the advancement of democracy and respect for human rights. When dealing with domestic challenges that affect the quality and status of democracy, US can face tangible difficulties in portraying itself as an authentic defender of democracy and promoter of the respect for human rights in the world.

The next set of data and information relevant to our paper belongs to the Freedom House which issues annually the "Freedom in the world" report. We have compiled the relevant data for a period of for years and displayed it in a comparative manner in *Table 2*.

Table 2 - *Comparative key developments in the US between 2016 and 2019*

Key developments 2016 (Freedom House, 2017)	**Key developments 2017 (Freedom House, 2018)**	**Key developments 2018 (Freedom House, 2019)**	**Key developments 2019 (Freedom House, 2020)**	**Key developments 2020 (Freedom House, 2021)**
Donald Trump won the presidency of the US, despite that Hillary Clinton got the popular vote	Donald Trump took office in January and continued to promote his private businesses	The president appointed Judge Brett Kavanaugh to the Supreme Court, who was formerly accused of past sexual abuse	New restrictive policies towards immigration have been introduced by Trump's administration	The measures taken to counter the effects of the pandemic have been deeply influenced by politicised misinformation from the President
US Intelligence agencies accused Russia of interfering in the 2016 elections	The president-elect named his daughter and son-in-law as presidential advisers	The Trump administration attempted to block asylum applications for those who crossed the border through unofficial ports of entry	In a mass shooting 22 people were killed at a store in Texas; the gunman was supposed to be motivated by racist and xenophobic attitudes	The killing of a Black civilian by the police caused one the largest protest movements in US history; on this occasion several journalists who covered the protests were arrested or faced assaults
The Republican leaders in the Senate refused to hold confirmation hearings for a new Supreme Court justice	Donald Trump adopted political decisions with prior little consultation or transparency within the executive branch	The investigation on the Russian interference in the elections resulted in criminal charges against several nationals from Russia and guilty pleas from a couple of Americans	The House of Representatives approved the articles for impeachment of the president, arguing that he attempted to extort a political favour from foreign leaders and obstructing Congress	Following his defeat in the 2020 presidential elections, Donald Trump refused to acknowledge the results of the elections and publicly shared messages regarding a large-scale fraud and promoted conspiracy theories

***Source**: Freedom House (2017, 2018, 2019, 2020 and 2021)*

Going through the key developments from 2016-2020 indicated by Freedom House, we can observe that the proposals advanced/associated by/with the Trump administration affected multiple core elements of a healthy democracy: the integrity and independence of the public office, the transparency of the decision-making process, the respect for the rule of law, the legality of electoral process, the equal treatment of various segments of the population, etc. In quantitative terms, the Freedom House score gained by the US in 2017 was 89/100, while in 2021 was 83/100, marking an important decrease that can be attributed to a worrying democratic erosion. While the American democracy is equipped with accountability tools and control mechanisms able to circumvent dangerous policies and political decisions, we can acknowledge that some of the damages done to the American democracy between 2016 and 2020 are hard to repair and in some cases almost irreversible.

The *Global State of Democracy 2019* (GSoD) report offers a slightly different perspective on the state of democracy in the US. While suggesting a democratic erosion given the decline in multiple sub attributes, the authors affirm that "these declines are not serious enough to be labelled democratic backsliding, which is defined in the GSoD framework as the gradual and intentional weakening on Checks on Government and accountability institutions, coupled with declines in Civil Liberties." (Idea International, 2020)

Advancing with our paper, we uncovered data about 2020, and for this we have studied The Economist Democracy Index, which puts the US on the 25th rank at the global level. The Index shows that the US registered low scores for the functioning of the government and for the political culture. Evaluating the regime type, the USA is included in the flawed democracy type since 2016. The authors of the report have also outlined the following characteristics of the US democracy: "The US's performance across a handful of indicators changed substantially in 2020, both for better and worse. The country exhibits a number of democratic deficits that could result in a further deterioration in its score and ranking soon." (The Economist, 2021).

3.3. The ultraconservative movements in the US and the 2021 storming of the Capitol

On January 6th, 2021, Senate Democratic Leader Chuck Schumer was addressing to his colleagues, in the Capitol Building on the need to support and defend the constitution. In his address he referred to the health and the example of the American democracy, to the fact that the incumbent president has not accepted the results of the elections and thus he does not see them as being legitimate. In late 2020, Donald Trump was defeated by Joe Biden, the Democrat nominee, who received 306 of the Electoral College votes (the minimum to win was 270 votes). Trump did not recognize the result of the elections, called them a "major fraud on our nation" (BBC News, 2020b) and filed tens of lawsuits in various states with the purpose of getting recounts (Bazelon, New York Times, 2021).

Senator Schumer invited his colleagues to reflect upon the message and the example the US was showing to the world: "What message will we send today to our people, to the world that has looked up to us for centuries? What message will we send to fledgling democracies, who study our Constitution, mirror our laws and traditions, in the hopes that they, too, can build a country ruled by the consent of the governed? What message will we send to those countries where democratic values are under assault, and look to us to see if those values are still worth fighting for? What message will we send to every dark corner of the world, where human rights are betrayed, elections are stolen, human dignity denied?" (Schumer, 2021).

Outside of the Capitol building, groups of Trump's supporters gathered for a march to spread messages about the "rigged elections" and about the fact that their candidate was the only one that can save America. The events turned into an insurrection movement with the sole purpose of overturning the defeat of Donald Trump in the 2020 elections. The rioters managed to get in the Building, occupy it and vandalize the legislative floor. The whole world was looking to what was happening in the United States and the international reactions were not long in coming.

One of the responses came from the former president of the European Council, Donald Tusk, who tweeted that "There are Trumps everywhere, so each and every one should defend their Capitol." (Tusk, 2020). Support messages for the strength of the American democracy continued to be delivered in the following days. At the same time questions and remarks about the manifestation of such a tragic event for democracy were laid forward by various political analysts and researchers. One of the themes of these analyses was that of the rioters' profile and backgrounds.

Several research pieces and investigations regarding the participants to the riots and the storming of the Capitol showed that members of various ultraconservative movements have been directly involved. One of the movements that operated in the insurrection was that of *The Proud Boys*, a far-right group which encourages violent activities against people who have different ideologies (Wall Street Journal, 2021). Members of the movement have been accused and arrested for violent activities at the Capitol. Also, Canadian officials have characterized the group as a terrorist organization, at the beginning of February 2021 (Levy and Ailworth, Wall Street Journal, 2021).

Other groups that stormed the US Capitol Building were supporters of the QAnon movement, which was built around the theory that President Trump is leading a sacred operation against Satan-worshipping paedophiles in government, business, and the media (Wendling, BBC News, 2021). This conspiracy theory has somehow evolved from the *Pizzagate* theory and propagated Donald Trump as the genuine protector of the American values.

One reason for which QAnon became so well known to the public may be related to the fact that President Trump has previously validated the members of the movement saying about them that "I heard that these are people that love our country" and sharing QAnon related content on his social media accounts (Colvin, AP News, 2020). In a report released in 2019, the FBI Phoenix Field Office mentions that "these conspiracy theories will very likely emerge, spread, and evolve in the modern information marketplace, occasionally driving both groups and individual extremists to carry out criminal or violent acts."

To the end of this section, we would like to draw the limits that derived from our analysis. This part of the paper has focused on describing the facts associated to Donald Trump's mandate and the follow-up of the 2020 elections. We have not investigated the reasons for which people get to support conspiracy theories or join far-right movements. We believe that these two directions should constitute the analysis of a different research. We aimed to display the changes occurred in the American society and the political system to understand which of them have directly or indirectly contributed to a democratic erosion.

One of the main conclusions of this section is that the documented interreference of a foreign actor in the 2016 elections constitutes a serious impediment for running free and open elections and this leads to a decrease in the quality of democracy. Secondly, the development of conspiracy theories and ultraconservative movements lead to increased divisions in the society, which not only affect the fundamental freedoms of the

individuals, but also the overall state of democracy. Lastly, the citizens' satisfaction with democracy should represent a key indicator for the political parties, who should further work in favour of developing the citizen's trust in the democratic institutions and actors and not their discontent with how politics works.

4. Conclusions and Recommendations

The first part of this paper was focused on understanding the democratic decline. For this, we have investigated the data available and presented the overview as it was measured by major research bodies (Freedom House, The Economist, Idea International and Centre for the Future of Democracy). We have started with looking at the citizens' dissatisfaction with democracy and understood that this indicator is closely linked to the events that caused an increase or a decrease in the satisfaction with democracy.

We observed the indicators that measure the state of democracy and we recognised that 2019/2020 was an all-time low compared to the initial years when these measurements were executed (starting from 1995 to 2006). By analysing the data and **trying to put** it into context, we reached to the conclusion that **democratic decline is mostly happening through the erosion of the democratic institutions caused by the political representatives** that have been freely elected in most cases.

This represents a troublesome conclusion to which we should pay more attention in the future. The control mechanisms and the checks and balances in a democracy may not be enough to counter the authoritarian inclinations of some governments. Situations such as the pandemic can represent first-rate opportunities for some political leaders to put at risk both the status of democracy and its quality. It is important in these cases to call for transparency, accountability and integrity in the decisions made.

Lastly, what happened in the US should be a signal that democracy is not immovable anywhere in the world. Be it external interferences or internal divisions, the quality of democracy can suffer on a long term when it is put at risk. The US case should also teach us that the biggest threats to a democracy come from within and when people feel unrepresented or ignored by the political class, they will find ways to manifest even violent ones.

Donald Trump has validated movements that were profoundly anti-democratic and this has given them leverage to be even more dynamic and outspoken at the national level. While their ideal president is no longer in office, it does not mean that the purpose of their attention has drifted apart. Most probably, the leadership void will be filled by some other political leader that will give voice to the members of the movements.

Given this, the US should focus on repairing the divisions between the citizens and help decrease the level of polarisation and hatred. The people need to feel that they can contribute equally to the same goal and work towards rebuilding trust and cooperation. The Global Democracy Summit announced by president Biden should start with working on improving the quality and status of democracy in the US. If this will be successful, the world will have an example that one country can be on the verge of democratic decline and still recover from it. The European Union's *Conference on the Future of Europe* if done right can also inspire the political sphere in the US and can be a constructive way to legitimately reengage the citizens.

Building and rebuilding democracy takes time and this can be hard as citizens always want to see concrete results in a short amount of time. But not acting on safeguarding democracy is a decision that no political leader should ever make. As a recent report (World Economic Forum, 2021) points out the collapse of an established

democracy is a global risk for 2021 and not only. The fact that "a legal rather than a violent coup erodes the system, with knock-on effects on other democratic systems" is a worrisome fact that should be acknowledged by all political leaders and a signal for responsible, ethical and honest political leadership that should be sent at a global level.

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SOFT POWER AND ITS IMPACT ON FOREIGN POLICY DECISIONS

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Abstract. *Discussions about the use of soft power and its influence on foreign affairs have developed a lot in recent years, especially due to the great complexity characterizing the international scene and relations. In this context we can all agree on the importance of finding the best solutions to the present problems and hybrid threats at the international level. Using soft power in order to „build bridges" between international actors may represent one of the most efficient ways in order to find those solutions to the common problems. Therefore, in the present paper we will try to analyze and establish what is the impact soft power can have when it comes to making a foreign policy decision.*

Keywords: *soft power, decision-making, foreign affairs, multilevel guvernance, non-state actors.*

1. Aspects of the foreign policy decision-making process

It is never easy to define foreign policy. Like I always said, there are a lot of questions, problems and theories that apply to this area and it makes it difficult to give a clear and unique definition of what foreign policy represents (Petraşca, 2020: 143-144). But what is important to emphasize, instead, is how foreign policy decisions are made and what are the factors that influence this process. Like Joe D. Hagan argues in one of his papers, decision-making and decision-makers are an important part of the evolution of international relations (Hagan, 2001: 5-6).

Decision-making processes and decision-makers have often been placed at the basis of the distinction between the domestic and the foreign policy of a state. But in a context in which we talk more and more about the concept of governance in international relations, especially multi-level governance, and about the increasing role of various actors in the decision-making process, it is obvious that domestic and foreign policies often overlap or interact. Starting from Robert Putnam's theory, "the two-level games theory", the answer to the question "do domestic policies really determine international relations and *vice versa*?" is very clear: yes, sometimes the two determine each other (Putnam, 1988: 427). Putnam argues that staying at the table of the international negotiations, decision-makers are constrained on the one hand by the pressure of internal factors and the favorable policies they claim, and on the other hand by the need to minimize as much as possible the negative effects that these domestic demands could have on the international developments (Putnam, 1988: 434). The recent change of perspective in international relations presents a new image of the state, whose position is no longer that of a unitary actor placed at the forefront or at the crossroads of the two policy areas, namely the domestic and the foreign one, but it emphasizes more and more the networks

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developed between individuals and non-governmental organizations, the transnational and transgovernmental societies etc.

In an age of technology and digitalization, like the one we live in today, and considering the recent emergence of concepts such as digital diplomacy, it is obvious that the mutual influence between foreign and domestic policies is a reality we cannot deny. Social media platforms have become real foreign policy tools and, just to give an example, from promoting elements of national culture to being considered part of the national cultures, or from promoting different ideas and values to even presenting negotiation strategies in the field of foreign policy, these platforms have become a real influencing factor in decision-making processes. In their study of "domestic" digital diplomacy and the Nuclear Agreement with Iran, Corneliu Bjora and Ilan Manor show us how a foreign policy objective can be followed by influencing the public opinion or, in turn, by influencing with the help of the public opinion, through a Twitter account, for example. Such a means involves three main activities: creating messages and calibrating arguments in order to maximize the public's interest in the policy you want to propose, listening to the feedback and counteracting opponents' arguments in real time, and last but not least, engaging in a dialogue leading to the formation of coalitions with those who support you and the formation of connections with those who oppose your policy (Bjola, Manor, 2018: 27). Through these steps, a state actor can build the internal support needed to implement a foreign policy or to defend a foreign policy decision.

From the diversification of the influencing factors in decision-making, of the actors involved or of the levels at which a decision-making process takes place, also derives the appearance of the alternative models for analyzing the foreign policy decision-making processes. If the traditional analyzes of the foreign policy decision-making usually use three classical models to describe this process, explaining the typology, factors, levels and actors involved, the more recent alternatives to these models reflect a more complex approach. The three main models are the following: The Rational Actor Model, The Bureaucratic Politics Model and The Organizational Process Model[1] and some of the alternative models identified in the specialty literature are the following: The Political Process Model and The Inter-Branch Politics Model[2], The Cybernetic Model, The Prospective Theory, The Poliheuristic Theory, The Multiple Streams Model and The Psychological Approaches (Ciot, 2014: 117-157), The Small Group Model, The Group-Sharing Model, The Knowledge Model, The Elite Theory, The Risk-taking Based on Overconfidence Model, The Cognitive Patterns Model, The Pluralist Model, The Foreign Policy Change Model, The Criminal Liability Exposure Model, The Diversionary Foreign Policy, The Multilevel Network Theory, The Actors' Participation Model, The Rubicon Theory of War Model and The Ethical Foreign Policy Model (Musta, Rus, 2020: 38-53). The details about all these models and about the characteristics that differentiate them can be consulted in the bibliographic sources that were cited for each of the examples.

But what we want to emphasize in this paper and what these new models show us is that analyzing the decision-making process from a more recent perspective of international relations, especially that of multi-level governance, it should be noted, first of all, that in this context decision-making has extended far beyond the main representative institutions and that there are many other elements that can make a

[1] "5 Key Approaches to Foreign Policy Analyses", Norwich University Online, September 11, 2017; https://online.norwich.edu/academic-programs/resources/5-key-approaches-to-foreign-policy-analysis, accessed August 20, 2021.

[2] *Ibidem*.

difference in foreign policy decisions, especially psychological elements. This creates much more room for the influence soft power approaches can have in international relations. With the multiplication of the public/private networks, from the lowest to the highest level, but also with the diffusion of the formal authority from the state, as a central actor, to other supranational and subnational institutions, decision-making has developed a more collective character and, in some way, a less formal one. This may lead to a more frequent use of "smart" and less "traditional" tools and strategies for developing and influencing foreign policies.

Like I said before, the many internal and external factors that can influence a foreign policy decision-making allow state and non-state actors to play an important role on the international scene using not just their military or economic power, but also other means of persuasion. For example, at the domestic level we can identify some influencing factors like the public opinion, the social groups - which can set the connection between state and society, the governmental organization - meaning democratic or authoritarian states and the leaders - with their personalities and values system etc. (Partowazar, Jawan, Soltani, 2014: 349-351), while the external influential factors in a foreign policy decision-making could be the military strength of a state - according to the realists, the economic wealth and interconnections between states - according to liberalism, and the international norms - according to the constructivists (Partowazar, Jawan, Soltani, 2014: 347-349). All these structures have a very important impact on foreign policy, even if we talk about "political, cultural, psychological, economic, national, regional, global, technological, ideational, cognitive and normative" structures, but especially the cultural ones were shown to have a high influence on the way institutions work, the policymaking being different from one culture to another[3].

Many of the actors involved in foreign policy decision-making, can often find themselves in a situation where, contrary to the realists' perspective, they cannot use their military power, or the so-called hard power, to directly influence these decisions. There is the possibility that these actors, by their nature, do not develop this type of power and even if they do, it is an insufficient or even inefficient principle (Petraşca, 2020: 150). Moreover, we must also consider the presence of non-state actors in foreign policies and international relations, which, if we do not refer to the armed non-state groups, significantly excludes the possibility of exercising hard power. Thus, in order to gain a relevant position on the international scene, they can use other "smart" means and strategies, which should actually reflect what in the specialty literature is called soft power.

2. **Soft power and its role in foreign policy decision-making**

Considering the impact that the end of the Cold War and the intensification of the globalization phenomenon had on the new global order and also given the importance of the new technologies and communication systems, which have definitely opened up access to information for almost any individual, it is clear that we are witnessing an international diffusion of power (Petraşca, 2020: 150). As a result, states have been forced to think about how to make others wanting the same things they are pursuing themselves without making exclusive use of economic or military power, without using coercion, but determining them to follow their example, to appreciate their values and principles or,

[3] Sharifullah Dorani, "The Foreign Policy Decision Making Approaches and their Applications", August 4, 2019, https://cesran.org/the-foreign-policy-decision-making-approaches-and-their-applications.html, accessed August 20, 2021.

more precisely, to aspire to the same level of prosperity (Nye, 2004: 5). This translates into the concept of soft power, which, according to Vasif Huseynov, "concepualizes the instruments and policies that states employ to wield power over the minds and feelings of foreign publics" (Huseynov, 2016: 73). But what is important to mention, as Joseph Nye argues himself, is the fact that "most of a country's soft power comes of its civil society rather than from its government" (Nye, 2017: 2). This is why we tried to emphasize that the changing nature of the international relations, the emergence of a large variety of actors, even non-state actors, on the international scene and their transformation in influential factors determined the appearance of new decision-making models in foreign policy where concepts like soft power can have a major influence.

The soft power concept has become an increasingly used component in analyzes or even in foreign policy strategies. Moreover, talking about strategies, in recent years the soft power concept was "completed" by another one: smart power; it means "the succesful combination of hard and soft power resources into effective strategy" (Nye, 2017: 2). Over the last few years many states or international entities have begun to invest more resources in soft or smart power strategies. For example, in 2017 the UK government announced a £700 million Soft Power Fund; the European Union represents another example of making a great use of soft power in its external relations, while China has a large global network of Confucius Institutes (Doeser, Nisbett, 2017: 14).

Actually, there is an annual Portland Report presenting a global ranking of the countries that make the best use of soft power in their foreign policies and the last one, published in 2019, reflects the following top 10: the French Republic, the United Kingdom of Great Britain and Northern Ireland, the Federal Republic of Germany, the Kingdom of Sweden, the United States of America, the Swiss Confederation, Canada, Japan, the Commonwealth of Australia, and the Kingdom of the Netherlands[4]. Some of these states have long adopted this kind of approach in their foreign policies, or even put the basis for this soft power concept and other associated concepts, such as cultural diplomacy, but we will discuss such history examples more precisely in the next part of the paper.

Even if we have the certainty that more and more states are trying to enhance the role of soft or smart power in their foreign policies, it is important for us to understand how exactly can foreign policymakers respond to the evolving international challenges using their soft power strategies and instruments. It is known that with all the efforts made so far, the world today is marked by a high degree of instability and unpredictability. Unfortunately, there are a few examples such as mass migration, climate change, terrorism or infectious diseases, that are directly affecting us right now. We can see this in the case of the COVID-19 pandemic, in the case of the extreme meteorological phenomena that the European continent is currently facing because of the major climate changes and which requires the support and intervention of several state or non-state partners, or, to some extent, we can also see it in the case of the situation in Afghanistan. These are situations in which smart power approaches and strategies could be the key in order to "build the global coalitions needed to tackle these challenges and ensuring respect for the rules-based international system in general. Prevention – which the persuasive force of soft power

[4] "The Soft Power 30. A Global Ranking of Soft Power 2019", Portland, USC Center on Public Diplomacy, pp. 9-10; https://softpower30.com/wp-content/uploads/2019/10/The-Soft-Power-30-Report-2019-1.pdf, accessed August 21, 2021.

does particularly well – is usually better than cure"[5]. As we have pointed out before, extending your partnerships, building "friendships" and understanding your counterparts on the international scene can help enhancing your diplomatic ties, sharing the "know-how" of a country, improving commercial ties and the cooperation on shared areas of interest, strengthening institutions and civil society, stimulating economic prosperity and even developing your national security[6].

This attempt by international actors to emphasize the importance of using soft power in their foreign policies is justified by the interest in "maximizing their reputation, share their values through language, cultural heritage, sports, political pluralism and economic prosperity"[7] or "addressing domestic policy issues, such as those related to social cohesion or promoting the causes of the specific civil society groups"[8]. But what are the most important elements at the basis of a good soft power strategy and how can the results of such a strategy be evaluated? Because, as many specialists claim, it was never easy to determine "whether money is spent and policy designed to influence foreign politicians, ordinary citizens living overseas, people or countries that are allies, or those that are perceived as a possible threat. In almost all cases the target audience for Soft Power efforts is undefined or unidentifiable" (Doeser, Nisbett, 2017: 17), just like "there is no consensus on what Soft Power and Cultural Diplomacy are for and what they actually seek to achieve. Policy in this area can be framed as skirmishes in a 'battle for hearts and minds', a means of gaining competitive advantage, a way to build national identity, to prevent wars or tackle unilateral or multilateral policy challenges like climate change" (Doeser, Nisbett, 2017: 17).

I think that soft power strategies encompass all these elements. First of all, it is important that those strategies address both the elite leaders in a state and also the public opinion, especially when it comes to long-term positive results (Petraşca, 2020: 152). An example in this regard, which we have also mentioned in previous papers, could be the failure of the relation between USA and Iran. Beyond the good relation developed between US and the Iranian Shah and government in the '70s, the Iranian civil society was not convinced and its anti-Americanism was one of the causes of the 1979 anti-Shah Revolution (Patalakh, 2016: 94). Going back to the subject of digital diplomacy and the use of social media platforms, now it is even simpler and more effective to use these platforms in order to convey the messages that are intended to reach the target audience. Secondly, when developing a soft power strategy, one have to consider the regional peculiarities and that "a soft power strategy, which is successful in one country, can misfire in a region that differs in its internal conditions. In other words, the reason for a strategy's failure or success can lie in the recipient's specificities rather than the features of the strategy itself" (Patalakh, 2016: 90).

Although measuring the effectiveness and the immediate results produced by a soft power strategy is quite difficult, there are still some aspects that need to be mentioned

[5] John Dubber and Alasdair Donaldson, "How soft power can help meet international challenges", British Council, September 2015; https://www.britishcouncil.org/research-policy-insight/insight-articles/how-soft-power-can-help-meet-international-challenges accessed August 21, 2021.

[6] *Ibidem.*

[7] J.P. Singh and Stuart MacDonald, "Soft Power Today. Measuring the Influences and Effects", British Council, the University of Edinburgh, p. 8; https://www.britishcouncil.org/sites/default/files/3418_bc_edinburgh_university_soft_power_report_03b.pdf, accessed August 22, 2021.

[8] *Ibidem.*

in such an evaluation. First of all, it is important to know "how well soft power activities establish credibility and generate trust in audiences and how well the activities of soft power actors are perceived"[9]. Secondly, it is "necessary to identify how the preferences and choices made by the targets of soft power have been affected"[10]. All these answers must be reflected in tangible benefits for the actor exercising its soft power. These benefits could come in different fields like politics, economy and culture, so we could evaluate the efficiency of a soft power strategy by analyzing the number of international students and tourists in a country, of foreign investments in a country, or by analyzing the voting patterns at the United Nations, for example[11].

Going back to the analysis of decision-making in foreign policy, we have to reiterate that any decision made on the basis of soft power involves the interconnection of a multitude of factors (internal and external, as well), actors (individual, national or international actors, non-state actors etc.) and instruments (domestic institutions, traditions, values, culture etc.). The goals to be achieved through soft power, like building a good reputation on the international scene, are projected on long periods of time, which means the decisions that stay behind them can be very well described by a Rational Actor Model. Aiming a long-time objective can give the decision-makers enough time to act rational and to prepare its strategy: to be informed about the status quo, to establish the proper goal to be achieved, to develop a solid knowledge of "cause and effect relationships that is relevant for assessing the expected consequences of alternative courses of actions" (Partowazar, Jawan, Soltani, 2014: 345).

In the same time, such cooperation objectives usually involve a large number of actors, characterized by a great diversity. Most of the time these actors have different interests, goals, viewpoints or individual political ideologies, and that is why making decisions in this framework requires some standard processes and procedures (as from the perspective of Organizational Process Model)[12] but also some malleability and openness to personal views (as from the perspective of the Political Process)[13] and combined efforts and cohesiveness towards achieving collective goals (as from the Inter-Branch Politics Model)[14].

There are also the other alternative decision-making models, presented above, which approach this process from a more recent perspective on international relations and which can also emphasize the importance of soft power and its capacity to influence foreign policy decisions. More specifically, it is about the psychological approaches models, where factors like group thinking or individuals' actual beliefs and perceptions are very relevant in making a decision (Ciot, 2012: 208). Because these factors may, in fact, be reflected and determined by soft power resources or instruments like culture, traditions, domestic institutions, economic models, politics, policies etc.

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[9] J.P. Singh and Stuart MacDonald, "Soft Power Today. Measuring the Influences and Effects", British Council, the University of Edinburgh, p. 25; https://www.britishcouncil.org/sites/default/files/3418_bc_edinburgh_university_soft_power_report_03b.pdf , accessed August 22, 2021.

[10] *Ibidem*.

[11] *Ibidem*, p. 26.

[12] "5 Key Approaches to Foreign Policy Analyses", Norwich University Online, September 11, 2017; https://online.norwich.edu/academic-programs/resources/5-key-approaches-to-foreign-policy-analysis, accessed August 20, 2021.

[13] *Ibidem.*

[14] *Ibidem.*

Taking into account the complexity of the soft power concept, the number of related topics it may include, or the diversity of the actors involved, its influence on the decision-making process can also be described by the Pluralist Model, which is based on a dispersion of power in society (Musta, Rus, 2020: 44); by the Foreign Policy Change Model, which involves the redirection of a state's foreign policy caused by factors such as public opinion or other emerging actors (Musta, Rus, 2020: 45); by the Multilevel Network Theory or the Actors' Participation Model; but also by the Ethical Foreign Policy, if we refer to soft power strategies aimed at protecting the environment or the universal cultural heritage, for example, especially when it comes to support the less developed states.

The soft power is undoubtedly an important dimension of a state's foreign policy. An effective use of soft power can have a high contribution on a country's future. It can be very useful, from promoting a set of values, to make your voice count on the international scene and, on a long term, to influence decisions in order to follow your national interests. As Henry Kissinger once mentioned, "international order depends not only on the balance of hard power, but also on perceptions of legitimacy, which depends crucially on soft power, and it becomes more important than ever in an information age"[15]. Although foreign policy or international relations analyzes based on concepts like soft or smart power are relatively recent, some states, which are still at the top of the rankings regarding the use of such tools, have long understood their importance. This is what history has taught us and therefore, in the next part of the paper, we will try to give some short examples in this regard.

3. **The importance of soft power in foreign policies: an example in the history of the French Republic**

The soft power concept certainly has numerous examples in the world history and I would like to emphasize one of those aspects also because I consider that "*Historia Magistra Vitae*" / "History is the teacher of life", as Cicero said. The example I will present refers to the French Republic and its former president, Charles de Gaulle. I chose the French Republic because, as we could see, in the last report "The Soft Power 30", published by Portland in 2019, the French Republic occupied the first position at the global level, in terms of using the soft power in its foreign policy. Moreover, we cannot overlook the fact that France stayed at the modern origins of what we define today as cultural diplomacy or even soft power.

Charles de Gaulle, president of the French Republic between 1958 and 1969, and one of the fundamental personalities in the contemporary history, even if he was, first of all, a prestigious and respected military officer, had the wisdom to understand that in the upcoming world dynamic the soft power could be the way to increase the prestige and the role of his country. After his returning to power on May 13, 1958, following the dramatic events in Algeria[16], Charles de Gaulle understood that in a world where the decolonization process was becoming a reality, the separation was the only and the best solution, even if it not easy to manage such a considerable change at the level of both state and society. It is

[15] Joseph S. Nye Jr.,"American Soft Power After Trump", in „The Soft Power 30. A Global Ranking of Soft Power 2019", Portland, USC Center on Public Diplomacy, p. 49; https://softpower30.com/wp-content/uploads/2019/10/The-Soft-Power-30-Report-2019-1.pdf, accessed August 22, 2021.

[16] Since 1830, France was occupying the Algerian land as a colony; in 1954 the Algerian locals started a war of independence, which was achieved in 1962 following the Evian Agreements.

very interesting to see and study the actions of the president Charles de Gaulle, who chooses this policy of separation having only the "support of his words". That was one of the events when soft power became a reality, a reality also enhanced by the replacement of a colonial state policy with a new one especially based on the Hexagon's humanist and cultural heritage, a universal one.

Charles de Gaulle realized the power of the new media instruments and those were the methods of his action. For example, in a televised press conference he declared: "In the Second World War I was winning with the microphone. Now I am winning with the television"[17]. The press conferences were very relevant in building Charles de Gaulle's strategy, in order to convince the public opinion, first of all, of the necessity to end the Algerian war and to consent to the probable and after all inevitable independence and sovereignty of the new state.

France was choosing, as I have already mentioned before, the way of replacing its previous role as a colonial state and becoming a promoter of her historical values: "Liberté! Egalité! Fraternité!". Another relevant example illustrating this strategy of a new France based on soft power was the address of president Charles de Gaulle in Pnom Penh, capital of the Kingdom of Cambodia, on September 1, 1966. That speech was delivered in front of almost one hundred thousand persons and the main ideas promoted were those related to the common links between France and Cambodia, like their historic victories and defeats, their exemplary art and culture, their territories' foreign ambitions, etc.[18]. The French president also spoke about the neutrality policies of Cambodia and about the presence and assistance of "the French culture and language" in the territory[19]. In such a turbulent context of Asia, namely the Vietnam war, France positioned itself as a voice that preferred the possibility of excluding a military solution. The political agreement with Cambodia was the only way to conciliate the conflict in progress. Charles de Gaulle was giving the example of the Algerian conflict where France was involved and of its capacity to "deliberately putting an end to a sterile fighting on a ground where its forces unquestionably dominated, on a ground France administered directly for 130 years and where more than a million of its children were settled. But as this fighting engaged neither its happiness nor its independence and in the times we live in right now they could result in nothing but loss, hatred and destruction, France wanted to and knew how to get out of it without suffering but on the contrary, by increasing its prestige, its power and its prosperity"[20].

We have to consider that such a political context together with the public behavior and determination of the president Charles de Gaulle represents a good oportunity to reflect on the acceptance of change, on the power to adapt and to understand that even with painful sacrifices the enhancement of a country and of its economical, cultural and political values has to continue with the same purpose: a relevant presence and a positive image in the world politics. As we could see, soft power approaches can make a difference in these situations.

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[17] Eve Bonnivard, "Allocution du général de Gaulle du 16 septembre 1959 en faveur de l'autodétermination", *fresques.ina.fr*, https://fresques.ina.fr/independances/fiche-media/Indepe00232/allocution-du-general-de-gaulle-du-16-septembre-1959-en-faveur-de-l-autodetermination.html, accessed August 21, 2021.

[18] Charles de Gaulle, "Discours de Phnom-Penh, 1er septembre 1966", https://www.charles-de-gaulle.org/wp-content/uploads/2017/03/Discours-de-Phnom-Penh.pdf, accessed August 22, 2021.

[19] *Ibidem.*

[20] *Ibidem.*

4. Conclusions

The results expected by a country that uses its soft power to promote its national interests do not come immediately, but they are achieved step by step. The international image of a country is very important doesn't matter the foreign policy objectives it aims, and a good international image is most of the time built on economic and technological developments, respect for rule of law, respect for human rights, openness to multiculturalism and diversity; in other words: prosperity, peace and stability. Soft power, especially through its cultural dimension, can contribute to obtain and then promote this "good international image", even in the cases of conflict zones. The words of a Pakistani musician returning from a tour in the USA, as part of a cultural exchange program, fully confirm the above: "back home, and everywhere, art is like water for the fire of fundamentalism" (Ryan, 2016: 32). "Mutual understanding amongs[21]. In the same time, the French example showed us that soft power, through the impact of some words, can be used even in order to obtain the support of your own citizens and civil society for a foreign policy decision.

A country that has built and consolidated its international image for a long period of time, proving that it has all the advantages of a good international partner and respects all the global values, becomes a predictable and a credible actor on the international scene. This can help it to achieve its main foreign policy goals, such as joining an international organization, or becoming an important regional actor and helping to the stabilization of its neighbourhood problems. Using soft power for building reputation can truly be a very useful mean, especially for the small countries, in order to achieve their foreign policy goals.

In this paper, we could see that an international context or a new world order is mainly based on the foreign policies of the states which interfere with other actors' actions. Foreign policy decisions usually reflect a state's power but today the importance of soft or smart power concepts has increased; international relations are influenced by soft power means. For example, through a good soft power instrument like cultural diplomacy, a country can attract foreign investments and develop social integration. In other words, "spiritual and intellectual capacities of a country, reflected in the performance of its institutions and policies, are namely the consequence of a nation's culture"[22].

As we could see, there are different models that can explain a foreign policy decision, but there are also different instruments that could model such a decision and soft power instruments have this potential.

[21] Hyungseok Kang, "Reframing Cultural Diplomacy: International Cultural Politics of Soft Power and the Creative Economy", King's College London, 2013, p. 9; http://culturaldiplomacy.org/academy/content/pdf/participant-papers/2011-08-loam/Reframing-Cultural-Diplomacy-International-Cultural-Politics-of-Soft-Power-and-the-Creative-Economy-Hyungseok-Kang.pdf, accessed August 22, 2021.

[22] Joseph S. Nye Jr.,"American Soft Power After Trump", in „The Soft Power 30. A Global Ranking of Soft Power 2019", Portland, USC Center on Public Diplomacy, p. 49; https://softpower30.com/wp-content/uploads/2019/10/The-Soft-Power-30-Report-2019-1.pdf, accessed August 22, 2021.

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THE ACCESSION NEGOTIATION CHAPTERS BETWEEN MONTENEGRO AND THE EUROPEAN UNION[1]

Emilia Nicoleta SCHIOP*

Abstract. *The aim of the paper is to analyze the progress of the negotiations between these two entities. The objectives of the article are: to present the context of the negotiations, to show the institutions which are involved in the process, to present the debating groups, the lobby and a case from the Ministry of Foreign Affairs and European Integration from Montenegro, to show the current state of these negotiations (to analyze the most relevant chapters from the process from the European reports), to evaluate.*

The literature review is related to the significance of the paper explained in the previous work (about candidate countries' negotiations with the EU, in the waves of enlargement starting 1973). Montenegro does not meet the conditions for membership of the EU. All negotiation chapters are not closed. To resolve this issue, the EU works towards revealing the mandatory requirements related to the accession process, while the candidate country is striving to meet its membership conditions by creating the necessary institutions during the process. About the methodology, the paper starts with the theoretical part (from special sources). There are official documents of studying the international elements. This article is analyzing some of the domains from the European Commission reports on Montenegro from 2015 and 2018. I am transforming the content into position documents. They will have the following structure after the analysis: introduction (presentation of the issue, the circumstances), points of agreement, points of disagreement and conclusions (document analysis). The paper has chosen to analyze the European reports related to the accession negotiation, because the information is objective and it shows both sides (EU and Montenegro throw agreement and disagreement points). By using a case from a ministry from Montenegro and lobby groups leads to highlight the Montenegrin point of view.

Keywords: *Turkey, accession negotiations, enlargement, progress.*

1. The introduction and the general presentation

The article shows the stage of the agreements between Montenegro and the European Union. Before the challenges that the European Union is facing, widening this geopolitical structure to the East was a priority, but this goal is postponed.

Brexit determines more cohesion between the member states and the postponed enlargement can be realized in the future.

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The states from the Western Balkans are trying to be close to the European Union to speed up the economic reconstruction, to improve mutual relations and to strengthen the democratic system in the public administration.

The economy from the Western Balkans could influence the geopolitics of the world. It is important the understanding of the last changes in the economy of the Balkan countries, that they could influence decision-makers from the neighborhood.

Firstly, the paper shows the history of negotiations within the European negotiation process, and other related implications (from general sources, elements from more domains). The proximities and distances between the two entities are highlighted.

Montenegro is located in the south-west of the Balkan Peninsula, having an area of 13,812 kilometers square, capital is Podgorica (ex Titograd), the landscape consists mostly of forested mountains. The subsoil is rich in bauxite, the main industry is food. This is in the capital, in Cetinje, in Kotor, and Mojkovac. There is a steel industry in Nikšić and metalworking at Podgorica and Cetinje, repair shipyards at Kotor, the textile industry in the capital city and related industries at Mojkovac. The rural economy is based on vines and plants in the western Mediterranean, but it is also based on livestock. Cereals are grown in Zeta depression. (Macrea, 1964).

Related to conceptualization, the connotations of terms have proven to be loaded with negative political motivations for legitimacy and justification of the powers that have invaded this space. The evolution of concepts of Balkan, Balkanism, Balkanization supported the West's instigators to form a picture of the disadvatages of the Balkan society, becoming a mark of disgrace associated with a particular circumstance of the history of the Balkan space (Leca, 2014). The concept of the Balkans has an autonomous textual existence that multiplies its sense and significance in the West (Leca, 2014). This influenced the eastern states during a time in its economy.

The Balkans become an arbitrary construct and the term of Balkanism is a Eurocentric discourse of the inferiority of a certain part of Europe. The Western Balkan speeches were different from those of the real Balkans, which can be defined by a profound historical evolution. (Leca, 2014).

The enlargement for the Central and Eastern Europe and the Balkans was different: in the first half of the 1990's the interactions between these two entities were minimal. After the dissolution of the Yugoslav Federation until the Bosnian crisis from 1995, the EU wanted to keep problems at distance. Europe acted in the area only in the domains of crisis management and humanitarian aid. The EU was involved in the early stages of the Yugoslav crisis, especially for Albania, which was in extreme poverty. The most important assistance programs were Phare and Obnova. The Phare program was limited to conflict management.

The next phase was to give incentives for countries that progressed sufficiently down the path of political and economic reforms by giving them the chance to negotiate European agreements with the EU (Jano, 2008).

These two entities (Montenegro and the European Union) involved in negotiations want different things at different times. Montenegro wants the accession, but it does not have yet all the instruments and it does not respect all the values that the UE requires. In this way, the theoretical framework shows the context of the negotiations and the case study consist of document analysis (the reports from the European Commission).

The EU is based on the values which are listed in article 2 of the Treaty on European Union: respect for human dignity, freedom, democracy, equality, rule of law, respect for human rights, including the rights of persons belonging to minorities. In 1957

the European Union began as the European Economic Community and the European Atomic Energy Community with six members: Belgium, France, Germany, Italy, Luxemburg, and the Netherlands. Six waves of enlargement rounds were from 1973 that has increased the number of member states: Denmark, Ireland, United Kingdom. In 1981 Greece was integrated. In 1986 Spain, Portugal and Austria, Finland and Sweden (1995) became full members (The European Commission, w.y).

N. Piers Ludlow explains that the enlargement was never part of the initial European project when it began in the 1950s, but became one of the EU's most important and successful policies. The first enlargement of 1973 welcomed other Western European democracies (the UK, Ireland, and Denmark), with no long-term strategy for enlargement. Only with the Greek accession in 1981, the strategy of democratization enter into the enlargement process and, as Eirini Karamouzi demonstrates, from that point onward the Community sought to encourage and entrench democratic transitions among its neighbors, with membership being their ultimate reward. However, the democratization was linked to the security considerations in the geopolitical context of the Cold War. Another idea was described by Cristina Blanco Sío-López: the Community developed and institutionalized its enlargement strategy through the Spanish accession in 1986 to shape the eastern enlargement of 2004 and post-communist states in Central and Eastern Europe, meanwhile, sought to assimilate to the Western European model, as Anne Applebaum explains, by adopting Community membership as an overriding policy objective (Durand-Ochoa, 2013).

In 1993 (June) the European Council from Copenhagen approved the EU enlargement in the Eastern countries and formulated the conditions for them.

The European Council in Cannes in June 1995 adopted the White paper. This ensures the preparation of Central and Eastern European countries for the single market. In Madrid (December 1995) it was decided that six months after the intergovernmental conference in 1996, conditions should be created for the integration of the states. In June 1996 Florence adopted a calendar for negotiations with Central and Eastern European countries. At the Dublin meeting (December 1996) the pre-accession strategy was strengthened. The detailed analysis of the Commission's opinion was adopted in Amsterdam in June 1997. Agenda 2000 was published in December 1997 in Luxembourg. It contained the future of EU policies, the enlargement of the Union and the financial options until 2006 (The European Commission, 2007).

In June 2000 (in Feira) it was decided that countries that are part of the stabilization and association process are considered potential candidate countries for the European Union (The European Commission, 2014).

In June 2005 in Belgrade Serbia and Montenegro parliament adopted a resolution for the EU accession of the Serbian state. The resolution was adopted at the initiative of the integration committee of the parliament. There were 59 votes for from Serbia and 23 from Montenegro (Srpska Vlada, 2005). In May 2006 these negotiations frozen because of the lack of cooperation between Serbia and the International Criminal Tribunal for the Former Yugoslavia, beeing resumed after the cooperation with the tribunal (The European Commission, 2014).

The EU granted candidate status to the Republic of North Macedonia in November 2005, to Montenegro in 2010, to Serbia in 2012, to Albania in 2013 and Bosnia and Herzegovina is potential candidate state (The European Parliament, 2014).

The time is not only ripe, but pressing for the EU and the states from the

Western Balkans to recalibrate and reinforce the current pre-accession strategy. Trade policy should be moved beyond existing free-trade commitments for all the Western Balkans. Eurozone doctrine should be adapted to realities and rather than regarding the use of the euro by Montenegro and Kosovo as an unfortunate turn of events, the costs and benefits of unilateral adoption of the euro by not-yet member states of the region should be more openly appraised, and the option to "euroize" could be recognized as a possibility. It is good that the EU has moved at the declaratory level towards visa liberalization, which means scrapping visas rather than just an option for facilitation measures (Emerson, 2008).

Montenegro is a member state of the United Nations, it is implied in the World Trade Organization, in the Organisation for Security and Cooperation in Europe, in the Council of Europe, in the Central European Free Trade Agreement and founder of the Mediterranean Union. It is a member of the North Atlantic Treaty Organization since 2017 (on the second of December 2015 Montenegro received a formal invitation to join NATO).

Unfortunately, Montenegro is part of crises. For example, in 2015 the president, who was in that period the prime minister, Milo Đukanović, was in danger to be killed by the Russian nationalists. Milo Đukanović did efforts for the UE and the NATO (Komnenic, 2016).

The European Union has approved the candidate status for North Macedonia in November 2005, Montenegro in 2010, Serbia in 2012, Albania in 2013, Bosnia and Herzegovina is a potential candidate country (The European Parliament, 2017). During the enlargement policy, preferred over liberalization is modified not only within a state but also within a sector. Liberalization with multidimensional characterization is a reason to adopt other simplified methods by a national governor who is more competitive (Radu Dan Ganga, 2016).

Firstly, the paper shown the history of negotiations within the European negotiation process, and other related implications (from general sources, elements from more domains). The proximities and distances between the two entities are highlighted.

For better understanding, the practical part is based on the analysis of the concrete actions that the Montenegrin institutions implemented or not different policies.

To solve the issue of not being integrated yet, the European Union works towards revealing the mandatory requirements related to the accession process, while the candidate country is striving to meet their membership conditions by creating the necessary institutions during the process.

In this regard, looking at the report published by the European Commission on the negotiation chapters, the study can show whether or not the preparations made by this state are generally advanced. By detailing the most relevant chapters of the agreements, the areas are highlighted in which there is no need to continue the process and the areas under development.

This is a contemporary subject, the accession negotiations unfold for some states from the Western Balkans, including Montenegro. European Commission's official documents for this process are in the English language. There are also official documents from the Montenegrin government which indicates the progress and the institutions which are implied in the process. It is important to mention that the events in the neighborhood of the European Union left their mark. The theme is relevant, even though accession negotiations with Montenegro are no longer as effervescent as in the past. The European

Union wants its neighboring countries to be partners and to maintain good relations with them for good functioning.

2. Materials and methods - institutions, negotiation groups, lobby, a case from the Ministry of Foreign Affairs and European Integration and negotiation chapters

The fall of the communist regime in Eastern Europe was accompanied by severe ethno-national tensions in the region (Verdery, 1992). However, despite the crises, communities in the Balkans have maintained their values.

Trade policy should be moved beyond existing free-trade commitments for all the Western Balkans and Turkey for entering the Customs union of the EU and the eurozone doctrine should be adapted to realities and rather than regarding the use of the euro by Montenegro and Kosovo as an unfortunate turn of events, the costs and benefits of unilateral adoption of the euro by not-yet member states of the region should be more openly appraised, and the option to "euroise" recognized as a possibility (Emerson, 2008).

By using a case from a ministry and lobby groups leads to highlight the Montenegrin point of view.

The Montenegrin state has applied for membership in December 2008, more than two years after its declaration of independence. The country received the candidate status in December 2010 and the accession negotiations were opened in June 2012 (The European Parliament, 2017).

The process of Montenegro's negotiations with the European Union has been specific and transparent in comparison to the previous ones, the following three important phenomena can be recognized as having contributed to transparency:

- decisions on chapters related to the fight against corruption and organized crime with the role of the rule of law (from the European Commission report),
- chapters 23 and 24 – for example, judiciary and fundamental rights (from the European Commission report),
- peer review missions.

The experience from 2015 shows that the coordination of the process has been fully taken over by the Rule of Law Council and working groups do not receive official information about the conclusions of this body. The secretariat of the group for negotiations on accession claimed that the Council's sittings are closed to the public, although this is not specified in the decision on the establishment of this content. Furthermore, press releases from this body's meetings contain only approximate and descriptive assessments of the type of negotiations, without any conclusions or specific responsibilities for ministries or administrative organs.

Although formally, the working group can propose a topic for discussion at a meeting of the Council, this has not yet happened in the sessions of the working group, which have been reserved only for technical barriers to reporting. Also, there are no non-governmental organizations' representatives from the working groups and specific information relevant to the work of the Council cannot even be obtained by formal request, something which was attempted repeatedly by the Alternative Institute. This gives rise to claims that access to information is not provided in a general manner and that the position of non-governmental organizations' representatives in the working groups is unequal.

Inadequate exchanging of information between the Rule of Law Council, the two of groups and the exclusive focus of discussions on formal aspects of the process have led

to the role of the groups being marginalized and reduced to the technical monitoring of measures and reporting. Coordination of the process has been moved to the higher level of ministers and heads of administrative bodies, whose meetings are closed to the public, while their conclusions are not even available to the working group, which implements the measures.

The connection of institutions can be shown as: the Collegium for negotiations – the state – the delegation – the Rule of Law Council - a group for negotiations – the working groups (Marović, 2005).

According to lobby, in the Western Balkans are young associations with an average age of only 11 years in Montenegro, 15 years in the Republic of North Macedonia and 19 years in Serbia. The interest representation is an important activity of the associations. It is an activity to which they devote an average around 40% of their time. Business groups are involved in lobbying on a larger scale in comparison with other types of associations. Interest groups are most active in the domains of human rights, education, and research, but also in social welfare or social security, local and regional development and employment policy. Trade unions and business associations are active in a larger number of policy areas than other types of the lobby (Cekik, 2015).

Taking into account a case from the Ministry of Foreign Affairs and European Integration, the article shows the important progress taken by Aleksandar Andrija Pejović, the state secretary and the chief negotiator for Montenegro's accession to the EU. In 2016 Montenegro marked the tenth celebration of the country's independence and the fourth year of the start of the accession negotiations. This state achieved results and progress made in the EU accession process. In 2015 (June) in three intergovernmental conferences there were opened negotiations on six acquis chapters (negotiation between Aleksandar Andrija Pejović and his team from the candidate country and EU): chapter nine – financial services, chapter 12 – food safety, veterinary and phytosanitary policy, chapter 13 – fisheries, chapter 14 – transport policy, chapter 15 – energy and chapter 21 – trans-European networks. In 2016 the country entered the fifth year of the negotiation process with 24 opened chapters, two of which have been provisionally closed (Ministarstvo Vanjskih Poslova, 2016).

The Ministry of Foreign Affairs and European Integration made signs of progress in the control and expertise in terms of responsible institutions and personnel. Otherwise, the signs of progress with negotiation chapters would not had been at this level.

According to **negotiation chapters,** in this section the paper analyzes some of the negotiation chapters from the European Commission reports on Montenegro from 2015 and 2018. The methodology consists of the document analysis. The information shows the perspective for the accession negotiation, which indicates objectively the level of development in the selected domains (most relevant fields). The European perspective is similar to the Montenegrin perspective from the Montenegrin government in the same areas (through the Ministry of Foreign Affairs and European Integration). In this article the content from the reports of the European Commission are transformed into position documents. The information in this paper is interpreted from the descriptions used in reports. They are having the following structure after the analyzation: introduction (presentation of the issue, the circumstances), points of agreement, points of disagreement and conclusions.

In the chapter: company law: 2015: the EU has common rules on the formation, registration and disclosure requirements of a company, with complementary rules for accounting and financial reporting and statutory audit.

Points of agreement are important to be mentioned. National legislation on company law is in line with the acquis. The work on legislative alignment continues, especially on transparency and takeover bids. Montenegro is developing an online electronic company registration to facilitate its business environment. There was progress on corporate accounting and auditing through the signature in May 2015 of the contract under the World Bank project for the setting up and operation of a public audit oversight body and a related system of quality assurance. The Montenegrin state is advancing with the law project that has to be closed to the most recent EU legislation in the field of accounting and auditing.

As **disagreements,** in the area of cross-border mergers, it could had been an alignment assured. The online electronic company registration was not fully operational. The results of the contract with the World Bank were not seen. The work with audit and accounting remains to be completed (The European Commission, 2015).

2018: as **agreement,** "good progress was made through adopting the law on audit and establishing a statutory audit oversight system."

As **disagreements,** there was a lack of alignment of the law on business organizations with the acquis. Also, the alignment with EU corporate accounting and statutory audit acquis was not complete. For this objective the necessary legislation was not adopted (The European Commission, 2018).

In the chapter: competition policy: 2015: as general principles, Montenegro has adopted the strategy acquis in October 2014 for five years (The European Commission, 2015). The EU rules are protecting free competition (anti-trust rules against restrictive agreements between companies and abuse of dominant position). Also, EU rules are trying to prevent governments from granting state aid which distorts competition.

As **points of agreement,** in the domain of antitrust and mergers, three bylaws regulating block exemptions were adopted by the government in December 2015. The Agency for the Protection of Competition has improved, particularly on antitrust policy.

As **points of disparity,** all secondary legislation about the law on the protection of competition has not been adopted. The first three years of implementation of European law have shown some shortcomings in procedures and penalties. The law on state aid control needed to be taken in the line with the acquis and with Montenegro's state aid commitment according to the Stabilisation and Association Agreement on procedural rules (The European Commission, 2015).

2018: for **agreements** the progress was registered, especially concerning the independence of the state aid authority (in February 2018 Montenegro adopted a law which serves as the legal basis to transfer the state aid authority into the Agency for Protection of Competition). Montenegro has a good level of preparation for the rules - antitrust and mergers.

It has to continue efforts for the functioning of the Agency for the Protection of Competition, for the functioning at all levels of the state aid authority and the effectiveness of its control at all levels and the transparency on all decisions (The European Commission, 2008).

In the chapter: financial services: 2015: the EU rules for ensuring fair competition and stability of financial institutions are in the fields of banking, insurance, supplementary pensions, investment services, and securities markets. "They include rules on authorization, operation, and supervision of these institutions."

From **things that were done,** it can be seen that on banks and financial conglomerates, in October 2014 the Central Bank passed a set of implementing decisions

relating to the law on consumer credit. On financial market infrastructure, the system of settlement cycles on the second business day was introduced in January 2015. Rules on registration of issuers of securities with the Securities and Exchange Commission were adopted. On securities markets and investment services, the Securities and Exchange Commission adopted secondary legislation implementing the law on investment funds and improving the way of doing business in the capital market.

From **things that were not done,** it can be seen that in November 2015 amendments to the decision on minimal standards for the management of credit risk in banks were adopted. The Central Bank amended its decision on the method of calculation and disclosure of effective interest rates on loans and deposits to bring it into line with the EU acquis. On insurance and occupational pensions, the law on bankruptcy and liquidation of insurance undertakings have not been adopted (The European Commission, 2015).

2018: good **progress** was made on legal alignment and in addressing the high level of non-performing loans, as it was recommended.

As **disagreements,** it has not adopted the acquis-compliant legislation on deposit protection and the reorganization and winding-up of credit institutions (The European Commission, 2018)

In the chapter: economic and monetary policy: 2015: ”EU rules requires the independence of the central banks. Member states coordinate their economic policies and are subject to fiscal, economic and financial surveillance.”

The progress has been made on monetary policy so that Montenegro is using euro. This fact was decided by the Montenegrin authorities under exceptional circumstances and it is fully distinct from membership in the euro area. In December the Central Bank adopted amendments to the decision on bank reserve requirements, decreasing the upper limit for bank reserves to be held in treasury bills issued by the government. On economic policy, in January the government adopted its first economic reform programe, covering the period 2015 - 2017. In 2014 numerical fiscal rules were introduced, which represent partial alignment with the directive on requirements for budgetary frameworks. The first-time application of these numerical fiscal rules for the 2015 budget was going to stress test the quality of public finances and budgetary planning. The implementation strategy of the 2010 methodology of the European system of accounts standards in public finance statistics, also a requirement of the directive, was adopted in April. In 2014 Montenegro submitted fiscal notifications for the first time.

The progress has not been done, because Montenegro does not have standard monetary policy tools at its disposal. This leaves fiscal policy as the main macroeconomic policy instrument. The further improvement of the authorities' capacity for the economic policy formulation and coordination was not finished. The adopted budget for 2015 has an excessive deficit above the 3% limit, partially due to the costs of the Bar-Boljare highway project. The fiscal notifications needed to be gradually aligned with the EU requirements (The European Commission, 2015).

2018: ”good **progress** was achieved through the adoption and ongoing implementation of an action plan for the acquis alignment on economic and monetary policy, and a medium-term fiscal consolidation strategy, in line with the 2016 report's recommendations.”

Montenegro has to continue the implementation of the action plan to be aligned with the acquis (The European Commission, 2018).

In the chapter: education and culture: 2015: The EU supports cooperation in education and culture by funding programs and through the open method of coordination.

Member states should also prevent discrimination and facilitate the education of children of EU migrant workers.

As **points of agreement** on education, training, and youth, it has done a new law on higher education, which was adopted in October 2014: it provides non-discriminatory access to education for EU and Montenegrin nationals and introduces stricter criteria on quality assurance, study programs and financing. An external evaluation report on higher education programs and labor market relevance carried out by the European University Association and it was adopted by the government in December 2015.

As **points of disagreement,** about students with disabilities, the law also includes the principle of affirmative action about enrolment and tuition fees. The application of the new law was not implemented. Montenegro has not revised and implement outcome-based curricula at all levels of education (The European Commission, 2015).

2018: "the good progress made on implementing the revised curricula based on learning outcomes, revised enrolment policies, and the introduction of practical learning must be maintained and ensured across all levels of education."

Also, **it must continue** efforts to increase pre-school participation rates, especially from disadvantaged backgrounds, to continue with curricular reform in primary and secondary education for basic and transversal skills and focus on learning outcomes (The European Commission, 2018).

In the chapter: consumer and health protection: 2015: the EU protects consumers about product safety and it also ensures high common standards for tobacco control, blood, tissues, cells and organs, patients' rights and communicable diseases.

Good **progress** was done in February 2015. Montenegro adopted the annual action plan to implement the 2012 - 2015 national consumer protection program. The consumer representation, which was launched by the Consumer Protection Centre in the first collective lawsuit increased to 300. Implementing legislation was adopted in the consumer protection law. The number of inspections (safety and non-safety) made by the Administration for Inspection Affairs has increased.

From **what was not done,** more public awareness of the banking ombudsman and for civil society organizations in the field of consumer protection needed to be improved. On non-safety issues, it needed more work on consumer education and information (The European Commission, 2015).

2018: some progress can be seen in the field of consumer protection about regulatory alignment, mostly addressing the recommendation made in the 2016 report.

This state **has to** complete the alignment of national legislation with the EU consumer protection acquis, to ensure further alignment with EU health protection acquis, mostly concerning tobacco control and patients' rights in cross-border healthcare, to adopt and start implementing the foreseen action on communicable diseases and on substances of human origin (The European Commission, 2018).

Results

In the chapter: company law: 2015: Montenegro is in the medium stage in the field of company law. This state progresses in legislative alignment (The European Commission, 2015).

2018: in comparison with 2015, Montenegro has reached a good level of preparation (The European Commission, 2018). It can be seen progress.

In the chapter: competition policy: 2015: Montenegro is in the medium stage in the field of company law. Nonetheless, state aid remains an issue of concern, especially

the notification and compatibility of new legislation and aid to large investment projects. The administrative capacity needs to be improved, both on antitrust and state aid. Montenegro did not complete the alignment of the state aid control law with the acquis on state aid procedural rules and did not ensured the operational independence of its state aid authority. The competition policy is a part of the economy, so the implementation is this field can also influence the economy. By analyzing this chapter, we can see the level of preparation for the rules of the free market, which is an important domain. The preparation for this level started before 2015 (The European Commission, 2015).

2018: it is moderately prepared (The European Commission, 2018). In comparison with 2015, little changes have been improved.

In the chapter: financial services: 2015: Montenegro is in the medium stage in the area of financial services. This state progresses in this field (The European Commission, 2015).

2018: Montenegro is moderately prepared in the area of financial services (The European Commission, 2018). In 2015 it was also in the medium stage.

In the chapter: economic and monetary policy: 2015: Montenegro was in a moderate phase in the area of economic and monetary policy: some effort was made on alignment with the acquis. Also, the public sector's special access to institutions with financial capacity has not been adjusted, only partially. Also, Montenegro should had adopted and it should had started implementing an action plan for alignment with the acquis (The European Commission, 2015).

2018: Montenegro remains moderately prepared in this area (The European Commission, 2018). There are no big changes since 2015.

In the chapter: education and culture: 2015: there was a good level of preparation in the chapter of education. Signs of progress were made in education; the national qualifications framework was referenced with the European Qualifications Framework. Montenegro has not finished the implementation with curricular reform in primary and secondary education to teach basic and transversal skills and focus on learning outcomes; also, it was important to improve teacher education and to revise enrolment policies for vocational and higher education (The European Commission, 2015).

2018: it is a good level of preparation in this chapter (The European Commission, 2018). Different issues were taken into consideration.

In the chapter: consumer and health protection: 2015: Montenegro was moderately prepared. Some progress was made in this area, but the substantial further alignment of legislation was needed to meet EU standards and quality on both consumer protection and public health. Montenegro should have done more for improving health promotion and prevention and achieve sustainable improvement in patient safety and the quality of healthcare (The European Commission, 2015).

2018: "progress on health protection with regard to the previous recommendations in this area and on consumer awareness has been limited." It is moderately prepared (The European Commission, 2018).

Discutions

The European Union wishes their neighboring countries to be partners and to maintain good relations with them for effective functioning. If the official discussions on potential integration would be suspended, then official relations with the Turkish state could be jeopardized, in particular because of the unstable situation in the Turkish, but also internationally.

The strategy must be followed by concrete steps for the implementation of commitments and the presentation of clear and tangible results. Montenegro should also step up cooperation with the European institutions and with its relevant bodies to take into consideration key recommendations and implement all human rights decisions in accordance with the recommendations.

Conclusions

As general conclusions about the future integration of Montenegro, it is seen that the most important negotiating chapters are in a medium stage, which means new efforts. Montenegro changed a part of its legislation to include the European acquis. This was the metamorphosis of the Montenegrin state in legislative terms with immediate effects. Besides the fact that Montenegro is not advanced from this point if view, it faces new obstacles in the path toward integration (the EU attention is at the current crises), but it could receive the help of the European Union, which wants to keep cohesion between the member state and not to abandon the objective of enlargement.

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II. A Changing World: Digitalisation, Innovation and Cybersecurity

GAMIFICATION IN TRANSPORT SERVICES AND THE DIGITAL DIVIDE

Mihail CARADAICA[*]

Abstract. *As far as an increasing number of scientists are warning us about the destructive potential of climate change, humanity is facing a tremendous technological revolution. Also, the potential of new technologies to decrease the carbon footprint is significant, but the transition is highly dependent on people's choices and behaviour. This is why, a new way of motivating people around the world emerged: gamification. But, as good and innovative this idea seems to be, as many concerns it rises. Because the focus is mainly on technology, in this paper I will analyse the process of gamification through the lens of the digital divide. The concept was first used in the 1990s to describe the social and economic gap that emerged between those who had access to Information and Communication Technologies (ICT) and those who did not. Today it is mainly focused on the possibility that people would become even more marginalized due to the lack of basic skills and the impossibility to afford the new technologies on the market. Consequently, my research question is: "Is it possible that the introduction of gamification in the field of transportation increases the digital divide?". I will try to answer this question by analysing what categories of people are targeted by gamification in transportation services and which are those that could be excluded. Also, my approach is not limited to a specific country or global area, but is considering gamification and digital divide at an international level.*

Keywords*: gamification, inequality, digital divide, transport, Millennials, Gen-Z.*

1. INTRODUCTION

Earth's climate is changing and this fact is more visible each day, as we face massive forest fires, heatwaves and floods. Scientists predicted that global temperature is likely to exceed 2°C above pre-industrial levels by 2060, and to reach 5°C more at the end of the century. Such a major change will have an irreversible impact on nature, threatening the existence of life itself. In a race against the clock, many countries, or local authorities adopted different policies to deal with this phenomenon. One of the most important pillars of the fight against climate change is the reduction of CO2 emissions by revolutionizing transportation. Using new technologies such as electric cars, Artificial Intelligence, Internet of Things or the 5G network, government, municipalities or private companies came up with various strategies that involve a gamification of the services they provide. Gamification is a way of introducing elements from a game play into an interactive system that involves competition, social activity and rewards. It is expected to change people's

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behaviour in fields such as health, physical activity, education, transportation or marketing.

Regarding transportation, the emerging technologies that are starting to shape the way people understand mobility at a global level are: electric vehicles, Artificial Intelligence and Big Data for traffic management, and an impressive number of mobile apps that facilitate car sharing, use of public transport or other alternative transport facilities. Gamification in the mobility-related contexts is a way of motivating people to use various mobile apps and other technologies that are environment friendly, and to promote a more rational use of vehicles with a thermal engine. But generally, new technologies do not equally impact global societies. To explain this phenomenon, the concept of digital divide emerged. In this article, I will try to see if this concept applies for software or other devices that use gamification as a motivation tool, and, if so, to understand who are the excluded people.

2. WHAT IS GAMIFICATION?

In the last decade, the online market faced an exponential growth as the usage of internet and mobile devices largely spread in the global society. The diversity of social media platforms and other daily applications created a tough competition and many companies are struggling to have their software products installed on the user's devices. As this struggle took many faces, one of the working questions for most of the software companies was "how to better engage users?" and not necessarily "what new feature to add". As a result, a "new paradigm to engage people, gamification, has been adopted as a strategy for influencing and motivating people to participate in education, training, marketing, networking, and health-related activities" (Suh, Wagner, Liu, 2016: 1).

Gamification basically refers to the incorporation of game elements into different systems to better engage users, and various definitions were developed by scholars in order to offer a more accurate approach, as I indicate in Table 1.

Table 1

(Brigham, 2015: 473)	"Gamification is often used to advance goals outside the context of a game, such as the goals of greener or healthier living. Unlike a game, gamification is not a self-contained unit; it does not have a clear beginning, middle and end. Gamification uses game-based elements and strategies to increase engagement, motivation, learning, and even solve problems".
(Suh, Wagner, Liu, 2016: 1).	Gamification, "refers to the use of game elements, such as design techniques, thinking, and mechanics to enhance non-game contexts to engage users by increasing the hedonic value of an existing information system".
(Seaborn, Fels, 2015: 14)	Gamification "is used to describe those features of an interactive system that aim to motivate and engage end-users through the use of game elements and mechanics".

As Table 1 emphasises, there is no academic consensus on a standard definition for gamification, but there are some common elements that ca be extracted, like user's engagement and game elements. Ayoung Suh, Christian Wagner and Lili Liu came up with an example to clarify these aspects: "Nike+, for instance, has adopted game design elements in such a way that users are rewarded when they reach milestones in their progress toward physical fitness. Users can experience game-like dynamics to earn rewards (e.g., points and badges), track their performance, set goals, join challenges, and

compete with others in the community" (Suh, Wagner, Liu, 2016: 1). In this way, the company successfully built a fan community of 28 million users.

Gamification is in fact a computer-mediated phenomenon that should not be confused with other related game concepts as gaming, game-theory, serious games, applied games, simulation or gameful design. "The difference between these concepts are most obvious when provided with examples. Playing board games or video games within the library is much different than adding gaming elements to a library orientation scavenger hunt" (Brigham, 2015: 473). Best way to separate gamification from other concepts is to keep in mind that it uses a game approach in non-game situations. If gamification is properly implemented, it can provide to users a sense of accomplishment and progress. Also, "by providing the user with the opportunity to fail, they can experiment and explore various ways of showing progress. In most cases, gamification will show the individual's progress, which can motivate them to finish that task or course. In these ways, gamification provides a thoughtful way of laying out what people have achieved, allows them the freedom to fail, and helps them focus on achieving a personal best" (Brigham, 2015: 474).

Regarding gamification typology, Jamie Woodcock and Mark R. Johnson propose a distinction based on a model adapted from an analysis tool of the socialist countries. They borrow the concepts of Socialism-from-above and Socialism-from-below, and adapt it to the gamification process as it follows: "Gamification-from-above is the imposition of systems of regulation, surveillance and standardization upon aspects of everyday life, through forms of interaction and feedback drawn from games (ludus) but severed from their original playful (paidia) contexts. By contrast, gamification-from-below represents a true gamification of everyday life through the subversion, corruption and mockery-making of activities considered 'serious'" (Woodcock, Johnson, 2017: 2). So, the first type is more related to different kind of projects designed by private companies or by a state, while gamification-from-below is more related to a natural process of gamifying daily activities.

Furthermore, Brian Burke, in his book "Gamify: how gamification motivates people to do extraordinary things", identifies the following features as being the most relevant for the concept of gamification:

- Motivation: gamification is a way to motivate people to do mundane tasks by challenging them and showing them the progress that they have made. Thereby, "gamification is about engaging people on an emotional level and motivating them to achieve their goals" (Burke, 2014: Chapter 1).
- Give meaning to players: gamification engages people through ways that are meaningful for the users. "The primary distinction between gamification and traditional incentive and rewards programs is that gamification engages people in a way that is meaningful to them" (Burke, 2014: Chapter 2).
- Changing behaviour one step at a time: most of people's actions are guided by habits, and it is quite difficult for them to change their routine on purpose. Gamification can help a lot by challenging people to change every day (Burke, 2014: Chapter 3).
- Using gamification to develop skills: "Whether it is formal education, corporate training, or informal learning, gamification can provide the path and add motivation to learning activities" (Burke, 2014: Chapter 4).
- Using gamification to drive innovation: gamification can encourage the crowd to innovate weather they are employees, customers or other kind of community. "Gamified innovation solutions provide players with the play space and create the

objectives, rules, rewards, and other aspects of the player engagement model, but they don't define the outcome—players are free to innovate within that space" (Burke, 2014: Chapter 5).

But there is also a critical perspective on gamification. Jane McGonigal has analysed gaming communities and found out that, for them, "the real world just doesn't offer up as easily the carefully designed pleasures, the thrilling challenges, and the powerful social bonding afforded by virtual environments" (McGonigal, 2011: 3). Besides this, reality does not properly motivate them, does not push them to achieve their full potential and does not make them happy. Therefore, the general perception of the gaming communities was that "reality, compared to games, is broken" (McGonigal, 2011: 3). All of these findings were further developed by Mathias Fuchs, who states that "gamification is used to tell people that if reality is not satisfactory, then at least play might be so" (Fuchs, 2014: 146). Also, he proposes to conceive gamification as a new form of ideology, as it provides to people a false consciousness, as Marx and Engels defined an ideology.

3. GAMIFICATION IN MOBILITY-RELATED CONTEXTS

After I presented the main definitions and features of gamification, I will discuss, in this chapter, the particular case of applying gamification in any mobility-related contexts, in order to approach the research question's objective. The industrialization of agriculture and the massive growth of urban population at the international level are generating serious environmental issues. "Today's cities consume more than two-thirds of the world's energy and account for more than 70 per cent of global greenhouse gas emissions. Low-density urban areas tend to consume more than high-density areas" (United Nations, 2015: 3). This is why, due to the environmental reasons (cities face high level of pollution) and time spent in traffic, the concept of smart city emerged. "In a smart city, efforts to reduce energy consumption are focused not only on supporting the development of smart grid systems or prosumers, but also on reducing traffic. Additional benefits include saving costs and time, environmentally friendly transport, carbon emissions reduction, and fuel consumption reduction" (Olszewski, Pałka, Turek, 2018: 1).

But transportation systems in the large urban areas are complex sociotechnical structures, where various actors are making individual decisions (Marcuccia, Gatta, Le Pira, 2018: 119), and to change the collective behaviour requires a lot of attention and resources to be spent. However, "in the field of mobility a growing number of attempts for motivating behavioural changes using game elements such as incentives or rewards are emerging" (Millonig, Wunsch, Stibe, Seer, Dai, Schechtner, Chin, 2016: 34). Thus, gamification emerges as a promising tool that can change the mass behaviour through innovative transportation solutions. "However, it is not capable per se to induce behavior change. One should rather appropriately conceive, deploy and manage it to maximize users' involvement. In fact, it can produce different results depending on the correlation existing between: structure adopted, context, player-types and their preferences" (Marcuccia, Gatta, Le Pira, 2018: 119).

Relevant examples in the field of transport gamification are bike commuting programmes, such as Austrian cycling campaign "Bike to Work", where game elements were introduced, in order to increase bike transportation in big cities. These programmes, "use elements like competition, lotteries, team experience or awards, adding an emotional quality to the more objective arguments for biking, such as health benefits, time saving or climate change mitigation" (Millonig, Wunsch, Stibe, Seer, Dai, Schechtner, Chin, 2016: 34-35). What scholars found out after they were analysing these programmes was that the

prize was not the main motivating element, but the virtual competition between several teams of bikers (Millonig, Wunsch, Stibe, Seer, Dai, Schechtner, Chin, 2016: 34-35). Another example is the carpooling system that solved, according to Robert Olszewski, Piotr Pałka and Agnieszka Turek, the traffic problem in the capital of Poland, in an area called "Mordor of Warsaw". "Carpooling is a system through which users with similar routes can use one car. Its main goal is to match people who commute to work; therefore, carpooling can be an effective method of alleviating traffic jams during rush hours" (Olszewski, Pałka, Turek, 2018: 2).

To conclude this chapter, the gamification used in mobility-related contexts is a gamification-from-above because there is no natural phenomenon, but a set of rules enforced mainly through software and digital devices. Furthermore, this type of gamification acknowledges most of the features identified by Brian Burke: it is trying to change collective behaviour, give meaning to the users by developing an environment issue and motivate them through different means as team competition. But also, the critique of Jane McGonigal is still available for this case. Reality is broken as we deal daily with overcrowding and pollution, and different game-based systems keep people motivated to go on, as they carry a doubtful perspective as to the solving of these issues in the near future.

4. VARIOUS ASPECTS OF THE DIGITAL DIVIDE

After I pointed what gamification and gamification in the mobility-related contexts entail, it is time to tackle the research question, and what is the digital divide. I will also address how this could be related to the gamification concept. The digital divide is not a new idea, but a quite common concept during the past three decades. The spread of ICT technology was welcomed with a lot of optimism at the beginning of the 1990s, but Kieron O'Hara and David Stevens observed that this feeling did not last long. "If there is a revolution underway, then it is controlled by a small minority of well-placed people, even if it affects us all. Initial hopes that the invention of the PC or the Internet would lead to a more equal or democratised society quickly faded" (O'Hara, Stevens, 2006: 69-70). As time was passing, an increasing number of researchers discovered that more inequality arises from this new type of economy built around computers.

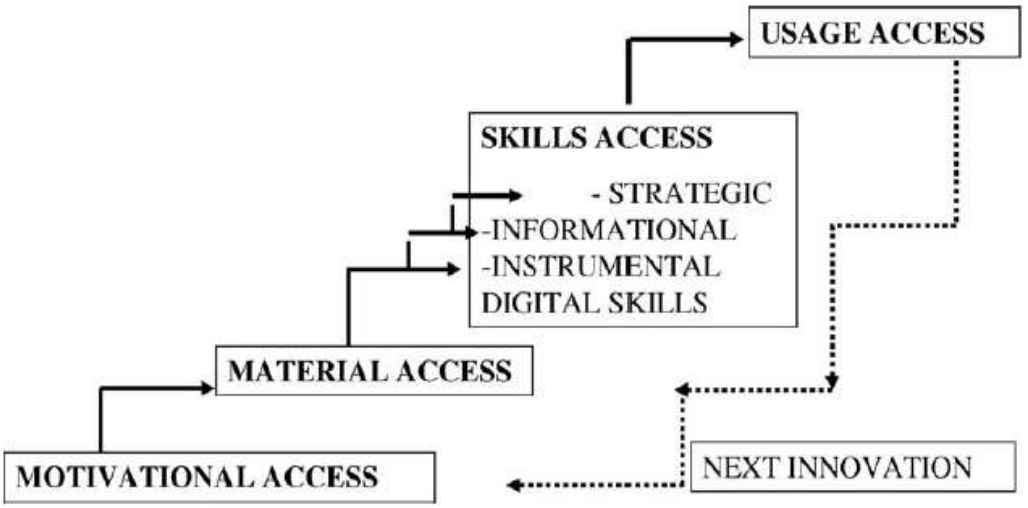
As I already mentioned, "in the second half of the 1990s the attention for the subject of unequal access to and use of the new media started to focus on the concept of the so-called digital divide. Before that time more general concepts were used such as information inequality, information gap or knowledge gap and computer or media literacy" (van Dijk, 2006: 221). Consequently, the concept of digital divide was first coined in the middle of 1990s by the US Department of Commerce's National Telecommunications and Information Administration. Since then, it was broadly adopted by the scientific community and it became the subject of different meanings and definitions. Pål André Aarsand considers that the digital divide is in fact the difference between "those who know and those who do not know how to act in a digital environment" (Aarsand, 2007: 236) and, also, between "people who had access to, compared to those who did not have access to computers and the internet" (Aarsand, 2007: 236). Also, Jan van Dijk used a broader definition, referring to technology in general: "The digital divide commonly refers to the gap between those who do and those who do not have access to new forms of information technology" (van Dijk, 2006: 221-222).

There were many factors connected to the creation of the digital divide, but the most important one was considered to be rooted in the educational system. "The task given to the

educational system rests on the ideas that differences in children's digital literacy are a result of activities that take place outside school, and that such differences constitute a problem" (Aarsand, 2007: 236-237). Thus, the school should be the place where children would acquire their main digital skills. This could give them equal opportunities in their future careers and reduce, in time, the gaps generated by the digital divide.

Education is an important element that can generate digital divide but, however, it is not the only one. Jan van Dijk imagined an entire model that indicate how digital gaps are formed and deepened, as one can see in Figure 1.

Figure 1



(van Dijkm, 2006: 226)

According to this model, everything starts with motivation. "Prior to physical access comes the wish to have a computer and to be connected to Internet. Many of those who remain at the 'wrong' side of the digital divide have motivational problems" (van Dijk, 2006: 226). The motivational issues often emerge from no need of using digital devices in the daily life or career, lack of money, lack of time or lack of skills. But if someone acquires the necessary motivation and manages to have permanent or temporary material access to ICT infrastructure, then the problem of skills might interfere. "This problem is framed with terms such as 'computer, information or multimedia literacy' and 'computer skills' or 'information capital'" (van Dijk, 2006: 226). Here, as I already discussed, institutions and self-education play a decisive role. Then, "actual usage of digital media is the final stage and ultimate goal of the total process of appropriation of technology that is called access in this article. Having sufficient motivation, physical access and skills to apply digital media are necessary but not sufficient conditions of actual use" (van Dijk, 2006: 229). For proper usage, one would need sufficient time to spend, a good internet connection, or to apply the knowledge on real-life situations.

A mid-term conclusion after I discussed all these theoretical aspects is that elements like skills, affordability or motivation to use digital devices are not directly related to the gamification concept, but more to the devices and programmes that use gamification. For example, in the case of a smart city, "most vulnerable populations – its elderly, minorities and poor – are most likely to be left out" (Bordal, 2016). In this context, applying gamification for devices or software that some parts of the urban

population are barely using, could lead to an increase of the digital divide. I call this, the first wave of the digital divide.

To determine if there is a second wave of digital divide, which I consider to be directly related to the gamification process, a broader analysis on inter-generational digital divide should be done. Don Tapscott considers that "today, instead of a gap, there is a "generation lap"—kids are outpacing and overtaking adults on the technology track, "lapping" them in many areas of daily life" (Tapscott, 2009: 28). But the rift Tapscott observed between kids and their parents regarding technology is not just a matter of certain accumulated skills while playing child video games. The technology itself seems to determine the way children think: "the brain is particularly adaptable to outside influences in the first three years of life and then during teenage and early adult years, which is just when most Net Geners are immersing themselves in interactive digital technology 20 to 30 hours per week" (Tapscott, 2009: 98).

Another important contribution belongs to Marc Prensky who wrote a chapter, "Digital Natives, Digital Immigrants", in a book coordinated by Mark Bauerlein and called "The Digital Divide". His argument is that the present educational system is outdated due to the digital gap between teachers or decision makers and children. He states that "today's average college grads have spent less than 5,000 hours of their lives reading, but over 10,000 hours playing video games (not to mention 20,000 hours watching TV). Computer games, e-mail, the Internet, cell phones and instant messaging are integral parts of their lives" (Prensky, 2011: 4). These kids are digital natives, which means that they can natively speak the language of computers, video games and the Internet's. The main characteristics of the digital natives are:

- They better handle multitasking processes;
- They prefer to learn from graphics/pictures/videos, rather than from text;
- They work better in networks;
- For motivation, they need frequent rewards;
- They prefer to play games rather than to focus on work (Prensky, 2011: 5-6).

To conclude this chapter, there are two approaches regarding gamification and the digital divide, which I called the first and the second wave. The first wave is related to the lack of access or the lack of skills to handle devices or software that might contain game elements. The second wave is directly linked to gamification and imply, according to Tapscott, an inter-generational gap. Furthermore, Marc Prensky describes the generations that grew up with computers, internet and video-games as having a different mindset by preferring games to focus on work and being motivated with frequent rewords. In the next chapter I will try to outline which are these generations that Tapscott and Prensky are describing in their research.

5. MILLENNIALS AND GEN Z – THE LIMITS OF GAMIFICATION

Although the concept of gamification is relatively new, games have been part of human culture since the beginning. "Games are firmly entrenched in human culture, continuing to influence our social and leisure lives on a scale unprecedented and yet historically anticipated" (Seaborn, Fels, 2015: 14). But due to the spread of personal computers, video-game industry has expanded in a manner that succeeds to cover a wide range of sport competitions, stories or daily activities in order to determine the users to feel more comfortable in the virtual world. This is why, as I argued, "the greatest attraction of applying gamification to an activity or a course is that it encourages increased involvement and engagement" (Brigham, 2015: 474). But now, the question is who are

those people shaped by the video games? For a clear image of an inter-generational digital divide that might be outlined, I will propose the following classification.

Figure 2

(Corey, 2018)

According to the time table proposed by the Figure 2 and with the fact that video-games massively spread in the 1990s along with personal computers, Millennials and Generations Z are those who grew up or still growing up with games as a part of their lives.

As Tara Brigham states, "millennials are the first generation that did not have to adapt to new technologies of the digital era—the Internet, mobile technology, and social media to name a few. Unsurprisingly, millennials are technologically savvy and avid users of a variety of digital platforms" (Brigham, 2015: 471-472). If the PC games were the beginning, the spread of smartphones opened new and unexplored territories. "Although video games have been around since the 1970s and have steadily increased in popularity, the influx of smartphones and mobile devices in the last five years has taken the reach and usage of technology-based games to a new level" (Brigham, 2015: 471-472). This is why Millennials and Gen Z are more dependent on game elements in order to properly work and live, comparing with the previous generations. Moreover, Adam Porter confirms that the Millennials grew up in a world of computers and video games, but he states that "these games may have negative effects on people (or not – the debate continues to rage), but all games involve problem-solving, critical thinking, and strategy" (Porter, 2008: 232). Even more, games also involve a strong competitive and teamworking component, as we have various successful and largely spread MMOG (Massively multiplayer online games). Thus, gamification process embeds elements such us developing strategies, creating competitions and teamwork in order to boost the involvement of millennials and to have them as an active component.

The analysis of Austin Corey shows that "58 percent of Millennials have played video games in the past 30 days, and one-fifth of those players spent more than 20 hours gaming during that time (roughly five hours a week). They are 25 percent more likely than Gen X to play regularly" (Corey, 2018). Also, 77% of students declare themselves gamers, while 60% of women are playing computer or online games, and 40% of men (Porter, 2008: 232).

According to Liliia Matraeva, Ekaterina Vasiutina, Alexey Belyak, Petr Solodukha, Nataliya Bondarchuk and Marina Efimova each generation has developed different cultural background due to the historical events and specific condition that they grew up with, as it follows:

- Generation GI (the Generation of Winners - 1900-1922) - revolutionary events of 1905 and 1917;
- Silent Generation (1923-1942) - repression, World War II, the restoration of a destroyed country;

- Generation of baby boomers or boomers (1943-1962) - the Soviet "thaw", the USSR – is the world superpower, the "cold war", the unified standards of education in schools and the guarantee of medical care, the generation with the psychology of the winners;
- Generation X (Unknown Generation 1963-1982) - the continuation of the Cold War, Perestroika, AIDS, drugs, the war in Afghanistan;
- Generation Y ("Network generation", the generation of "Millennium" 1983-2002) - the disintegration of the USSR, terrorist attacks, military conflicts, outbreaks of epidemics, economic crises, the development of digital technologies, the era of status items;
- Generation Z (2003-2023) - digital revolution and economy, instant accessibility to information and accumulated knowledge, gamification (Matraeva, et all., 2019: 126).

As this classification shows, Millennials and Gen Z base their development on digital technologies, while Gen Z are heavy related to the gamification process. Following this perspective, addiction to video-games should be even stronger for the Gen Z. Now, 68% of Gen-Z males are saying that gaming is an important part of their personal identity (Whistle, 2018). This indicates an important difference in the way these two generations are valuing video-games. For Millennials is more about free time and leisure, while for Gen Z, it started to be a way of living the social life. "There's a consensus that Gen Z is lonely, but that could be a misinterpretation of the reality. Instead, it's possible that social interactions have evolved into ways that aren't considered social at first. Connecting online and through video games is a different type of connecting, but it's the type that Generation Z has grown up with" (Wallace, 2019).

Even if technology unites both generations, it is also important to observe what kind of technology they grew up with. "Millennials grew up using DVD players, giant personal computers, cell phones with tiny screens, and dial-up internet. At that time, we thought these technologies were groundbreaking. Now, most children and teens within Gen Z have access to iPads, smartphones, endless Wi-Fi, or streaming services that put our prized DVD players to shame. Many members of this generation might have also grown up in households with early smart home technology" (Bump, 2019). Thereby, Millennials experienced the gradual development of ICT, while Gen Z were able to use it since day one.

To conclude, from Gen X to Gen Z, as technology evolved, video-games had an increasing impact on their lives. For my analysis, as video-games started to spread in the '70s, Gen X was not as relevant in discussing gamification as Millennial and Gen Z. The former two generations grew up with video games, and a gamification of various aspects of "real life" might appear to them as sign of normality.

6. CONCLUSIONS

In this paper I attempted to demonstrate the possibility of increasing the digital divide posed by gamification in the field of transportation at the international level. In order to do this, I first discussed the concept of gamification, highlighting different theoretical perspectives. As a general approach, gamification is a process where elements from video-games such as design techniques, thinking, and mechanisms used in totally different contexts, in order to increase the motivation of users, to give them a meaning, to change their behaviour or to support the development of new skills. Then, I showed that in

the mobility-related contexts, gamification can be a useful tool to change the transport routine, especially in big cities as part of smart cities programmes.

Furthermore, I tackled the concept of digital divide and I show that, initially, it reflected the gap between people who have and people who do not have access to digital instruments such as computers or Internet. People who are excluded from the usage of these technologies are, implicitly, excluded from the interaction with gamification processes. I called this the first wave of digital divide. But the further question was: are there any people that might be excluded by gamification itself? At this point, I discussed the researches of Prensky and Tapscott that were pointing a significant difference between generations, in regards to video-game perception.

To answer the research question, the introduction of gamification in the field of transportation could increase the digital divide between people belonging to different generations. The most adapted generation to the gaming elements is Gen Z, which perceive games as part of its personal identity. Millennials constitute the generation that has matured in the same time as the spread of personal computers and Internet, and for them, video-games are more related with free time and leisure activities. Then, if Gen X is weakly related to video-games, as they lived in a time when this new type of human activity was just starting to spread, the other generations are mainly excluded. Thus, these differences are producing in fact the inter-generational digital divide.

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ASSESSING THE GAMIFICATION APPROACH ON THE EU'S CRITICAL INFRASTRUCTURE SECURITY[1]

Ana Maria COSTEA [*]

Abstract. *The present article aims to tackle the issue of gamification of smart cities from a cyber-security point of view. More specifically, the analysis is going to focus on the transportation sector and its effects over the security of the individuals, economic operators and states. Firstly, the article is going explain the concepts are being employed throughout the paper like: critical infrastructure, gamification, smart city and Intelligent Transport Systems (ITS). Secondly, the analysis is going to focus on the needs and main benefits that smart cities bring to the life quality of its citizens, thus cause and effect. After establishing the current status quo, the analysis is going highlight the security vulnerabilities that can arise from using ITS and the gamification technics in smart cities especially in the case of IPT since it is part of the critical infrastructure of that state. Taking into consideration the benefits and the costs, the analysis is going to be finalized with recommendations regarding possible ways to reduce the cyber security related costs for transportation gamification at the level of the European Union. In order to be able to develop the recommendations, the following research questions are going to be addressed: Which is the impact of smart cities and gamification in Europe? How should the EU dealing with its cyber-security vulnerabilities especially in the transportation field?*

Keywords: *critical infrastructure, cyber-security, the European Union, transportation*

Introduction

The development of digitalisation and connectivity brought huge benefits for both states and individuals, but also important vulnerabilities in terms of security. One example in this case could be Estonia in 2007, moment when the cyber dimension begun to be perceived as a national security dimension. Regardless of the national level, thus apart from the security of the governmental devices, networks, servers, the technological area brought also the vulnerability of the individuals in front of attacks like DDoS, cyber-phishing, botnets, cyber-bulling, etc. At the same time smart cities brought another layer of vulnerabilities, due to the fact that the critical infrastructure of the city is permanently connected on the internet and as every online system it can be hacked[2]. Following this

[1] The article is part of the development of a study on the application of the game approach in logistics and transport training (Output Title O4) under the Erasmus + strategic partnership project „*Building an innovative network for sharing of best educational practices, incl. game approach, in the area of international logistics and transport", Project number: KA203 / HE-25 / 13.09.2019*

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[2] More information can be found at: Council Directive 2008/11/EC on the identification and designation of European critical infrastructures and the assessment of the need to improve their protection, specifically Art.2 and Annex I

logic, the EU decision makers decided that "*all necessary actions need to be taken to improve cybersecurity in the Union so that network and information systems, communications networks, digital products, services and devices used by citizens, organisations and businesses – ranging from small and medium-sized enterprises (SMEs), as defined in Commission Recommendation 2003/361/EC (4), to operators of critical infrastructure – are better protected from cyber threats.*[3]"(The Cybersecurity Act 2019). In order to reach this goal they created the European Union Agency for Network and Information Security (ENISA), a European body that was established by Regulation (EU) No 526/2013 of the European Parliament and of the Council[4]. The present article is aimed to tackle to issue of cyber-security of smart cities that employ gamification technics for their transportation sector. Following this aim, there are three research questions are employed: Why do we need smart cities? Which is the impact of smart cities in Europe? How should the EU dealing with its cyber-security vulnerabilities especially in the transportation field? But before answering to these questions, we will analyse the concepts that are going to be applied throughout this paper.

Critical infrastructure

At the level of the EU, the concept of critical infrastructure is defined as "*an asset, system or part thereof located in MS which is essential for the maintenance of vital societal functions, health, safety, security, economic or social well-being of people, and the disruption or destruction of which would have a significant impact in a MS as a result of the failure to maintain those functions*." (Article 2a of Directive 2008/114/EC).

From a theoretical point of view, the concept of critical infrastructure was viewed as an essential part of security by the Copenhagen School theoreticians. They viewed security as comprising five different sectors: military, economic, political, environmental and societal[5]. Given the fact that cities became bigger and bigger, that the population living in the urban areas grew and that European states cooperated more and more due to the European project, the critical infrastructure as part of the last type of security became essential in ensuring the local, regional and even national security for a state. Traditional examples in this case could be a bridge that connects two major cities or even countries; the governmental buildings, the electric grid that powers a major city, the train routes, the air traffic, the highways, etc. Nowadays the concept of critical infrastructure changed due to the current technological development especially since the deepening level of cooperation and connectivity have put an emphasis on the transportation sector, field that suffered huge changes over the years. Thus, today we can call as being part of the

[3] For more information about the Cybersecurity act please access Regulation (Eu) 2019/881 of the European Parliament and of the Council of 17 April 2019 on ENISA (the European Union Agency for Cybersecurity) and on information and communications technology cybersecurity certification and repealing Regulation (EU) No 526/2013 (Cybersecurity Act), Accessed on 15 August 2020, https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32019R0881&from=EN

[4] For more information about ENISA please access Regulation (EU) No 526/2013 of the European Parliament and of the Council of 21 May 2013 concerning the European Union Agency for Network and Information Security (ENISA) and repealing Regulation (EC) No 460/2004 (OJ L 165, 18.6.2013, p. 41).

[5] More information about the concept of security from the Copenhagen School point of view can be found Barry Buzan, 1991, People, states, and fear: an agenda for international security studies in the post-cold war era. Boulder, CO: L. Rienner.

national/regional/local critical infrastructure new elements like: the internet wires, the computers, the servers, the internet connection and its speed, instruments that ensure the flow of data and its storage, since a large proportion of the activities that were carried out by the government or by the civilians face-to-face moved in the online areas. Individuals can pay their state contributions online, they can even apply for citizenship via online, like it is the case of Estonia. These changes brought huge benefits, but at the same time, they emphasized also major vulnerabilities of the system, as we are going to be highlighted throughout this article.

Gamification

In order to make the online systems friendlier, efficient from an economic point of view and at the same time sustainable, the decision makers applied the principles of gamification to services that at the first view did not have a direct connection to games, like for example: e-government, infrastructure, banking system, etc. (Zica, Ionica, Leba 2018, 3). The concept of gamification can be understood as applying the principles of games (like rewards, competition, fun, challenges) to non-game related fields (Zica, Ionica, Leba 2018, 3) for different purposes. For example, British and Australian authorities wanted to encourage the population to use more the bicycles or to walk. The results were visible on short term since in Australia 35% of the car trips to school were replaced by eco-friendly and healthy transportation means (Zica, Ionica, Leba 2018, 4). Another example can be seen in Singapore were an application with rewards was introduced so that people would start using public transportation in other intervals that the ones that represent the rush hour (Zica, Ionica, Leba 2018, 4).

Together with the benefits of having lower costs for its users, but also for the providers and being eco-friendly and sustainable, the integrated systems proved to be vulnerable in front of cyber-attacks. This issue is even more important, since the digitalisation process touched upon the critical infrastructure of the states making it an issue of national security, even a regional and international one if we take into consideration the case the European Union and its four liberties. "*For that reason, it is important to consider security for Intelligent Public Transport to protect the operators, the economy and the life and safety of citizens. However, IPT faces several challenges in this direction: there is currently no EU policy on cyber security for transport, the awareness level is low and it is difficult for operators to dedicate budget to this specific objective of cyber security*" (Lévy-Bencheton, Darra 2015, 7).

Smart City and ITS

A smart city should be understood as "*a city that uses ICT [*information and communication technology*] to meet public needs and foster development in a multi-stakeholder environment"* (Lévy-Bencheton, Darra 2015, 13).

As defined by the European Commission in the Directive 2010/40/EU of the European Parliament and of the Council on the framework for the deployment of Intelligent Transport Systems in the field of road transport and for interfaces with other modes of transport (2010, 1), Intelligent Transport Systems (ITS) "*are advanced applications which without embodying intelligence as such aim to provide innovative services relating to different modes of transport and traffic management and enable various users to be better informed and make safer, more coordinated and 'smarter' use of transport networks*." Another definition refers to "*systems incorporating a wide variety of technologies (telecommunication, IT, automation, measuring) and management techniques applied in*

transportation for the purpose of protecting the life and health of traffic participants, increasing the effectiveness of the transportation system, and protecting the natural environment with all its resources" (Stawiarska and Sobczak 2018, 3).

Nowadays Europe hosts around 240 cities that have taken the necessary steps in order to become what are called smart cities and all are using the ITSs. The majority of them are geographically found in Western Europe, particularly in France, Netherlands, Italy, Spain and Austria. As it can be seen below, there are fewer smart cities in Eastern Europe (*Euractiv*, *How many smart cities are there in Europe?*). At the same time their number is high enough all around the EU so that their in/security and their (lack of) efficiency has a potentially large impact over the security of the EU member states and even the region as a whole. This aspect is even more important since, according to the recent studies, "*Europe's level of urbanisation is expected to increase to approximately 83.7% in 2050*" (*European Commission, Developments and Forecasts on Continuing Urbanisation*). From this point of view, we could say that a smart city is more than a desirable framework. Rather than that it became a necessary solution for the current dynamics due to the following specific factors:

- The growing number of population in the urban areas. Since the urban centres attracted more and more people to work or the live there, the need for redefining the city's infrastructure arose. Since it would have been very difficult, if not impossible, to construct new infrastructure connections due to the space/geographical limits, the decision makers had to come up with new, innovative methods of making or maintaining the fluidity of the traffic in order to maintain the life quality of the citizens and the economic development of the city.

- The need for sustainable policies. Global warming is an issue for the entire globe. At the same time, it cannot be tackled only at global level, since the actual pollution starts from the local one. In this sense, states, especially the EU member states developed eco-friendly policies in order to protect the environment and to reduce the air pollution. In this sense, they invested in buying electrical cars and use them for the public transportation of people. Another example is represented by the public campaigns to share cars or to use alternative transport methods like public transportation instead of personal cars, trains, bicycles or electrical push scooters.

- The need for connectivity. Globalization and instant communication brought the desire for rapid connectivity. In this sense people started to work in other cities than the one that they are living, or generally, they started to travel more for different reasons. In order to make that possible, states or the local authorities needed to develop solutions, like for example fast trains that travel between various cities (the TGV from France).

- The desire for economic growth. Besides from the needs that are described above, the intelligent transport systems bring several benefits like: the reducing time for waiting, the interconnections that are possible in a faster way, the costs for transportation are lower, thus the city or the region would develop faster. Also we could take into consideration the indirect effects, like the attraction of foreign investors in a stable and sustainable environment, which in turn will create jobs and bring revenues to the local, regional budget.

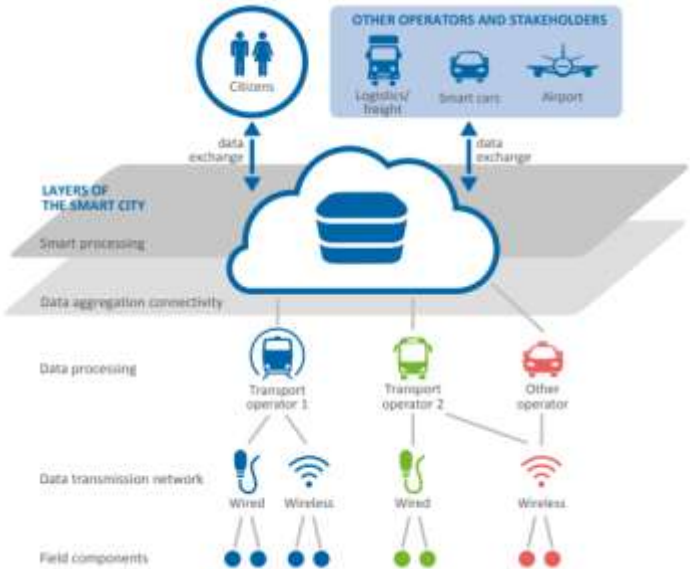
In terms of objective and measurable benefits, according the some of the previous researches, we could identify the following:

- The increase of street throughput by 20–25% (Stawiarska and Sobczak 2018, 4);

- The traffic safety augmented, since the accidents number decreased by 40% until 80% (Stawiarska and Sobczak 2018, 4);

- Reduction of pollution;
- Economic development;
- The life quality of people increased since due to the fact that now people can learn about the seats available in a bus, the time remaining until the next bus arrives, the approximate time for reaching the desired location, the fast interconnections between trains, the push scooters available in their neighbourhood, etc.

All these are possible in a smart city that uses ITS, but in order to be able to provide these type of services, the ITS has to connect various actors like: users-citizens and stakeholders like public and private companies, different operating companies, etc., as it can be seen below:



Source: Cédric Lévy-Bencheton, Eleni Darra.2015. *Cyber security for Smart Cities An architecture model for public transport*. *Good practices and recommendations.* European Union Agency for Network and Information Security (ENISA).p.18

In terms of components, the ITS has to encompass the following: telecommunication technologies, information technology, methods of control and management of transport systems and networks and telematics of transport (Stawiarska and Sobczak 2018, 3). Besides these elements, every system needs a Traffic Management Centre that uses ICT systems, regardless of its specialization, namely traffic on land, on air, or on the sea. At the same time, in order for the Centre to work in an efficient way it needs to collect real time data regarding the traffic, the density of the population in a certain area in a certain period of time, real time accidents and alternative routes, etc. Additionally, after collecting the data, the Centre need to have transmission systems that send the collected data to the centre. Here timing is essential for the efficiency of the system. Last, but definitely not least, the centre needs to have operating systems and people that analyse the data very fast and adjust the system to meet the needs on the ground.

From a gamification perspective, all the elements that are present in the above image are linked through one or more application. Then, this app is used by the individuals for transport purposes. One classical app that is used all around the globe is

Waze (2020). Through it the individuals can travel via car and on foot between different locations taking using live data regarding the traffic like traffic accident, traffic congestions, ways to avoid them, etc. The app is also designed to be friendly and to encourage competition since it offers rewards for those that are using it on regular basis. From the point of view of decision makers, the app is very useful since it offers essential information regarding the traffic at a specific hour, the preferred routes and the density of the population on a certain period of time and location, thus the tangible benefits for both individuals and the authorities. The app is also allowing the user to make reports or to communicate to other users regarding the traffic. This element is very important since the app is transforming the user in a part time operator, and like a living cell of the system it can influence it through its actions like for example reporting the presence of an accident or of the police where there is not the case. Waze proved to be successful since in August 2020 it has more than 90 million users (Waze, Drivers, 2020). Nevertheless, it has to be mentioned that gamification instruments are at the beginning stages of their development, therefore there are not very often found, thus their impact over the society is rather limited to different domains, like for example Waze in the case of land transportation.

At the same time, the app needs the location of the user and some of his/her personal data information like name, e-mail address, Facebook account. Here arises the issue of education, in the sense that the users should be aware of the requirements of the app and what they are entailing. From a security point of view, these opportunities can become a vulnerability if the necessary steps for protection are not in place as we are going to see in to following chapter.

Cyber-security of critical infrastructure within smart cities

At the level of the EU cyber-security is understood as "*collection of tools, policies, security concepts, security safeguards, guidelines, risk management approaches, actions, training, best practices, assurance and technologies that can be used to protect the cyber environment and organization and user's assets*"(Lévy-Bencheton, Darra 2015, 14).

Returning to the architecture of a smart city, in terms of cyber-security we could identify the following issues. Taking into consideration all the layers and the actors that can influence the system's security willingly (hackers) or unwillingly (a user that is part of a botnet without knowing it or is hacked due to his/her security taken measures) or given the fact that the systems are inter-connected, a hacker that gains access into the systems of transport *operator 1* and gain access or influence that data that transport *operator 2* is receiving. Thus, the range of possible cyber-attacks that can be inflicted against the systems pertaining to smart cities is very large. In this sense we could discuss about:

- Data stealing (number of persons that are connected and are using the subway in a specific moment during the day, their identify which in turn can be used later for fraudulent transitions);

-Hijacking of the system (the hacker can take control of the entire system which could cause even physical harm- e.g. the hacker can take control over the train, thus influencing the speed, the stops, and go even until the train will leave the tracks, therefore causing physical harm of the travellers, even death;

- Disturb and influence the information flow- e.g. the hacker can enter the system and make the Management Centre technicians and systems believe that the subway is going with a certain speed, when in reality the speed is much higher thus causing an accident;

- The classical DDoS in which the users cannot access the system to buy tickets anymore and last, but not least, blocking the system's operating tools until the municipality is paying the ransom;

- Breach of the confidentiality clause. An important element especially for the end users, the citizens, is represented by the protection of their data confidentiality (personal data like names, bank account number, etc.). Threatening this confidentiality would in turn break the trust of the citizens in the operators, be them public or private, which in turn would determine the user to choose other services or to mistrust the local, regional public institutions due to the loss of reputation;

- Trading information. Another possible threat is related to the available data, which can be exchanged between operators. Here, the EU is among the pioneers of the international system developing the GDPR through which it protects the data of its users.

Concrete examples of cyber-attacks that affected smart cities within the EU are the following:

1. November 2016, Sweden. Due to a cyber-attack the Air traffic controllers were not able to see the aircrafts on their screen. Due to the security issues that arose from this aspect and in order to prevent accidents, numerous flights were cancelled, fact that affected a large number of individuals (IOActive 2018, 4).

2. October 2017, Sweden. The cyber-attack targeted the Transport Administration system through a DDoS. AS a result, the administrators had to operate the system manually, to stop some of the trains, facts that generated huge delays (IOActive 2018, 4).

Recommendations

In order to tackle all these vulnerabilities that decision makers should focus on public policies that provide the following services or implement the following activities:

- testing their critical infrastructure against possible cyber-attacks. In order to be able to protect themselves, their need to firstly establish their level of security. This will allow them to see which are the areas that need further investments in the security department.

- developing public-private partnerships between the local/regional governments and the private companies that operate the systems or private companies that are specialized in cyber-security aspects.

- creating Computer Emergency Response Teams (CERTs). This recommendation was already implemented as many countries in Europe already have such institutions: Netherlands, Romania, Belgium, France, Germany, Portugal, Luxembourg, Spain, Italy, Denmark, Sweden, Finland, Estonia, Lithuania, Latvia, Poland, the Czech Republic, Hungary, Slovenia, Croatia, Bulgaria, Greece, Austria, etc. (ENISA, 2020).

- developing cyber-attack emergency plans. Such plans would make possible the avoidance the replication of Estonia 2007 incident, or the ones from Sweden 2016 and 2017.

- making national awareness campaign to that to increase the knowledge level, thus the competences of the citizens regarding the online risks and ways to tackle them through cyber-hygiene or other means;

- making national awareness campaign to that to increase the knowledge level, thus the information of the citizens regarding the available application especially in the field of transportation;

- encouraging the private companies to disclosure the moments when they were victims of cyber-attacks. This recommendation is among the most difficult ones to

implement, since by disclosing their security breaches the private companies can lose the trust of the costumers.

- training the security experts. An example in this case could be the Locked Shields exercise which take place in Estonia every year since 2010. "*For example, in the recent 2017 exercise, which involved nearly 900 participants from 25 nations, the teams were tasked to maintain the services and networks of a military air base of a fictional country, which, according to the exercise scenario, will experience severe attacks on its electric power grid system, unmanned aerial vehicles, military command and control systems, critical information infrastructure components and other operational infrastructure.*" (CCDCOE, 2019).

- integrating security standards at the EU level. For the harmonization of the security protocols and standards, the EU decision makers should agree on at least the minimum common denominator regarding the cyber-security requirements of smart cities.

- incorporating in the decision making process of the actors that are involved in the process (the public authorities, the private actors (manufactures, service providers, operators) and the end users).

- concentrating on the resilience of the system. Apart from protecting the system, the EU decision makers together with the national, regional and local ones should try to ensure the capacity of the system to recover in an acceptable timely manner, since in the cyber domain that question that should be posed in not if you get attacked, but when you do. Prevention is an important part of the strategy, but at the same time, given that fact that cyber threats and attacks do not have rather large costs to be deployed and the range of actors and their motives are heterogeneous the possibility of an attack is large, thus the security strategy should focus also on the steps that are to be taken after an attack happens.

- concerning strictly gamification, the decision makers should use more this technological instrument for cooperating or informing the population beyond the traditional channels. This could serve as a tools for increasing the transparency level, thus the trust of the population in the public authorities.

Conclusions

Nowadays society comes with unprecedented development. People can travel faster, safer at lower costs without affecting the environment. The initiative of smart city proved to be a very efficient one from both economic and environmental point of view. Coupled with the principles of gamification, the initiative created a network were the population is a directly involved actor that can influence the system. At the same time the technology comes with a cost and thus possible vulnerabilities in terms of security. From this point of view the article emphasized the possible threats for public authorities, economic operators and end users in terms of cyber-security within a smart city critical infrastructure framework. Referring to the specific case of the EU it must be said that besides that GDPR initiative that is meant to protect the ends users, it developed a specialized institution that is meant to tackle to issue of cyber-security at the level of the entire organization, ENISA. At the same time, we must not forget that the need for security is a pivotal responsibility of the national states, and apart from the classical meaning of the term, the XXI century poses new and very dynamic threats to which the states must adapt and respond.

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REINFORCING CULTURE AND TALENT OPERATIONS AT TRUSCO NAKAYAMA CORPORATION

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Abstract. *This paper illustrates how a traditional Japanese company, Trusco Nakayama Corporation (hereinafter NKC), strategically focuses on culture and talent operations in order to drive business sustainability and innovation. The authors worked directly with NKC executives, business leaders, organizational architects and talent operators to determine the main components and characteristics of their talent strategy and culture development efforts. The paper further describes how key elements of Japanese culture and traditional Japanese business practices were taken into consideration when developing the corporate strategy for value creation and business growth.*

Keywords: *Innovation, Organization, Transformation, Sustainability, Strategy, Japan*

1.Research Methodology

We conducted research based on a real business case study. The authors engaged a combination of participatory observation sessions, talent assessment and transformation workshops as in-house consultants, organizational performance evaluators and talent review officers for the business in Japan. We could, thus, have first-hand access to organizational data and we could observe decision-making processes and managerial initiatives with the eyes of internal associates. We also engaged in executive discussions with decision makers (Yin, 2003) on various platforms and opportunities. We conducted 638 surveys, 36 individual and 22 focus group interview (FGI) sessions with leaders, talent managers, service project owners, chief engineers, internal and external strategists, corporate executives and organizational architects.

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2. Background

Trusco Nakayama is a machine tool distribution and trading company which deals mainly with MRO (Maintenance, repair and operations products)[1] products for factories. The company was founded in 1959 in Tennoji ward, Osaka, as Nakayama Kiko Shokai, as a machine tool dealer. Sales in the fiscal year ending December 2017 were 195.1 billion, compared with 83 billion in fiscal 1994, when current president Tetsuya Nakayama took office. Ordinary profit margin for 2017 was 7.5 percent, significantly higher than the wholesale industry average of 3.9 percent (2014). The company had long been run debt-free. But with recent changes in the business environment, Trusco Nakayama began to invest aggressively, borrowing 10 billion in 2017 and 15 billion in 2018 (Trusco Nakayama, 2018).

Founder Chuji Nakayama was originally a *salaryman* for a machine tool dealer in Osaka. It was always in the back of his mind to start his own company, but he was not able to make the first step. Finally, the trigger for him to branch out on his own was when he began to worry about the future of his children. His son (current president), Tetsuya, was delivered by forceps and suffered an injury to his optic nerves. He was thus born blind in both eyes. Although his left eye recovered sight, he is still blind in the right eye. Nakayama decided to start the company for his son. He built the company base on five principles. These guiding principles are still used for the business today:

- Never draw up bills, always use endorsed bills
- Never discount bills
- Borrowing is limited to the extent that we can repay within one year. Don't agree on debt that is too difficult to pay back
- Don't make late payments to suppliers; don't extend
- We don't just make products for the machine tool industry

When the company was founded in 1959, it was the last in a long line of Osaka machine tool trading companies. For that reason, the company could not agree on a dealership contract with any famous manufacturers. So, the company tried to plan its own (outsourced) production of goods, other than tools, for use in factories. It took five years, but the company began selling products of its private brand in 1964.

From these early days, Trusco Nakayama was focused on creating value for all stakeholders. Value creation has been considered a major business objective all over the world. Value needs be created not only for shareholders but for all stakeholders (Haksever et al., 2004). According to Gummerus (2013) superior customer value leads to competitive advantage.

While several conceptualizations exist over the meaning of "value", no scientific consensus has yet been reached (Hassan, 2012) points out that value is multi-faceted and, when it comes to corporate value creation, it is not just a matter of price, quality, or location. Instead, value is derived from how customers perceive a combination of experiences. (Bititci et al., 2004). Authors describe an internal value, which comes from a shareholder perspective, and an external type of value, which comes from a customer perspective. Internal value implies that value is derived from profit and is expressed in

[1] MRO refers to auxiliary materials required by factories, warehouses, offices and construction sites, such as consumables, tools and fixtures purchased by a company as expenses. Main materials for factories include the raw materials, such as iron or chemicals used to create an end product. Major trading companies and manufacturers tended to operate in main materials.

corporate vision, mission and objectives. External value is related to what customers perceive and is directly connected to satisfaction. Throughout this paper, we will discuss value both in terms of internal and external value.

Nakayama Kiko Co. Ltd. was officially established as a stock company in 1964, and in 1989, its 30th year as a registered company, it was listed on the over-the-counter market of the Japan Securities Dealers Association. In 1994, the same year Tetsuya Nakayama became president, the company changed its name to Trusco Nakayama, announcing that the new organization will be focused on enhanced value creation for customers, employees, shareholders and society. Trusco is a portmanteau of *trust* and *company*. According to the company, the name conveys its commitment to building a company that earns the trust of everyone it is associated with (TRUSCO, 2020).

In 1996, the company listed on the First Section of the Tokyo Stock Exchange and the Osaka Stock Exchange. The following year, sales exceeded 100 billion. In December 2001, the company announced that it would cease trading in notes. At that time, the term of promissory notes handed out by the machine-tool retailers to their suppliers was around 150 days. This placed a heavy burden on the trading companies supplying them. Many retailers were unhappy, and it resulted in lost sales. However, Trusco Nakayama was an indispensable trading partner for many of these retailers, and in December 2005, the company succeeded in eliminating promissory notes from its business. As a result, retailers had to improve their credit ratings. Trusco Nakayama had cast the first stone in telling retail stores how they should operate.

The company made its first forays overseas mainly at the behest of Japanese automakers. It established foreign affiliates to supply Japanese car companies in Thailand from 2010, and Indonesia from 2015. To strengthen the company's selection of European-made tools, in 2015 it established a purchasing entity in Germany. The Representative Office Germany in Düsseldorf was established to serve as a site for product procurement. TRUSCO Corporation import quality PRO TOOL not commonly seen in Japan from all over the world, primarily the US and European countries, to invigorate the "monodzukuri" industry in Japan (TRUSCO Corporation Profile, 2018:12).

2.1. The MRO Distribution Market

Japanese domestic MRO was worth 7.9 trillion in 2015 (Japanese Ministry of Trade, Economy, and Industry calculations, 2015). There were more than 10,000 manufacturers of MRO products around the world, managing a total of more than 10 million SKUs (Add FN stock-keeping units). The most famous and leading player was the American giant, 3M. The end users were mainly companies (550,000 large and medium-sized, and 3.6 million small), but there was also demand from individuals.

Since the average user's annual purchase of MRO products was small (approximately 2 million) and users ranged from large companies to individuals, direct sales and delivery from the maker was not cost effective. Retail stores selling machine tools, therefore, played the role of connecting many manufacturers with a large number of users. Retail shops fell into three main categories: machine tool dealers (which also sell welding materials), home centers, and e-commerce operators.

2.2. Machine Tool Wholesale

Every year, hundreds of thousands of machine tools and work equipment are needed. To accurately meet the needs, wholesale distributors and retailers are bridging the gap between users and manufacturers, expediting the flow of products. According to the

official Asia's Leading Platform for Analyses on Companies Industries and M&A Deal (SPEEDA) data base in 2017 from Japan, the top three domestic machine tool wholesalers by sales were Yamazen, Yuasa Trading, and Trusco Nakayama.

Table 1. Competitor Comparison

	Total sales	Operating margin	Ordinary margin	Net income attributable to parent	Net margin attributable to parent	Equity ratio	Liabilities
	JPY millions	%	%	JPY millions	%	%	JPY millions
Trusco Nakayama	195,096	7.3	7.5	10,173	5.2	77.14	10,000
Yuasa	461,749	2.5	2.6	8,261	1.8	30.56	3,484
Yamazen	497,963	3.1	3.0	10,205	2.0	34.17	5,521
MiSUMi Group	312,969	11.1	11.1	25,601	8.2	76.41	106
MonotaRO	88,348	13.4	13.4	8,464	9.6	53.94	8,176
Sugimoto	44,315	5.6	6.5	1,914	4.3	82.58	

***Source*:** SPEEDA, https://jp.ub-speeda.com, accessed on 25.01.2020

According to the information presented in Table 1 Yamazen company sales in fiscal 2017 were 498 billion, Yuasa Trading 462 billion, and Trusco Nakayama 195 billion. Yamazen and Yuasa Trading dealt mainly in machine tools, industrial equipment, construction machinery, and building materials. They were particularly strong in large equipment. Trusco Nakayama, by contrast, did not trade in large equipment and preferred to focus on MRO products.

2.3. Machine Tool Dealers

Machine tool dealers represented more than 60 percent of total MRO sales. Most of these dealers were small-scale. The management motto of Trusco Nakayama is to become the leading player in the wholesale sector in Japan. By offering a product range that other companies do not handle, by tracking trends to improve inventory, and by delivering products as soon as they are needed, the company aims to improve customer convenience. Trusco Nakayama handles 2.3 million products, keeps its inventory stocked with 390,000 items, and provides an inventory hit rate of 90.5 percent (IBM, 2020)

Annual sales per dealer averaged 150 million. Fewer than 30 percent of 13,000 domestic machine tool dealers had revenue above 1 billion. These dealers listened to local customer needs to provide services carefully tailored to them. In turn, dealers needed just-in-time deliveries, a broader range of products, and low prices. The number of dealers had been declining by an average of 1.7 percent over the last 30 years (Japanese Ministry of Trade, Economy, and Industry calculations, 2015). According to the database the number of member companies affiliated to *Zenkikoren*, the national machine tool federation in 2015 halved from 3,200 companies in 1989. The percentage of owner-operators over the age of 60 was exceptionally high. More than 60 percent of them planned to close their dealership when they retired.

Throught Japan, Trusco Nakayama Corporation has built delivery routes that trace planet, like orbits around company distribution centers. From this point of view, the company have named its distribution centers "Planets."

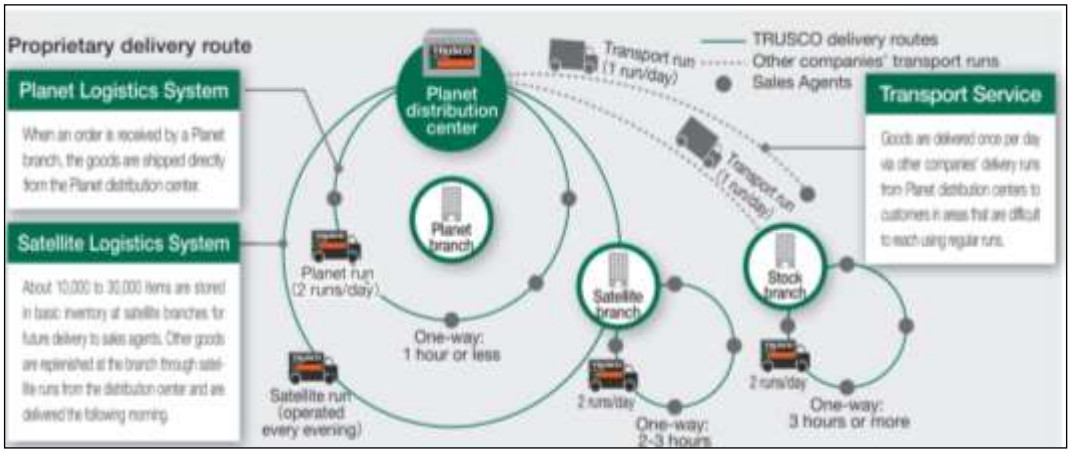

Fig. 1. Routes that achieve immediate delivery (Planet and Satellite Distribution System)
***Source*:** Trusco Nakayama (2020), "TRUSCO Corporate Profile", http://www.trusco.co.jp/docs/eng/trusco2020.pdf,

2.4. Home Centers

Consumer retailers such as home centers accounted for about a quarter of the MRO market. E-commerce operators were slowly eating into sales of this channel. Home center sales were expected to shrink 0.3 percent per year in the years starting 2015. Home center wholesalers required low prices above just-in-time deliveries or a wide product range.

2.5. E-commerce Operators

E-commerce was the fastest growing channel. In 2015, it accounted for just nine percent of the MRO market, but by 2025, it was expected to be 25 to 30 percent. B2B MRO e-commerce operators tended to focus on smaller businesses not covered by machine tool dealers. Although B2C e-commerce operators such as Amazon and Rakuten handled MRO products, the sales volume was low compared to B2B.

2.6. Others

There were cases where retail stores handling other types of products began selling MRO products. Examples included stores dealing in industrial gas, stationery, and office equipment, and scientific machinery and equipment. Trusco Nakayama opened more than 800 new accounts per year, but many of them were these other types of operators.

3. Trusco Nakayama's Business Strategy

3.1. Product Range

Trusco Nakayama handled products in nine categories. Products ranged from cutting tools (3.7%); production processing tools, such as measurement tools and equipment (8.3%); construction supplies, such as hydraulic tools, welding supplies, ladders and stepladders (11%); work supplies, such as miscellaneous items for factories, grinding and polishing supplies, and cutting goods (18.4%); hand tools, such as screwdrivers and spanners (17%); environmental safety supplies, such as protective equipment (15.3%); storage supplies, such as containers and steel shelving (12.3%);

laboratory supplies, such as workbenches and laboratory essentials (4.4%); to office supplies, such as office equipment, cleaning supplies and stationery (8.8%).

3.2. Customers

Trusco Nakayama reached its customers mainly through three routes. The "factory route" accounted for nearly 80 percent of sales. Primary customers were retailers such as machine tool and welding material dealers. The number of accounts was over 27,000. These dealers sold onward mainly to end customers such as factories.

Traditionally, the "home center route" was the second biggest category, but the "e-business route" recently overtook it. Roughly 75 percent of e-business sales were through online mail-order companies (MonotaRO, Amazon.com, etc.). The remaining 25 percent sold through Orange Commerce, Trusco Nakayama's online end-user sales support platform for over 1,000 partner factories and 300 companies. Although Trusco Nakayama received orders from the end users via the platform, sales went through dealers. The company delivered orders to its affiliated dealers, who in turn processed the orders and sent them to the end user with delivery slips.

3.3. Corporate Governance

In 2017, Trusco Nakayama received the Best IR Award for Encouragement from the Japan Investor Relations Association Nakayama explained his company's approach to investor relations: "The starting point of IR is the shareholders' meeting. I wonder if it might be interesting to tell you the percentage of shareholders who show up to the meeting. For our company, of the 25,000 shareholders we have, 1,790 (7%) show up. This is a unique number. The level of attendance at the meeting shows the shareholders' level of interest in the company.

Our shareholders' meeting is very welcoming. At other companies, they may show a welcoming face, but in their hearts, they are saying, *Please don't come!* That's why we do it on the same day as our fiscal year end. I think the decision to hold the meeting on a busy day comes down to a choice between good and bad, between relevant and non-relevant (Trusco Nakayama, 2017). Many listed companies in Japan close their fiscal year at the end of March. Of these, many hold their shareholders' meeting on the second to last day of business in June (in 2018, 30.8% of companies held their shareholders' meeting on the same day as they closed their fiscal year.)

Mr. Nakayama also had clear ideas about corporate governance. According to his perspective the company does not need outside directors and full-time auditors. The first people to notice if the executives act untoward is the employees. Will they see an outside director who only visits the company once a month? The company have them because it is mandatory to have them. But from general perspective as the company must have them (auditors and outside directors), they are making the best of them to improve the company architecture. The Tokyo Stock Exchange made it a requirement in February 2014 for listed companies to designate at least one independent outside director. The following due, corporate law was revised so that listed companies not appointing an outside director were obliged to explain the reason at the shareholders' meeting. The corporate governance code enacted in June 2015 by the Financial Services Agency requires at least two outside directors and recommends a third (Japan's Corporate Governance Code. Final Proposal, 2015). An amendment in June 2018 called for the number of outside directors to be one third of the board or more.

The background to Nakayama's thinking was in the thoroughness of OJS. Not even Nakayama could see who gave feedback on the people in OJS. Nakayama told the talent operators that they should never entertain requests for that kind of information, even from him. If the section received such requests, it should inform him. It is this this kind of thinking and commitment to the development of authentic and user relevant value that is behind Nakayama's remark about not needing outside directors or auditors. There was already a mechanism in place that enabled employees to report unscrupulous executives.

Although many of the employees were shareholders, the overall ratio of employee stock ownership was not high. Nakayama explained why: "In many companies, employee or supplier shareholding associations are among the top shareholders, but we have stopped doing this. We think it is nonsense to tell people to buy or not sell their individual assets. Although we do in fact have an employee shareholding association at our company, the difference for us is that when the units of stock reach that required for voting rights, the shares are automatically withdrawn from the association and changed to individual stock. We tell them that because these are your assets, withdraw them so that you can be an individual shareholder and claim dividends as well as other shareholder benefits. They also have the right to participate in the shareholders' meeting."

Trusco Nakayama is widely considered in Japan as one of the most successful adopters of Japanese Management. Japanese Management grew out of research from the GHQ's post-war occupation policy (Abegglen, 1958), when it was noted as a management style different from the one in the United States. Related research progressed particularly in the 1980s, when Japanese automobile and electronics makers (major Japanese export industries) became successful in the United States and attracted international scientific attention. (Dertouzos et all, 1989).

In time, an increasing number of management researchers and business managers also felt that Japanese management was different from the US style. However, this research slowed after the end of the bubble economy in Japan and American management techniques became more common from the mid-1990s, a period of low growth in Japan. Many researchers pointed out the limitations of the Japanese management style, while the American-style management spread gradually, but not without its well-known side effects.

4. Conclusions

Somewhat contradictory and apparently incompatible, the Japanese style of management and American style of management have co-existed in different organizations and geographies over the past few decades. At times of economic growth, businesses have indicated preference for the immediate business results and profit-driven US style of management. However, at times of social unrest, economic hardship and business crises, global organizations have repeatedly turned to Japanese-style management for insights on stability, sustainability, and psychological safety.

As observed in the Trusco Nakayama case, the development of a family-type of culture, driven by social norms and supported by Confucianist thinking, Japanese organizations are highly hierarchical, yet well engineered and geared to accommodate talent at each layer of the organization and provide them with the tools and opportunities for growth within that specific organizational layer.

Promotion is planned and is calculated according to the amount of time spent with the organization, accumulated experience, demonstrated managerial and professional ability and organizational need for growth.

Although individual compensation does not increase exponentially according to individual results, employment is indirectly guaranteed for as long as the organization is in business, leading to psychological safety for employees who prioritize culture and belonging over individual increase of income.

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JAPANESE OPEN INNOVATION IN SILICON VALLEY: INNOVATION OUTPOSTS AS EFFECTIVE WAYS OF ABSORBING INNOVATION INTO CORPORATE ECOSYSTEMS

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Ana DAMASCHIN[**]
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Abstract. *We define open innovation as a business management model for innovation that promotes collaboration with people and organisations outside the company. This research illustrates how Japanese companies focus on collaboration, ecosystem development, and user integration to initiate social innovation opportunities. The authors worked with investors, key executives, and business architects from NTT Docomo Ventures, Inc. to underpin the main characteristics of their social innovation strategy and to determine how their organisations draw from experience in user engagement and their corporate philosophy to create sustainable business models and to develop a unique and long-lasting value proposition.*

Keywords: *Organization, Transformation, Sustainability, Talent, Strategy, Ethics*

1. BACKGROUNG

The term *innovation* has been defined in many different ways. Innovation comes from the Latin word *innovat*, which means to renew or alter. The combination of *in* and *novare* suggests, "to come up with something entirely new" (McKeon, 2014:XXIX). Analysing the innovation concept, Wulfen (2018:01) indicates that innovation can appear in many forms. Innovation is frequently associated with product development or new technological inventions. But it can also be services, business models, markets, processes, customer experience or ways of organising yourself. However, the main definition of innovation from the authors point of view is that innovation can convert ideas into developmental concepts.

From a theoretical point of view, social innovation is a contemporary manifestation of historical tensions of the relationships between "economy" and "society." According to Logue (2019:1), as a concept, social innovation is concerned with the process and pursuit of both economic and social progress and is underpinned by a fundamental relationship to value and morality, that is, understanding of "doing good" and "being good."

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Innovation wasn't always a hot topic in Silicon Valley. As many things have happened in the ensuing years, innovation has risen from the bottom up. Today, companies seem to have an almost insatiable thirst for knowledge, expertise, methodologies, and work practices around innovation (Kelley, Littman, 2016:3).

An important development of innovation studies in the past decade has been recognising the role of communities outside of the boundaries of firms in creating, shaping, and disseminating technological and social innovations (West, Lakhani, 2008:223). The term "open innovation" is most recently defined as "a distributed innovation process based on purposefully managed knowledge flows across organisational boundaries, using pecuniary and non-pecuniary mechanisms in line with the organisation's business model" (Chesbrough, Bogers, 2014:17). Open innovation is not related solely to the company, it also includes creative consumers (Berthon *et all*, 2007:39) and communities of user innovators.

The boundaries between a company and its operating environment have diluted. Innovations can be easily transferred inward and outward between firms and other firms and between firms and creative consumers. This translates in impact at the consumer level, the firm, the whole industry, and society (Bogers *et all*, 2017:15).

Today there is a growing tendency in big companies to operate disruptive ideas far away from their headquarters in the so-called "innovation outposts," where they afford to increase their versatility and be fast enough to keep up with such a demanding pace in technology. A report from Mind The Bridge - an advisory firm in innovation - and JETRO (Japan External Trade Organisation), (Mind the Bridge, JETRO, 2020:2-16), observes the corporates new ways to push towards innovation strategically placing their innovation outposts inside the world's technology epicentres: San Francisco Bay Area, Israel or China. According to their methodology (Mind the Bridge, 2020:2-19), an "innovation outpost" is "a team of people and often a physical site that is set up by a corporation in a global technology hub to perform and support activities such as: Technology Scouting, Open Innovation, Startup Investments, and M&As". For a better understanding and in concordance with the report methodology, we identify six defining characteristics of innovation outpost:

- Exposure/Training
- Trend Reporting
- POC/Acceleration/Co-Development/Development/Venture Building
- Procurement/Licensing/Partnership
- Investments
- Acquisitions

When analysing these principles, it is important to note that during their operation, innovation outposts are constantly changing shape, from being innovation "antennas" for the head company to independent R&D centres. In particular, Japan uses these innovation outposts for capital deployment in either Corporate Venture Capital (CVC) or Limited Partners in a tertiary investment fund. Today, large companies are taking on a decidedly 21st-century twist. With the rise of Silicon Valley as a hub of innovation, large firms are beginning to embrace open innovation, looking outside their own corporate borders to find innovation sources. They are putting Innovation Outposts into Innovation Clusters to tap into the clusters' innovation ecosystems. According to Mind the Bridge and JETRO classification, in an attempt to seek an understanding of the corporate push towards innovation, researchers have identified 4 forms (Corporate Innovation Antenna, Corporate

Innovation Lab, Corporate R&D Centre and Corporate Venture Capital (CVC) Office), generally taken by the innovation outposts, each showing different focus and depth of the corporate missions (Mind the Bridge, 2019:1).

2. CORPORATE INNOVATION ANTENNA

The first is the lean setup, the Corporate Innovation Antenna. In terms of the innovation community, this type of innovation outpost builds on a lean setup consisting of a small team of up to 10 individuals performing trend spotting and individual startup engagement. In addition to being lean, this is usually the initial step towards a growing presence, and therefore, antennas are often young. Typically, the Antenna is hosted in a co-working space or third-party innovation centre.

3. CORPORATE INNOVATION LAB

To make innovation management ready for digitalisation, companies are increasingly setting up Corporate Innovation Labs. This represents the lean version of the R&D facility and allows for better interaction with startups working with new technologies. On the other hand, this is actually a startup incubator or accelerator running on corporate resources for out-of-house research and development on new technologies and venture building and strategic partnerships. Corporate Innovation Labs are mainly focused on implementing radical and disruptive innovation to develop a digital roadmap.

4. CORPORATE R&D CENTRE

In-house research and development of new technologies or technological capability are recognised as a key engine of short-term business performance and long-term survival. This kind of outpost is established when there is a long-term commitment from the main company (Park, Youngjoon, 2006:26). An R&D Centre employs anywhere from 50 to 1000 individuals and represents the region's highest dedicated mission. The R&D centres draw on both startup technology and local talent to give corporations the power to interact and implement new solutions. Furthermore, an R&D centre pursues to develop technological capabilities for value creation in diverse business areas and provide the next growth engines for the global competition. Some corporates might have multiple R&D Centres specialising in different technologies. While R&D Centres were the dominant model until 2010, during the last decade, we have seen a strong shift towards a leaner presence and the use of other open innovation mechanisms. Labs and - more recently - Antennas have become rather frequent. In parallel, Corporate Venture Capital phenomena is rapidly growing in the Bay Area (Mind the Bridge, 2019:1).

5. CORPORATE VENTURE CAPITAL (CVC) OFFICE

The physical presence of a venture capital fund is key to any business as VC is organically a part of an entrepreneurial ecosystem. Therefore a CVC office is often the choice of a big corporation inside an innovation cluster. For a better understanding, Corporate venturing – also known as corporate venture capital – is the practice of directly investing corporate funds into external startup companies.

Mind the Bridge's Online Directory shows real-time data of the innovation ecosystem in Silicon Valley. According to their findings, in November 2020 there were 389 innovation outposts in the Bay Area taking the form of either innovation antennas, innovation labs, R&D centres, or venture capital offices.

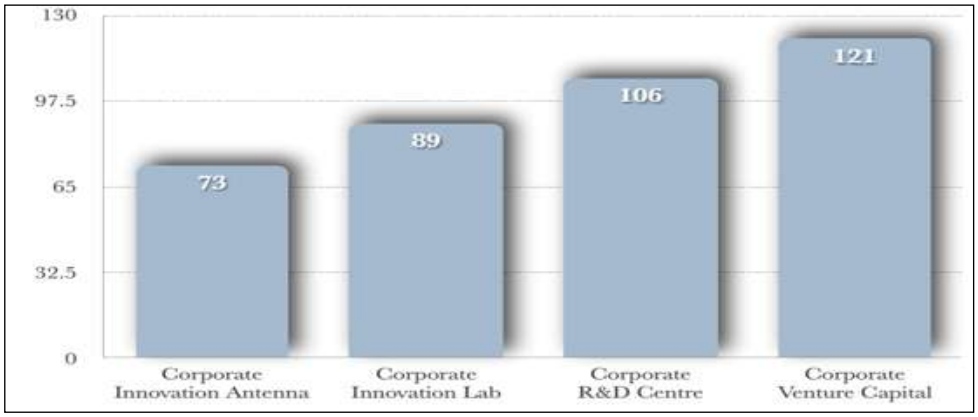

Fig. 1. Innovation outposts in Silicon Valley, by type
***Source*:** Mind the Bridge report (2020). "Corporate Innovation in Silicon Valley", https://sv-innovation.mindthebridge.com/directory

The appetite of mature companies worldwide in having a presence in Silicon Valley is increasing in recent years. The largest presence is from Asia and the Pacific rather than Europe. Out of the 222 companies with an innovation outpost in the Bay Area, 94 (42%) are from the APAC region, versus 76 (34%) from Europe. 41 (18%) are from the rest of the US and 8 (4%) from Latin America. Other regions, including Africa, the Middle East, and Russia, have only a marginal presence of one outpost each. (Mind the Bridge, 2019:1)

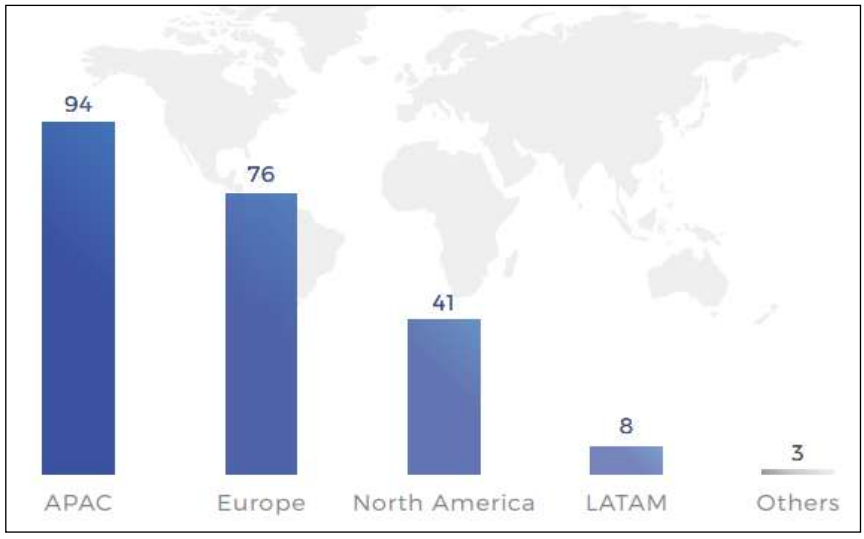

Fig 2. Corporates tapping into Silicon Valley by region of origin
***Source*:** Mind the Bridge report (2019). "Corporate Innovation in Silicon Valley Outposts and Investment Flows", https://mindthebridge.com/corporate-innovation-in-silicon-valley-2019-report/

Based on the total sum of corporations tapping into Silicon Valley by region of origin we can analyse corporate innovation presence by country. Looking at the graphic in Figure 3 we observe that out of the total number of innovation outposts, 27% (107) are

American companies, 22% (87) Japanese, followed by Chinese (33), German (28), French (22), and Korean (22). The top 6 countries with innovation operations in the Bay Area account for 76% of the total number of corporates, while there is a total of 30 countries with innovation hubs in the region.

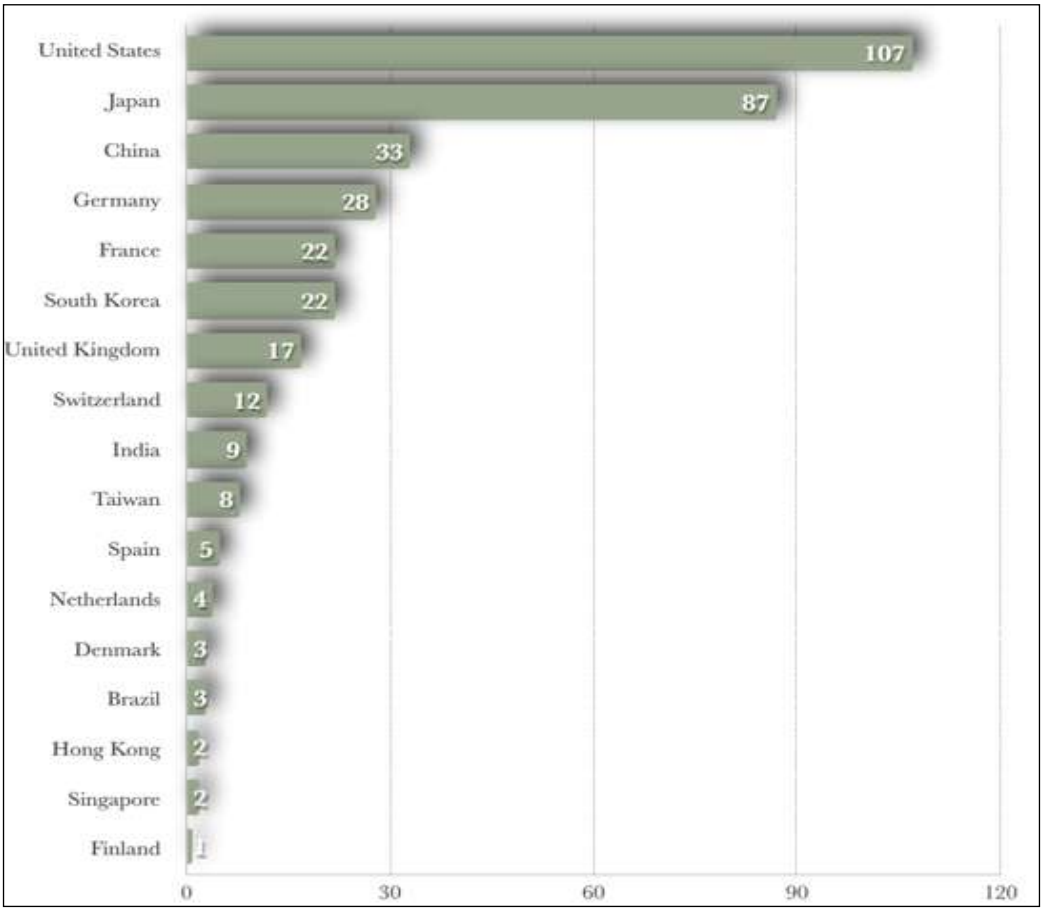

Fig 3. Corporate innovation presence in Silicon Valley, by country. Number of innovation outposts
***Source*:** Mind the Bridge report (2020). "Corporate Innovation in Silicon Valley", https://sv-innovation.mindthebridge.com/directory

If we look strictly at Japanese presence in Silicon Valley, we see a tendency towards lean structures as antennas, labs, and VC offices, operating with a small number of employees. Figure 4 shows trends in Japanese innovation outposts in Silicon Valley, by type. There are only 5 more structured Japanese R&D subsidiaries established in Silicon Valley that deliver innovation for their main branch: Fujitsu Laboratories of America (FLA), Hitachi America and Hitachi Vantara, Toyota Research Institute, and TDK InvenSense. These R&D centres have operations requiring anywhere between 50-500 members, having their research focused on artificial intelligence, sense computing, cryptography, blockchain, big data analysis, IoT, or quantum computing.

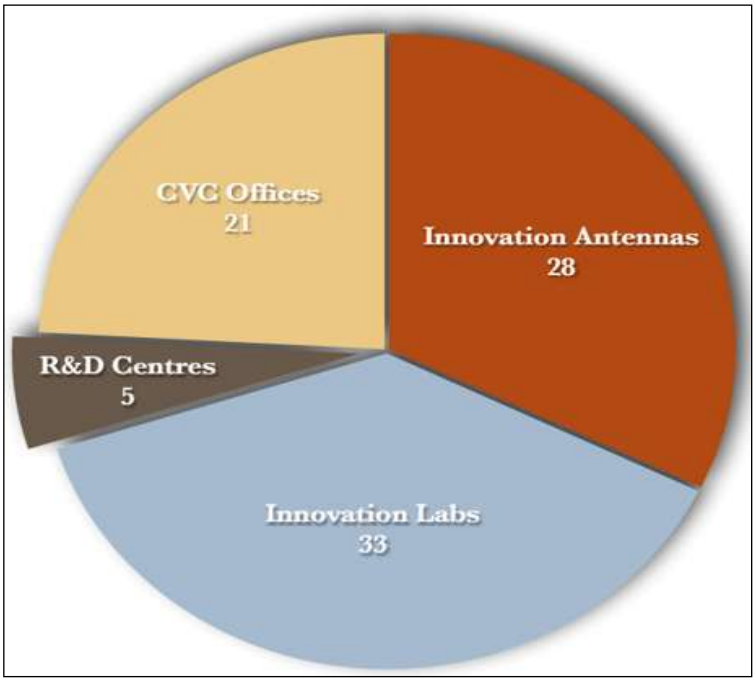

Fig 4. Japanese innovation outpost in Silicon Valley, by type
***Source*:** Mind the Bridge report (2020). "Corporate Innovation in Silicon Valley", https://sv-innovation.mindthebridge.com/directory

Regarding industries, there are 18 different sectors of the Japanese economy present in the Bay Area, some companies having even more than one innovation outpost. Figure 5 shows Electronics as being the most representative sector, counting 13 outposts out of 87 and covering giants like Panasonic (3), Sony (2), Hitachi (2), Canon (1), or Murata (1). The Automotive industry comes next with 10 innovation centres for manufacturers such as Toyota (2), Denso (2), Honda (1), or Yamaha (1). Large conglomerates such as Mitsui, Mitsubishi, and Sumitomo, which have their main focus on trading and investing, are also key players in the region, having 9 CVCs offices and innovation labs to cover their extended portfolio of research and investment. The software comes next with 8 Japanese innovation antennas and corporate innovation labs working for Fuji Film, Rakuten, Softbank, and NTT.

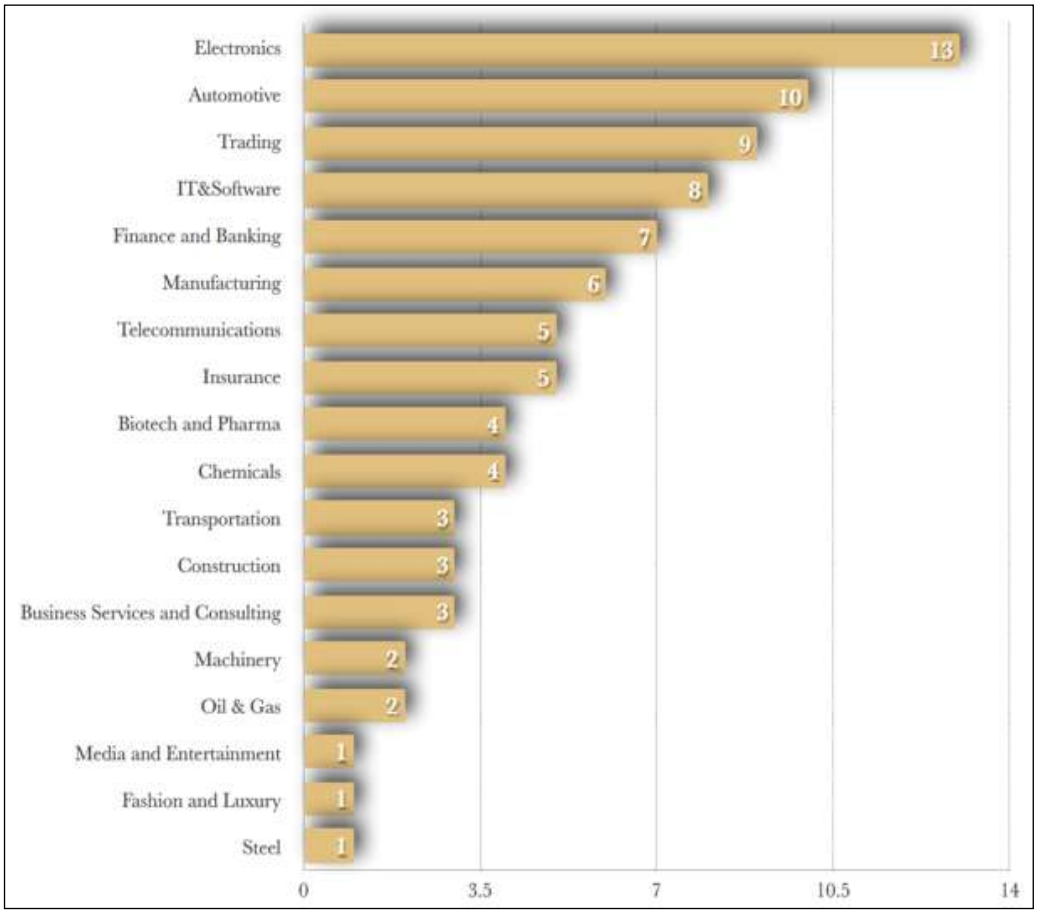

Fig 5. Japanese innovation outposts, by industry
***Source*:** Mind the Bridge report (2020). "Corporate Innovation in Silicon Valley", https://sv-innovation.mindthebridge.com/directory

Based on these numbers, we notice that Corporate Open Innovation in Silicon Valley is definitely booming. Not only the presence of big corporations but also the foreign capital invested in the region is significant. Figure 7 shows the top 15 investors in Silicon Valley between 2015 - 2019. Starting from 2015, corporates in mainland Japan put a special focus on CVC (Corporate Venture Capital), backing 288 rounds with a total of $28B of co-investment into the Bay Area. This makes Japan the most valuable foreign investor in Silicon Valley. The main Japanese players in the spectrum are the Vision Fund, Toyota AI Ventures, NTT Docomo Ventures, Sony Innovation Fund and MUFG Innovation Partners (Mind the Bridge, 2020).

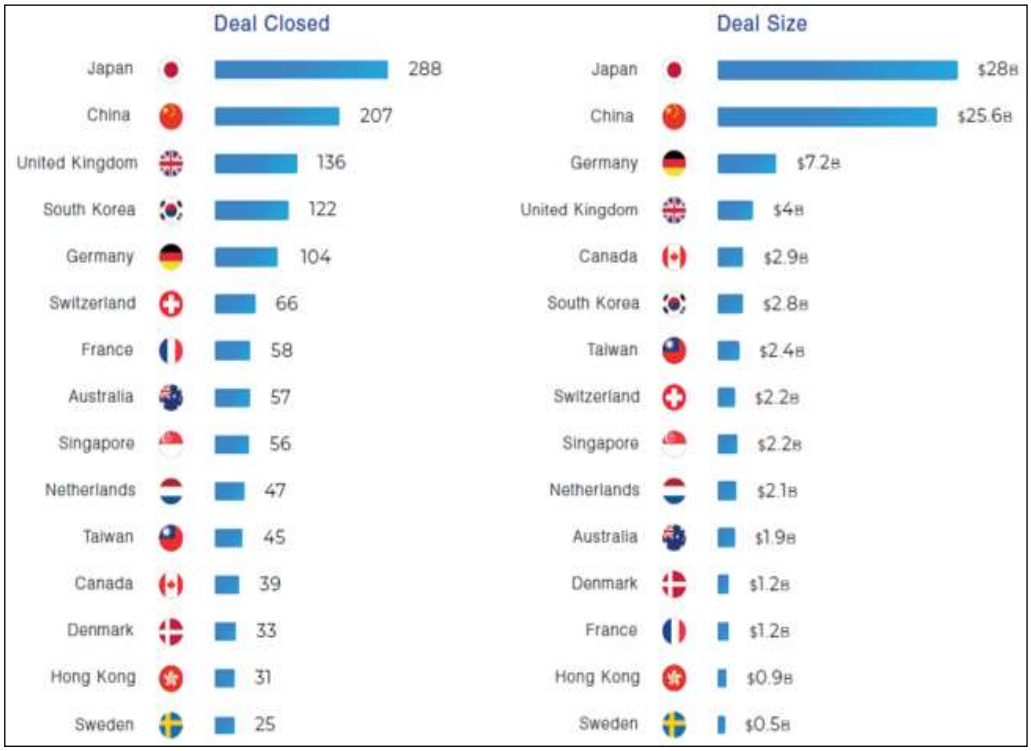

Fig 7. Top foreign investors into Bay Area (2015-2019)
***Source*:** Mind the Bridge report (2020), "Corporate Innovation in Silicon Valley", https://mindthebridge.com/japanese-corporate-innovation-in-silicon-valley/

Mind the Bridge is a global organisation which provides innovation advisory services for corporate and government organisations. With HQs in San Francisco (CA) and offices in Barcelona, London, Milan, and Berlin, Mind the Bridge has been working as an international liaison firm, acting between startup's and corporates since 2007. The organisation scouts, filters, and works with 5,000+ startups a year, supporting global corporations in their innovation quest with open innovation initiatives that translate into curated deals with startups (licensing, investments, and/or acquisitions). It also provides advisory services and benchmarking on innovation strategy and structure.

JETRO, or the Japan External Trade Organization, is a governmental organisation which works to promote mutual trade and investment between Japan and the rest of the world. JETRO San Francisco focuses on Innovation and partners with local accelerators for startups to provide free services which allow them to expand their business and receive expert mentoring. JETRO also connects Japanese startups to interested investors in the Bay Area and provides support and assistance to American companies entering the Japanese market.

6. CONCLUSIONS

Through this research, we intended to illustrate how Japan originated companies focusing on collaboration, ecosystem development, and user integration have managed to initiate social innovation opportunities in Silicon Valley. It is important to observe that the Japanese companies' social innovation strategy focuses on creating sustainable business

models and developing a unique, long-lasting value proposition for all users - customers, employees, shareholders, and society.

As mentioned previously, establishing innovation satellites away from the headquarters is considered a strategic move for a corporation looking to remain at the forefront of societal transformation. According to practical and theoretical research results, Japanese companies have managed to adapt to these criteria. As the present research indicates, if there were only 10 Japanese innovation outposts tracked by Mind the Bridge before the year 2000, the number grew almost 9 times, especially in the last 5 years. The present data shows Japan being the main foreign investor in Silicon Valley, with the largest innovation presence, spread all around the Bay Area.

Findings also showed that corporate innovation outposts' success depends on their alignment with their main companies' goals and the business units that have to integrate the innovation coming from Silicon Valley. If teams are stable and the commitment from top management is clear, concrete results follow, independently of the headcount of the outpost placed in Silicon Valley.

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III. Public Policies and Issues of National Minorities

REFLECTIONS ON DATA OF ORAL HISTORY COLLECTED BY THE SURVEYS OF THE JEWISH COMMUNITY FROM ORADEA

Anca OLTEAN*

Abstract. *This is a paper based on my PhD thesis "The history of the Jews from Romania and Hungary (1945-1953) in the Romanian and Hungarian Historical Writings". From the consultation of the edite bibliography that we put at the basis of the present study it results that we have studied of an appreciable literature dedicated to the study of Jewish phenomena after the Second World War, published in Romania and Hungary. Written by Romanian and Hungarian historians, some of Jewish origins, the edite bibliography reveals us a series of particularities of the evolution of Jewish community during communist period in Central Europe.*

The sources of oral history allow us to give new insights on a community on fighting for the coming out from the tragedy of Holocaust, the adaptation to the newly political economical realities of the area, but also for the prezervation of identity. Thus were questioned 8 members of the Jewish Community of Oradea, who either them or members of their family members were returned from deportation with the view of the early postwar years in Oradea and their welcoming back in the community near the Crisul Repede River.

Keywords: *Jews, Holocaust, deportation, oral history, questionnaire, Romania, Hungary.*

An important historian who wrote about the situation of Romanian and Hungarian Jews, Randolph Braham in his article "*Romanian Nationalists and the Holocaust: The Drive to refurbish the Past* "[1] mentions the fact that during the leadership of communist president Nicolae Ceauşescu the historical truth was distorted concerning the anti-Jewish policy of Antonescu's Romania during the years 1940-1944. The trend was not to mention in the history school books the Jewish deprivations of rights in the post-Trianon antonescian Romania, the Jews often remaining without means of living because of the fact that they could not practice certain jobs, deportations in Transnistria were ignored and not mentioned, and pogroms of Iassy and Bucharest were forgotten. Also, the communist historiography ignored the sufferences of Transylvanian Jews deported by Hungarian authorities in German concentration camps, considering that antifascist and communist Romanian inhabitants died there and not the particular group of the Jews. The publication of the journal of Eva Heyman[2], a Jewish girl from Oradea, a niece in the family of a

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[1] Randolph Braham, *Romanian Nationalists and the Holocaust: The Drive to Refurbish the Past,* in CEU Yearbook, 1996-1999), http://web.ceu.hu/jewishstudies, accessed in April 22, 2015.

[2] Eva Heyman, *J'ai vécu si peu. Journal du ghetto d' Oradea (Préface de Carol Iancu, traduit du Hongrois par Jean-Léon Muller),* Editions des Syrtes, 2013.

farmacist, reveals the situation of the Jews in the Holocaust years in the city of Oradea. She talks about public robbery of Jewish assets and houses, about the fact that Jews were forced to leave their properties and to move to the ghetto, in the city, about feelings of hate and public violence against the Jews of the city and later on they were deported to German concentration camps.

After the end of the war, the Jews deported tried to return to their country of origin, Romania in our case, and it followed a state of independance of 2-3 years (but the situation of the country was precarious because of political struggle and instability), a state of independance in the sense that people could talk freely about the Holocaust, about the persecutions against the Jews, about Hungarian arbitrary dominance in Transylvania and also about the persecutions against the Jews during the war from Romania and Hungary. In 1953, the single remaining Jewish organization in the Jewish quarter was Jewish Democratic Committee, an organization considered by some as a communist one, but still trying in a practical way, to organize the Jewish community from Romania.

It is very easy to state that communists leaders of Jewish origin forgot the common sufferance of the Jews and built the communism disconsidering their community and origins. But, on the other hand, in present times, Jewish community tried to keep distance of these important former Jewish communists and to foster relations with Israel and to pursue the democratic ideas and local community development.

For instance there were cases of Jewish activists having important roles in the communist party who tried to help their Jewish fellows to emigrate in Israel.

The volume *Raport Final/ Final Report*[3] elaborated by the International Commission for the study of Holocaust in Romania has a chapter entitled "*Distorsion, negation and minimalization of Holocaust in postwar Romania*". The international Commission important historians such as Ioan Scurtu, Jean Ancel, Randolph Braham, Ladislau Gyemant, Andrei Pippidi, Liviu Rotman, Leon Volovici, Lya Benjamin who had important contributions in solutionning the Jewish chapter of Second World War in Romania. In spite of the rapid communist advance, in post-war Romania, at May 26, 1946, it took place the process of war criminals in Iași and Bucharest and these trials condemned the anti-Semite politics of Marshall Ion Antonescu. Many of the condamned leaders of the Antonescian bureaucracy will be later on rehabilitated and even included in the ranks of Romanian communist party. The authors point out the negative consequences of the pogrom of the Iassy with its numerous Jewish victims (approx. 10 000 of Jews) and the deportations of Transnistria acknowledged during the trial by Ion Antonescu (150 000 -170 000 of victims).

But not all the Romanians persecuted the Jews and were anti-Semites. There was also a benevolent category of Romanians who saved the Jews from certain death and received, in consequence, the distinction "Rights among the Peoples". This aspect is revealed by *Raport Final (Final Report)* and also by Professor Antonio Faur[4] from the University of Oradea who, in his publications, that regard the fate of the Jews from the

[3] Friling, Tuvia; Ioanid, Radu; Ionescu, Mihai E., (eds.), *Raport Final (Final Report)*, Polirom, 2005.

[4] I quote here the book of Antonio Faur, *Implicarea diplomatului român dr. Mihai Marina în acțiunile de salvare a evreilor din Transilvania de Nord și Ungaria (1944) (The implication of the Romanian diplomate dr. Mihai Marina in the actions of salvation of the Jews from Northern Transylvania and Hungary (1944))*, Oradea, Editura Muzeului Țării Crișurilor, 2014, publication that reveals the role of the diplomate dr. Mihai Marina in the actions of crossing the border of the Jews from Nord-West of Transylvania in the Romanian Kingdom where life was still bearable for the Jews.

North-West of Transylvania under Hungarian and fascist dominance and occupation, underlines that although the fate of the Jews from the occupied Transylvania was far from good, them being deported in German concentration camps, there was a benevolent category of Romanians who helped the Jews under Hungarian occupation to cross illegally the border in the Romania were the political regime was not leading towards their total annihilation.

Making reference to the history of Jews in Central and Eastern Europe during the communist regimes, Bernard Wasserstein in his book *Vanishing Diaspora. The Jews in Europe since 1945*[5] provides the figures of remaining and returning Jews in Hungary as 145 000 of people and in Romania of 420 000 in the year 1946. During the last years of Stalinist leadership, in Soviet Union started a stalinist purge that reverberated in the communist block. The Jewish schools with teaching in Hebrew are closed in Romania and Hungary in 1948-1949.

In his book *Evreii în anii tranziției spre comunism (1944-1948) (The Jews in the years of transition to communism (1944-1948))*, Harry Kuller[6] speaks about the hopes of Romanian Jewry to be saved by Americans in the years when the communism was about to be installed: "The years 1945-1949 they were thus, years of expectations and confrontations- between organisms and organizations, between their leaders, seconded by larger or smaller groups. It was an open field for positions and oppositions, for diverse solutions and benign adversities. A state of democracy, some would say; paradoxically the general social-political current was not leading towards democracy. At horizon it was visible a socialism of Soviet type; they were Jews who wanted it, others who wanted to avoid it making themselves cousins of the evil until they passed the bridge, until emigration; last, but not least, not few decided to remain in the place where they were born in good or in worse times. None of the above mentioned categories of Jews did not "bring" the socialism in Romania"[7]. [transl.] The fact is that almost all the Jews of Romania emigrated after the setting of communism here, in Israel, proving that they were not as communist as some asserted about them.

The chief rabbi of Romania, Moses Rosen, confirms the existance of community life and religion during the whole communist years[8]. Although the activity of the sinagogues and of the Jewish community was not as intensive as before the war, these institutions continued to exist, inclusively there were people involved in the assertion of the Judaic cult, which, at a certain moment, the rabbi stops them to emigrate because it was necessary that them to remain in the country. There many adherents of the Judaic cult which continued to go to the Sinagogue, although the Security sent also here its sources of information because the "Jewish streets" must have been submitted to the comunist regime.

It was very much accredited the idea that the Jews brought the communism and this system was implemented with the massive participation of Jewish community members. Radu Ioanid shows that it is wrong to consider that the number of Jewish communists in Romania was big, showing that in 1933, from a total of 1655 of communist

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[5] Bernard Wasserstein, *Vanishing Diaspora. The Jews in Europe since 1945*, Hamish Hamilton Ltd., London, 1996, p. 1-158.

[6] Harry Kuller, "Evreii în anii tranziției spre comunism (1944-1948) ("The Jews in the years of transition to communism") în Acad. Nicolae Cajal, dr. Hary Kuller, *Contribuția evreilor din România la cultură și civilizație (The contribution of the Jews of Romania to culture and civilisation)*, Editura Hasefer, București, 2004.

[7] *Ibidem*, p. 155.

[8] Moses Rosen, *Primejdii, încercări, miracole. Povestea șef-rabinului Moses Rosen*, p. 16-340.

members, only 364 were Jews which represented 22,6%. Also, Ioanid shows that in February 1946, the Jews represented only 5,3% from the party members[9].

As in Hungary, the Jews had particular reasons to adhere to communism. In 1945 the option for communism, meant a strong attitude against the fascism, of which they were fear the most. More of them could not feel animosity towards the Soviet army or towards the Russians because these were the factors which liberated them from the Antonescian regime. Several Jews, traumatized by the horrors of Holocaust, became important personalities of the communist party, or, much more, they involved in the Romanian Security, terrorizing themselves the political opponents of the communism.

In 1949, the Romanian communists started a brutal campaign against the Zionist leaders. What was interesting was the fact that although in the period that we study a number of Jews emigrated in Israel, the Zionist leaders tried to convince the Jewish population in the view of emigration and to accelerate the rythm of emigration, were imprisoned, enquetted and tortured starting with the year 1949[10]. From 1949 to 1959 they were enquetted and sentenced and judged around 250 of persons. The campaign was restarted in 1954, although Stalin died in 1953.

The faith of the Jews from Romania was far from good. With the exception of a minority, they were rather victims of the communism rather than beneficiaries. The Jews from Romania emigrated to a greater extent than the Jews of Hungary, while in Hungary assimilated more of them. We can conclude that, in Romania, the communist regime was more permissive with the Jews.

Regarding the situation of the Jews from Oradea after their return from Holocaust, I succeeded to question on the issue of Jewish postwar life in Romania a few Jews, survivors of the Holocaust, who were deported or who escaped from arrest being hidden by generous persons.

The questionnaire that I have achieved took into account a few classical works written by consacrated historians on the basis of questionnaires. Gidó Attila and Sólyom Zsuzsa, in the study *The surviving Jewish inhabitants of Cluj, Carei and Oradea. The survey of World Jewish Congress in 1946*[11] draws by the intermediation of questionnaires analysis a painting of Jewish community during the war and in the months which followed to the liberation. The authors describes the situation existent in Romania in interwar period by mentionning the fact that most Romanian Jews were deprived by citizenship both in 1924, but also during the governance of Octavian Goga in 1938 making a comparison with Hungary were the second anti-Jewish law brought restrictions in the sense that the Jews could not obtain the citizenship in any way. On the basis of questionnaires, the authors fill in this picture with a painting of the situation existent in Cluj, Carei and Oradea in the period of Hungarian administration. Thus, in the first months of occupation of Transilvania was organised a military administration, replaced later on with a civil one. They were taken measures against the Jewry by the interdiction of the Jewish publications, of sportive clubs and non-religious associations. Starting with

[9] Radu Ioanid, *Răscumpărarea evreilor. Istoria acordurilor secrete dintre România și Israel (The ransom of the Jews. The secret bargaigning between Romania and Israel),* București, Polirom, 2005, p. 76.

[10] Teodor Wexler, "Procesele sioniștilor" în Romulus Rusan (ed.), *Anii 1954-1960. Fluxurile și refluxurile stalinismului*, p. 380.

[11] Gido Attila, Solyom Zsuzsa, *The surviving Jewish inhabitants of Cluj, Carei and Oradea. The survey of World Jewish Congress in 1946*, Cluj-Napoca, ISPMN Working Papers, nr. 35/2010, http://www.ispmn.gov.ro/uploads/35%20pt%20web%20final.pdf, accessed in February, 2011.

1940 the insults, the evacuations, arrestments and expulsations of the Jews became frequent. The authors allocates a separate chapter to the anti-Jewish existent legislation in Northern Transylvannia found under the occupation of Hungary. Thus the first anti-Jewish law (The Law XV -1938) reduced the number of Jewish intellectuals or free professionists at 20% from the total number of Jewish citizens. The second anti-Jewish law from May 5, 1939, during the governance of the count of Teleki Pál, considered as Jews the ones that were members of Jewish religious community and if one of the parents or two grandparents were Jews. The proportion of 20% of Jewish intellectuals or free professionists was limited to 6%. The law introduced several anti-Jewish measures among whom the law numerus clausus who limited the number of Jewish students to 6%. The limit of 6% of Jews was introduced also in the house of lawyers, doctors and engineers for the Press Chamber and Chamber of actors. The law was limited the right to the Jews to buy agricultural and forestry properties and made possible the expropriation of Jewish properties. Several Jews lost their jobs and several Jewish shops were closed. In practice the number of their closed shops and stores confiscated was more numerous than the one acknowledged by the law.

The third anti-Jewish law was the law no. XV/1941 and its prezervations were applied also on Northern Transylvania. The Law forbidden the marriage between Jews and non-Jews and imposed penalities for the Jews who had sexual relations with non-Jewish women.

Another anti-Jewish law was the Law XV/ 1942 by which the Jews lost the right to buy more properties.

On the basis of the questionnaires made up by World Jewish Congress in 1946, the authors are offering informations also about forced labour. Established by several decrees, the forced labour entered into vigour at July 1, 1939 and stay valid until April 1941. The Jews who made forced labour were not required to make military service. The ones who made forced labour could not wear weapons. The Jews had to make in turn a hard physical work, to endure cruel punishments and and inhuman treatment, including insufficient portions of food.

The questionnaires offered also informations on the deportation that started after March 19, 1944. At the end of March, 1944, the Germans arrived in Northern Transylvania, and from April 5, the Jews were obligated to wear a yellow star as a distinctive sign of their origin. The goods of the Jews were blocked. First of all the authorities sequestrated the children and older population but also the young ones who were not recruted for forced labour. It existed ghettos in the cities of Cluj, Gherla, Dej, Șimleul Silvaniei, Satu Mare, Baia Mare, Bistrița-Năsăud, Oradea, Târgu Mureș, Reghin, Sfântu Gheorghe. The most deportees were sent into the concentration camps from Bergen-Belsen, Buchenwald, Dachau, Grossrosen, Günskirchen, Mathausen, Neungamme or Ravensbrück.

In 1946, 7 200 of the Jews were still living in Northern Transylvania, among whom 200 of Jews from Bihor, 1500 of Jews from Cluj, 800 of Jews in Maramureș, 700 of Jews in Satu Mare, 650 of Jews in the Someș county, 500 Jews from Sălaj and Năsăud.

The authors present the themes and the problems to which have referred the questionnaires.

Thus the respondents were asked about the legal and financial status and about the atrocities they had suffered. They were required to write about the consequences of the assignements and ammendaments connected with the issue of marriage. The questionnaires were made out of questions concerning the evets that hapenned under

Hungarian administration. The respondents could make details with regard to any prejudice, to report the material losses they had to suffer such as the expropriation of private investments, the restrictions imposed in the business world, the confiscated objects, the conditions of living, the incomes. Besides these datas, the questionnaires put questions about deportations with the mentionning of the date of deportation, of the place of deportation and concentration camps through they passed through.

Robert Eaglestone in his book *The Holocaust and the Postmodern* [12]tells an assertion of Maurice Blanchot[13] who wrote that the survivors of the Holocaust are not read as other usual books. Elie Wiesel[14] consider that a new type of literature was invented together with the Holocaust, namely the one of oral testimony which refers to personal experiences. The experience of the Holocaust implies subjective relatations coming from the survivors.

At a much more smaller case, we questionned a few persons from the Jewish Community from Oradea who were survivors of the Holocaust, no matter that their relatives completet the questionnaires in the name of the parents already dissapeared from life. The questionaires asked datas connected of:

1. Name and surname
2. Date of birth
3. Place of birth
4. The locality of residence
5. Occupation
6. Nationality
7. Were you deported during the Holocaust?
8. How were the Jews received after their return from deportation? But you personally?
9. When you returned you succeeded to recuperate your old properties (mobiles and imobiles)? If yes, to what extent?
10. Did you participate to the life of Jewish community during the years 1945-1953 and to what extent?
11. Did you received aids especially for the Jews during the years 1945-1953?
12. You were members of some Jewish organisations after the war? Can you mention in which organisations?
13. You never thought to emigrate in Israel or in other states of the free world?
14. Were you member in Romanian Communist Party (PCR)? Which was the motif for which you entered in the party? Did you believed indeed in the ideals of egalitarism?
15. Did you had relatives abroad? To what extent you succeeded to maintain connections?
16. It was possible to talk openly about emigration during 1945-1953?
17. Did you have ties with the Zionist movement? Did you know of the existance of Zionist organisations?
18. Which were the reasons for which some Jews emigrated in Israel (political persecutions, etc.)?
19. How do you motivate the fact that you did not emigrate?

[12] Robert Eaglestone, *The Holocaust and the postmodern*, Oxford University Press, 2004.
[13] *Ibidem*, p. 15.
[14] *Ibidem*, p. 15.

Thus, **Hommonai Maria**, born in November 30, 1947, in Oradea, is Jew and pensionner. She filled in the questionnaire in the name of her parents Schwartz Iosif and Schwartz Ileana (born Krausz) who were deported, father at forced labour in Russia and mother in the concentration camps from Auschwitz Birkenau. At the question how were received the Jews after their return from deportation? What about her parents personally? the daughter Hommonai Maria answered: „I have no knowledge about their welcoming back from the side of the official authorities, only from the neighbors or relatives who returned sooner or, in different circumstances, they escaped from deportation. They were received back with friendship and feelings of sorry." Their property had a lot to suffer while they were deported."Father found his house, where I actually live with the family which was terrible ravaged and was functionnning as a warehouse for Soviet troops who were the masters of the city, the house of my father was a household for the horses. Mother, at her return from Sweden, where she arrived after her liberation by the Danish Red Cross, found her personal things at a family of friends who gave notice that they succeeded to enter in the posession of their goods, after she was brought in the ghetto from Oradea". In the period 1945-1953, Schwartz Iosif and Schwartz Ileana did not participate to the life of Jewish Community, did not received aids designed especially to the Jews, were not members of Zionist organisations after the war, did not emigrate, them being at the second marriage and being exhausted physically and emotionally after the deportation. They were not members of Romanian Communist Party and did not have relatives abroad. Schwartz Iosif and Schwartz Ileana did not have ties with the Zionist movement. Hommonai Maria, their daughter, thinks that the Jews who emigrated in Israel wished that the history not be repeated again. Her parents did not emigrate because „They did not have the power and the necessary strenght to start a new way in life, they were concerned with the re-making of their normal lives in the conditions known before their deportation".

Braun Vioara was born at 30.09.1926 at Marghita. She is actually retired. Survivor of the Holocaust, she was deported together with her parents and two brothers who died at Auschwitz. At the question how were the Jews received after their return from Holocaust and particularly herself, Braun Vioara answered: „Differently. Some with curiosity, with hidden enmity, with distrust, with simpathy, etc. I arrived home in September 1945 when it was formed a community of Jews from the survivors who returned sooner at home and from whom she received help". She did not succeed to recuperate her property, mentions that she found the empty house, she participated to the life of Jewish community during 1945-1953 by spectacles, in front of the youth. She was member of the Democratic Group of the Jews from Marghita, and did not think to emigrate. She believed in the ideals of the communism because of her wish that the things she has passed through will not be repeated again. She had an older brother who emigrated in the USA, returned later to see her and whom she had visited too. She did not have ties with the Zionist movement. Among the reasons that the Jews had to emigrate in Israel she remembers the distrust, uncertainty and „the hope that they will be treated as equal citizens in their country". She did not emigrate because of the fact that she had born two kids and she was ill very often.

B. ZS. was born in Oradea, at 20.04.1944. She was pensioneer and of Hungarian ethnicity. She speaks on behalf of the Jewish acquintances who were deported. In what she is concerned she mentions: „I've been refugiated to Arad (Romania). My acquintances enjoyed the coming of the escaped prizoners from deportations. Our former housemade offered accomodation, clothes, desinfected, fed the ones in need". She heard about the

loose of goods, of Jewish immobles. She did not participated to the life of Jewish community during 1945-1953, did not receive special aids designed for the Jews, was not member of the Jewish organizations after the war, had a brother who emigrated, but for her it was too late. She was not member of Romanian Communist Party (PCR), had ties in Israel with whom she keep in touch. In her opinion it can not be talked openly about emigration, she did have ties with the Zionist movement. The reasons for which some Jews emigrated in Israel were concerned by the fact that „They believed in a country of their own where they could be Jews without persecutions". She motivates the fact that she did not emigrate by the fact that she was loyal to the state who offered a peaceful living for her and her child.

Steier Elisabeta was born at Octomber 24, 1917 at Boiu (Bihor), after which she lived in Oradea. She is retired, of Jewish origines. She mentions only that after August 23, 1944 she was liberated. Partially she succeeded to recuperate the properties. In the period 1945-1953, she did activities of volunteer work in the favor of Jewish community, received aids designed to the Jews (cloths), was not member of some Jewish organisations after the war, did not think to emigrate in Israel or in other states of the free world. She was member of Romanian Communist Party (PCR) and, as other sympathizers believed in the ideals of egalitarism. She had relatives abroad with whom she maintained connection by posts and visits. Her husband had ties with the Zionist movement. The motivation of the fact that some Jews emigrated in Israel were the political persecutions. She did not emigrate from medical reasons.

Bone Gabriela was born in March 28, 1928 in Târgu Mureș and lived in Oradea. She was deported during the Holocaust, is pensionneer and Jew. At the question how were received back the Jews after their return from Holocaust, especially herself, Gabriela Bone says: "From the deportation-from the concentration camp Bergen Belsen I arrived home in Târgu Mureș, str. Octavian Goga 18-we were welcomed by the Jewish Community with a lot of joy, we installed in a former hospital, we received clothes, a chamber having all necessarry things". The properties were nationalized and by processes were recuperated to a great extent. During the years 1945-1953, she was member of Jewish Community in Târgu Mureș and Reghin, received material aids designed particularly to the Jews. She was a member of an Jewish organization after the war, the organisation (Ha)șomer Hațair. She did not think to emigrate because she got married. She was member of Romanian Communist Party (PCR) and thought that the things will improve after the installation of communism. She did not have relatives abroad and remembers that it was possible to openly discuss the issue of emigration in the years 1945-1953. She had not ties with the Zionist movement. The emigration in Israel she sees as an ideal appeared after the Holocaust in order that the Jews to have a country which to defend them and not to exist an Auschwitz anymore. She did not emigrate because she got married.

Kincses Ecaterina was born in May 11, 1940 in the locality of Cluj Napoca and then lived in Oradea. She is pensioneer and of Jewish nationality. She filled in this questionnaire in the name of her grandmother who was deported. The name of deported grandmother was Diamantstein Yolanda. Ecaterina and her mother escaped from deportations because her mother was married with a German ethnic. However in the period of Holocaust, they stayed more hidden. The brother of her mother was deported too, Diamantstein Ivan. Him and their grandmother were deported to Auschwitz. Besides uncle Ivan, nobody from the family returned from deportation. They had only mobile goods, not imobiles. After the liberation, they recuperated some of them. She does not remember that her parents to be involved in the life of Jewish community, immediately

after the war. They were helped, but very less. During the years 1945-1953 they received helps designed especially to the Jews as clothes and boxes of ailments. It was not member of certain Jewish organization after the war. She did not think to emigrate in Israel, mother was against the fact that also other Jews think to emigrate. Mrs. Kincses believed in the communist ideals. She motivates that mother, father and step father believed in the communist ideals. "Mother cried at the Stalin's death and did not know it will be further on". During 1945-1953 they did not have relatives abroad. In 1978 emigrated an aunt with whom they succeeded to keep in touch by telephone and packages. How the packages arrived was something terrifying, opened, throwned up. The parents, mother and step father did not want to emigrate. Her family had nothing to do with the Zionist movement. The reasons for which certain Jews choose to emigrate were the political persecutions, considers Mrs Kincses. She motivates the fact that she did not emigrate by the explanation that "I can not imagine life in another way. In Israel, there are problems with Arabians".

Varadi Iudith was born at 09.01. 1926 in Cluj-Napoca, then she lived in Oradea. She is pensioneer of Jewish ethnie. She was deported during the Holocaust, mentioning the places through which she passed through: "Between 1944, May 3, in ghetto in Dej, Auschwitz, the concentration camps C, B,...Buchenwald Commando "Tauscha", the march of death until May, 5-6 1945, at the return to hospitals sanatoriums-repatriation 1946 march". At the question how were the Jews received after their return from deportation, what about herself personally, Varadi Iudith answers: "Left alone alive, me personally I did not return to the locality from which I was deported, but in Timișoara, to an uncle from the side of my mother, who perished in Holocaust, together with my brother. Shortly, I got hired and I started a qualification". The house in which she had lived before the Holocaust was demolished. She participated to the life of Jewish Community after her return to Oradea in 1948 and was a contributor member of Jewish community together with the husband. She did not received helps designed especially to the Jews, she was not member of some Zionist organizations, she did not think to emigrate in Israel or in other part. She was a member of Romanian Communist Party (PCR) and believed in the ideals of egalitarism. She had relatives abroad with whom she corresponded and kept in touch. During communist period it was possible to emigrate only with difficulty, considers Varadi Iudith: "There was campaigns in order to renounce to emigration then for a while it was impossible to emigrate, after several years of solicitation, the majority did not receive favourable recommandation, it was open a new possibility after 1970". She did not have ties with the Zionist movement. In her opinion, the Jews emigrated because they were not promoted to their working place and because they were hearing the call of Israel.

She did not emigrate because she returned ill from Holocaust and because she did not succeed phisical and psychical ressources to start a new life in another country.

Somogyi Livia completed the questionnaire in the name of the deceased father, Somogyi Laszlo, born in 1892 at Beiuş, of profession pharmacist, who lived later on in Oradea. At the question how they were the Jews received after their return from deportation, Somogyi Livia relatates that she came back with the hope that she will find her family and she will receive the immobles that she previously had. Unfortunately, she did not receive back neither the mobile goods, neither immobiles. Somogyi László participated to the religious celebrations at the sinagogue and led the chorus of the community. She did not receive the help designed especially to the Jews, she was not member of some Jewish organizations after the war, she did not think to emigrate in Israel, motivating that it was too old to start everything from 0. They had relatives abroad,

exchanging letters. She was member of Romanian Communist Party, believing in the ideals propagated by the communists. In the opinia of Somogyi Livia it was impossible to speak openly about the emigration only with the risk to loose your job. They did not have ties with the Zionist movement. Some Jews emigrated in Israel in order to "be Jews in their country and for an easier lifetime".

We see thus the difficult life conditions the Jewish community had to bear even after their return to their places of origin. The interviewed Jews were Jews that still reside in Romania and this fact explains why the majority of them were not Zionists in the aftermath of the war, why they did not emigrate in Israel. Some of them said that Romanians and Hungarians from Transylvania had compassion for them after their return from deportation, other say that they confronted with the hostility of the local ethnics after their return from deportation. Almost all are discontented with the way in which they received back their goods, as the communism was advancing in Romania and Eastern Europe, and also the Jewish community had to obbey to the new master. The ones who keeped ties with Israel and relatives from Israel, did this under the surveillance of the Security, in difficult and risky conditions. One deported Jew says that the packages from Israel arrived ravaged at his destination. It is impossible that after these months of deportation, not to have been created a breach between the local population and the returned Jews. The communism spoke about equality but these fissures could not be overcame allways and this expains in part, why the majority of Jews emigrated in Israel during the communist years and did not identify with the newly created communist order.

From the consultation of the edite bibliography that we put at the basis of the present study it results that we have studied of an appreciable literature dedicated to the study of Jewish phenomena after the Second World War, published in Romania and Hungary. Written by Romanian and Hungarian historians, some of Jewish origins, the edite bibliography reveals us a series of particularities of the evolution of Jewish community during communist period in Central Europe.

The sources of oral history allow us to give new insights on a community on fighting for the coming out from the tragedy of Holocaust, the adaptation to the newly political economical realities of the area, but also for the prezervation of identity.

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THE RIGHTS OF THE NATIONAL MINORITIES IN ROMANIA FROM AN EDUCATIONAL PERSPECTIVE IN THE INTERWAR PERIOD

Alexandru Gheorghe MOCERNAC*

Abstract. *The educational rights of minorities have always reflected not only the degree of openness of a state, but also the regime in power in that country. Currently, the national minorities in Romania enjoy full rights, which make our state an example of good practices in this regard, but this has not always been the case. This is the reason why, in this article, I chose to focus on the interwar period, a period that offers us an overview of the stages that Romania has gone through in regard of educational rights for the national minorities.*

Keywords: *Constitutions, legislation, stages, changes, political power*

The study of national minorities is becoming a pressing concern for the researchers of the 21st century. The disappearance of authoritarian regimes and the establishment of the democratic ones, or at least, of those `claimed` to be democratic, led to the creation of dependencies between states. At the same time, another transition took place: from a regime that served only the leaders to a regime that now serves the population as well.

The new democratic regime promotes the freedoms and rights of all citizens but also the autonomy from the powers of the government, which gives the opportunity for the opposition to freely express themselves despite the political leaders that are in power. In this new context, more and more ethnic groups, both on the old European continent and outside it, disagreeing with the actions of the state of which they are citizens, driven by the desire to gain power or just the radical idea of secession, fought for separation from the state they belonged to.

The act of secession can save the citizens of a state in case there are differences and even the danger of a civil war between the majority population and minority groups. But as everything, this has a negative side as well, because it can also cause enormous administrative and economic damages. Thus, the study of minorities, be they national, ethnic or religious, is becoming increasingly important among researchers and it became an interdisciplinary matter. In order to completely understand and to succeed in outlining the profile of a minority and anticipate its behavior in time, it is fundamental to combine the historical, sociological and political point of view.

No consensus has yet been reached on the term of „minority". this term is not being clearly explained in any document, not even in those addressed to national minorities (Khan, Rahman, 2012: 11-12). Regarding to term „minority" there are only mentions or regulations given by various bodies and institutions, both national and international. The first regulation applicable in international law, of the concept of

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minority was given by the Permanent Court of Internaional Justice in 1930. "The community" (referred as to minority) has been defined as "*a group of persons living in a separate country or region, having their own race, religion, language and traditions, who retain their own ways of exercising their faith and who support each other*" (Petraru, 2015: 20). Attempts to define the concept of minority also occurred within international organizations. The definitions given by them reflect not only the field in which the specific organisations are operating, but also the political reality of those areas. For example, the United Nations mainly uses the formula "*national, ethnic, religious and linguistic minorities*" (UN Declaration on the Rights of Persons Belonging to National Ethnic, Religious and Linguistic Minorities, 1992). Meanwhile, the European standards use a more simple formula "national minorities".

In opposition to the first impression given by the meaning of the "minority" term, it is not a numerical category, but rather a socio-political term. Therefore, it's necessary to specify that this term needs to be understood in its political and social meaning, not as a quantitative term (Mureșanu, 1996: 37). Throughout my paper, when I will use the concept of national minority, I will refer to a group that differs from the rest of the population by the presence of an ethnic (national) character expressed through culture, language or religion.

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In Romania, the national minorities played an important role in the evolution of the Romanian society. They have helped, especially in shaping the society's structure from the ethnicity and identity perspective. According to the National Institute of Statistics, in our country nowadays, the majority group is represented by Romanians, with a 88,9% percentage, followed by Hungarians with a percentage of 6,5% of the total population. These are followed by Roma with 3,3%, Ukrainians 0,27%, Germans 0,19%, Turks 0,15%, Lipovans 0,12% and Tatars 0,11% (National Institute of Statistics, 2014: 10).

More often than not, in the last century, minorities have enjoyed rights and freedoms that have allowed them to preserve but also to promote their ethnic and cultural accuracy. Thus, they reached, especially in the period after the fall of the communist regime, to be *positively discriminated*. This pictured Romania as an example of "good practices" in respecting and promoting the right of national minorities.

In order to have an overview of the rights that the national minorities of Romania currently have, we considered that we need to look back in time and learn, firstly, the rights they have enjoyed in the past and its evolution over time. Therefore, in this study I will focus on the rights of national minorities in the interwar period because this period embodies in just 21 years the entire history of minorities and their rights. From normality to positive discrimination and then to the decay and restriction of rights, the interwar period offers us a general perspective on the situation of national minorities in Romania.

On the one hand, the behavior of the state towards national minorities was largely determined by different historical events, but also by the European regulations that took place in this field. In Romania, as well as in the rest of the world, the first demands of minority groups focused on the topic of religion, as an element of protection of the ethnic identity. Within the United Principalities of Moldavia and Wallachia, in addition to the Christian majority, there were also ethno-religious minorities who did not share the religious beliefs of the majority. The religious matter was more important at that time, because the obtainment of citizenship was limited only to Christians (The Constitution of Romania, 1866). This problem, however, gradually disappears from the Romanian society

with the help of the political elite that was slowly establishing but also with the events that took place internationally.

The end of the First World War brings Romania in a favorable situation in which it can easily achieve its main political goal, namely the foundation of the unitary national state, but also the possibility of reorganization and restructuring. A few events of this period outlined the necessary framework for our country to establish the Greater Romania. To namely only a few: being one of the victorious countries in the First World War, the dissolution of the multinational empires in Eastern Europe, the desire of the Romanians from the three provinces (Bessarabia, Bucovina and Transylvania) to unite.

The Great Union took place on the 1st of December 1918 and with this event, Romania recognizes the equality in exercising the civil right for all national minorities. This recognition is a mutual one, because as we stated earlier, in the efforts of creating the Great Union several minority groups both from Bucovina, Bessarabia and Transylvania have shown their support for the establishment of the Greater Romania. In the Resolution of the Alba Iulia National Assembly, the National Assembly proclaims the followings: "*Full national freedom for all the co-inhabiting peoples. Each person will study, manage and judge in its own language by individuals of its own stock and each person will get the right to be represented in the law bodies and to govern the country in accordance with the number of its people*" (Resolution of the National Assembly from Alba Iulia, 1918: art. 3/1) and in the second point "*Equal rights and full autonomous religious freedom for all the religions in the State*" (Resolution of the National Assembly from Alba Iulia, 1918: art. 3/2). Therefore, we can observe a change in the perception of minorities who are now offered equal rights with those of belonging to the majority. If the Constitution of 1866 tried a process of assimilation of minorities, the Resolution of the National Assembly in Alba Iulia brings upfront the idea of creating an intercultural society that reduces the cleavage between majority and minority and where minority groups actively contribute to creating and consolidation the national identity. This proves an emancipation of the elite of the time and a determination to bring Romania to the European standards of the time.

The change in perception on the subject of minorities is also due to the fact that the percentages of minorities have increased once the Great Union was successfully established. The provinces that united on 1st of December 1918 brought, in addition to the expansions of the country's territory and a significant population growth, a population in which, over time, several nationalities have found their place. Thus, Romanian politicians were forced to manage, besides the restructuring of the state, the situation of the minorities as well. In this scenario, given the large number of citizens of other nationalities, the process of assimilation of minorities into the majority population was no longer a viable option for a country with democratic standards. Therefore, the only solution was to adopt Western policies to grant equal rights to all *cohabiting people*.

In order to create an overview of the increase in number of other nationalities citizens who were included in the territory of the Greater Romania after the 1918's Union, I have created a table with data provided by the National Institute of Statistics in the paper entitled "*Romania a Century of History: Statistical Data*" („România un Secol de Istorie: Date Statistice"). In this table I compared the data from the 1912 Population Census (before the Great Union) and the Population Census of 1930:

Table 1. The structure of the Romanian population by nationalities, both the 1912 Census and the 1930 Census.

Nr. crt	Nationality	The Population Census of 1912	The Population Census of 1930
1	Romanian	93,47%	71,9%
2	Hungarian	0,96%	7,9%
3	Austrian	0,63%	-
4	Turkish	0,47%	0,9%
5	Greek	0,24%	0,1%
6	Bulgarian	0,16%	2,0%
7	Italians	0,15%	-
8	German	0,11%	4,1%
9	Serbian, Croatian and Slovenian	0,06%	0,3%
10	Russian	0,06%	2,3%
11	French	0,02%	-
12	Swiss	0,01%	-
13	English	0,01%	-
14	Ukrainians, Ruthenians	-	3,2%
15	Czech, Slovakia	-	0,3%
16	Polish	-	0,3%
17	Jewish	-	4,0%
18	Tatars	-	0,1%
19	Gagauz	-	0,6%
20	Roma	-	1,5%
21	Undeclared	0,01%	0,01%
22	Others	0,01%	0,3%

Source: National Institute of Statistics, "Romania a Century of History: Statistical Data", Publishing House of the National Institute of Statistics, Bucharest, 2018.

As we can clearly see in the above table, after the creation of the Greater Romania, the number of Romanian citizens decreased from 93,47% in 1912 to 72% in 1930. Moreover, minorities such as the Hungarian, German, Russian, Ukrainian, Jewish or Bulgarian have strengthened, reaching considerable percentages in the overall population. Another consequence of the change in the minority policy after 1918 is the appearance and recognition of minority groups that until that point were not officially recognized as Romanian citizens, having rather the title of `foreigners residing on Romanian territory`. An example in this case is the Jewish minority, which was not included in the 1912 Population Census, but in the 1930 it appears with a percentage of 4%. The Roma minority, also appears only in the 1930 Population Census with a percentage of 1,5% and is in the same situation as the above mentioned minority.

The effects of the First World War were also felt in the share of populations that were not of Romanian nationality. We can notice between the two censuses minority groups that disappeared from Romania or so few people have remained that they were transferred to the "others" section (e.g. Italians, French, English, Swiss). This might have been due to the mass departure of some citizens to the West, immediately after the outbreak of the military conflict.

The aspirations towards a reform by the Romanian political elites of the interwar period but also the legislative evolution in the field of national minorities could not have been possible without adherence to certain treaties or international bodies. Thus, we have

to mention an important event: Romania's accession to the Minorities Treaty in 1919, an event that represented a notable evolution of the country in this regard. This event brought with itself a legal framework of Western inspirations. Romanian undertook, through this treaty, to ensure the protection of life, liberty, free exercise of any religious belief and to recognize as Romanian citizen anyone who lives or who is born in the country. It is important to note that the signing of this treaty was a condition for joining the League of Nations, but even so, the policies pursued towards national minorities entered a new paradigm protected by the League of Nations. Therefore, a new stage begins in where the focus is put on balancing the relationship between the minority and the majority, a stage of reconciliation and the cultivation of mutual trust and respect.

During this period, Western states focused their attention largely to their own national minorities, transforming the European space into an appropriate and convenient environment for the development and preservation of the specific elements of the minorities. At the same time, they adopted the idea of interculturality through which a dialogue between the minority and the majority was initiated, a dialogue that brought mutual benefits. Therefore, the rights of minorities have become a notable category of rights, being separated from human rights, but shaping into a framework that would protect minorities from any attempts by states or the majority population to marginalize or oppress them.

The interwar period, in addition to a freshly brought air for the European nations, also offers hope for the national minorities. The Romanian Constitutions from 29th of March 1923 confirms the commitment of the politicians and consolidates the state that soon took over no less than 16 national minorities. This "Fundamental Law", presented in a modern form, offers equal rights for all citizens "*regardless of ethnic origin, language or religion*"(The Constitution of Romania from 1923: art. 5). Moreover, article 7 stipulates that "*differences of religious beliefs and denominations, of ethnic origin and language, do not constitute an obstacle in Romania to acquire and exercise civil and political rights*" (The Constitution of Romania from 1923: art. 7). The adoption of this Constitution has allowed minorities to expand their political, cultural and economic activities, while ensuring that these rights will not be violated. Throughout this period, national minorities enjoy the most rights, because the legislation in this area was in line with that of Western states.

The year of 1924 brings the *Law for primary education and non-primary education*, a law that was issued based on the Western model, which stipulates that in regions with a population of another ethnicity or a group who is talking in a language different from the national one, primary schools will be established with teachers who are able hold classes in that specific language (Crețu, 2018: 79). Two more laws followed which were the subject of education: the Private Education Act from 19th December 1928 and the Secondary Education Act from 8th of May 1928. Both laws mentioned and regulated the field of education of national minorities. These laws were a clear example of the western direction that Romania took in the interwar period. Also, the country became more and more open on the subject of national minorities. Romania has gone from perceiving national minorities as a dangerous element that must be assimilated, to the creation of a permissive framework that offered them rights and freedoms similar to those in the West.

Once Carol II had come to power and the first undemocratic regime had settled in Romania, the state entered a new stage in its life in which the fascist influence had increased. The European context, where fascist movements were gaining power, also

contributed the Romanian situation. The first movements of such, in Romania, took the shape of small groups of people that condemned the parliamentary speech. Later, due to the favourable internal political climate, racist ideas were adopted related to the division of people into superior and inferior groups, Atheist-Nazi or Legionary-Orthodox (Mictat, 2015: 7). The racial hatred and anti-Semitism "trend" gradually increased due to the focused attention of the press in this matter. These ideas reached a large part of the Romanian society and the protection and rights that have been enjoyed by national minorities until that point, became unlikely and increasingly insecure.

During this period, newly formed parties such as the Christian National Defence League in 1923 (Liga Apărării Național Creștine) or the Legionary Movement / Iron Guard in 1927 (Mișcarea Legionară/Garda de Fier) imposed their point of view by adopting certain discriminatory laws that sought to eliminate citizens belonging to national minorities from all public services. The most affected group by these actions was the Jewish minority which was also attacked, at that time, by the anti-Semitic current. Unfortunately this was only the beginning of a long line of anti-Semitic and anti-minority regulations. In the following years, various laws emerged that increasingly restricted the rights of national minorities, from "reviewing minority officials" to "controlling minority cultural activities" or "separating minorities living in symbiosis and creating the specific separator" (Mictat, 2015: 8). Therefore, the national minorities have come to fear for their lives.

The authoritarian monarchy established by Carol II brings with itself a new Fundamental Law, thus separating itself from the liberal-democratic tradition of the previous constitutions. The new Constitution from February 1938 (The Constitution of Romania from 1938) specifies new rights and obligations for Romanian citizens. Once this new document had been accepted, national minorities realized that their former rights had been restricted by the simple fact that they have not been mentioned in the new Constitution.

Usually, the rights and obligations of minority groups are included in the constitutional text in order to give them an official, legitimate character. Therefore, by not including the subject of minorities in the Constitution of 1938, national minorities were restricted from the rights they had enjoyed until then. The fact that the new Constitution under the rule of Carol II hadn't mentioned the issue of minorities deepened the minority-majority cleavage and cultivated a sense of supremacy for the dominant population, which stated that by simply being more numerous than the other groups, had the power to control the minority. Thus, Romania enters a gloomy stage regarding national minorities and especially for the Jewish minority.

The problem of the Jews in Romania persisted long before the emergence of the regime of Carol II. In the middle of the 19th century, the Jews from Moldova and Muntenia were divided into 2 categories: those born on the territory of the Romanian Principalities, the so-called "raia" Jews, who paid a modest tax to the Government and the ones that were under the jurisdiction of foreign consulates, which did not pay any taxes and enjoyed greater privileges that those in the first category (Petreu, 2011: 21-27). However, over time, several political leaders have tried to change the perception on the Jewish minority, especially, as I mentioned in this paper, within the period of the Great Union, when Jews, like all the other minorities had enjoyed full rights.

The feeling of hatred towards the national minorities was accentuated despite the fact that Romania received criticism from the international community. The leaders of the time, strongly believing in the fascist ideal, continued to issue discriminatory laws for

minority communities. All of these culminated in the outbreak of the World War II when hundreds of thousands of Jews and Roma were deported to Nazi camps and suffered greatly.

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The rights of national minorities in the interwar period can be classified into three stages: the stage of reconciliation and rebuilding; the growing stage of fascist ideology sympathizers; the stage of deepening the minority-majority cleavage. These stages were largely influenced by the European context, because without the example of managing the minority of Western states and without Romania's acceptance in the League of Nations, we could not have talked about the stage of reconciliation and restoration of majority relations with minorities. As well as, without anti-Semitic or fascist literature there would have been no legionary movements in Romania and we would not have witnessed genocide of the Jewish minority and the oppression of the rights of national minorities. We can realize in this way the less favourable effects of state interdependencies, but nevertheless we must weigh the beneficial effects that compensate each time.

The interwar period introduced the emancipation of national minorities. For the first time, on the territory of Romania, minorities did not have an inferior status, which is to be admired considering the new specifics of Greater Romania. The educational reforms that had been enjoyed by people belonging to national minorities and the fundamental rights and freedoms offered by the liberal governments offered the possibility to raise the living standards of these citizens and it also increased Romania's positive image abroad.

During the interwar period in Romania the educational rights of the national minorities were in accordance with the specifics of the time. Starting from the full freedom to study in the language of the minority to which a group belongs and the encouragement of education in each minority's mother tongue continuing with the total restriction of this right during the reign of Carol II, people belonging to national minorities went through events that both marked their existence and strengthened their communities. Once institutionalized and protected by law, education in mother tongue offered the chance for minorities to have well-prepared leaders who were able to represent the rights of their own communities. It's important to mention that even though by the end of the interwar period all minority rights were restricted, the sense and feeling of freedom managed to triumph in these communities.

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DIVORCE IN THE DRUZE COMMUNITY AS A MINORITY IN THE STATE OF ISRAEL

Imad Abu REESH[*]

Abstract. *In this article I tried to explain about marriage and divorce to members of the Druze community. The marriage procedure is a procedure that requires members of the community to act in accordance with many years of tradition, because there is no complete equality between a man and a woman in all the religions in the world except the Druze religion and the small Druze community that gives both spouses to choose the other side and also to divorce him to choose another and also the possibility of divorcing him because marriage should not continue by force.*

Keywords: *Israel, Druze community, divorce, tradition, religious law*

1. Introduction

In Israel, religious law applies to marriage and divorce to all religions living in Israel. Other personal status matters are usually dealt with in religious courts such as rabbinical courts for Jews, Sharia courts for Muslims, church courts for Christians and religious courts for Druze. Each court operates according to the relevant. This means that in Israel today it is not possible to marry in a non-religious procedure, so the obligation to marry according to religious law has created a number of problems such as civil marriage. In recent years even clerics recognize the difficulties associated with the current situation especially due to the large number of children born to couples who married not in accordance with the religious laws.

This paper was written as part of a doctoral dissertation on the subject of:

Developing a policy for the official mediation between the legal system and the traditional civil justice system: Cultural aspects regarding divorce processes within the Druze community in Israel.

My doctoral dissertation will deal with: the conflict between the religious law and the Druze minority, especially for other ethnic groups in the State of Israel in general, and the penal code in Israel, and especially section 181 of the law.

Research objectives:

(a) To investigate the existing dilemmas regarding the gap between the traditional legal system of the Druze community and the civil law regarding divorce processes among the members of the community in Israel.

(b) To open a new thinking framework for bridging the gap between the traditional legal system of the Druze community and the civil justice system in Israel as well as other religious communities living in Israel.

(c) To investigate the attitudes of the decision makers-namely, the Knesset of Israel - in order to push them into altering 181 of the Penal Code

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Research questions:

(a) What dilemmas exist regarding the gap between the traditional legal system of the Druze community and the civil law regarding divorce processes among the members of the community in Israel?

(b) What components might comprise a new thinking framework for bridging the gap between the traditional legal system of the Druze community and the civil justice system in Israel as well as other religious communities living in Israel?

(c) What are the attitudes of the decision makers - namely, the Knesset of Israel regarding altering 181 of the Penal Code in order to bridge the gap between the traditional legal system of the Druze community and the civil justice system in Israel as well as other religious communities living in Israel.

2. Cultural Background of the Druze community

The Druze are members of a religious community in the Middle East who speak Arabic in a dialect unique to them; almost all Druze live in the geographical area that includes Syria, Lebanon, and northern Israel and a small Druze community in Jordan. They can also be found in various countries around the world, mainly those who migrated from Syria and Lebanon due to the civil wars and the complex situations there. The traditions and habits are common to all Druze in the world whether religious or non-religious, are acceptable to all, this is evident in education, culture and tradition and preservation of positive values, and preservation of moral purity. The Druze are called "sons of grace" or "mowahidon" which means the believing in one God. The Druze religion was made public in 1017 AD and it is based on all religions with different interpretations and also on the philosophical beliefs of the ancient world in both the East and Greece. The Druze religion does not allow for the acceptance of new Druze believers, and the religion is based on logic and common sense. The Druze believe in fate and agree with it in every way of life for better or worse. There is complete secrecy about the religion and the principles of the religion. The Druze believe in God and all the prophets who were sent to preach to humanity the words of God including, Noah, Abraham, Moses, Jesus, and Muhammad peace be upon them. The Druze doctrine is secretive and hidden. In Druze you are either religious or non-religious. Almost all Druze houses have both religious and non-religious members who live together and respect each other; no one imposes rules of conduct on the other because religious have a special ethics in conducts of life including dress-code, food, speech and behavior. A non-religious member of Druze cannot know the principles of the religion. Only a religious Druze person can read in the holy books and be exposed to the religious texts. Druze men cannot marry more than one woman. Women can equally learn the principles of the religion, and are famous for their hospitality, religious patience, loyalty, and providing refuge for the persecuted.

The Druze as mentioned are categorized, as mentioned, into two categories: religious and non-religious. The religious people are allowed to read the religious books, and non-religious who are not allowed to do so. The purpose of this division is to maintain the principles of the religion and keep it secret. Any non-religious person can become a religious person by a simple process, but this would require him to a certain code of conduct.

The Druze have integrated well and are conspicuously prominent in the State of Israel. In general, there are people in important positions and there are also public representatives in the Knesset of Israel and in various bodies in the various areas of life in the country. But the legislation of the Nation Law in 2008 changed the feelings of the

Druze (there is no room to detail in this article). The Druze community is recognized as a community with independent religious status in the country, which strengthens the traditional structure of the community among all Druze.

The Druze community is special both in the religious aspects, customs, way of life, traditions as well as in the traditional dress for the man and the religious woman which characterizes the modesty and respect, as well as the definition of who is a Druze? "Anyone born to two Druze parents (See Hanan Suliman's book that was published by the Ministry of Education in Israel: Guide to the Druze heritage teacher, Ministry of Education Pedagogical Director).

According to section 47 of the Kings Order in Council (See The king's speech in the council about the Land of Israel Act *1922-1947*), The provisions of personal law shall apply to matters of personal status. Because their order differs from community to community, they wanted to preserve the custom of their ancestors. A rabbinical tribunal or other religious tribunal shall have unique or parallel jurisdiction. As in the Druze religious courts, the law of the courts applies (see The Druze Religious Courts Law, 1962). Regarding the powers under section 4 of the Act, there will be unique powers in three matters and they are: 1. Marriage matters "including the marriage contract, and the "mohar" which is the agreed sum of compensation whether immediate or postponed. 2. Divorce matters "including postponed mohar" and compensation for damages resulting from the divorce. 3. Sacred property. S. 5 of the above law gives the Druze court 3 authority to hear all other matters such as "division of property, alimony, child custody, execution of a will, order of succession, appointment of guardian and more", only if all concerned parties agree to the jurisdiction. If there is no agreement then the jurisdiction passes to the Family Court.

3. The religious judicial system

Throughout their history, the Druze did not enjoy the status of a separate religious community. The Ottoman government was unwilling to grant them this right, and the British Mandate government did not change their legal status either. According to this they were subject to the law of the Muslim judicial system, this is so despite their requests to grant them judicial autonomy and recognized legal status. Despite this, the Ottomans appointed the late Sheikh Muhammad Tarif to be the judge to in cases regarding Druze members and he was also appointed by the Ottomans to be the Druze judge (Kadi) in Lebanon. He died in 1928, and the British Mandate appointed his son Sheikh Salman Tariff in his place. On the other hand, the Druze in Israel were granted independent religious status in a process in which three main stages can be distinguished:

1. In 1957, the Minister of Religions recognized the Druze as an independent religious community by virtue of its authority under the Religious Communities (Organization) Ordinance of 1926.

2. Four years later, in October 1961, the community's spiritual authority was recognized as a religious council with three members, the late Sheikh Amin Tariff from Julis village, who led the Druze community for decades with two other members, the late Sheikh Ahmad Kheir. From the village of Abu Sanan, and the late Sheikh Kamal Moadi from the village of Yarka.

On December 25th, 1962, the Knesset of Israel completed the process of approving the Druze Religious Courts Law. From now on, the members of the community will be tried in matters that fall within the jurisdiction of the religious judicial institutions,

according to sections 4 and 5 of the law, which give unique authority in three matters one of which is marriage to the Druze members only; It also includes the appointment of marriage religious clerks in each village, divorce (the unencumbered divorce act) but includes the immediate and deferred "mohar", and damages due to divorce that the causing party of the divorce will pay to the other party. The other issues discussed in the court require the consent of the parties concerned, such as alimony, child custody, dissolution of a partnership (division of property), an inheritance order, a will, a guardian's appointment, and the like.

According to a decision of the Druze Religious Council of November 2nd, 1961, the Personal Status Law of the Druze community in Lebanon of 1948 was adopted as the law of the Druze in Israel, according to which the Druze religious courts have the jurisdiction to rule in these issues. This law was also adopted by the Druze in Syria and therefore constitutes the basis of the judgment regarding the personal status of the members of the Druze community in its three geographical concentrations in three countries.

In an article that I published in the book: A window into Druze law A guide to personal status law in the Druze community (Ministry of Justice - Druze Religious Courts: A Window for Druze Law and a Guide to Personal Class Law in the Druze Community, Prepared and Printed by Adv. Kamil Mula, First Edition - January 2016.) about the development of judgment among the Druze throughout history on page 77 I stated that:

"Mr. Menachem Begin, who was a member of the Law and Constitution and Justice Committee (and later the Prime Minister) at a meeting of the committee on June 25, 1962, said:

"I would like to see the Lebanese Druze law, only today I learned that the State of Israel has adopted a Lebanese law, we must know the content of the law"

The next day the translation of the law was prepared and handed to the committee; the committee members went through all the sections and did not reject Lebanese law, meaning that the Constitution and Justice Law Committee adopted the law and ratified it without going through acceptable legislation.

The Druze Religious Council also has the authority under the Druze Religious Courts Law to enact the Personal Status Law and the Rules of Procedure for Druze Religious Courts and to change them and thus there is no legal claim that the personal status law did not pass through the Knesset in the three readings as usual and that the law requires the courts to act in accordance.

In 1964, the religious organization of the Druze community in Israel was completed with the actual establishment of the Druze religious courts.

According to the Personal Status Law, the courts deal with extensive powers that have been strengthened in the Supreme Court case 207/88 Fachar Aladdin (High Justice Court case number 207/99 Saeed Ahmad Fakher Eldin v 1. Druze CA 2. Head of CA, 3. Skeikh N. Halabi, Kadi at the Druze court, 6/8/89), in which judge Bach Strengthened the authority of the Druze religious courts. This was overturned many years later by the Supreme Court Judge Dorner in case 9611\00 Nibal Maraee (Israel High Justice Court case number 9611/00 Nibal Marai v. Marai (4/4/2004) p"d n(3) 321 (1996)) which significantly reduced the powers of the Druze court. The Supreme court in this case also recommended that the powers of the Druze courts and their actions vis-à-vis the community be regulated as opposed to powers that should be within the jurisdiction of the family courts.

4. The right to marry

Article 16 of the Universal Declaration of Human Rights of the World of December 1948 (UN Universal Declaration of Human Rights) states that "any man or woman who has reached the age of maturity may enter into a marriage contract and establish a family, without any limitation on the grounds of race, citizenship or religion. They are entitled to equal rights in the marriage, at the time of the marriage and at the time of their annulment (UN Universal Declaration of Human Rights). Article 23 of the International Covenant on Civil and Political Rights of December 1966 states that "the right to marry and to found a family shall be recognized for a married man and woman (International Covenant on Civil and Political Rights) ". The State of Israel has objected to this section stating that personal status is discussed in religious law, in most Western countries the right to marry is recognized as a basic right. The right to a family in Israel is in the realm of the right to dignity, based on the Human Dignity and Liberty Law (Israeli Basic Law: human liberty and dignity, 25.03.1992). The Supreme Court, sitting as the High Court of Justice, ruled that "the right to a family is one of the central foundations of human existence. It derives from the protection of human dignity, from the right to privacy, and from the fulfillment of the principle of autonomy of the will of the individual, which is at the core of the concept of human dignity." The court also ruled that "the hierarchy of constitutional human rights, after protecting the right to life, is the right to a family which gives meaning to life. " (Israel High Justice Court 2245/06 Member of Kenesset Neta Dvorin & others v IPA & others 2006)

The obligation to marry according to religious law also entails the obligation to divorce according to religious law; marriage and divorce are related to each other. In Israel the residents are required to marry in a religious ceremony, even if they are secular. In this context, it has been argued that the State of Israel is the only democratic state in the world in which the registration of marriage and divorce is exclusively in the hands of religious institutions (Adv. Irit Rosenblum and Shira Hillel, New Family Organization, New Family: Marriage Report in Israel, Trends and Difficulties 2006.). The religious Jewish public finds it difficult to accept and is also exclusive to the Orthodox sect, and only rabbis are allowed to perform marriage ceremonies. It has been argued that it harms religious pluralism and Jews belonging to other denominations, and that the marriage ceremony currently practiced discriminates between men and women, especially with regard to the issue of property and its integration (Prof. Shachar Lifshitz, The Partnership Alliance, The Israel Democracy Institute, Jerusalem, Cheshvan 5767 November 2006). In contrast, the Druze community has no streams. There is one mechanism and it is the Supreme Religious Council and the issue of marriage and divorce is arranged as a binding law for all members of the Druze community and is acceptable to all members of the community and it is rooted since the community appeared in history about a thousand years ago and documented more than five hundred years ago by Sheikh Abdulla Al-Tanukhi, known as "Al Amir Al Sayid" in his book, the marriage and divorce of the Druze (Dr Fuoad Abu Zaki, Al Amir Al Sayid Jamal Aldin Abdalla Altanokhi, 1st edition April 1997 p. 340 – 364).

5. Personal status law for the Druze community

The sage of the generation and the supreme arbiter of the Druze community at all times was the great sheikh "Jamal Al-Din Abdullah al-Tanukhi" who was born in 1417 AD and came from a family that rules the whole of Lebanon and also led the Druze community. He was also referred to as Al Ameer Al-Sayed meaning "The Lord Prince."

He drew the first legislation regarding the personal status of the Druze community – Marriage and divorce in Al Mowahidon (The Personal Status Law of the Druze Community in Israel 1962). On February 24, 1948, the Personal Status Law of the Druze community was enacted in Lebanon(Shiekh Marsel Nasser: Personal status for Druze religion, 1st ed., p. 95-118) Which adopted most of the enactments of the late Amir al-Sayyid and also in accordance with the interpretations of the custom al-Hanafi which is one of the currents in Islam. With the change of parts of it according to the conditions created about 500 years or more later, these laws as stated above were adopted on November 2, 1961 also by the Druze Religious Council and the spiritual leadership of the community, and approved by law in the Constitution and Law Committee of the Knesset, and until these days the Druze Courts rule in accordance to them.

The law is divided into 19 chapters with about 171 sections and they are as follows and briefly:

1. Eligibility for marriage: from section 1 to section 8, which give the Druze court the authority to issue marriage permits to members of the community and to those who have reached the age of marriage to a man and a woman but in exceptional cases there is authority to grant marriage permit to any underage girl under certain conditions. It also prohibits the marriage of minors, and authority to give an older woman up to the age of 21 if there is an opposition from her parents to marry her choice, also the possibility of appointing a guardian relative to the girl whose parents oppose.

2. Prohibited in marriage, from section 9 to section 13 which speak of prohibition of marriage to a married woman and if so they are void, and prohibition of polygamy. In addition, a man is not allowed to return his ex-wife, and he is not allowed to marry her again, and it is defined with whom a man is not allowed to marry and also to whom a woman is forbidden to marry, that is, it is forbidden to marry blood relatives.

3. Marriage Relationship: from Section 14 to Section 19, explains the procedure of drafting the "ketubah" – marriage contract, and the express consents of both spouses to draft the marriage contract on the judge or the person authorized by the judge to be in his place, he is worthy of the position and will follow the instructions of the judge.

4. Marriage Law: from section 20 to section 23: these are the sections dealing with the relationship between the husband and wife and that the husband is immediately liable to compensate his wife for the immediate and delayed "mohar", and the husband is obligated to pay his wife's alimony from the binding date, and the right of mutual inheritance applies. Also, a woman has no right to demand the deferred mohar unless one of the two conditions of divorce or death is met. And the husband must at home to the wife after the payment of the immediate mohar, and the wife's duty to go with her husband to another locality if possible. The husband must treat his wife with affection and equality and the wife must obey her husband in all constitutional rights arising from marriage.

5. "Mohar": from section 24 to section 27 which define the mohar which is a monetary amount or a valuable asset without which the marriage contract is not fulfilled. The husband must pay the immediate mohar and if the sum of these expressions is not written as agreed then the judge estimates the sum of the rejected mohar at his discretion and according to the circumstances of the case. The chapter also defines the conditions in case of a separation between the couple at the time of the engagement before the marriage contract, and the amount of the deferred mohar at the time of the separation during the marriage contract and before the wedding.

6. Alimony: from section 28 to section 36 which explain the issue of alimony in all situations and interpret them, when the couple encounters them, that the husband owes

his wife and household a living in everything related to food, clothing, footwear, education, medical care, etc. It also allows the judge to add or subtract from the alimony any amount according to the recurring circumstances, and the husband's absence status as a party to determine alimony for the wife, and also the amount of alimony determined for the wife is not negligible after the husband's death is a debt on his inheritance.

7. Disallowing marriage (separations): from section 37 to section 49 are sections special to Druze law and completely different from Muslim law and Jewish law and even contrary to them (Dr Salman Falah: The Druze in the middle east, ministry of defence publishing – 2000). Even in some of the above there are differences in the essence of things that this is not the place to elaborate and which talk about the situations the couple finds themselves in with their separation, and they determine how the wife is divorced or how the husband or wife can divorce his or her partner and that the declaration of the man who divorces his wife before two trustworthy witnesses will mean that the woman will be divorced and thus forbidden to him forever. This is relevant to all members of the Druze community. Also the right of a woman to divorce her husband if she learns that he is ill and there is a deformity that interferes with contact and it is not possible to live with him without harming herself, the judge will award her separation when it is proven that the disease has no cure. Even when it is proven to the woman that the man is sexually impotent and there is no cure, in that case she can get the divorce from her husband in court. Or, of for example the husband becomes mentally ill, in that case he will receive a year for attempting to heal and cure himself, after which if there was no result she can claim a divorce. There are clauses like 42 to 45 that have no equivalent in Muslim or Jewish law, which talk about the separation between husband and wife by their mutual consent and free will providing that they declare the divorce in front of two witnesses or in the presence of the judge during the hearing, in which case the judge issues a verdict accordingly and approves the divorce. This section is one of the modern liberal sections that Druze jurisprudence upholds, even when the husband is convicted of a prostitution offense the wife has the option to request separation, and vice versa this affects the rights the court rules in favor the parties. Also if the husband is sentenced to more than ten years in prison the wife may request separation after the end of his five years in prison. When the husband disappears or is absent and the wife does not receive alimony from him then after a period of three years she is entitled to request separation. If she would receive alimony from him then after five years she can get a divorce. Even if the husband appears after the divorce the couple are prohibited from each other. Marital life of the couple will be solely with the consent of both the husband and wife, but divorce on the other hand is effected only if one of the spouses so requests. There are other sections too but re to there to protect the rights of the woman and to life with dignity, but the other two sections talk about the attempt to reconcile between the two spouses in conflict over mediators, and if they manage to bring the spouses back into the family according to a new agreement. The issue is a decision that is made in the court and in the authority of the judge who can award a sum of compensation in money that the guilty party will have to pay. The last section of this chapter seeks to protect the wife's rights from the husband's arbitrariness against having an unjust divorce against the wife; if it becomes clear to the judge that the divorce has no justification then the judge will award the wife in addition to the deferred mohar also damages due to the divorce.

8. Waiting period: from section 50 to section 53, this is a period between the death of the husband or the divorce of the wife and her remarriage. A period of four months is required to ensure that the woman is not pregnant. The reasoning behind this is that on

case the woman is found to pregnant, then the child can be assigned to the father who will be responsible for all expenses and alimony for the child.

9. Custody: from section 54 to section 66 which discusses the supervision of children in all sorts of situations.

10. Alimony imposed on the fathers and sons: Sections 67 to section 74 discuss alimony imposed on the father for the benefit of the sons.

11. The alimony imposed on the sons for the benefit of the parents and alimony for close relatives: From section 75 to section 80 which discuss the alimony imposed on the sons for the benefit of the parents, and the relatives.

12. Custodian of minors: from section 81 to section 87 which discuss the issue of guardianship of minors and who has the authority and who raises them.

13. Guardianship of minors and guardianship of minors and those without legal capacity in the estate: from section 88 to section 98 which are guardianship and wills.

14. Authority of the Custodian: From section 99 to section 118 which discuss the activities of the Custodian and all his powers and duties.

15. Disqualification Law: From section 119 to section 125 which discuss in the disqualification law of a person and appoint a guardian with special emphasis.

16. The missing person and the trustee on his property: from section 126 to section 136 which define a missing person whose whereabouts are unknown, whether he is alive or dead, and determine the rights of the trustees and their duties, appoint their disqualification and position, and the judge's authority to declare a missing person ten years after his absence and the passing of his property to the heirs, and more.

17. Pedigree and Paternity: From section 137 to section 144 it is a matter of determining the period of pregnancy and attribution of the newborn to the father and determines the period of pregnancy and pedigree attribution to his father especially when the woman is widowed or divorced.

18. The will and the inheritance: From section 145 to section 169: these are sections that define the will and inheritance and defines who can write a will, especially since Druze law gives full authority to the person writing his will to leave all or part of his estate to a natural heir or a person who is not an heir and not even from the Druze community. This chapter also defines situations of deprivation of rights in a will or inheritance when a person murders the, and also in a will for a charity the mental stability of the person making the will.

19. The person making the will can also register his will before the judge or alternatively before two witnesses. The will must be in writing and before witnesses. The sections also speak about situations where the deceased person dies without leaving a will, in such a case the natural successors will inherit him.

20. Sacred property: from section 170 to section 171: the last two sections discuss the matters of the sacred property and the obligation to exist and replace and utilize it and appoint trustees to it, in accordance with customary practice. The judge is also authorized in any matter that is within his authority and there is no reference to the issue in the sections stated above. Each and every one of these sections has a long explanation that this is not the place to elaborate.

6. Marriage in the Druze community

The marriage in the community is special in order and is included in the Personal Status Law for the Druze community in six chapters from the first to the sixth chapter. Sections 1 to 36 speak about the age of the engaging couple and they must be over 18

according to the Marriage Age Law (Israel's Marriage Age Law 1950 and it's amendments regarding age of marriage). The sections also prohibit marriage to certain family relatives, and prohibit mix marriage, that is to other religions. And on the negotiations between the man and the woman through intermediaries who are witnesses to the conclusion of the marriage contract by the marriage order on behalf of the Druze religious court which is the sole authority of the Druze community to approve the marriage. The sections also refer to the man's commitment to the woman and that she should be compared to himself, and also the woman's commitment to the man. Also the issue of the "mohar" that will be written in the marriage contract after both parties agree on the amount, and on other issues such as alimony that the husband is obligated to his wife from the time the bond is made.

There are several stages that the couple go through, from initially knowing each other until marriage. The stages are:

6.1 **The engagement**: if there is acquaintance between the boy and the girl from school or family or friendships between the parents or acquaintance through friends or matchmaking only through the parents and they are not allowed to meet alone in private; The bride's consent must be taken (Dr Nisim Dana: The Druze, Bar Ilan university publishing, Ramat Gan 1998*)*. The communication between the groom and his future bride is done through his parents; after getting to know them, the guy turns to his parents to address the bride's parents with respect. This tradition is long and still continues the same way. The girl will finally have to say whether she agrees or disagrees.

Another option for engaging is that the parents of the groom go according to his wish to the parents of the bride to ask for their consent to the engagement. If the consent is given then they declare them publicly engaged and that they want each other, so that everyone close and far know of this. This is the initial step towards marriage. The woman will not be a man's wife until after the wedding, as I will write in more details later. Since the religious people have always established the order of marriage for us and this has been happening for centuries, we still find that this is the right way to act despite the advancement and modernization that is developing today. Engagement time is a time to know each other and know everything about each other. Furthermore, the nature of each and every one and his mental and health condition and also exchange valuable gifts like gold jewelry and various objects after a period they will determine its length like weeks or months or years and this period ends either in the binding ceremony before the actual marriage or allowing the engagement because the engagement period is not considered marriage. In general, there are no mutual rights as spouses only to know whoever sought the dissolution will lose the gifts he gave to the other party and the court must act under section 26 of the Personal Status Law of the Druze community.

6.2 **Aked (the convention):** After the engagement period the engaged begin to prepare for the binding ceremony and then there are negotiations (Dr Saib Arekat: Life is negotiation, Alnajah university, Nablus, 2008 p.21) between the parents of the parties regarding the preparation of a furnished apartment and everything else in order to reach agreements in the planning of construction if it is not yet possible to choose an apartment or the color of the furniture or the date of the wedding and those invited after the agreements set a date for the written binding ceremony which is a written commitment to people. The Aked derives religious duties and rights with traditional and religious principles and this is done after receiving written approval from the Druze religious court to confirm that the two do not prevent them from marrying after examination because both are Druze to Druze parents and have no marital relationship and no medical disability

prevents them from marrying. The “aked” is written by one of the marriage orders from which the tribunal is appointed in each village and who operates according to the instructions of the tribunal and with the approval of the tribunal to be conducted by the Kadi (Ministry of Justice - Druze Religious Courts: A Window for Druze Law and a Guide to Personal Class Law in the Druze Community, Prepared and Printed by Adv. Kamil Mula, First Edition - January 2016. P16). The ceremony takes place in front of at least two witnesses from each side who are the witnesses to edit the Aked and with everyone's consent the couple will sign with the witnesses who can also be parents or others. In case one spouse is deaf, then consent is given by allusion or sign. Instructions will be read to the couple from a paper that is prepared by the court and which explains to them what is allowed and what is forbidden and how to act. After signing, a copy of the aked is given to the parties, and two copies are sent to the court. One of the copies that are sent to the court is then sent to the interior ministry by the court, so that the marital status is changed accordingly. From the moment of the aked, the status of the parties is changed to “married” in the interior ministry (Section 24 of the Israeli Personal Status Law). It is important to note that nothing of the above is done without the consent of both parties. From this moment, the woman is considered to be his “waiting” wife. From that moment she will be forbidden to others and also to her husband who is not allowed to marry another and he has to compare her to his soul in every matter and must keep her from everything and also owes alimony to his wife, among them the inheritance law applies if any of them dies prematurely then the other is one of the heirs. The husband must at this stage give her the immediate mohar and alimony (Section 20 of Israeli Personal Status Law). The deferred mohar will be paid to the wife in two situations: the death of the husband or divorce that the husband is guilty of after a verdict is given on the matter, and if no mohar is registered then the deferred mohar in accordance to section 24 of the Druze community personal status law. After the aked the woman is still prohibited for him, until the marriage ceremony after which she moves to live with him as his wife. It is worth noting that after the aked the mother of the woman will become forbidden for him too, and also the woman will become forbidden to her father in law (Dr Nisim Dana: The Druze, Bar Ilan university publishing, Ramat Gan 1998). Therefore, after writing the marriage contract (aked), the groom signs, and the groom and everyone in front of the witnesses, will be given instructions on what is allowed and what is not allowed until the wedding day, and that the groom must visit his bride at her parents' house, especially during the holidays. And the like2. The marriage contract document is handwritten in four copies. Copies are handed to the groom, bride and two copies to the court, one of which is sent to the Interior Ministry to change the marital status of single or widowed or divorced.

6.3. **The wedding**: if the bride and groom do not separate after the aked and before the wedding, then after a period of sometimes weeks or months or even years, the parents of both sides declare a wedding date. For the wedding day both the bride and groom's parents invite guests from the village and outside to dine with them in two places one at the groom's parents and the other at the bride's parents. After the meal, the groom's parents ask the guests to accompany them as a delegation to the bride's parents' house, where they kindly and pleasantly ask the bride's parents to take her from the groom's house to the groom's new house in a spectacular and dignified religious ceremony. Then his wife will allowed for him as long as of course it is by her own free will without coercion and they will give her personal security and treat her justly and give her warmth and love and all that his hand achieves and not deprive her; As for the bride, she must surrender to him and obey him in all his legitimate personal and marital rights and all the

accepted rules of conduct in society apply to them and they are rooted within the Druze community and the wedding ceremony is a religious principle and foundation in marriage and is a custom of the prophets.

7. The status of the Druze woman

The Druze woman enjoys a special status that gives her rights and obligations arising from the foundations of the religion and which were published by the late Al Amir al-Sayed and from the long tradition and culture since the Druze past and present. For generations, three basic principles have been maintained: The first is the preservation of religion, the second the preservation of the females, and the third the preservation of the land, and in addition upheld the principles of honor, pleasant manners, good morals, and exemplary ethics. This took care of the individual and the family and brought good to them and society. Taking care of the woman in the family is a cornerstone of society and building the children in the best way and they are the foundation of society as a whole. If the mother who is the woman in the house does not fulfill her role in educating the children and raising them on the rules and good traditions, then they will deviate in their behavior and move away from values and ethics, therefore and in order to be good one must choose the good woman with morals and ethics and good education. Even when the woman chooses a man, she should examine the good education and traditions etc., because many studies have shown that the behavior at home between a man and a woman affects the children's education and their personality. In the Druze community there are two classes: religious and non-religious who are from all sectors of life and in all villages and families. Within the same house you will find religious and you will find non-religious. This does not interfere with lifestyle because anyone can and may choose his way of life, and they live together with harmony. The Druze woman is also allowed to be religious or non-religious and chooses her future husband at her own free will and can agree to one of dozens who turn to her to get her hands through her parents, so a religious woman will prefer to marry a religious man so there will be equality between the couple3. A non-religious couple can become religious and vice versa religious couples can also become non-religious. And even a woman married to a non-religious man can alone be religious; the social status of a Druze woman is significantly better than the status of her Muslim counterpart, and this is due to the attitude of the Druze religion towards women4. The Druze religion gives the Druze woman a respectable status in society, but also imposes strict duties and patterns of behavior on her, with the main idea being the recognition of almost full equality between her and the man (Dr Shakieb Saleh, History of the Druze, Bar-Ilan University publishing, Ministry of Defense / Publishing, p. 49.). In all duties and rights the wife can choose for herself her own lifestyle for the benefit of both husband and children. There are also husband's obligations to his wife that should be treated with respect and kindness and grace and hear her and understand her and not to use violence against her whether by conduct, verbal or physical violence, because the woman is a full partner for the man and assists the man in building the house of the residence if there was not one. The woman is the master of her home and her life and the partnership in it will bring happiness and wealth in life and respect and appreciation of all. The woman is the sole decision maker as to who she chooses to be her life partner. If she does not agree then she should not be forced, because at the time of making the aked, the witnesses must ask the woman about her consent to the making of the aked in an explicit manner and in front of the witnesses. She should be of a clear opinion and understand the meaning of things; everything is done according to section 14 of the Personal Status Law as stated above. It is

also not possible to write conditions that are contrary to customs in the aked, such as the period of marriage: it is strictly forbidden to determine a period between the spouses how long they will live together because the marriage is intended for life, because after all, the purpose of marriage is to establish a home with family and children. It is forbidden to wed a girl to a person who is not Druze. The reason behind this is to maintain the core of the Druze minority, and to keep the Druze identity.

The Druze woman has the same right as the man and is entitled to receive property and do with it as she pleases and also to bequeath it to whomever she desires. This right is also granted to the man equally, and can write feces and indicate who enjoys it freely and if she doesn't leave a will then her estate will be divided upon the successors in accordance with the Law of Succession (Israeli Inheritance Law 1965). In addition, the Druze woman can be the guardian of her minor children under section 91 of the Personal Status Law for the Druze community, and all this if she meets the conditions for appointment as a healthy body and soul with a good life and with all civil and adult powers. The woman is entitled to alimony under section 20 of the Personal Status Law from the time of making the written bond "aked" until death or divorce under section 35 of the Personal Status Law. The woman has the right to custody of her children under section 54 of the Personal Status Law if she deserves it and has the ability to care for the children and take care of their needs and if she is legally competent to do so in accordance with section 55 of the Personal Status Law. The Druze woman has the authority to request a divorce from her husband for any reason listed in the Personal Status Law from sections 39 to 49 which we will explain about later. The Druze woman enjoys that she will be the only woman to her husband and this is because polygamy is forbidden by religion and by law in accordance with section 10 of the Personal Status Law. If the husband wants to marry a second wife their marriage is void and forbidden. It is also forbidden to return a divorcee and under section 11 of the Personal Status Act both spouses should accept each other as he/she is and learn about the behavior of each and every one of them and take care to bridge the prejudices each brings from home according to the education he received at home, because every family has different priorities in life and it is not always compatible with the other side. I, as a judge, and from my experience at work for years, give a demonstration of the woman's status as a tree that gives good and delicious fruits, each of us cultivates the tree and guards it and fences it and takes good care of it etc., all in order to get good and delicious fruits. This definition fits the Druze woman because she is the one who brings the good fruits which are the good and beautiful children and grandchildren, and all this thanks to her and the education she gives to those around her. If I was to define who the woman is about then the woman is a mother, sister, grandmother, aunt, granddaughter, wife, daughter, these are the women around each of us and they are the honor of each and every one of us.

8. Divorce in the Druze community

Divorce in the Druze community is well established, according to the late Alamir Al-Sayyid, more than 500 years ago. The divorce between the two spouses is without a return to cohabitation. Once divorced there is no way back. Back in the days there were no religious courts, so the issue was dealt with in houses of prayer. Before ruling, the head of the house of prayer gathers the relevant religious people, and they hear from both spouses, listen to their arguments and try to reconcile and if they cannot be returned as spouses then they are declared as divorced. After the divorce, the divorcee of a person will be forbidden to him forever, no-matter what the reason or the situation is. This tough prohibition stems

from the dignity of the wife as she is not an object in the hand of the man. She is an independent authority and has the right to express her opinion and consent and dignity is also related to her non-return to a husband who does not respect her or care for her or their children; the husband who makes this difficult decision to divorce his wife must know the dangers of divorce and the limitations. If all roads to peace have ended then there is no other option but to divorce, but this is subject to the restrictions stated above. Al Amir al-Sayyid did not allow the separation between the two spouses until after all the reconciliation proceedings between them had been accomplished through mediators from both sides, usually relatives of the husband and relatives of the wife who will work to make peace between them. It is also important to ensure that the divorce was not in a moment of anger, the declaration of divorce on its own does not constitute the disengagement of the marriage bond (Camil Mulla: an article which was published in Din Vedvarim beyond open doors, 52 Dec. 2014). There are three cumulative conditions for the divorce deed to exist both on behalf of the husband and on behalf of the wife: The first is the existence of an intention on the part of one of the parties to divorce the other. The second is the determination and tenacity of which of the parties to divorce and there is no room for peace at home. Third, if one of the parties declares the divorce on front of credible witnesses, then the couple will be given a reasonable period of time to consider their steps and return from the rigid position and try to regulate the marriage their marriage by mutual consent, then there is no divorce and they can live together again. But if the attempt is unsuccessful and one of the two spouses insists on divorcing then he\she is not forced to continue the marriage life and the marriage in it ends. Then it's a problem for both of them because they cannot go back together to marriage life forever. The late Amir al-Sayed also gave equality in the divorce to both spouses, and did not give the severance of the marriage relationship in the hands of the man alone who could at any moment sever the marriage bond and divorce his wife, but he also gave the wife the right to divorce her husband, and gave her the same rights that the husband has in ending the marriage, since this is in the substantive law of the Druze religion, and gave her the freedom of will and expression of opinion regarding the marriage with the other party. This is a principled and inherent religious rule in the marriage life of the Druze, and it has a lot of meaning according to the Druze religion and a lot of influence on the status of a child born out of a forced marriage and / or back to a married life between divorced spouses. This child is considered a bastard and the court is unable to approve the annulment of a divorce under sections 37, 38 of the Personal Status Law for members of the Druze community (The Personal Status Law of the Druze Community in Israel 1962). Because according to religious law if the divorce is conducted before two credible witnesses and those two witnesses publish the validity of the divorce after the husband stuck to his position and after trying to reconcile between the two spouses and the reconciliation was unsuccessful and the husband was not illegally unlawfully influenced then the spouses can no longer go back to living a married life together. Likewise the wife can also divorce her husband if she feels she can't continue living with him because of circumstances she will detail before dignitaries or the court. The woman's ability and possibility to resolve the marriage bond (separation) also exists if one of the grounds listed in sections 39 to 45 of the Personal Status Law of the Druze community and Druze law is met. On February 5, 2015, the Supreme Court issued a judgement in Case No. 2535/14 (Israeli High Justice Court case number 2535/14 P. v Druze court in Acco and others, given on 19.5.14), in which it affirmed my ruling in the Druze court. The Supreme court quoted my ruling: "*it is not possible to oblige which of the parties to continue their*

married life by force and necessity and since I am convinced that there is no room for reconciliation between them anymore ... " The Supreme Court affirmed my ruling by rejecting the appeal. In this situation the wife filed for divorce against her husband for reasons written in the statement of claim through a lawyer and adhered to her position of separation and divorce from her husband. The tribunal appointed mediators to reconcile between them and after meetings with both sides outside the court, they came to the conclusion that there was no need to reconcile and bring them back to a marriage life and the mediators announced that they had not been able to bring them back together. The court also tried to save their marriage and bring them back together but unfortunately without success. Both parties submitted their arguments in writing and their words were recorded in the minutes of the meetings of the court. The lawyers also submitted their words and after I was convinced that there was no need to reconcile them I decided to accept the woman's position on separation and a divorce certificate under sections 37 and 38 was issued. There is another possibility to resolve the marriage relationship according to section 42 of the Personal Status Law of the Druze community. The issue takes place in a consensual divorce agreement. This comes into effect when the divorce is announced in the presence of at least two witnesses, and the affirmation of a court judge. Article 42 states: *"The spouses may disconnect the marital relationship by mutual consent. The disconnection of the relationship will take effect upon its declaration in the presence of witnesses and in front of a Kadi (judge) who will confirm in the ruling the release of the relationship between the spouses.*" Another option would be according to sections 47, 48 of the Druze community's personal status law, which is a "quarrel and dispute" claim, meaning a claim for domestic peace (a claim for domestic peace will also be under section 23 of the Personal Status Law) and not only for domestic peace but also for divorce if the reconciliation attempt did not succeed. Article 47 states: if a quarrel or dispute arises between the spouses and one of them turns to the Kadi Madhab (judge), the Kadi will appoint an arbitrator from the husband's family and an arbitrator from the wife's family, and if the two families do not have the qualifications required to arbitrate, the Kadi will appoint an arbitrator. The divorce can be due to a quarrel or dispute within the house and not necessarily that the spouse directly applies to the court announces his desire to divorce but there is a dispute over the actual existence of the divorce event. According to section 47 as stated above an arbitrator in this case is a kind of mediator, conciliator and not just an arbitrator. Article 48 provides: "the two arbitrators shall be aware of the causes of the dispute between the spouses and shall endeavor to bring them to reconciliation; if they have failed to reconcile due to non-cooperation and stubbornness of the husband then the judge will break the marriage and payment of all the mohar and also the deferred mohar may be applied. If the reconciliation fails on the part of the woman, the Kadi will rule the expiration of her right from all or part of the rejected mohar. In both cases the Kadi may rule that the spouse responsible for allowing the relationship will pay damages to the other spouse. The results of the efforts of the mediators or arbitrators determine the further discussion and treatment of the tribunal on the issue. According to section 48 above if the arbitrators failed to mediate between the spouses checking who in their opinion was the factor that led to the divorce at the end of the process, if the husband is the cause the husband will pay all or part of the deferred mohar to the wife. If the woman is the cause, the Kadi shall rule on the expiration of her right to all or part of the Mohar, and in both of the above cases, the Kadi may award damages to any of the spouses who have been harmed as a result of this divorce. Basically whoever is guilty will pay. Another possibility is divorce without reason, when the man or woman, announces his desire to

separate from his partner for no reason, like maybe if the love just ended, he is allowed to do so and the court shall grant the request, because the marriage begins with mutual consent and continues with mutual consent but separate if one spouse expresses his desire to separate and all attempts at mediation did not succeed in establishing peace at home.

The Druze community as already mentioned protects the rights of the wife and compares her with the husband and allows her to act on a separate and independent level in all divorce matters. The Druze legislature was aware of the possibility of husbands who could divorce their wives regardless of a justifiable reason and without any contributory fault, and that is why in such situations we have Article 49 which gives protection to the wife and states that if it becomes clear to the Kadi according to the circumstances of the case, and after hearing all the arguments and proofs, in addition to the deferred mohar she deserves, the court can grant her compensation for damages. Some argue that divorce sometimes before witnesses constitutes a criminal offense under section 181 of the Penal Code. The section states: "breaking marriage contract against the woman's will": If the man breaks the marriage contract without a judgement from the court, he can face a punishment of up to five years imprisonment". The main purpose of this section is to punish and compensate the woman under the "Torts Ordinance" after proof of the tort that exists in section 63 of the above Ordinance. The Supreme Court in his sitting as the High Court of Justice ruled in case number 245\81 *(Court of Appeal case number 245/81 Horiya Sultan v Hasan Sultan)* that: "*the answer also arises from this that the damage, which the enacted law sought to prevent, is not the damage caused as a result of divorce but from a change of status from a married woman to a divorced woman without a court ruling.*" In the Druze system, it is not possible to change the status from a married woman to a divorced without a ruling. The woman remains married until a divorce certificate is issued by the court. The status of the woman remains even if the man has declared a divorce but a divorce certificate has not yet been issued by the court. With this regard, the Supreme Court ruled in case number 2829/03 (Israeli High Justice Court 2829/03 P. v Druze court in Acco and others, given on 16.1.06) from 16/1/2006 the tribunal must issue a divorce judgment and divorce certificate when the tribunal is satisfied that there is no room for peace after all attempts and solicitation to motivate the parties to reconcile between them, and after the divorce certificate is issued the tribunal will hear damages and fines due to both parties under sections 48 and 49 of the Personal Status Act. In order for section 181 of the Divorce Act to exist, three cumulative things must exist: "a valid act of divorce, the woman's disagreement, and the absence of a ruling from a court or a competent court that obliges the woman to allow the marriage." In order for section 181 of the Divorce Act to exist, three cumulative things must exist: "a valid act of divorce, the woman's disagreement, and the absence of a ruling from a court or a competent court that obliges the woman to allow the marriage." The issue of divorce is in the substantive law of the community and I will write on this issue in another article.

9. Summary

In this article I tried to explain about marriage and divorce to members of the Druze community. The marriage procedure is a procedure that requires members of the community to act in accordance with many years of tradition, because there is no complete equality between a man and a woman in all the religions in the world except the Druze religion and the small Druze community that gives both spouses to choose the other side and also to divorce him to choose another and also the possibility of divorcing him because marriage should not continue by force. This leads to the guilty party paying the

other. Divorce is the most undesirable thing in family life and especially when there are small children under adulthood. And we are witnessing today that there are children who grow up with both parents and nevertheless they turn to crime. One might ask, if children with both parents become criminals, what would children with divorced parents become? Especially that mostly the children are thrown into one of them and the other fights to see them, or when the divorced parents fight over the custody of the children; these fights are like ropes that are put around the necks of the children while each parent pulls it to his side without noticing that they are harming their own children. I, as a caddy in the Druze Court of Appeals, do my best to bring the couples back together and overcome all obstacles in their lives. I also do seek the help of mediators and fellow religious people who have the necessary capabilities because this is much better than of destroying the marriage. But, this has to be done without forcing the solution on the parties. It is possible to make peace and it has been proven with me that a large number of cases and after a convincing explanation to both parties I was able to sign a peace agreement and bring them back together to live and raise the children. On the other hand, divorce is sometimes a refuge for freedom when there is oppression on the part of one or both couples against each other and therefore separation is required and a new life with new people sometimes would bring joy and happiness. A new marriage in some cases brings a change in lifestyle and is an opening for hope for the continuation of a dignified life.

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MINORITY INTEGRATION POLICIES AT THE NATIONAL AND EUROPEAN LEVEL

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Abstract. *The purpose of public policies in the field of national minorities can be dual, namely, to protect the specific (cultural, linguistic, ethnic) identity of people belonging to national minorities, and to ensure harmonious coexistence between majority and minorities, as well as between minorities themselves. Thus, this paper aims to analyses the policies and measures defined at national level in the field of minority integration, as well as European models or regulations with rank of recommendations for Member States. To this end, have been resorted to qualitative methodology instruments as data analysis and case study. According to the OSCE, "to support the integration process, [are needed], policies, to create a society in which diversity is respected and in which all people, including all members of ethnic, linguistic, cultural or religious groups, contribute to building and maintaining a civic, common and inclusive identity". Therefore, the research questions on which the paper focuses, refer firstly to the extent to which Romania has managed to apply minority integration policies, and secondly, what are the European models that Member States could follow in order to ensure an efficient and substantial regulation and application of the rights of persons belonging to national minorities.*

Keywords: *national minorities, public policies, integrative tools, European models.*

Introduction

National minorities represent the primary factor of cultural diversity, precisely through the specific identity features, different from those of the majority. Thus, the philosophy of Members States` policies on the protection and integration of national minorities must relate to the desire to cultivate this distinct identity, to help to promote the cultural diversity of society, which in turn ensures a healthy climate for good coexistence between the "majority" and "minority" (Aurescu, 2015).

Although there has been an academic debate on minority rights since the late 1960s, and many political initiatives to transpose those debates into a normative framework for the protection of minorities, there is yet no academic or political consensus on the concept of minority. Neither article 27 of the International Covenant on Civil and Political Rights nor the Framework Convention for the Protection of National Minorities offer a definition. In the absence of such an authoritative definition, states claim the ultimate word on whether there are minorities in their territories and tend to adopt very narrow definitions of "minority", thereby severely hindering the already bleak protection provided by international legal instruments to minority groups and their members (Jerónimo, 2012: 7).

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In the meantime, there has been much talk about the role that the European Union can play in the definition and implementation of a European standard of minority protection, given the outstanding minority issues brought to the Union's political landscape by the 2004 eastern enlargement and the growing commitment of the European Union to the protection of human rights, attested by the adoption of the Charter of Fundamental Rights of the European Union (Jeronimo, 2012: 9).

Policymakers throughout Europe feel increasing pressure to adopt more effective approaches to secure inclusion but are uncertain how to bring people together to achieve this (Rudiger, Spencer, 2003:3). It is in this context that the European Commission has called on political leadership to overcome social divisions and to generate acceptance for diversity. It has emphasised that social cohesion requires the implementation of integration policies that promote equality and diversity, based on a recognition of the pluralist nature of European society (Rudiger, Spencer, 2003: 3-4).

As we said, the term minority, although it does not have a universally accepted legal definition, exists a number of common elements. Our analysis will focus on the definition provided by professor Francesco Capotorti in his report to the United Nations, a definition that is accepted by most European countries, as well as a number of international instruments. In his view, "the minority is a group of people, numerically inferior to the rest of the population of a state, in a non-dominant position, whose members - citizens of the state - have different ethnic, religious or linguistic characteristics and who show, even implicitly, a certain sense of solidarity, directed towards preserving the culture, traditions, religion and/or language of the group" (Capotorti, 1979: 5-11).

This study examines the way in which Romania implements public policy measures to protect and promote the identity and rights of minorities, including ethnic, cultural, religious and linguistic rights. The European Union also calls to the Member States to develop strategies to improve the participation and representation of minorities in the political, cultural, social and economic life of the societies in which they live, and from this point of view, it would be interesting to see how Romania approaches policies in this regard (educational policy, representation of minorities at the local level and in Parliament, public policies for Roma community). In addition, this research will focus on the models or regulations adopted at European level on the integration of national minorities. As we well know, the conceptual framework of integration debates and policies differs across Europe, making the comparison of policy approaches and an exchange of good practice difficult. Comparability is impeded by Member States promotion of a national ideological consensus on integration by the use of different monitoring systems and categories, and by different historical backgrounds as well as economic, social and political structures. This confirms the extent to which the issue of integration of migrants is linked to the wider issue of national cohesion, social order and stability (Rudiger, Spencer, 2003: 7-8). The comparability of integration policies is limited for the same reason as their practical success: integration remains linked to nation-building, perceived as a one-way process (Rudiger, Spencer, 2003: 7-8)[1].

Starting from these, we will try to respond at some research questions. Firstly, to what extent does Romania succeed to apply minority integration policies? Secondly, what are the European models that Member States could follow in order to ensure an efficient

[1] Cf. Adrian Favell, (2001) Philosophies of Integration: Immigration and the Idea of Citizenship in France and Britain, New York.

and substantial regulation and application of the rights of persons belonging to national minorities?

In the paper we opted for qualitative analysis, in order to bring to light those novelty elements analyzed by the proposed topic. The research started from the observation and analysis of the phenomena, so that later the results can be interpreted. It is an empirical approach based on the investigation of sources, such as the key documents adopted so far at national and European level, as well as the constraints operating on the implementation of policies for the integration of national minorities. It, also, were reviewed studies, reports of European and international institutions, as well as specialized volumes. In order to arrive at relevant data regarding the object of the research, one of the techniques that will be used will be the content analysis. This is a qualitative analysis, whose fundamental objective is to transform the descriptive-discursive information of the documents into countable or, possibly, measurable entities, according to certain properties (Agabrian, 2006:41). Basically, in order to identify the main dimensions and characteristics of our study, through analysis, we will try to solve the problem of time retrieval. This scientific approach will be organized in the form of a case study. The case study raises the issue of generalization, notes and common mechanisms (Iliuț, 1997:108). In interpreting the case, we will try to focus on European models or regulations with the rank of recommendations for national states on the integration of national minorities (Ljubljana guidelines on the integration of diverse societies).

Despite the relatively small number of countries with large minorities, interethnic conflicts in the early 1990s have contributed to increasing attention to how state policies respond to minority requirements. In most states have been signed and ratified relevant international and European agreements and conventions, these leading to the development of national policies on minority rights.

The policies adopted at national level, as well as the relevant international and European agreements and conventions in this regard, will be presented in the following sections.

I. Minority integration policies at national level

Over time, the Romanian state authorities have undertaken an impressive number of measures aimed at integrating national minorities. More than 200 normative acts have been adopted, which have included stipulation on various aspects of majority-minority relations, it have been established state institutions with competences in areas of interest to minority communities, and significant funds have also been allocated for supporting organizations that have taken on the role of representing the interests of minority communities.This complexity of the approaches regarding the regime of national minorities places Romania in a top position at international level. Romanian diplomacy has contributed substantially to the negotiation of the Framework Convention, given Romania`s direct interest in the matter (Aurescu, 2015). And its policies for the protection of national minorities on its territory (given the twenty minority groups), defined since the 1990s, have been adapted to the philosophy of the Convention. In fact, Romania is also the first state to ratify the Framework Convention, on April 29, 1995, being, at the same time, among the states that signed the Convention on February 1, 1995, when it was opened for signature. It is true, however, that the measures taken and followed by the state authorities have not always led to the expected results, leaving many controversial aspects of majority-minority relations still to be resolved through appropriate state policies.

In the conference ”Ethnic minorities in Europe - Challenges and Perspectives”, the Minister of Foreign Affairs, Bogdan Aurescu, talks about Romania’s approaches to minorities, claiming that “being a part to this international instrument, Romania, through the policies promoted in the matter, has shown that it is faithful to the desideratum of ensuring the highest possible level of protection for the members of the 20 national minorities on its territory. Romania will remain consistent with this goal, in particular, and with respect for fundamental rights in general” (Aurescu, 2015).

These two objectives - highlighting the achievements so far and pointing out possible directions for progress - were the basis for motivating the research.

From an academic point of view, the issue of national minorities in Romania has been the target of concerns especially for historians (Salat, 2008: 10), sociologists (Bădescu, Kivu, Robotin, 2005), specialists in international law (Năstase et. all., 2002) or normative approaches (Andreescu, 2004). The articulated points of view were situated in the contexts of the evaluation of the interethnic relations in Romania, of the conditionalities related to the objective of joining the Euro-Atlantic structures, or of the political disputes regarding the relations between the majority and the minorities.

Approaches that use the language of public policy allow avoiding a trap that frequently sets in the way of negotiations between majorities and minorities on institutional arrangements for accommodating diversity: disputes over the law - with reference to the provisions of international law or ”national minority law” - tend to get in the way of zero amount, in which any ”gain” recorded by one party seems to be conditioned by a ”loss” on the other side (Salat, 2008: 11). In contrast, the problems defined as challenges for the set of public policies of a society allow the perception of these problems through a positive game, by placing the issues in the context of the public good, by raising awareness of responsibilities, and by mobilizing all stakeholders. making decisions in the public interest, or in other words, in the „good governance” of the community, in the sense in which John Stuart Mill used this term (Mill, 1998: 217-237).

A large collection of laws and legislative documents regulate national minority rights in Romania and a proper environment for the conservation of the minorities’ linguistic and cultural identity, in different fields of activity. This collection includes documents that prescribe minority rights in domains such as education, local public administration, political rights, anti-discrimination, as well as in fields such as the police officer’s status, children rights etc. (Ethnocultural Diversity Resource Center).

According to the authorities, Romania understood that cultural diversity, more precisely, multiculturalism and interculturality, as goals in themselves in the field of minority policies, represent essential values of democracy, of societies based on respect and peaceful coexistence. Specifically, Romania protects the right of every individual, who freely declares his membership of a national minority, to use his mother tongue in relation to administrative and judicial authorities, to learn and to receive education in his mother tongue or to participate in public life and in the decision-making process in matters of relevance to society as a whole, not just to the minority concerned (Ministry of Foreign Affairs, 2015). Romania has learned from its own experience the challenges to which national minority policies must respond, and has undoubtedly understood that societies with a strong democracy are those based on tolerance, mutual respect, cultural diversity, interethnic and intercultural dialogue, for the benefit of society as a whole.

Many of the reports agree that Romania has made changes in the implementation of minority policies, but there are also reports that criticize national approaches.

For example, in the Report of the Committee on Culture, Science, Education and Media on ”Identities and Diversity in Intercultural Societies”, Romania is highlighted among the states that promote innovative policies, action plans for cultural diversity and dialogue in various fields such as art, media, internet and social networks, having a general or interdisciplinary nature (Committee on Culture, Science, Education and Media, 2014: 1-18). Also, according to the 2012 evaluation of the Framework Convention Advisory Committee, ”since the ratification of the Framework Convention, the Romanian authorities have continued their efforts to protect national minorities and have maintained an inclusive approach to communication with national minority representatives” (Council of Europe, 2012:5). At the same time, the Committee believes that many efforts have been made to promote intercultural dialogue between the majority and national minorities and between the various national minorities (Council of Europe, 2012: 1-38).

As we mentioned, there are also reports that criticize the way Romania implements legislative instruments on the protection or imtegration of minorities. In this regard, on 16 February 2018, the Council of Europe published the 4th Opinion of the Advisory Committee on the Application of the Framework Convention for the Protection of National Minorities. The latest report submitted by Romania, which was evaluated by the Advisory Committee, shows a worsening of the situation of compliance with the Framework Convention for the Protection of National Minorities. As stated in this fourth Opinion, the Council of Europe not only took note of the conclusions of the country report, but, as it had done on other occasions, undertook field visits. Visits on the spot took place in Bucharest, Cluj, Suceava and Constanța, and alternative data were collected from reports and conclusions issued by independent entities (non-governmental organizations, political entities of national minorities, etc.). One of the first issues set out in the Opinion was that the submission of the national report was delayed by two years. The Committee also notes that its third Opinion was not translated into Romanian and into the mother tongues of persons belonging to national minorities, and the information contained therein was not disseminated to the general public. The Committee notes that the Law on the Statute of National Minorities, which has been debated in Parliament since 2005, has not yet been adopted. Although the Committee does not consider the adoption of such a law as a condition for compliance with the Convention, it nevertheless expresses its concern about the ”lack of a coherent and consolidated legislative framework for the protection of the rights of minorities in Romania” (Council of Europe, 2016: 1). Representatives of the Committee found that ” legislation regulating different aspects of national minority protection is disjointed, piecemeal, full of grey zones and open to contradictory interpretation, which on occasion needs to be resolved by the judiciary” (Council of Europe, 2016: 11).

The rights of minorities - and, especially, multiculturalism - are a reality in Romania - which implies the recognition of pluralism and cultural variety, of the cultural identity of any minority. Moreover, in our country, special emphasis is placed on the mutual recognition of values, on cultivating a spirit of dialogue, on communication and collaboration between various existing cultures. Over time, our country has evolved, now, being unanimously recognized, at the international level, the concerns of the Romanian authorities for the protection of national minorities.

1.1. Educational policy

Intercultural education is a formative approach that meets human desires, by enhancing particular, unique features in a diverse society, ensuring a social framework

that gives coherence, solidarity and functionality (Ionescu, Vasiloni, 2018: 83). Experiencing and accepting diversity is the main goal of intercultural education. The issue of intercultural education is an important component of the current educational system, and lately it has gained a special importance in society. Intercultural education was also included on the Council of Europe`s agenda for education, in order to remove the difficulties related to the integration of children belonging to ethnic communities, through pragmatic approaches of inclusion ”by developing knowledge of others, their history, traditions and spirituality” (Ionescu, Vasiloni, 2018: 83). Intercultural communities represent real challenges in the issue of education, especially when it comes to finding the most appropriate strategies for school attendance, prevention of school dropout, completion of vocational training. These people were included in the category of ethnic groups at high risk of vulnerability, requiring the implementation of inclusive education policies. The educational process aims to train students in authentic and sustainable skills, habits and attitudes based on the principles of ”integrated education” and ”school for all” (Ionescu, Vasiloni, 2018: 84).

The Constitution and the Law of Education provide the right mother tongue instruction in the public education system at all levels, and the right to establish its own institutions private education. The orders of the Minister of Education no. 1528/2007 on ”Promoting diversity in education” and no. 3774/2008 on ”Intercultural education in schools” have been implemented and their provisions were broadly disseminated among teachers.

Specific provisions which ensure a better implementation of the principles stated in the above mentioned documents were included in chapter on Education of the Romanian Government Strategy for the inclusion of Romanian citizens belonging to Roma minority 2015 – 2020, such as: Art. (3) – Organizing courses on initial and continuous training of teachers in the field of intercultural education, promoting diversity, nondiscrimination and equal opportunities; Art. (3) – Design and implement training programs for civil servants and for the personnel within the public education, health, social assistance and protection services on issues related to preventing and combating discrimination, promoting diversity (Council of Europe, 2016: 42-43).

Various courses on promoting diversity and intercultural education have been included in the curricula at national level. A program, which was initiated in 1999, involves the winners of high schools minority languages school contests. During summer break, students participate in visits throughout Europe to explore the historic and cultural European diversity. In 2014, the program included a trip to Germany with the aim to get acquainted with the *EU Strategy for the Danube Region*, as Romania is one of the participating countries. Starting with 2014, the Department for Interethnic Relations and the nongovernmental organization from Târgu Mureș have been organizing *The Intercultural Schools*, which is a training program for high school students. In 2015, the program continued with two sessions for students held in various multiethnic areas and one training session for teachers (Council of Europe, 2019: 43).

The Department for Interethnic Relations, in partnership with the Federation of Jewish Communities in Romania - The Mosaic Cult organized in October 2018 the third Painting Camp ”Colors of Our Union - Young Artists, Witnesses of the Future”, in Iași. The project brings together 32 young artists, students from art colleges from Bacău, Buzău and Iași, guided by the plastic art professors, who have performed works on Centenary - history, values, people, patrimony, future. The works will be exhibited in Romania, Vatican, Israel, Austria and Norway. In addition to the creation workshops - painting and graphics - the organizers proposed to the young participants for discussion some important topics such as:

competence and competition; art - as a form of education; ”My future begins today” - roles and places; Me is Europe” (Council of Europe, 2019: 45).

In order to provide education in the mother tongue, initial teacher education is provided in a number of pedagogical high schools and many universities, as well as abroad, based on inter-ministerial education cooperation programs between Romania and countries where the mother tongue of respective minorities is the official language. Continuous training and specialization of mother tongue teachers is ensured by school inspectorates, universities, as well as in initiatives organized or supported by associations /centers of persons belonging to national minorities. Also within the mechanisms of bilateral cooperation in the field of education with these countries are offered similar opportunities for training teachers working in schools in Romania that provides education to persons belonging to the following national minorities: Bulgarian, German, Serbian and Turkish. Language faculties from various Romanian universities are running programs with foreign language and literature lecturers from different countries, including those who have kin minorities in Romania (Council of Europe, 2019: 46).

1.2. Representation of minorities in public administration

Romania has become a country with a complex and stable system of participation of persons belonging to national minorities in public affairs. This wouldn`t have been possible in the general process of democratization and modernization of the country, without the constant, effective and responsible participation of representatives of national minorities in public life, on the basis of various instruments available to them: Parliament, consultation and participation mechanism at Government level or local representation (Council of Europe, 2019: 47).

1.2.1. Parliamentary representation

According to article 62 par. (2) of the Constitution of Romania, ”the organizations of citizens belonging to a national minority who have not been able to obtain the number of votes required to be represented in Parliament have the right to a deputy seat according to the Electoral Law”(Constitution of Romania, Art. 62, Par. 2).

As a result at the last parliamentary elections (December 2020), the national minorities in Romania are represented in the Senate and in the Chamber of Deputies as follows: the Democratic Alliance of Hungarians in Romania, has a parliamentary group in the Senate of 9 persons and a group in the Chamber of Deputies of 21 persons; The Parliamentary Group of National Minorities of the Chamber of Deputies, consisting of 18 deputies representing the organizations of citizens belonging to national minorities.

The significant number of votes obtained by the citizens belonging to national minorities at the last general election can reflects their good image among the communities they belong to and at the level of the electorate in Romania as a whole. Furthermore, the parliamentarians representing national minorities participate in the activities of committees and parliamentary structures (depending on their skills) such as public administration, finance, human rights, education, agriculture and others.

1.2.2. Participation of national minorities in decision-making processes at executive level

Of late years, the Governance Programs have included a significant policy for persons belonging to national minorities and interethnic relations. DAHR was a political formations which was part of the ruling coalition and participated directly in all the social

and economic processes that took place in Romania at executive level. Thus, DAHR had Deputy Prime Ministers, ministers and state secretaries at executive level. Currently, DAHR is part of the governing formula and consists of the government, a deputy prime minister and three ministers, the Ministry of Development, Public Works and Administration, the Ministry of Environment, Waters and Forests, and the Ministry of Youth and Sports.

Collaboration and ongoing consultation between the Government, through its specialized institution, the Department for Interethnic Relations, and the Council of National Minorities is carried out through its specialized committees: the Education and Youth Committee, the Committee on Culture, Cults and the Media, for Financial Affairs, the Commission for Legislation and Administration, the Committee on Socio-Economic Issues, the Commission for Relations with Civil Society and International Bodies. After consultations, the most important initiatives are subject to government approval (Council of Europe, 2019: 50).

In recent years, the organizations of the Council of National Minorities have consolidated their position in the public life of Romania and created a strong material base, likely to allow them a more active involvement in the development of social, cultural, political and economic processes in Romania.

1.2.3. Participation of national minorities at local election

Romania has created, within the constitutional system, the necessary conditions and legal framework for the effective participation of people belonging to national minorities in the decision-making processes, especially those that concern them directly, as well as in the bodies elected at local level. Thus, the participation of national minorities in elections contributes to the strengthening of the rule of law and democracy in general.

The right of national minorities to participate in elections for local public administration authorities is regulated by art. 8 of Law no. 115/2015 for the election of local public administration authorities, for the amendment of the Law on local public administration no. 215/2001, as well as for the amendment and completion of Law no. 393/2004 on the Statute of local elected officials, with subsequent amendments and completions (The Department for Interethnic Relations, 2020: 1).

Following the election for the local public administration authorities, organized on September 27, 2020, the interests of citizens belonging to national minorities are represented by 4 presidents of county councils, by 104 county councilors, by 217 mayors and by 2966 local councilors. Out of the total number of mandates mentioned above, the citizens` organizations belonging to the national minorities members of the Council of National Minorities were assigned 4 mandates of president of the county council, 97 mandates of county councilor, 207 mandates of mayor and 2648 mandates of councilor local (Permanent Election Authority, 2020).

1.3. Public policies for Roma community

The new vision and approach of the strategy to sustain Romanian citizens of Roma minority social inclusion is based on several prerequisites: intervention is needed not only to ensure social justice and protection but also to value, support, and develop the

Roma human resource; the intervention measures will be corroborated and integrated to ensure their effectiveness, and tailored to the social and cultural particularities of various Roma sub-groups (Council of Europe, 2016: 8).

The main goal of the strategy is to bring Roma minority to a socio-economic level of inclusion similar to that of the rest of the population and to provide equal opportunities by initiating and implementing public policies and programs in various fields (Council of Europe, 2016: 8).

In the field of education, the main sectorial objectives intend to decrease the gaps in terms of educational stock, school attainment rate, socio-economic condition between Roma and the other children, promoting inclusive education and reducing discrimination cases in schools. The main actions to reach such objectives are: designing of specific national programs meant to increase the access to early education of vulnerable children, including Roma, through the provision of parental counselling, food for vulnerable children and expanding the existing children care facilities (kindergartens, crèches, day-care centres, etc.); development of After school programs in Roma communities; continuation of "Second chance" programs for Roma early school leavers, as well as of affirmative action interventions; training for Roma school mediators and teachers teaching in Roma communities; completing the legal framework on combating school segregation, raising-awareness campaigns (Council of Europe, 2016: 9).

In the employment sector, the main objective aims at improving labour market participation of Romanian citizens belonging to the Roma minority through actions such as: information campaigns on the labour market to ensure the link between employers and unemployed Roma (through provision of free information, counselling and mediation services to job seekers on the job vacancies, etc.); fostering job mobility and entrepreneurship among Roma (through signing bonuses, free consultancy services for start-ups); skills development and certification (through training courses and free evaluation and certification services); incentives for employers hiring job seekers from vulnerable groups, etc. In order to develop their skills and access to the labour market, young Roma (aged 16-24) may benefit from measures supported by the *Youth Guarantee* (Council of Europe, 2016: 9).

In the fields of education and employment, the European Social Fund complements the national policies through additional funds for programs and projects.

Health represents another pillar of the Roma social inclusion. The current Strategy search to improve of the access to basic, preventive and therapeutic medical services; to prevent sickness situations contributing to the morbidity and mortality levels affecting the Roma population and the diminution of risks thereof; to improve the local authorities capabilities in order to identify the needs and to address them; to prevent the discrimination of Roma in the health system. Among other measures, it is envisaged to: increase the Roma presence rate in the national social insurance system; develop the basic health services network; support the employment of Roma health women and children; supplement the vaccination of vulnerable children; implement prevention programs against infectious diseases; create a hotline against the discrimination of Roma patients (Council of Europe, 2016: 9).

In the area of housing, the main objective is to ensure decent living conditions and access to public services and infrastructure. Some of the measures envisioned are as follows: building social houses with indiscriminate access by low-income Roma; rehabilitating houses in areas with vulnerable Roma; developing public utilities infrastructure in such areas; supporting the issuing of real estate documents (Council of Europe, 2016: 9).

In the field of culture, the specific objective is preserving, developing and assertimg the cultural identity: language, traditions, patrimony of the Roma community

(Strategy of the Romanian Government for Inclusion of the Romanian citizens belonging to Roma Minority for the period 2014-2020, 2014: 22).

Regarding social infrastructure, the main objective is the development, by the institution, of measures which, through the service they provide, respond to the social needs of disadvantaged categories in the matters of development, child protection public order or justition (Strategy of the Romanian Government for Inclusion of the Romanian citizens belonging to Roma Minority for the period 2014-2020, 2014: 22).

2. European reglementations for integration of people belonging to minorities

Democracy is based on the will of the majority, but at the same time protects the rights and freedoms of minorities of all kinds: ethnic, religious, political, linguistic or social. In a democratic state the rule of the majority is limited to respect the rights of minorities.The protection of national minorities, the rights and freedoms of persons belonging to national minorities are an integral part of the international protection of human rights and, as such, is an area of international cooperation.

In this direction, at european level were adopted a series of reglementation and models regarding people belonging to national minorities, reglementation and models which will be presented in the following section.

2.1. Framework Convention for the Protection of National Minorities

The Framework Convention for the Protection of National Minorities, drawn up within the Council of Europe by Ad Hoc Committee for the Protection of National Minorities (CAHMIN) under the authority of the Committee of Ministers, was adopted by the Committee of Ministers of the Council of Europe on 10 November 1994 and opened for signature by the member States of the Council of Europe on 1 February 1995. Non-member States may also be invited by the Committee of Ministers to become Party to this instrument (Framework Convention for the Protection of National Minorities and Explanatory Report, 1995: 1).

The Framework Convention is one of the most comprehensive treaties on the protection of the rights of persons belonging to national minorities. The members of this Convention undertake to promote the full and effective equality of persons belonging to national minorities in all areas of economic, social, political and cultural life, as well as the conditions to enable such people to express, preserve and develop their own identity and cultures (Framework Convention for the Protection of National Minorities and Explanatory Report, Art. 4. 1995: 3).

The Framework Convention covers a wide range of dispositions, including: non-discrimination; promoting effective equality; promoting the conditions that facilitate the preservation and development of cultural heritage, religion, language and traditions; freedom of assembly, association, expression, thinking, conscience and religion; access to the media and their use; linguistic freedoms (Framework Convention for the Protection of National Minorities and Explanatory Report, Art. 7-8, 1995:4).

According to its provisions, Member States must submit, within one year of the date of ratification, and every five years, reports on the measures taken to implement the provisions of the Convention. States may also be required to provide ad hoc reports. In order to implement the principles set out in this Framework Convention, the Committee of Ministers will be assisted by an Advisory Committee, whose members will have recognized experience in the field of protection of national minorities (Framework Convention for the Protection of National Minorities and Explanatory Report, 1995: 25).

Various activities for the protection of national minorities have taken place within the Council of Europe as part of its cooperation and assistance program, including: organizing meetings to provide detailed information on the Framework Convention for the Protection of National Minorities and other European legal instruments; encouraging states not party to the Framework Convention to sign and ratify it. States Parties shall take part in such meetings for the purpose of discussing domestic events and the implementation of the Convention in detail (Otovescu, 2006: 183). Delegations are made up of parliamentarians, government officials and representatives of national minorities.

2.2. Document of the Copenhagen Meeting (1990)

This document was developed at the OSCE `Conference on the Human Dimension` and contains the following provisions for persons belonging to national minorities: persons belonging to national minorities can effectively exercise their human rights and fundamental freedoms without any discrimination and in full equality before the law; these persons have the right to freely express, preserve and develop their ethnic, cultural, linguistic or religious identity and to maintain and develop their culture in all its forms; States Parties shall ensure that persons belonging to national minorities have the opportunity to learn their mother tongue and, if possible and necessary, use it in their relations with public authorities, in accordance with the legislation in force; States Parties condemn totalitarianism, racial and ethnic hatred, anti-Semitism, xenophobia, as well as any discrimination against anyone, but also any persecution on religious and ideological grounds (Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE, 1990: 1-26).

2.3. European Charter for Regional or Minority Languages

It was adopted by the Council of Europe in Strasbourg in 1992 and entered into force on 1 March 1998. This treaty aims to protect and promote the historical regional or minority languages of Europe. It was adopted, on the one hand, in order to maintain and to develop the Europe`s cultural traditions and heritage, and on the other, to respect an inalienable and commonly recognised right to use a regional or minority language in private and public life. First, it enunciates objectives and principles that Parties undertake to apply to all the regional or minority languages spoken within their territory: respect for the geographical area of each language; the need for promotion; the facilitation and/or encouragement of the use of regional or minority languages in speech and writing, in public and private life (European Charter for Regional or Minority Languages, ETS, No. 148). Further, the Charter sets out a number of specific measures to promote the use of regional or minority languages in public life. These measures cover the following fields: education, justice, administrative authorities and public services, media, cultural activities and facilities, economic and social activities and transfrontier exchanges. Each Party undertakes to apply a minimum of thirty-five paragraphs or sub-paragraphs chosen from among these measures, including a number of compulsory measures chosen from a "hard core". Moreover, each Party has to specify in its instrument of ratification, acceptance or approval, each regional or minority language, or official language which is less widely used in the whole or part of its territory, to which the paragraphs chosen shall apply. Enforcement of the Charter is under control of a committee of experts which periodically examines reports presented by the members (European Charter for Regional or Minority Languages, 1998).

2.4. Report on minimum standards for minorities in the EU (European Parliament)

European Parliament notes that the EU still lacks effective tools to monitor and enforce the respect of minority rights and it egrets that in the field of minority protection the EU has either taken for granted the assumption that its Member States comply with minority rights or has relied on external monitoring instruments, such as those of the UN, the Council of Europe or the OSCE (Report on minimum standards for minorities in the EU, 2018). It stresses that non-discrimination policies alone do not solve the issues minorities are faced with and do not prevent their assimilation; notes that persons belonging to minorities are in a special category with regard to the right to remedy and have specific needs that must be met if they are to be ensured full and effective equality, and that it is necessary to respect and promote their rights, including the right to freely express, preserve and develop their cultural or linguistic identity, in keeping with the identity, values and principles of the country in which they live, so that, Parliament encourages the Commission to promote regular monitoring of linguistic and cultural diversity in the EU (Report on minimum standards for minorities in the EU, 2018).

Also, it considers that there is a need for a legislative proposal on minimum standards of protection of minorities in the EU, following a proper impact assessment and in line with the principles of subsidiarity and proportionality applying to the Member States, with the aim of improving the situation of minorities and protecting already existing rights in all Member States while avoiding double standards. And it considers, while respecting the principles of subsidiarity and proportionality, that such standards should start out from those already codified in international law instruments and should be firmly embedded in a legal framework guaranteeing democracy, the rule of law and fundamental rights across the EU and accompanied by a functioning monitoring mechanism. Furthermore European Parliament calls on the Commission and the Member States to ensure that their legal systems guarantee that persons belonging to a minority are not discriminated against, and to take and implement targeted protection measures (Report on minimum standards for minorities in the EU, 2018).

3. Ljubljana guidelines on the integration of diverse societies- a practical model on how to realize policies for integration of diverse societies

By decision of Helsinki of July 1992, the Organization for Security and Cooperation in Europe established the position of High Commissioner for National Minorities (HCNM), considered as a tool to prevent misunderstandings involving national minorities. In the last 20 years, the three High Commissioners who have successively held this position, have faced a number of recurring problems regarding the minorities, as a result they have published several series of recommendations and thematic guidelines, which provide advice to developing countries which faces the same problems.

If societies do not have good integration policies, there is a danger that the different communities within them will become more and more separate, with little or no common interests, and without feelings of common belonging. In guidelines, integration, *"*is regarding as a dynamic, multi-actor process of mutual engagement that facilitates effective participation by all members of a diverse society in the economic, political, social and cultural life, and fosters a shared and inclusive sense of belonging at national and local levels". To support the integration process, states should adopt policies that aim to create a society in which diversity is respected and where, everyone, including all members of ethnic, linguistic, cultural or religious groups, contributes to maintaining a common and inclusive civic identity. This is achieved by securing equal opportunities for

all to contribute to and benefit from the polity (Guidelines on Integration of Diverse Societies, 2012: 4).

In view of the growing ethnic and cultural diversity of all OSCE member states as well as the growing interest in integration models and approaches, the HCNM decided to summarize the collective experience gained and share it in the form of these Guidelines. They aim to provide guidance on how states can work to increase integration and social cohesion (Guidelines on Integration of Diverse Societies, 2012: 4).

The purpose of these Guidelines is to provide to policy makers a set of principles and a practical advice on how to formulate and implement public policies that facilitate the integration of minorities. It is hoped that other actors who contribute in various roles to this process (actors from civil society, the private sector and independent institutions) will find these Guidelines useful for their work.

The development and implementation of integration policies should be among the priorities of all states that try both to integrate ethnic diversity and to avoid the risk of developing conflict due to separation and growing tensions between groups in society, thus contributing to long-term peace and stability. Member state governments should develop strategies, public policies and action plans for integration, giving due attention to the competencies of the various levels of government and their roles, as well as to other actors and stakeholders. Public integration policies should use both top-bottom and bottom-top approaches (Guidelines on Integration of Diverse Societies, 2012:25).

Because there is no single public policy that responds to all elements of diversity and intergroup relations, more coordinated responses are needed. This generally presupposes the existence of a comprehensive integration strategy that includes specific action plans with clearly defined objectives, measurable actions and timetables in all relevant areas, such as economic, social, cultural and political. For the establishment, guarantee of the framework and public policies necessary to achieve the integration of various societies, the main responsibility is of the executive. However, policies can only be effective if all levels of authority - national, regional and local - are involved according to their competences. Therefore, national strategies and plans, general principles, directions and objectives should be adequately complemented and contextualised through local strategies and action plans and where is necessary, through regional strategies and action plans. Civil society and other non-state actors also play an important role (Guidelines on Integration of Diverse Societies, 2012:25).

The policy-making process must be based on the collection of systematic and comprehensive information and its objective analysis. As the relevant monitoring bodies point out, objective data are essential for the design and implementation of effective policies to promote and protect the rights of persons belonging to minorities. States have a wide margin of appreciation for data collection tools and mechanisms. For exemple, these may include official censuses or others tools such as independent sociological, ethnographic and linguistic research and analysis or other scientific research and analysis, as well as through opinion polls on households, the workforce, schools or other categories or data collected by municipalities, as well as through opinion polls regarding households, labor force, schools or other categories or data collected by municipalities.
Adequate human and financial resources should be allocated to the development, implementation and monitoring of the activities set out in the strategic plans and action plans (Guidelines on Integration of Diverse Societies, 2012: 28).

Although the establishment of optimal institutional arrangements depends on the context, the existence of public, governmental and or independent institutions is

necessary in order to ensure the effective formulation and implementation of integration policies. Their competencies and tasks should be specified and their functioning should be ensured accordingly. Moreover, at national level, there is a need for a legislative framework conducive to the development of policies on the integration of minorities.

The guide suggests to states a number of key public policy areas in which national governments should take action.

With regard to `Anti-discrimination, full and effective equality and justice`, states must adopt effective implementation mechanisms when creating comprehensive anti-discrimination policies and legislation. Proactive policies should be put in place to identify and remove impediments to equal opportunities, and legal remedies in cases of discrimination should include effective, proportionate and dissuasive sanctions, suitable compensation and remedial action, where is necessary (Guidelines on Integration of Diverse Societies, 2012: 38). If we think about justice, according to the Guidelines, "trust in an impartial and effective judicial system and the availability of accessible remedies regardless of legal status are vital to the integration of society. An ineffective justice system can easily be perceived as being discriminatory against persons belonging to minorities. Lack of trust in the justice system or a perception that the system favours members of the majority undermines social cohesion, fosters alienation and can increase the risk of conflict, including of an inter-ethnic nature (Guidelines on Integration of Diverse Societies, 2012: 59).

Regarding `Citizenship`, an inclusive and non-discriminatory citizenship policy is an important aspect of integration policy. Moreover, citizenship has a symbolic value, signaling the common belonging of the person who holds it and of the one who grants it. The protection of the rights of minorities is an obligation that falls mainly on the state in which they reside. Policies that provide for privileged access to citizenship by foreign nationals on the basis of cultural, historical or family ties should ensure respect for the principle of friendly relations, including good neighborly relations, and territorial sovereignty. Such policies should be designed so as to avoid creating ambiguities in relation to jurisdiction (Guidelines on Integration of Diverse Societies, 2012: 40-44).

For Participation in public life`, governments should adopt specific policies, focused to ensure that all people have adequate opportunities to participate effectively in the democratic decision-making process. Based on international standards and practices as well as based on the experience of HCNM, focused policies may include one or more of the following policies, including: electoral systems that facilitate minority representation and influence, while opening competition for votes among all sectors in society.Intercommunity political platforms can play an important role in the integration of society and effective participation of minorities; advisory or consultative bodies and mechanisms that act as formal or informal channels of communication between governments and community; bodies and processes designed to ensure and promote effective dialogue, or others (Guidelines on Integration of Diverse Societies, 2012: 45-47).

The participation of persons belonging to minorities in the economic and social life of the state` is as important as their participation in public life. In particular, according to the guide "the gouvernments should implement strategies and targeted policies to promote labourmarket inclusion of minority groups with disproportionally low participation. Such policies should be evidence-based, with an assessment of the economic needs and interests of different communities, including minorities, in the context of wider labourmarket dynamics. Strategies and policies should be designed, implemented and monitored for effectiveness in regular consultation with the representatives of the persons or groups concerned. Where

needed, specific but not exclusive measures to overcome barriers to employment should be put in place for particularly disadvantaged groups. Examples of such measures include job training programmes or workplace, based language instruction. While targeting underrepresented minorities, such measures should not be limited to participation by specific groups but be open to all who may need such support" (Guidelines on Integration of Diverse Societies, 2012: 48).

Cultural policies` should not be limited to the preservation and promotion of traditional cultures, but should at the same time encourage a plurality of cultural and artistic expressions, promote equal access to contemporary culture in all its forms, and encourage intercultural interaction and exchange. State policies should respect and, where appropriate, support the preservation, enhancement and transmission of the cultural and religious heritage of communities in all its forms to future generations. It may include cultural and religious practices, representations, expressions, knowledge and skills, objects and artifacts, and the buildings and spaces associated with them. To this end, it is essential that minority representatives be effectively involved in all stages of the development, implementation and monitoring of relevant policies and legislation (Guidelines on Integration of Diverse Societies, 2012: 49-51).

`Education policies` should be formulated in accordance with and as part of integration policies. In this way, they can provide a better basis for the integration of society and can encourage knowledge, interaction and understanding between students from different communities. Educational policies should aim to follow an appropriate balance between respect for the established right of persons belonging to minorities to learn the language of that minority or, when all conditions are met, to learn in that language and the need to create a common educational space in which all people to enjoy equal chances of obtaining a quality education. In this context, it is important to avoid educational segregation, even when it is self-imposed by minority communities, but with full respect for the educational rights of persons belonging to minorities (Guidelines on Integration of Diverse Societies, 2012: 54-55).

Conclusions

In light of what is presented, if we ask ourselves to what extent Romania has managed to successfully implement such policies, we can conclude that Romania has managed to develop over time, of course with the help of national minorities, a system of protection of their rights complies with international standards in the field. The system has proved quite effective in protecting and promoting the cultural, linguistic or religious identity of persons belonging to national minorities in Romania. This results from the analysis of the various monitoring mechanisms established under the conventions of the Council of Europe, in particular the Framework Convention. Specifically, Romania protects the rights of persons who freely declare their membership in a national minority, to use their mother tongue in relation to administrative and judicial authorities, to learn their mother tongue, to receive education in their mother tongue, to have the service religious in the mother tongue, to have access to the media in the mother tongue or to participate in public life and in the decision-making process in matters of relevance to society as a whole, not just to the minority concerned. The national legal framework, which allows the affirmation and promotion of the elements that make up the specific identity of national minorities, is also a guarantee of promoting multiculturalism. Moreover, it is considered that the basic principles regarding the integration and guarantee of the rights of persons belonging to minorities are firmly anchored in the legal

order of Romania. The relevant legal framework consists of numerous rules of law in all areas. Undoubtedly, however, we are talking about a perfectible legal framework, as well as its application, and we are talking about the need for continuous adaptation to policies aimed at protecting the rights of persons belonging to national minorities, to the ever-changing social realities.

At the international level, the practice reveals and encourages the integration of persons belonging to minorities, as a result a series of regulations on minorities have been adopted and solutions have been formulated that can serve as a basis for the development and implementation of long-term programs on the protection of nationale minority rights.

In this sense, the Framework Convention for the Protection of National Minorities of the Council of Europe is considered the main European instrument in the field of protection and integration of the rights of persons belonging to national minorities. It guides the relevant public policies in order to ensure the effective and substantial regulation and enforcement of the rights of persons who identify themselves as belonging to a national minority. The Framework Convention must also be seen as a pragmatic tool that highlights the measures that states must take in order to protect national minorities on their territory, in order to ensure both the integration of minorities and cultural diversity in the societies from which they belong. In addition, it emphasizes the dimension of international cooperation in ensuring the rights of national minorities, as part of fundamental human rights, while respecting the principles of international law which governing relations between states.

The Ljubljana Guidelines on the Integration of Diverse Societies (2012) present the same way of thinking and approach. In practice, it support national governments with a set of guiding principles and practical guidelines on how to formulate and implement public policies that facilitate the integration of diverse societies. The development and implementation of integration policies must be among the priorities of all states which try to integrate diversity, because through them the risk of developing conflicts as a result of separation and increasing tensions between groups in society can be avoided, thus contributing to long-term peace and stability.

The Romanian authorities, as well as those of other countries, are invited to always adapt in order to find the balance between the need of minority groups to submit to a different regime, motivated by their special characteristics, and between the concern of not providing an excuse for a policy of separation. The protection of cultural identity should therefore not be taken to the extreme, in essence, it is a matter of balance, each culture having to adapt to the needs of development, without being asked, however, to give up its individuality (Prisacariu, 2010: 195) .

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ETHNICITY AND DEMOGRAPHICS IN UNITED ARAB EMIRATES. THE CURIOUS CASE OF A COUNTRY WITH MORE FOREIGNERS THAN NATIONAL POPULATION

Tudor-Octav DAN*

Abstract. *The purpose of this research is to demonstrate how a state can shape its policies in order to successfully meet the social challenges caused by the large number of foreign nationals who settle in that state for a better living. The political, social and economic aspects will be analysed in order to find an answer to the research question, namely: (how) has the UAE managed to find the right solution to manage an atypical social context, in parallel with meeting the continuing need for economic development?*

Keywords: *Labour politics, Migration, Society, Human rights, discrimination.*

1. INTRODUCTION

The purpose of this research is to demonstrate how a state can shape its policies in order to successfully meet the social challenges caused by the large number of foreign nationals who settle in that state for a better living. The reason why I chose to study the subject that I would personally classify as a phenomenon of the modern world, is to better understand the ingredients necessary to achieve a solid social structure, even at the cost of changing the status of the indigenous population, from the majority population, to the minority population. The way in which the United Arab Emirates has managed this situation with a view to visible economic progress is the main landmark of the research. The political, social and economic aspects will be analysed in order to find an answer to the research question, namely: how has the UAE managed to find the right solution to manage an atypical social context, in parallel with meeting the continuing need for economic development?

In the following rows I will present the political and social context of the United Arab Emirates, the political, economic and social aspects that can be interpreted in response to this research question. Then, in the first part of this paper I will analyze the main political measures that have favored the development of this phenomenon and the attraction of the high number of immigrant workers in the United Arab Emirates. After the analysis of the political and legal aspects, I will present and research the way in which the United Arab Emirates focuses its attention on education, both as a tool for integration and as an easy way of economic development of the country. In the second part of the paper I will present the main barriers of the United Arab Emirates in trying to achieve a successful process of integrating immigrants into society. At the same time, I will focus on the problems caused by the negative perception of female immigrant workers in this Muslim state. In the last part of this research, I will present the main conclusions of the paper. I will use as research tools, the analysis of the specialized literature, the

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interpretation of some statistical data, the approach of some articles from the press or of some official statements of some profile institutions.

As a result of decolonization process of former British Overseas Territories in Middle East, one of the new established countries is the United Arab Emirates (UAE), a country made up as a federal state of seven small emirates united as a single state on 2nd December 1971. The original identity of the people from this new country were a traditional one with two main orientations: one orientated to the nomadic, desert life, of the legendary Bedouin people that organized through history different cultural entities around the small desert oasis, and a sea-orientated cultured, of those who decided to live their lives at seaside in order to develop an economy based on sea trade and fishing. Those two original cultures had a lot of similarities between them because they were used to trade between them, had a same religion, language, and even a similar identity (Melvin, Ember, 2001: 2325).

The economical development of UAE in the last two decades, due in particular to rich oil resources has facilitated the spectacular evolution of demographic characteristics in this country. Since 1968, till 2018, the population of UAE grown from less than 200.000 inhabitants to more than 9.5 milion, A far more important characteristic of this evolution is the immigration process of foreign workers in this country. More than 85% of the population is made up by foreign residence workers, most of them from India, Pakistan, Bangladesh and Philippines. This aspect is almost unique in the world, but quite similar for Gulf States. Once more we can see the how the globalism and economical development can change the way of how a modern state can look in terms of population (Snoj, 2015).

The United Arab Emirates has Sunni Islam as its official religion, an issue to remember in this analysis, as most emigrants from this state share this belief. Politically, the United Arab Emirates is a constitutional monarchy with an elective federal system, led by a president of the federation (Stewart, 2013: 155). The economy of this Persian Gulf state is based on oil and gas-rich resources, the exploitation of these resources being the main reason why there was a need for external labour.

2. UNITED ARAB EMIRATES – ETHNICITY, DEMOGRAPHICS AND NATIONAL POLITICS

2.1. Labour politics and main agreements

In the following lines I propose a research of the political characteristics of the United Arab Emirates by which this state succeeds in maintaining the proper development of social life for citizens, but also supporting continuous economic development. In this respect, I will carry out a descriptive research of the legislative framework in the Arab state.

An interesting aspect of the labor market in the United Arab Emirates is provided by the symbolic process of *emiratization*, marked by the "theory of labor market segmentation" through which one can observe a phenomenon of economic marginalization of ethnic minorities, lower social classes and women. This segmentation can be interpreted as a failure of the labor market and those who manage this issue, to find a balance between all those involved in the labor market. Labor market segmentation is also an increase in racial capitalism through which Western nationalities are subjugated (Reich, Gordon & Edwards, 1973: 359-365).

From the point of view of the labor market in the United Arab Emirates, we can see two different structures that are interdependent. A level of workers who come from the ranks of the citizens of this state and a level of those who belong to imported ethnic groups. The two structures are "de facto" obliged to work with each other, but are subject

to a system of laws that proposes different rights and obligations for the two categories of workers. In this sense, according to the Labor Law of 1980, stateless workers are subject to a kafala type system (sponsorship), through which employers have increased power over foreign employees. Also, the mobility of workers in the labor market in this state is restricted by a policy adopted by employers which seeks to provide opportunities for all national workers (Girgis, 2002: 38).

The diversity of the labor market in the rich Arab state, caused by the multitude of nationalities sharing different economic and cultural characteristics, was also supported by the Dubai 2020 and 2015 strategic plans or the vision of the United Arab Emirates 2021, which proposed a development agenda in line with with the economic principles of the free market in this state. Policies in this state will continue to support demographic branching to facilitate diversity in the labor market. Consult these strategies, we can understand that it is not aimed at homogenization, but the continuation of a habit already well assumed. The segmentation of the labor market in the United Arab Emirates is based on a socio-economic system that embodies a "core-periphery" relationship. These issues are caused by the fact that the United Arab Emirates is developing its human capital capabilities through modern instruments of globalization. Thus, according to the context, the theory of segmentation of work pieces is correct, and the duality and hierarchical configuration of the specific ethnic groups of the labor force in this state can be analyzed from the perspective of other theories. One is the theory of human capital proposed by Ehrenberg and Smith, who describe workers in the United Arab Emirates as the embodiment of a set of skills that can be closed to employers. These skills are represented by the knowledge and skills they generate, a worker can create a certain stock of capital (Ehrenberg, Smith, 1997: 278-279).

From a political point of view, the “emiration” of foreign nationals is considered a capacity of the state to legitimately use its power to stabilize economic relations between all residents of the United Arab Emirates. This practice is often used by Arab states. However, in this case, the government of the United Arab Emirates demonstrated subjectivity by acting in relation to individuals from abroad, because for them, the economic purpose violated some of the social principles that it should have respected (MacQueen, 2013).

The United Arab Emirates is one of the states that has signed the United Nations Convention on the Protection of the Rights of Migrant Workers and Members of Their Families. The United Arab Emirates has also signed the World Trade Organization's general agreement on trade services. Even though the Middle East state has signed these two agreements, the Abu Dhabi government sees these agreements as two tools that facilitate the "emiration" of migrants. However, if this process were to take place on an industrial scale, the newly acquired identity would soon be dissolved, and this branch of society in the United Arab Emirates would again become subordinate to the native population, especially since the patronage in this country is differ from the ranks of this category of population (Alzaabi, 2012: 4-5).

Given the autocratic nature of the Abu Dhabi leaders, the two international agreements and the large number of emigrants from the United Arab Emirates are unsafe for the national government. In order to reduce the effects of the danger found by the government of this state, ministerial decrees, laws and resolutions were initiated to regulate the whole situation. At the same time, the new Emiratisation policy of the United Arab Emirates seeks to constrain and prevent the indigenous population from taking

advantage of the opportunities offered by the acceleration of economic development in the Emirates, to the detriment of the population from other countries (Gamburd, 2010).

2.2. Education for emigrants

The United Arab Emirates is a young state with an equally new education system, deeply influenced by the political, social and economic changes of the last half-century in this state. The educational process carried out in this territory, historically integrated into the structure of several foreign imperial rulers, was one specific to the Islamic world, led by Imani and classrooms in mosques. The main object of study at that time was the Quran, the educational system being a deeply religious one. Moreover, specific to Islamic culture, only men from wealthy families had access to education. Relatively modern forms of education would be implemented in the late 19th and early 20th centuries due to the British administration, which would also be involved in this field.

The large-scale, mass education system was only implemented after gaining independence from the British in 1971, a time confused with the founding of the modern Emirian state. The spectacular economic development facilitated by the trade in rich oil resources, have created the ideal framework for continuous investment in the public education system. The administration from Abu Dhabi understood the necessity for an education system based on the Western model and were able to implement such a project in a relatively short time. Currently, the United Arab Emirates benefits from a similar system to the American one, with a pre-university education of 12 classes (K-12), four years of college (bachelor's degree) and two years of master's degree followed by doctoral studies.

The progress of the education level of the population of the United Arab Emirates has been extraordinary, both in terms of time and results achieved. The main indicator confirming this is the increase in literacy rates. According to UNESCO data, literacy in 40 years (1975-2005) increased from 32 percent among women and 57 percent among men, to over 90 percent for both categories. Moreover, in 2005, 97 percent of young women in the United Arab Emirates could read and write. This percentage is truly an educational miracle, especially since the overall average among young women is 86 percent (Sergon, 2021).

The United Arab Emirates understood the role of prioritizing education, and in this regard devised a national education strategy for the period 2017-2021, proposing to increase the percentage of high school graduation (upper-secondary) from 96.7 percent in 2016 to 98 percent. Although the 2016 percentage is high enough, the Emirian state is constantly proposing to raise education standards in order to benefit from a well-prepared population that can cover the need for ever-growing labour, especially in the field of services, where at least high school education is needed. Moreover, the ambitions of the Abu Dhabi government also take on a symbolic character, in search for international prestige. The government proposes to improve the score of the United Arab Emirates in the Organisation for Economic Co-operation and Development (OECD) Programme for International Student Assessment (PISA) study to reach the top 20 countries globally. The National Higher Education Strategy 2030 also aims to improve accreditation standards, increase research capabilities and apply a curriculum in syncronise with labour market requirements through broad partnerships with the private sector and major employers (*National Agenda 2021 website,* 2021*)*.

Another important aspect to mention, which also characterizes the entire Emirian society, is that of the integration of residents of other nationalities. The entire education system in the United Arab Emirates does not differentiate between the indigenous population, immigrants or foreign students who are engaged in a study program in that

state. Moreover, given the minority specificity of the native population, with Arab roots, it would have been a huge blunder for the United Arab Emirates to carry out two educational systems simultaneously, one elitist for the indigenous population and one discriminatory for immigrants. Thanks to these logical and correct approaches, the United Arab Emirates enjoys international prestige thanks to effective internationalization and recognition of educational and scientific merits. A study by the British Council included the United Arab Emirates among the world's best performing countries in terms of educational legal framework, internationalization and outbound and inbound student mobility over the past decade. Moreover, the United Arab Emirates benefits from a higher inbound mobility rate than that of outbound mobility, so more foreign students come to the Emirates than students who opt to study outside the borders of the Arab state (Ilieva, 2017: 14).

Although the United Arab Emirates, as a relatively small state, does not have a numerical total of international students such as the United States, the United Kingdom or the main European states, the Abu Dhabi government's education system benefits from extraordinary results, with inbound mobility growing exponentially. The inbound mobility rate is 48.6 percent, which places the United Arab Emirates among the most attractive study destinations in the world. Moreover, 84 percent of American University of Sharjah students, one of the leading universities in the Arab state, are international students, which places this university first in the world in terms of the ratio between international and indigenous students.

From the point of view of the origin states of these students, we can see a direct relationship with the whole phenomenon of labour migration. Most international students come from India (about 17 percent), followed by students from Middle Eastern countries, North African countries or Pakistan. The same trends can be observed, with small differences, throughout the immigration process of foreign workers to the United Arab Emirates (*American University of Sharjah website*, 2018).

Due to the high demand for skilled workers in different fields, the United Arab Emirates has become an attractive destination not only for already qualified people, but also for students who have as their prospect their establishment in this country at the end of their studies. This is also facilitated by the increasing quality of university studies, institutions such as United Arab Emirates University or the University of Sharjah enjoy modern facilities, educational capacities to the highest standards and partnerships with the highly profitable private environment. We can say that universities in this state can compete with prestigious universities in North America or Europe.

Moreover, in the United Arab Emirates, the need for qualified staff exceeds the number of resident students of that state, which gives this state the opportunity to attract foreign students. This is also benefiting from the condition of neighbouring states, which do not benefit of the same educational conditions or of the same opportunities in the labour market as the United Arab Emirates. Both features place the United Arab Emirates in a position of regional leadership, both in terms of education and work opportunities for highly qualified staff (Malit, 2017).

To further exploit this advantage, the United Arab Emirates does not charge high tuition costs and have devised various "loyalty" policies for foreign students to further attract them to settle in Abu Dhabi or Dubai in the future. The residence and visa policies have been considerably relaxed for students, the state offering visas valid for up to 10 years after graduation for students with very good results. Moreover, since 2016, the United Arab Emirates allows foreign students to obtain part-time contracts with various business partners of the universities where they study. Since 2018, the government has

extended visas for graduates of universities in the United Arab Emirates (Reynolds, Webster, Rizvi, 2020).

The United Arab Emirates has observed trends in the countries of origin of these students, most of whom are from India or different states in the Arab world (about 66 percent in 2016). In this regard, the government has established a strategic partnership with the People's Republic of China, the world's largest student exporter, to attract even more Chinese students to universities in the United Arab Emirates, with the aim of increasing diversity and creating a multicultural environment. Future partnerships with European countries are part of United Arab Emirates educational agenda (Zacharias, 2019).

2.3 Integration process

The United Arab Emirates has offered a number of advantages and benefits to immigrants, especially from an educational point of view. However, due to the Kafala sponsorship system, the integration of immigrants has been conditioned by the availability of employers, especially those in the private sector, who have broad control over foreign employees. Low-skilled workers from Asia have been the main subjects of economic, social and even political abuses in this context, of the application of these policies of cooperation between the public system (Emirate state) and the private system (large companies).

The United Arab Emirates has been influenced by two aspects in managing the integration of immigrants. First, during the fast and abrupt development of the young Arab state, the United Arab Emirates did not consider it necessary to integrate foreign workers, as they were considered only a temporary part of a larger process. In addition to the temporal aspect, the workers were quite often replaced by each other and did not have the necessary time to be able to "acommodate". Thus, the United Arab Emirates, in the rush for development, has omitted the application of "comfortable" policies for immigrants. This omission, intentional or not, allowed employers to have the ideal corridor to exploit the despair of people who wanted a better life for themselves and their families.

The second reason why the United Arab Emirates, as well as other Gulf states, failed to pay attention to the integration of immigrants, was the economic condition of these states. The United Arab Emirates' economy has been based in recent years on exports of oil and petroleum products. This market is a dynamic one, because it is deeply influenced by the fluctuation of the oil price. Thus, the entire economy of the United Arab Emirates functioned in line with the evolution of the price of oil, and the fate of foreign workers depended exclusively on this economic detail. If the price increased, the economic development was stronger, the job opportunities multiplied, if the price decreased, the need to have foreign workers also decreased. Therefore, this economic feature highlighted even more strongly the temporary feature of foreign workers in the United Arab Emirates. However, the United Arab Emirates has understood that it needs to detach itself from the fate of oil and as their economic development has opened up new opportunities, distinct from those in the oil field, the continuing need to have foreign workers at its disposal has forced the Abu Dhabi to take measures to integrate these immigrants. One such example is the granting of citizenship to children from mixed families, consisting of a foreign husband and a mother who is a citizen 2of the United Arab Emirates (Martin, Malit, 2016).

The United Arab Emirates and its Gulf neighbors are relatively young, growing and assertive states. It is quite clear that in the near future, these states will not directly abandon the conditional approach to immigrant integration. For the Abu Dhabi government, granting citizenship and more benefits to immigrants would cost more than the potential benefits.

Therefore, the United Arab Emirates will not implement a sudden change in these policies, although the current approach has discriminatory effects on immigrants, especially low-skilled workers in Asia, who serve an important category in the national economy. In the United Arab Emirates there is a clear difference in the integration of immigrants according to their level of education. Skilled workers with higher education, high-skilled, are considerably advantaged unlike low-skilled workers who are not discriminated and do not have the same social, economic and politic advantages.

2.4. Foreign female workers perception

Although a modern state, the United Arab Emirates does not give up the traditionalism specific to the Islamic world, and the principle of gender equality is still far from being properly implemented in this state. Therefore, over time, especially in the early years of independence, female immigrants were considered a problem. Both the state and the citizens of the United Arab Emirates did not consider this category of people as an integral part of national development or only as a simple component necessary for economic development. Unfortunately, this attitude has also affected the education of young people in the United Arab Emirates, who have borrowed the discriminatory habits of their parents, thus making it difficult to change their mentality (Ibrahim, 1986).

Discrimination against immigrant women has become even more pronounced in the last decade of the last century, when various foreign housekeepers or nannies have been convicted of various crimes, such as adultery, theft or non-compliance with migration laws. Curiously, it was considered that the women of the United Arab Emirates were responsible for these mistakes, who according to public opinion, by seeking emancipation and professional development, they neglected their duties as spouses. Therefore, discrimination against women took place in three directions. Men accused their wives of neglecting their domestic responsibilities and hiring housewives or nannies, and the immigrant women were accused by both men and women in the United Arab Emirates of their mistakes.

However, there are people in the public space in the United Arab Emirates who criticize the discriminatory treatment of women in the Arab world, especially against immigrant women. Said Bin Bellelah, General Director of the Dubai Migration Service Office, strongly condemns the negative perception of these women, whom he considers that those perception to be developing major problems in the relationship between these women and employers. Moreover, the same official from the United Arab Emirates also condemns this attitude due to the fact that it is also borrowed by the young generation. Other voices in the public sphere consider that such attitudes are not productive at all and create serious discrepancies in society (Afkar, 2019).

3. CONCLUSION

In conclusion, it can be said that the United Arab Emirates, although a modern state, is far from understanding the need for effective policies to integrate the population of foreign origin into the local social structure. The government from the capital city of Abu Dhabi is far too preoccupied with finalizing its economic progress and regional power status as an important global financial center to neglect these goals in favor of implementing social measures.

The main mistake the United Arab Emirates is making is to grant far too much and uncontrolled freedom to private companies. Thus, employers have full control over the immigrant workforce and the state provide to those companies a free way to abuse

foreign workers and restrict their political, social or economic rights. Although in recent years, even under pressure from international forums, the United Arab Emirates has relaxed restrictive measures and offered more freedoms and rights to immigrants, the general situation is far from aligning with social norms similar to those in the West. It is likely that the United Arab Emirates will implement a strategy to integrate the foreign population only when it considers that the need to exploit this category of people will no longer be necessary or at least not at the same levels as at present.

In addition to the rapid economic development, which has made it the ideal frame to neglect social issues, the United Arab Emirates, in order to implement measures conducive to the integration of immigrants, must completely detach itself from dependence on oil resources. The evolution of the oil price directly influences the development capacity of the state, and the fear of a sharp decrease in the price of oil, which would destabilize the national economy, do not allow the creation of a secure framework for the application of such social measures.

As a compensation for these shortcomings, the United Arab Emirates does not make a difference between the domestic and foreign population in terms of education. Also for economic reasons, the government considers it necessary to implement measures to promote the internationalization of education in the United Arab Emirates. These policies have proved useful so far, and the education system enjoys very good results, placing the entire educational system in the top of the best education systems in the world, especially due to high level internationalization rate.

Unfortunately, despite a successful education system, traditional mentalities, specific to Islamic culture, do not allow the elimination of social barriers to the perception of the role of women in society, especially foreign women.

The last conclusion of this research is that the United Arab Emirates has begun to understand the need to implement social policies for better integration of the foreign population, but the whole process is only at the beginning and it will pass more years till the United Arab Emirates society will enjoy equality of opportunity.

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IV. Crisis Management and Interethnic Conflict

THE 10 NOVEMBER CEASEFIRE AGREEMENT IN THE NAGORNO-KARABAKH PROLONGED CONFLICT: FIRST STEP TOWARDS SETTLEMENT OR NEW FREEZING?

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Abstract. *The common declaration signed by the Presidents of Russia and Azerbaijan and the Prime Minister of Armenia on November 9, 2020, put an end to the one month and a half military clashes that had taken place in the Nagorno-Karabakh conflict zone (Nagorno-Karabakh proper and the seven adjacent districts surrounding it) since September 27, 2020. The entry of the Russian troops into the region represents, in fact, a new "frozening" of the conflict on the new alignments of the troops (which are becoming the new "Line of Contact"), for an indefinite period of time. While Azerbaijan has fulfilled most of its objectives, taking back the seven adjacent districts and the southern part of Nagorno-Karabakh proper, it has not succeeded in taking back Nagorno-Karabakh entirely. Moreover, the status of Nagorno-Karabakh remains undetermined, which also leaves room to further tensions and/or negotiations.*

Keywords: *Nagorno-Karabakh, frozen conflict, ceasefire declaration, OSCE Minsk Group.*

In the evening of November 9, 2020, Presidents of the Russian Federation and of the Republic of Azerbaijan, Vladimir Putin and Ilham Aliyev, together with Prime Minister of the Republic of Armenia, Nikol Pashinyan, met through videoconference and signed a common declaration on cessation of hostilities in the Nagorno-Karabakh conflict. The agreement put an end to the one month and a half military clashes that had taken place in the Nagorno-Karabakh conflict zone (meaning Nagorno-Karabakh proper and the seven adjacent districts surrounding it) since September 27, 2020, the worst escalation since the end of the Nagorno-Karabakh war of 1991-1994.

The confrontations saw Azerbaijani armed forces, allegedly backed by Turkish military and Syrian fighters, taking control almost entirely over four out of seven regions around Nagorno-Karabakh (Fizuli, Jabrayil, Zangilan, Qubadli), plus the southern part of Nagorno-Karabakh proper, including the town of Shusha/Shushi, bearing an important

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symbolic value for both Azerbaijan and Armenia. This military victory led, afterwards, to a de-facto capitulation of the Armenian side, which subsequently led to the Armenian side ceding control over the other three regions around Nagorno-Karabakh still not taken by the Azerbaijani military, meaning Adhdam, Lachin and Kelbejar (the names and locations correspond to the former districts/rayons of the Republic of Azerbaijan - as it emerged from the break-up of the Soviet Union; in the self-proclaimed Republic of Artshakh the names might were different, as well as the frontiers of these territorial-administrative units).

The ceasefire agreement of November 9, 2020

The common declaration signed by the Presidents of Russia and Azerbaijan and the Prime Minister of Armenia envisaged the following:

- Complete ceasefire starting November 10, 2020, 00:00 hours (Moscow's hour), with the armed forces of Azerbaijan and Armenia holding their positions at that moment; Return to Azerbaijan of the three districts around Nagorno-Karabakh that had not been militarily taken by the Azerbaijani side during the confrontations started September 27. The agreement also envisaged precise deadlines for the return (Aghdam district before November 20, Lachin district on November 15, Kelbejar district on December 1);

- The Lachin corridor, with a width of 5 kilometers, was to ensure the land connection between Nagorno-Karabakh and the Republic of Armenia; the corridor was to be under Russian troops control and not affect the town of Shusha/Shushi; upon agreement of the sides, in 3 years' time a plan was to be elaborated envisaging construction of a new road between Nagorno-Karabakh and Armenia through the Lachin region, also secured by Russian troops;

- The Azerbaijani side was to ensure security of movement of persons, vehicles and goods along this corridor;

- The deployment, along the new Line of Contact between the Azerbaijani and Armenian armed forces, as well as along the Lachin corridor, of a Russian peacekeeping contingent (1960 troops, 90 armored vehicles, 380 vehicles and special equipment); the deployment was to take place in parallel with the withdrawal of the Armenian armed forces, for a 5 years length of time, which was going to be automatically prolonged if none of the parties denounced the agreement 6 months prior to the expiry of this period;

- Setting-up of a ceasefire monitoring center;

- Return of refugees and internally displaced persons in Nagorno-Karabakh and the surrounding districts, under the supervision of the Office of the United Nations High Commissioner for Refugees (UNHCR);

- Exchange of war prisoners, hostages, detained persons and dead bodies;

- Restoration of all communications and of economic relations in the region;

- The Republic of Armenia was to provide a land connection between the Azerbaijani enclave of Nakhchivan and the territory of the Republic of Azerbaijan, as well as guarantee the security of movement along this route, which was to be built upon the agreement of the parties; control of this connection was to be entrusted to the Russian Border Guards, subordinated to the Federal Security Service of the Russian Federation. (official website of the Russian Presidential Administration, November 10, 2020).

The events prior to the November 9 agreement

The agreement followed six weeks of intense fighting between Azerbaijani and Armenian troops, no doubt the worst escalation in the Nagorno-Karabakh prolonged conflict since the end of the 1991-1994 war, judging by the scale of confrontations, the amount and the type of armament and military technique used, as well as the length of the clashes.

The fighting broke out on September 27, 2020 when, early in the morning (shortly after 7:00 AM) the Armenian side reported heavy artillery attacks on civilian settlements of the self-proclaimed Nagorno-Karabakh Republic (including its capital, Stepanakert), causing significant damage on civil infrastructure, as well as human losses among civilians. In a development unprecedented in this prolonged conflict, the president of the so-called Nagorno-Karabakh Republic, Arayik Harutyunyan, announced, the same day, introduction of the martial law and general mobilization of all men over 18 years old; the same was decreed, only hours later, in Yerevan. All economic activities in the so-called Nagorno-Karabakh/Artsakh Republic ceased and the personnel was evacuated. (BBC News, 27 September 2020).

On the other side, the Ministry of Defense of the Republic of Azerbaijan announced it was conducting military operations in Nagorno-Karabakh conflict zone, in counter-offensive to alleged Armenian attacks, having had as a result civilian victims among the population living close to the Line of Contact (official website of Ministry of Defense of the Republic of Azerbaijan, 27 September 2020).

On September 28, martial law (with circulation of civilians prohibited in big cities and some regions during night) and partial mobilization were announced in Azerbaijan, in response to similar measures adopted in Armenia the day before (Trend News Agency, 27 September 2020).

At this point, many experts and observers were confident that the clashes were no more than a new episode of escalation in the decades-long "frozen" conflict of Nagorno-Karabakh, with its cyclical evolution alternating relatively long periods of building-up of tensions, followed by a few days of high intensity military clashes, and further relatively calm periods, with almost no changes on the ground. The only elements that were not fitting in the picture this time were the martial law and general mobilization, which are usually announcing a war, but in this case were interpreted by some as possible "exaggeration" by both sides.

However, the fighting continued with the same high intensity the following six weeks. The Azerbaijani offensive had a few components: alongside with massive artillery and aerial attacks on the civil infrastructure objects (electricity, water reservoirs, bridges, dams, hydropower etc.), concentrated mostly in and around Stepanakert and Hadrut (and extended a few days later to Shusha/Shushi), the Azerbaijani armed forces undertook decisive offensive actions, using air and land forces, on the entire perimeter of the Line of Contact, with a bigger concentration of forces at its southern (the districts of Fizuli and Jebrail) and northern edges (Terter district). As a distinctive feature of their actions, one can observe the massive use of drones, all or most of them produced in Turkey and Israel (some of them might have been produced in Azerbaijan, thought, under the terms of the Turkish-Azerbaijani cooperation in the military-industrial field). According to experts, these were successfully used by Turkish military in fighting operations in the Middle East, and proved to be extremely efficient in "cleaning-up" the battlefield (destroying enemy fire power) before the entry of the land forces, thus minimizing human losses among soldiers (EurAsian Times, 10 October 2020).

As a result of these operations, the Azerbaijani army managed to advance considerably in the southern direction (where the relatively plain landscape was somehow more favorable to its endeavors, since there were no strategic heights controlled by the Armenians), taking control over most part of the Jebrail, Fizuli, Zengilan and Gubadli districts, as well as a large portion of the Hadrut district, inside Nagorno-Karabakh proper. The advancements of the Azerbaijani army, with the names of the human settlments taken over, were publicly announced almost on a daily basis, the main vector of communication being the Azerbaijani president, Ilham Aliyev. The announcements of the president were generally accompanied by video footage posted on the Azerbaijani Ministry of Defense website, serving as a proof, since the Armenian side was using a strategy of denying Azerbaijani advancements. As of the end of October, the Azerbaijani troops were already in the proximity of the road connecting Nagorno-Karabakh with Armenia, through the Lachin district, reportedly being able to target it with artillery strikes, opening the perspective for them to isolate the Armenian forces in Nagorno-Karabakh and cut off their supplies (EurasiaNet, 24 October 2020). Then, on November 8, 2020, the Azerbaijani side reported taking control of Shusha/Shushi, although not officially confirmed by the Armenians; only after the clashes were over, the "president" of the self-proclaimed Artsakh Republic, as well as the Armenian Prime Minister admitted that the Armenian forces had lost control over parts of the town on November 5 already and lost it entirely on November 7 (Interfax, 10 November 2020).

At the northern edge of the Line of Contact the advances of the Azerbaijani army on the ground were much more limited, since the terrain there is mountainous, and the Armenians held the most advantageous strategic positions; even so, the Azerbaijani side reported the liberation of a few villages in the Terter district and of some strategic heights (AzVision, 28 September 2020).

The fall of Shusha/Shushi, announced by the President of Azerbaijan on November 8, was a decisive moment. Shuha (in Azerbaijani)/Shushi (in Armenian) is a historic town located strategically on a height in the center of Nagorno-Karabakh proper and only 15 kilometers away from the "capital" of the self-proclaimed Republic of Artsakh. Similar to what happened in the first Caucasus war back in the '90s, the fall of Shusha eventually led to the losing side accepting its loss and surrendering. In the 2020 war, it was a matter of only few days before the Armenian side accepted the otherwise heavy conditions posed by the enemy for its de-facto capitulation.

Analysis and evaluation of the November 9 agreement

The analysis of the terms of the November 9 agreement reveals, first of all, its highly unfavorable character in what concerns the Armenian side: there is **no mentioning of the Nagorno-Karabakh status or at least of any kind of roadmap conducting to it**, although this was Armenian's side primary goal from the beginning of this conflict.

It is worth mentioning that in his October 14 address to the nation, Armenian prime-minister, Nikol Pashinyan, had explained the context of the September-October clashes by revealing the content of the negotiation process around the settlement of the Nagorno-Karabakh conflict (something which happened very rarely during the almost 30 years of the peace talks). He therefore had stated the following:

"In the process of negotiations over the Karabakh issue, step by step Azerbaijan reached a point where it insisted that the Armenians of Karabakh should renounce their rights. Their demand consisted in the following: immediately hand over 5 out of 7 territories to Azerbaijan, develop a clear-cut timetable for handing over the remaining 2

territories and state that any status of Nagorno-Karabakh implied being part of Azerbaijan. Moreover, the status of Nagorno-Karabakh should not be associated with the transfer of territories. In other words, territories should be handed over not for status but for peace, otherwise Azerbaijan threatened to resolve the issue through war.

Our government, which had inherited the current framework of negotiations, refused to discuss the issue in this way because it was unacceptable. Under these circumstances, as we tried to **state clearly that the settlement of the issue without defining the status of Artsakh was impossible**, Azerbaijan gave up any serious discussion on the status, stating in fact that the only status that Artsakh could have was autonomy within Azerbaijan, which in fact was meant to build up an institutional framework that would pave the way for ethnic cleansing in Artsakh. At the same time, Azerbaijan was developing military rhetoric and anti-Armenian propaganda." (official website of the Prime Minister of Armenia, 14 October 2020).

Nikol Pashinyan's words are in fact symptomatic and reveal the real dimensions of the obstacles marring the negotiations held under the auspicies of the OSCE Minsk Group, but at the same time point to the importance attached by the Armenian side to the issue of the status of Nagorno-Karabakh. Thus, it is clear that the absence of any wording on the status in the 9th of November declaration is a heavy blow to the Armenians, actually reflecting and being a consequence of the Armenian side losing the war.

On the contrary, the Azerbaijani side fulfills much of its goals, **taking back the seven districts surrounding Nagorno-Karabakh and the southern part of Nagorno-Karabakh proper (much of the territory of Hadrut district), including the symbolic town of Shusha**, with a perspective of sending the Azerbaijani refugees and internally displaced people from the first Caucasian war back to their homes (although their homes are probably not there anymore, after being abandoned for almost 30 years, and the terrain is reportedly full of unexploded ordnance which will take, according to estimations, some 10 years to be removed). However, the terms of the agreement are very favorable for Azerbaijan, especially if one takes into account the provision regarding the land connection between Azerbaijan and its Nakhichevan enclave (a long-term goal of the Azerbaijani side), crossing the territory of the Republic of Armenia.

Having said this, it is noteworthy that **the Azerbaijani side did not succeed in obtaining everything it had wanted, either**. According to the official Azerbaijani statements, repeated many times during the confrontations (including at the highest levels), their goal was to take back entirely the seven adjacent regions plus Nagorno-Karabakh proper, with Nagorno-Karabakh being afterwards given (more or less large) autonomy inside the Republic of Azerbaijan.

For example, in the interview to the Japanese daily Nikkei, October 22, the Azerbaijani president, Ilham Aliyev, asked about a possible referendum on Nagorno-Karabakh status, said the following:

"No, of course not. There will be no referendum in Nagorno-Karabakh, we will never agree on that. We did not agree on that during the time of negotiations and now, when we regained big part of the territory, it is out of question. [….]

Self-determination is an important factor of international law. **But it should not violate the territorial integrity of Azerbaijan**. There are **different types of self-determination**. There are different types of communities. And they could have **cultural autonomy** for instance. We see these examples in developed countries of Europe. Where there are certain rights of people in their municipalities, in their communities, as in any

part of Azerbaijan, of course, Armenian who live in Azerbaijan can have this form of autonomy." (APA News Agency, 23 October 2020).

In the situation emerging after the implementation of the November 9 agreement, the Azerbaijani side is taking back the seven regions around Nagorno-Karabakh, minus the 5 meters width corridor through the Lachin district, but it doesn't have control over the largest part of Nagorno-Karabakh. The very existence of the Lachin corridor, guarded by Russian troops, seems to indicate a temporary solution, since such corridors are usually destined to the evacuation of troops/population during conflicts and are not really compatible with sovereign, modern states, recognized by the United Nations (all the more so if they are guarded by foreign troops).

Furthermore, the fact that the November declaration does not make any reference to the issue of Nagorno-Karabaks status is, of course, first of all worrying for the Armenian side, but at the same time **not entirely comfortable for the Azerbaijanis**, either. This indetermination can only generate **further tensions, or, in a positive scenario, discussions/negotiations with an unpredictable output**. Armenian Prime Minister, Nikol Pashinyan, already appealed to the international community, while the military confrontations were still ongoing, to recognize the independence of the self-proclaimed Republic of Artsakh, as part of a so-called "remedial secession" meant to protect the Armenian population of Nagorno-Karabakh of a supposed "ethnic cleansing" under an eventual Azerbaijani rule. It is worth citing, in this regard, various interviews to the Armenian and foreign press, for example the one to "Liberation" newspaper, on October 16 (published also on the official webpage of the Prime Minister of Republic of Armenia) in which Nikol Pashinyan was saying:

"This is not just a political war. It is an attempted genocide of the Armenian people. We must defend ourselves, like any nation that is threatened with extermination. Especially now as we see that there is only one way out of the conflict: the principle of <<**remedial secession**>>. There is no other possibility. Otherwise the Armenians will undergo ethnic cleansing in the areas controlled by Azerbaijan." (official website of the Prime Minister of the Republic of Armenia, 16 October 2020).

In a more detailed presentation of this solution on his Facebook page (also published by ArmInfo), the Prime Minister was explaining the following:

"The principle of <<remedial secession>>, which is a modern manifestation of the principle of self-determination of peoples, gives the right to certain groups, peoples to secede from any state when there is a risk of discrimination, widespread violations of human rights or genocide, and excludes joining the state if such a union leads to the same consequences as mentioned above….In particular, this should be the basis of our concept for the settlement of the Karabakh conflict, and the participation of hired terrorists in the current war and the terrorist behavior of Turkey and Azerbaijan provides a real opportunity to achieve such an international understanding. We must concentrate the potential of all Armenians on solving this problem." ("Arminfo, 16 October 2020).

It is worth mentioning, as an illustration of this point, that the French Senate on November 25, 2020, passed a **Resolution asking the Government to recognize the independence of Nagorno-Karabakh Republic**. Other rather interesting points were also mentioned in the document, among others a call for an international investigation of war crimes committed in Nagorno-Karabakh, alongside with the French Senate condemning the "military aggression of Azerbaijan" (Massis Post, 25 November 2020). The Government of France immediately stated that the Resolution was not going to have an impact on its foreign policy in the South Caucasus region (Jam News, 27 November

2020); nevertheless, the demarche itself and its content can be rather worrying for the Azerbaijani side. No wonder that the parliaments of Azerbaijan and Turkey rejected the Resolution, at the same time asking for France to be removed from the OSCE Minsk Group (Hurriyet, 26 November 2020). Of course, Azerbaijan is a country strategically important for the Western community, but the Armenian diaspora is also particularly strong in a few relevant Western countries; so, eventual decisions on recognition/non-recognition of Nagorno-Kararabkh Republic independence will depend primarily on the balance between those two factors.

Going back to the analysis of the 9th of November agreement, it seems as the entry of the Russian troops into the region will lead to a **new "frozening" of the conflict on the new alignments of the troops (which are becoming the new "Line of Contact")**, for an indefinite period of time, since Russian troops do seem to have a tradition of not going away any more or at least for a very long time, as proved in other prolonged conflicts like Transnistria, Abkhazia and South Ossetia.

As a result of this, **Russia comes out as the actual winner of the 9th of November agreement**, as it increases its military presence in the South Caucasus region (the Russians have not had a military base in Azerbaijan since 2012, when they refused to accept the Azerbaijani request for a significant increase of the rent for the radar in Gabala), and preserves an important political leverage in relation to both Armenia and Azerbaijan, since the Armenians will from now on be even more dependent on Russia and its military protection, whereas the Azerbaijanis will still have something to obtain, maybe, on a long term, since they do not have control over the entire territory of Nagorno-Karabakh; at the same time, by keeping the situation in a status of indetermination, Russia will still have the possibility of selling armaments to both parties, which is important, as a large portion of the Russian budget revenues are presumably coming from this type of commerce. On the other hand, Russia has a lot to gain in terms of perceptions in the international arena, since the West is already seeing it as a constructive, pacifist actor, while the post-soviet countries which were not yet swiped away by the mirage of the Western attraction can see what happens to the countries and leaders that trade their long-lasting loyalty to Moscow for the sake of an uncertain democratic future (as Armenia and its popular Nikol Pahinyan seem to have done).

Having said this, it is worth mentioning that the arrangement with the Russian troops entering the region as peacekeepers is, probably, **not entirely satisfactory to Azerbaijan and surely not satisfactory for Turkey**, which would have wanted a bigger role for itself in the Southern Caucasus. After the reports about alleged heavy involvement of Turkey in the military operations on the Azerbaijani side (although the Armenian accusations, openly supported by France and somehow confirms by the USA, in this regard were always dismissed by both Baku and Ankara) everybody would have expected a Turkish component of the peacekeeping operation. The official declarations of Azerbaijani and Turkish leaders in this regard are somehow deliberately confusing, since they seem to indicate to a Turkish presence in the componence of the peacekeeping troops, working on an equal basis with the Russians; in fact, as the Russian side has repeatedly underlined, there will be only a limited number of Turkish militaries in a so-called joint Russo-Turkish ceasefire monitoring center, which will be situated on the territory of Azerbaijan (exact location to be determined), far away from Nagorno-Karabakh (as specifically mentioned by Sergei Lavrov), as the monitoring operations will be conducted with the use of drones; all these are provisioned by a Memorandum of Understanding signed by Russia and Turkey on November 11, only two days after the

ceasefire declaration mediated by Vladimir Putin and one day after the Russian troops began occupying their positions in the Nagorno-Karabakh conflict zone (their deployment started right away in the morning of November 10).

In is worth citing, in this regard, Sergey Lavrov's statements at a press conference with local and international journalists, held in Moscow on November 12:

„The mobility of Turkish observers will be limited by the geographic coordinates of the **Russian-Turkish monitoring centre in a region of Azerbaijan located away from Nagorno-Karabakh**, which is yet to be chosen for the centre. A memorandum to this effect was signed yesterday (November 11, 2020) between the defence ministers of Russia and Turkey. **The centre will operate exclusively remotely, using live monitoring and recording systems, such as drones and other technology**, to monitor the situation on the ground in Nagorno-Karabakh, primarily on the contact line, and to determine which party violates and which party complies with the terms of the ceasefire and termination of hostilities. **The boundaries of the Turkish observers' mobility will be limited to the premises that are to be set up on the territory of Azerbaijan, not in the zone of the former conflict**.

I have read the statements made by Turkish Foreign Minister Mevlut Cavusoglu and Defence Minister Hulusi Akar to the effect that **Turkey will be working on the same conditions as Russia. This refers exclusively to the centre that is to be deployed in Azerbaijan**, **will be stationary and will not conduct any on-site missions**. It is true that Russian and Turkish observers and specialists will be working at this centre on equal conditions. But no Turkish peacekeeping units will be deployed in Nagorno-Karabakh. This is clearly stated in the three leaders' statement you mentioned.

Many people, including in Russia, are misinterpreting the agreements reached. I was astounded by some of these self-professed experts' deliberations. Speculations also abound in other countries, but **the thing to go by is what has been put down on paper following the intensive talks held throughout the week before the announcement of the ceasefire.**" (official webpage of the Ministry of Foreign Affairs of the Russian Federation, 12 November 2020).

One can only guess that the "intensive talks" were, probably, about **Turkey, seconded by Azerbaijan, trying to convince the Russians to accept a Turkish military presence in the Southern Caucasus, something presumably firmly rejected by Moscow**, since it would have been impossible for it to digest. After all, Russia still sees the post-soviet countries as its primary zone of interest, not only on the basis of the soviet legacy, but also because of their geographical proximity to Russia's frontiers, a proximity bearing strategic consequences. It may be true, although arguably, that Russia has nowadays a more mature and realistic approach to its "backyard", trying to concentrate more on itself as it is gradually realizing that the Soviet Union is over and what happens in other post-soviet countries is not its responsibility any more, as explained in Dmitri Trenin's "Moscow's new rules", published by Carnegie Moscow Centre:

"At the turn of the 2010s, the empire was still very much at the back of many people's minds, but certainly even then it was more of a memory of the past than a realistic vision of the future. A decade on, with the experience of Ukraine and also Belarus under its belt, Russia, I would argue, has turned post-post-imperial: one step farther removed from the historical pattern. It is getting used to being just Russia. Moreover, Russia is embracing its loneliness as a chance to start looking after its own interests and needs, something it neglected in the past in the name of an ideological mission,

geopolitical concerns, or one-sided commitments built on kinship or religious links. This is a new model of behavior." (Dmitri Trenin, November 2020).

Nonetheless, from this to accepting a foreign military presence in the proximity of its borders would have been a long run, especially taking into consideration that Turkey is also a member of NATO.

So, with the November 9 agreement, Russia succeeded in fulfilling at once a few of its goals: it managed to refreeze the conflict, it consolidated its military presence in the Southern Caucasus, while keeping Turkey's presence strictly limited and away, and it once more showed its strength as the true "master of the game" in its close neighborhood, by keeping its leverage on both Armenia and Azerbaijan for the foreseeable future.

It remains an open question **why the Azerbaijani army stopped its military operations while being a few kilometers away from Stepanakert** and chose not to continue its triumphant march towards a full victory, thus taking back Nagorno-Karabakh entirely; the answer probably is a mix of factors, the most relevant ones being the presumably extremely high cost (human and material) of the military operations in the mountainous area of Nagorno-Karabakh, Russia's pressure, as well as the result of the negotiation balance between Russia and Turkey, maybe involving the two actors interests in other areas of the world (for example in Syria). Although a high number of dead soldiers was not necessarily a problem for the Baku regime during this war (since Azerbaijan has a population more than three times higher than that of Armenia, and the proportion of the young is very high) it would have eroded rapidly the popular support for it, though; not surprisingly, the Azerbaijani side decided not to make public the number of their dead.

At this point, it is noteworthy that the Azerbaijani leadership was always very careful in not antagonizing Russia, which was perceived in Baku as a key to the Nagorno-Karabakh conflict (as it eventually proved to be – at least until now). Unfortunately for the Armenians, the regime of Nikol Pahinyan frustrated Moscow as much by its mere existence (a charismatic leader brought to power by a popular wave of revolt must be the worst nightmare of Vladimir Putin), as by its policies of anticorruption and reforms, which led to Moscow's closest allies in Armenia seeing their positions threatened, while Yerevan itself was decisively consolidating its cooperation with the West. Maybe all these elements had their share in Moscow's passive-balanced position towards the Azerbaijani-Armenian clashes this time, since in May 2016 Moscow intervened decisively after only four days, putting an end to the confrontation.

Another important element of the November 9 agreement which deserves a few considerations is the **return of refugees and internally displaced persons (IDPs) in Nagorno-Karabakh and the seven adjacent districts, under the supervision of the UNCHR**. First, it seems not sufficiently clear if this provision is referring exclusively to the Azerbaijani refugees and IDPs from the first Karabakh war (some 600000, according to UNCHR, based on Azerbaijani official figures) or it envisages also the Armenian population displaced by the recent second war (exact number not known). As it became immediately clear after the cessation of military hostilities, the Armenian population in the seven adjacent districts and the part of Karabakh under Azerbaijani control prefered to flee, heading towards the territories still under Armenian control ("France 24, 14 November 2020). At the same time, it is not clear if the Azerbaijani population will be allowed and willing to return to the part of Nagorno-Karabakh under Armenian control (although there might not be many people in this situation, since the population of Nagorno-Karabakh was almost 70% Armenian before the first Caucasus war and the

Azerbaijani population might have been concentrated more in the south). Anyhow, the UNHCR seemed to have been completely took by surprise by this provision and the role assigned to it, since only at the end of November the Azerbaijani office was able to come out publicly with some thoughts on the issue ("RefWorld, November 2020). Even with a concrete plan of return being already elaborated and ready to be implemented, it is not entirely clear when and how the people will be able to go back, since the seven adjacent regions which used to be inhabited by majoritarian Azerbaijani population before the first Caucasus war have been deserted for almost 30 years and lack basic infrastructure and living conditions.

As for the provisions regarding the **construction of a new road to connect Nagorno-Karabakh to Armenia (to the north of the current one), as well as of a land connection between Nakhichevan and Azerbaijan**, through the territory of Armenia, they seem to be envisaging a longer term, since the parties will have three years only to agree on the plans to the construction, which, of course, at the end of the day might remain on the paper (especially if in Armenia the pro-Russian forces succeed in taking back the power and put pressure on Moscow). At this point, when the war is still fresh in everybody's memory, it is difficult to imagine a world in which Armenia and Azerbaijan cooperate in regional projects, have a flourishing bilateral commerce and maybe even a joint economic cooperation commission, although for Armenia's impoverished economy that could prove to be a breath of oxygen; it cannot be completely excluded either, since in the Soviet period Armenians and Azerbaijanis lived together just fine. It will probably all depend on the political will of the leadership of the two countries to renounce the aggressive rhetoric and start educating their peoples in the spirit of peace and cooperation, although again, at this moment this seems to be a distant prospect.

The 9th of November agreement versus the Madrid Principles

Many of the provisions of the 9th of November agreement were also envisaged by the revised Madrid Principles, which were conceived by the three Co-Chairs of the Minsk Group in 2007, then revised two years later, after long negotiations with the two parties, as a basis for further discussions on a peaceful settlement of the prolonged Nagorno-Karabakh conflict. As a matter of fact, the Madrid Principles are just one of the many documents produced by the Co-Chairs with this aim, and represent maybe the essence of the envisaged peaceful settlement, a selection of the most viable ideas discussed with the parties over the years; moreover, further negotiations between the parties, under the auspices of the Minsk Group co-chairs, as well as those held with the mediation of Russia (so-called Lavrov plan, Kazan document etc.), all reportedly have had as a starting point the Madrid Principles.

Judging by the common declaration of the presidents of USA, France and Russia (as co-chairing countries of the Minsk Group) on the margins of the G8 Summit in L'Aquila (Italy), in July 2009, the (revised) Madrid Principles were consisting of the following:

- Return to Azerbaijan of the seven districts surrounding Nagorno-Karabakh.
- A provisional status for Nagorno-Karabakh, with guarantees concerning its security and self-governance.
- A corridor linking Nagorno-Karabakh with Armenia.
- Future determination of the Nagorno-Karabakh status through a legally binding expression of will.

- Right of all internally displaced persons and refugees to return to their residences.
- International security guarantees provided by an international peacekeeping operation.

The Madrid Principles were based on the Helsinki Final Act (1975) and were trying to bring together in a balanced approach three principles of international law (non-use of force, territorial integrity of states and the right of peoples to self-determination) and the six elements presented above (official web site of the Organization for Security and Cooperation in Europe, 10 July 2009).

It is noteworthy that the OSCE Minsk Group was considered, until recently, the only international format enabled by the parties themselves with finding a peaceful, negotiated solution to the Nagorno-Karabakh conflict. More precisely, there were its co-chairs (appointed by USA, France and Russia) who were practically doing all the work, since the Minsk Group itself proved to be unable to operate as such (too many countries, too many languages, impossible to provide simultaneous translation for everybody). During the years, the three co-chairs came up with a number of drafts for a peace agreement, which all failed because none of the parties proved capable or willing to compromise and accommodate the other. At some point, it probably became futile to talk about a peace agreement, since the war had ended too long ago (although armed clashes on the line of contact never really stopped), so all the ideas which were in principle accepted by the parties and considered viable were wrapped up in the so-called Madrid Principles and their revised version of 2009.

The co-chairs imagined a balanced solution, which would have taken into consideration both parties' interests, but at the same time demand from each of them some compromises, which may have been painful at the beginning, yet would have opened the way to a common future. In their vision, the solution should have had two distinctive elements, traded one for another: the return to Azerbaijan of the seven districts around Nagorno-Karabakh, as a first, essential step meant to unlock the Armenia-Azerbaijan relations, increase confidence and relaunch dialogue; a referendum on Nagorno-Karabakh status.

However, despite the co-chairs' efforts, the negotiations haven't seen any significant progress for almost 30 years, because of, as already mentioned, the parties' holding on to their maximalist positions and no willing to compromise.

Azerbaijan was not willing to discuss Nagorno-Karabakh status as long as Armenia refused handing back the seven districts around Nagorno-Karabakh which have been under its control since the end of the 1991-1994 war; at the same time, Armenia was not willing to discuss territorial concessions as long as status issue was not solved or a concrete plan with this aim and with concrete deadlines was not accepted by Azerbaijan. Any alternative which might have been proposed by one side or the other in the course of negotiations never managed to leave this unfortunate paradigm.

Back to the November 9 agreement, it is obvious that some of its provisions are identical to some of the six elements of the revised Madrid Principles, namely the return to Azerbaijan of the seven districts around Nagorno-Karabakh, the land connection of Nagorno-Karabakh with Armenia through the Lachin corridor, the return of refugees and IDPs, restoration of communications between Azerbaijan and Armenia. Still, there are important differences between the two documents and they affect the overall balance of interests which the Minsk Group co-chairs were so carefully in trying to preserve. It is true

that the Madrid Principles and the previous attempted peace plans were conceived on the background of a different reality in the field, as Armenia had won the first Caucasus war.

So, the provisions of the 9th of November agreement reflect the new reality on the ground, namely: Azerbaijan won the war and Russia was the sole mediator of the ceasefire declaration, while the Minsk Group or its co-chairs were in no way involved.

As underlined in Vladimir Socor's "The Minsk Group: Karabakh War's Diplomatic Casualty":

"**The armistice agreement departs from the Basic Principles in four respects**:

– it omits any reference to Upper Karabakh's legal or political status, current or future, although it does not prejudice that either;

– it places approximately one third of Upper ("Nagorno") Karabakh's territory *de facto* under Azerbaijan's direct administration, apparently but not necessarily excluding this part of Upper Karabakh from the purview of self-governance and status that the Minsk process had envisaged for "Nagorno" Karabakh;

– it adds, as an entirely new provision, the opening of a corridor between western Azerbaijan and the latter's exclave of Nakhchivan, across Armenian territory and under Russian border troops' supervision; and

– it inserts Russian "peacekeeping" troops in Upper Karabakh, in a dual role: to supervise the ceasefire and to protect the Armenian population of rump Upper Karabakh. This move contravenes the understanding that all parties to the Minsk process had achieved from the outset (OSCE's 1994 annual conference) and had maintained until now: namely, that any future peacekeeping mission would exclude troops from the three Minsk Group co-chairing countries (Russia, US, France) or from neighboring countries (such as Russia or Turkey)." (Vladimir Socor, November 2020).

At the same time, Vladimir Socor is correctly pointing out that "These changes … introduce **significant elements of ambiguity**; which, combined with **Russia's military presence on the ground, enable Russia henceforth to manipulate or block the negotiations toward a final settlement**. **Armenia has now fallen into full dependence on Russia; whereas Azerbaijan can rely on Turkey**, the new entrant and game-changer in the region, to protect Azerbaijan's interests **to some extent though not fully yet**." (Vladimir Socor, November 2020).

Conclusions and perspectives

This analysis shows, first and foremost, that the 9th of November ceasefire agreement did not put a final end to the Nagorno-Karabakh prolonged conflict, since the long-lasting, sustainable and equitable solution is not there anymore. On the positive side, the agreement stopped further loss of human lives, which is important, since the number of the dead is estimated to be rather high. Vladimir Putin was talking, already on October 22, about some 5000 dead Armenians and Azerbaijanis together ("BBC News, 22 October 2020). It is difficult to assess the number of dead soldiers, since both sides seem to be underestimating own losses, while overestimating the enemy's losses. The Armenians reported, at the end of the war, 2425 casualties among militaries (AP News, 18 November 2020); the Azerbaijanis refused to disclose the number of their dead during the confrontation, but reported on December 3, 2020, a number of 2783 dead militaries, as well as 100 more being missing in action (AP News, December 3, 2020). On the other hand, it is already obvious that the final goal of Armenians and Azerbaijanis living together in peace is even more far away than it was prior to the one month and a half war.

The Armenian civilians choose to live their houses in the districts returned to Azerbaijan, some even putting them on fire; this is somehow equal to an ethnic cleansing, although maybe not totally attributable to the Azerbaijanis, who invited them to stay (at least this is what they claim). The long tradition of enmity and distrust, fomented in the last 28 years by a sustained and aggressive propaganda on both sides, may be the main responsible for this situation. Unfortunately, the enmity and distrust will probably still be there for generations to come, refreshed by the recent war and will almost surely impede Armenian-Azerbaijani cooperation in regional projects, commerce and so on, as well as the expected economic benefits of the reopening of communications between the two.

With the Russian troops stationed along the new line of contact, the Azerbaijani armed forces will not try to take the rest of Nagorno-Karabakh in the foreseeable future. On the other hand, the status of Nagorno-Karabakh will most likely continue to remain undetermined for a long time, with Russia using this ambiguity as a leverage towards both Armenia and Azerbaijan, thus preserving its main role in the region and maybe allowing the OSCE Minsk Group some role in further negotiations/discussions.

Internally, the Aliyev regime will be able to fructify its victory on the battlefield, the recuperated territories, as well as the return of refugees and IDPs in order to consolidate its position on a short to medium term. However, on a longer term, the foreseeable expenditures related to the return of IDPs (who will need to be financially supported by the state), the pensions to the families of the dead soldiers and other social benefits to them might prove to be a considerable burden on the budget, especially if the price of oil remains low. The opposition will eventually try to play the card of a possible popular discontent over Azerbaijan not taking back entirely Nagorno-Karabakh while it had the chance. All these will add up to the underlying societal tensions.

In Armenia, the lost war and territories, the humanitarian crises and the deepening economic problems will erode the popularity of Nikol Pashinyan and his regime; together with the refreshed dependency on Russia this will, most probably, lead to pro-Russian forces taking power in Yerevan again (maybe with a new party/leader not compromised by corruption, relations with the oligarchs and so on).

The Russians will see their grip on the Southern Caucasus reinforced, will maintaining their leverage on both Armenia and Azerbaijan and will most probably keep selling arms to both sides. Moscow will continue to be the main actor in the region, although Turkey also succeeded in putting a feat on the ground and its influence might even grow, on a long term.

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COMPRENDRE LE CONFLIT ACTUEL DE L'ITURI

Andreea Bianca URS*

Abstract. *Depuis plusieurs siècles, les groupes ethniques Hema et Lendu s'accusent réciproquement de volonté d'extermination. L'anneé 2020 a apporté un revirement de la violence à plusieurs niveaux. Subdivisé en trois sections, ce travail adopte principalement une approche descriptive, afin de pouvoir apporter une éclaircissement sur complexité de la problématique évoquée. À travers le temps, sur le soustrait ethnique conflictuel ont été déposées des éléments tout aussi explosifs qui ont généré le conflit interminable qu'on connait aujourd'hui.*

Keywords: *RDC, violence, conflit armé, ethnie, ressources, territoire*

Le monde du conflit est souvent un monde binaire. Depuis plusieurs siècles, les Hema et les Lendu, deux principales communautés de l'Ituri, se disputent d'une manière sanglante l'accès à la terre et au pouvoir local. Les deux groupes ethniques s'accusent réciproquement de volonté d'extermination. Après quatorze années de paix relative en Ituri, depuis janvier 2020 on assiste à un revirement des violences graves dans les territoires de la province. Ce qui se passe et comment influencent ces événements le processus de pacification du pays mis en le président Felix Antoine Tshisekedi ? Le facteur ethnique est dominant ? Subdivisé en trois sections, ce travail adopte principalement une approche descriptive, afin de pouvoir comprendre la complexité de la problématique évoquée. Ainsi, cet article n'a pas la prétention de démêler l'entrelacements de luttes mais, plus modestement, son objectif vise à retracer succinctement l'événementiel de la violence dans cette zone frontalière depuis des décennies et de mettre en évidence les particularités des conflictualités provinciales qui rend illusoire toute paix imposée.

1. Du conflit à la paix

Qu'est-ce qu'un conflit ? Tout le monde a l'impression qu'il connait la réponse à cette question. Les conflits s'intensifient constamment, ainsi que l'intérêt humain pour les déchiffrer. Il y a notamment une très large littérature autour de ce terme, sa définition et ses référentes particulièrement dans le domaine économique, sociologique et philosophique. Le terme conflit englobe une dispute ou une incompatibilité causée par l'opposition réelle ou perçue des besoins, des internes et des valeurs de deux (ou multiples) parties différentes. Essentiellement, il s'agit d'une confrontation d'intérêts à propos d'une rareté, liée à une consommation de ressources non partageables ou même une rareté au niveau du pouvoir qui implique une forme de domination (économique ou politique). Comme l'explique Jeong, la nature essentielle d'une situation conflictuelle est aisément compréhensible en ce qui concerne les difficultés rencontrés pour répondre aux aspirations de chacun simultanément (Jeong, 2008 : 5).

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Les objectifs incompatibles sont souvent le noyau d'un conflit. Les membres de groupes ayant des objectifs incompatibles sont susceptibles de s'engager dans un conflit ouvert s'ils deviennent des groupes en conflit. Un conflit ouvert est susceptible de se produire si les membres sont conscients que leurs objectifs sont incompatibles avec ceux du groupe adverse, s'ils ont des griefs contre des adversaires et se sentent très frustrés, s'ils s'engagent dans une interaction libre qui favorise l'action de conflit, et s'ils disposent de ressources suffisantes (Bartos, Wehr 2002 : 80).

Un conflit diffère de la compétition, de la concurrence, du duel et apparait en plusieurs formes et structures. Le conflit marque la réinvention des règles du vivre ensemble. À ce sens, Bernard Calas propose l'équation conflictuelle suivante :

Conflictualité structurelle + tensions + blocage de la régulation + événement révélateur/catalyseur + mobilisation politique => conflit => réinvention des règles du vivre ensemble (contraintes et procédures de négociation internes) (Calas 2011 : 300)

Dans les études sur la transformation du conflit et la consolidation de la paix, il a été prouvé l'importance d'inclure les ressources naturelles. La syntagme « ressources naturelles » fait référence à tout ressource qu'on peut trouver dans la nature et qui peut être exploité pour des raisons économiques. La consolidation de la paix par l'environnement implique alors à la fois les ressources naturelles renouvelables comme la terre, le bois et la pèche, et les ressources non-renouvelables comme les minéraux et le pétrole. Ces ressources, surtout dans le contexte du continent noir, représentent une grande source de revenus et de pouvoir. Quand ces ressources sont mal gérées, distribuées ou contrôlées, elles impactent la vie des millions de gens de façon considérable et représentent la source des situation d'instabilité et des conflits[1].

Dans ce cas, il s'agit souvent de conflits à propos de la possession, l'accès ou encore la distribution des revenus concernant les ressources naturelles. Les exemples abondent des conflits qui prennent leur source dans le « scandale géologique » opposant l'appétit des grandes compagnies, la cupidité des élites nationales et les revendications des communautés locales :les guerres de Kivu, Sud-Soudan, la situation centrafricaine, les tensions autour du pétrole ougandais du lac Albert (Calas, 2011 : 313) sont construits autour des ressources, pour ne citer que quelques exemples.

En ce qui concerne la liaison entre les ressources naturelles et la violence armée, Paul Collier et Anke Hoeffler (Collier, Hoeffler, 2004 : 7) avancent l'idée que les opportunités purement économiques constituent souvent un déterminant plus signifiant dans l'apparition d'une rébellion que les motifs liés à des griefs activés par une injustice particulière. Bien évidemment, ces éléments peuvent être des éléments constitutifs du conflit, mais Collier et Hoeffler estiment que ce sont toujours les opportunités économiques qui font aboutir à un véritable conflit.

L'espace intervient souvent dans l'échelle du conflit. Les rebelles ont besoin d'un refuge, et deux caractéristiques géographiques, les montagnes et les forêts, sont généralement censées rendre la contre-insurrection plus difficile (Collier, Hoeffler 2004 : 8). Toutefois, comme l'indique Bernard Calas, « l'espace – faut-il lieu, territoire – n'est jamais un acteur, ce sont les hommes, les groupes humains, les institutions, les leaders

[1] Natural Resources and Conflict: Guide for Mediation Practitioners, UNEP, 2015, p. 11, en ligne, URL:https://wedocs.unep.org/bitstream/handle/20.500.11822/9294/Natural_resources_and_conflic.pdf?sequence=2&amp%3BisAllowed= , consulté le 17 decembre 2020.

politiques qui le construisent, le manipulent et le dominent qui lui permettent d'accéder au rang d'actant » (Calas, 2011 : 303). Enchâssés dans l'entité géopolitique des Grands Lacs, ni Goma, ni Ituri, ni Bukavu ne sont pas des acteurs. Ainsi, quand on parle d'Ituri ou de Kivu, on ne se réfère pas à l'espace géographique, frontalier, mais à un drame humain a plusieurs facettes dans lequel les acteurs et leurs enjeux continuent à augmenter la violence et éloigner la paix.

Plus important encore, Calas énumère quelques aspects (spécificités africaines, plus exactement) comme la question ethnique et la question environnementale. Les deux ne sont pas suffisantes pour entretenir un conflit : ils ne sont que des objets transactionnels réactivant des crispations préexistantes. Les conflits environnementaux sont légion sur le continent africain et la plupart des conflits ont désormais une dimension environnementale, mais, des analyses montrent que si la crise environnementale est une condition nécessaire du conflit, elle n'est pas suffisante pour le faire éclater et doivent également intervenir les lacunes institutionnelles de la régulation. Dans la même logique, la question ethnique innerve la plupart des analyses politiques sur le continent africain, mais l'ethnie ne conduit pas mécaniquement à l'ethnisme, camouflage de bien des conflits politiques (Calas 2011 : 312).

Lors de l'analyse du conflit, on peut utiliser facilement l'image de l'arbre. L'image relève l'interaction entre les facteurs structurels, manifestes et dynamiques de la situation conflictuelle. Tout d'abord, les racines de l'arbre indiquent les facteurs structurels et statiques, c'est-à-dire les véritables facteurs du conflit. Le tronc illustre les problèmes manifestes, en liant des facteurs structurels avec les facteurs dynamiques. Les problèmes manifestes sont localisés au centre du débat et forment le discours des acteurs concernés dans le conflit. Enfin, les feuilles qui ondulent au vent symbolisent doc les facteurs dynamiques, la concrétisation du discours prononcé. Au fil du temps, les fruits de l'arbre pourraient encore tomber et créer un nouvel arbre, né de ce conflit. L'image de l'arbre confirme que tous les éléments du conflit sont interconnectés, et bonne connaissance de chaque partie est impérieusement nécessaire.

2. Contextualisation – les traces d'une guerre qui n'est jamais termine

Située dans le cœur de l'Afrique, la République Démocratique du Congo (dorénavant abrégé RDC) est potentiellement l'une des plus riches pays du monde, mais en réalité est l'une des plus pauvres. La partie orientale du pays (la région de Kivu – Nord Kivu Sud Kivu et Ituri) est un espace brisé du reste du pays, dominé par la violence armée : actuellement y a 130 groupes armées actifs (Groupe d'étude sur le Congo, 2019). La richesse en ressources est inégalable, mais l'or, le zinc, le cobalt, les diamants sont convoités par une série des acteurs internes et externes.

Après des années chargées d'événements tumultueux, en janvier 2019 avait lieu la première alternance politique pacifique de l'histoire du pays : après 18 ans au sommet du pays, Kabila cède le pouvoir a son successeur Felix Antoine Tshilombo Tshisekedi suite aux élections de 30 décembre 2018.

RDC est un pays composé de plus de 250 ethnies et l'ensemble de ces ethnies constitue la majorité nationale. Ituri compte 18 ethnies et la plupart d'entre elles ne sont pas impliquées dans le conflit Hema/Lendu, sauf à titre de victimes. Ituri est une province situé à l'extrémité orientale de la République Démocratique du Congo, frontalière avec Ouganda. La province est divisée en cinq territoires qui sont également des circonscriptions administratives (Djugu, Irumu, Mambasa, Aru et Mahagi), elles-mêmes subdivisées en collectivités. Ituri a le statut de province depuis 2015. Une analyse sur la

situation de l'Ituri et sur la RDC entière, ne serait jamais complète sans l'ancrer dans l'histoire aux fins d'éviter l'impasse du simplification et généralisation. Afin de réaliser cette section, je me suis appuyé notamment sur le rapport d'International Crisis Group du 15 juillet 2020.

Les puissances ouest-européennes ont connu l'Afrique Centrale (sous-région du continent africain) parmi la découverte du fleuve Congo en 1482, accompli par l'explorateur portugais Diogo Cão, suivi par David Livingstone, Sir Henry Morton Stanley et Pierre Savorgan de Brazza. L'explorateur et journaliste britannique Stanley a navigué sur le fleuve Congo entre 1874 et 1877. Deux années plus tard, en 1879, Stanley revient employé par le roi des belges Léopold II et forçait les chefs locaux de signer de traités qui transféraient la possession de leurs territoires vers le roi belge. À partir de ce moment, le Congo a devenu la propriété privée du roi Léopold II, fondateur État indépendant du Congo (EIC). Le 17 novembre 1879 il crée l'Association Internationale du Congo (AIC) afin de perpétuer son intérêt personnel dans le fleuve de Congo. Le chancelier Bismarck, en clôture de la conférence de Berlin, février 1885, affirme :

Le nouvel État du Congo est destiné à être un des plus importants exécutants de l'œuvre que nous entendons accomplir

Organisée à l'initiative du chancelier allemand Otto von Bismarck du 15 novembre 1884 jusqu'au 26 février 1885, la Conférence de Berlin a accueilli les délégués du 14 pays (l'Autriche-Hongrie, Suède-Norvège, la Belgique, la Hollande, les États-Unis, l'Italie, l'Empire ottoman, la Grande Bretagne, le Portugal, l'Espagne, le Danemark, la France, l'Allemagne et la Russie). Lors de la conférence, les puissances coloniales de l'époque ont partagé l'Afrique sans apprécier et tenir compte de l'ample mosaïque africain composée par les nombreuses ethnies ou tribus existantes. L'État africain a été ainsi pensé par les européennes et son territoire ne représente pas l'évolution historique naturel des populations qui y vivaient. Dans la plupart de ces États, le régime politique a été une copie conforme de celui des métropoles coloniales. La même politique coloniale a été également pratiquée dans la région des Grands Lacs africains, en causent des nombreux conflits dans les pays limitrophes dont la région du Kivu en RDC. Les délégués ont divisé et partagé les territoires sur le papier, sans tenir compte du mosaïque ethnique et linguistique. À la conférence, les autres puissances ont reconnu l'EIC comme propriété privé du roi Léopold II, qui était un souverain très admiré dans toute l'Europe en tant que monarque «philanthropique» (Hochschild, 1998 : 1).

La violence en Ituri trouve ses racines dans la colonisation belge : depuis 1885 jusqu'au 1908 des millions de Congolais sont morts suite à l'exploitation des belges. À l'époque de la colonisation belge, les autorités ont contribué à la hiérarchisation des Hema, dont le chef disposait de pouvoirs importants, ce qui leur a permis d'asseoir leur domination sur les Lendu. Les colons ont également mené une politique d'éducation discriminatoire en faveur des Hema, qui ont acquis de plus en plus d'avantages, notamment en matière d'accès aux postes au sein de l'administration, de l'Église catholique et des structures commerciales. Après l'indépendance, l'élite Hema a continué à bénéficier de la politique de « zaïrianisation » (nationalisation des moyens de production

détenus par les étrangers à partir de 1973) sous l'ancien président Joseph-Désiré Mobutu (1965-1997), qui a permis aux élites Hema d'acquérir de nombreuses terre[2].

RDC se rétablit lentement après deux guerres sanglantes : la première entre 1996 et 1997 (la chute du dictateur Mobutu, destitué par le révolutionnaire Laurent Désiré Kabila) et la deuxième, déclenchée en 1998 quand L-D. Kabila a voulu divorcer de ceux qui l'ont mis au pouvoir (Rwanda et Ouganda voisins). Jusqu'au 2002, la RDC était le théâtre d'un conflit armé impliquant neuf pays africains. Le Rwanda et l'Ouganda ont des liens historiques avec des groupes armés et des rebellions en Ituri et au Nord-Kivu. Pour des raisons de proximité de géographique, le Rwanda a eu plus d'interactions avec le Nord-Kivu tandis que l'Ouganda a joué un plus grand rôle en Ituri et dans l'extrémité nordique du Nord-Kivu.

Essentiellement, les violences qui se sont propagées depuis le territoire de Djugu (le territoire de Djugu est, au plan agricole, le plus riche du district et, au plan ethnique, le plus complexe) sont attribuables à des miliciens Lendu, dont certains avaient évolué au sein du Front des nationalistes intégrationnistes (FNI). Le FNI est lui-même un ancien groupe armé Lendu installe sur le même territoire, devenu en présent parti politique, allié à la Force de résistance patriotique de l'Ituri (FRPI), groupe arme Lendu base en Irumu, qui a pris part à la guerre de l'Ituri de 1999-2003. Les attaques n'ont pas été revendiqués, mais plus tard « Codeco » assume la responsabilité[3].

En juin 2003, à la veille de la mise en place du gouvernement de transition (2003-2006), l'Ituri se trouvait dans une situation difficile. Sous l'effet de la crise économique, des manipulations et des tensions intercommunautaires par les forces d'occupation ougandaises et de la rivalité croissante entre Rwanda, Ouganda et RDC pour le contrôle de la région, les violences suscitées par les conflits fonciers et les clivages de plus en plus prégnantes entre communautés ont dégénéré en guerre interethnique entre les populations Hema et Lendu[4]. Bien que les miliciens portent des revendications spécifiques qui mobilisent la communauté Lendu depuis des décennies, le soutien dont ils bénéficient au sein de cette communauté reste difficile à déterminer. Ces revendications s'articulent autour de deux questions majeures : la réappropriation des terres qui auraient été spoliées par les Hema, et le refus de voir des étrangers exploiter les ressources locales (Entretiens de Crisis Group, acteurs de la société civile, Bunia, juillet 2019).

Après quatorze années de paix relative en Ituri, de graves violences éclatent en décembre 2017 dans le territoire de Djugu, avant de s'étendre aux autres territoires de la province. Contrairement à la guerre de 1999-2003, où les affrontements entre les Hema et les Lendu par milices interposées étaient généralisés, les violences en cours impliquent en grande partie des milices spécifiques constituées de jeunes Lendu, mais qui ne sont pas nécessairement soutenues par la majorité de leur communauté. Au début de cette nouvelle vague de violence, les assaillants Lendu ciblaient des membres de la communauté Hema dans le territoire de Djugu. Par la suite, les attaques se sont étendues à d'autres parties de la province, ciblant les militaires ainsi que d'autres communautés, dont les Alur dans le territoire de Mahagi, au nord de Djugu. Certains jeunes Hema ont été impliqués dans des

[2] « RD Congo : en finir avec la violence cyclique en Ituri », International Crisis Group, en ligne, URL : https://reliefweb.int/report/democratic-republic-congo/rd-congo-en-finir-avec-la-violence-cyclique-en-ituri, p. 3, consulté le 25 novembre 2020.

[3] *Ibidem*, p. 10.

[4] « Congo : quatre priorités pour une paix durable en Ituri », International Crisis Group, Rapport Afrique n. 140, 13 mai 2008 en ligne, URL : https://www.files.ethz.ch/isn/55865/140_congo_priorites_ituri.pdf, consulté le 11 décembre 2020.

attaques ou représailles à petite échelle, mais les Hema n'ont pas mobilisé de milices comme lors des affrontements de 1999-2003[5]. La mort du père Florent Dhunji, prêtre lendu, le 5 juin 2017, est le point de déclanchement de la violence. Certains Lendu ont accusé les Hema d'avoir élaboré un plan d'extermination de leurs chefs, dont le prêtre serait la première victime[6].

La violence y émerge là où le chemin est déjà préparé. Dès le début de 2020, des groupes armés ont attaqué des villes de négoce de l'or et ont taxé les creuseurs artisanaux dans les territoires riches en or de Djugu et d'Irumu, dont des représentants d'autorités locales, des hommes d'affaires, des creuseurs artisanaux et des sources issues de la MONUSCO. Les personnes interrogées par l'ONU ont noté que des combattants de factions Lendu et des membres du groupe Zaïre étaient également des creuseurs artisanaux, l'exploitation de l'or constituant la principale activité économique dans ces régions[7]. En raison de l'insécurité et de la pandémie de COVID-19, les autorités de l'État chargées des mines n'ont pas pu accéder aux sites d'extraction artisanale de l'or des territoires d'Irumu et de Djugu depuis mars 2020, et les exportations d'or officielles restent faibles[8] en laissent d'espace au commerce illicite. La Coopérative pour le Développement du Congo (Codeco) est le principal acteur de ce conflit, mais n'est pas le seul, ils sont entourés par d'autres factions violentes. Pour exemplifier, Union des révolutionnaires pour la défense du peuple Congolais et Armée de libération du Congo de la Coopérative pour le développement du Congo (L'URDPC/CODECO et l'ALC/CODECO) ont utilisé des enfants comme combattants dans leur lutte, certains portant des fusils d'assaut de type AK, des munitions et des armes blanches[9]. En janvier 2020, Codeco reprend le contrôle de plusieurs localités en territoire de Djugu suite au redéploiement des unités à cause de l'escalade de la violence dans la province voisine de Nord-Kivu. Le 23 janvier 2020, 22 villages des chefferies de Bahema-Bajere et Bahema-Nord (territoire de Djugu) tombent sous le contrôle de la milice. Au cours du premier semestre de l'année 2020, 630 personnes tuées en Ituri[10]. Actuellement, dans le mois de décembre 2020, la situation humanitaire est catastrophique, les attaques attribuées aux miliciens de la Codeco se multiplient et la population réclame le renforcement du dispositif sécuritaire et demandent l'aide de MONUSCO[11]. Nous y reviendrons à cet aspect.

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[5] « RD Congo : en finir avec la violence cyclique en Ituri », International Crisis Group, en ligne, URL : https://reliefweb.int/report/democratic-republic-congo/rd-congo-en-finir-avec-la-violence-cyclique-en-ituri, consulté le 25 novembre 2020 p. 6.

[6] « Congo-Kinshasa : la communauté lendu de Kinshasa adresse un message de paix aux communautés de l'Ituri », sur *AllAfrica*, le 21 juin 2019, en ligne, URL : https://fr.allafrica.com/stories/201906210557.htm, consulté le 20 décembre 2020.

[7] Lettre datée du 23 décembre 2020, adressée au Président du Conseil de sécurité par le Groupe d'experts sur la République démocratique du Congo, Conseil de sécurité des Nations Unies, S/2020/1283, p. 16.

[8] *Ibidem*, p. 17.

[9] *Ibidem*, p. 15.

[10] « En six mois, au moins 636 personnes tuées et 1130 autres blessées suite aux violences en Ituri », sur *Actualité.cd*, https://actualite.cd/index.php/2020/09/24/rdc-en-six-mois-au-moins-636-personnes-tuees-et-1130-autres-blessees-suite-aux-violences, consulté le 18 décembre 2020.

[11] « RDC: à Djugu, où l'insécurité persiste, la population cherche la protection de la Monusco » sur *Actualité.cd*, https://www.rfi.fr/fr/afrique/20201220-rdc-%C3%A0-djugu-o%C3%B9-l-

Pendant cette section nous avons observé l'existence de plusieurs éléments interconnectés qui font le conflit très difficile à analyser.

3. Le rôle du conflit d'Ituri dans le processus de pacification du pays

Au premier regard, on peut facilement catégoriser le cas évoqué comme un conflit isolé, ultra-local, comme un *Far West ougandais (*Ngonga 2003 : 182), sans liaisons directes avec l'ensemble du pays. Suite à l'expansion du groupe ADF Nalu (Forces Démocratiques Alliés) de Beni (Nord-Kivu) vers l'Ituri, on ne peut plus considérer le cas d'Ituri isolé. Étant donné que les principales offensives ciblent l'ennemi ADF, les territoires de la province sont entrés par défaut à l'attention du public. Profondément préoccupé par leur survie continue en RDC et sous pression depuis fin 2019 à la suite des opérations dites « à grande échelle », les ADF auraient quitté la zone connue sous le nom de « triangle de la mort » et leur tendance ont irradié vers l'extrémité nordique. Les ADF constituent une organisation armée et mafieuse qui bénéficie de plusieurs complicités locales, nationales et transnationales dans un contexte d'impuissance publique dans la RDC (Urs, 2020 : 55-73). Déjà on observe dans la media « Nord-Kivu et Ituri » ou « la zone de nord-est » au lieu de Nord-Kivu tout simple.

Le conflit actuel d'Ituri se concrétise à travers une violence physique accrue et la perte de la vie humaine : massacres, pillages, maisons incendiées, rançons, viols. Diverses actions ont été menées et continuent à être menées pour arrêter la violence armée, mais aucun progrès notable n'a été réalisé. La situation demeure toujours préoccupante dans l'est et dans le nord-est du pays. L'approche purement militaire n'est pas suffisant, car les groupes circulent rapidement à travers les territoires. Toutefois, rétablir la paix en Ituri est une priorité pour le président Tshisekedi. Il s'est rendu à Bunia le 30 juin 2019, jour de l'indépendance, pour manifester sa solidarité avec les victimes de la violence et promettre d'y mettre fin. Le président Tshisekedi devrait concentrer ses efforts sur le désarmement des milices de la Codeco et de leurs alliés, ce qui nécessiterait un dialogue plus étendu avec les communautés Lendu et Hema, en particulier sur les points qui soutient le conflit, en réalisant que les offensives purement militaires actionnent comme un traitement local, sans avoir des effets à long terme. Impliquer des personnes qui ont une expérience dans la guerre constitue un avancement pour le processus de pacification. À l'initiative du président, en avril 2020, des anciens chefs de guerre, récemment libérés de la prison de Kinshasa, ont été dépêchés en Ituri pour sensibiliser à la paix les couches sociales et groupes armés surtout dans le territoire de Djugu[12]. Toutefois, retarder la mise en œuvre des mesures va générer plus de chaos dans le territoire affecté. À titre d'exemple, quelque mois plus tard, la faction dénommée « Alliance pour la libération du Congo/ CODECO » qui a décidé de quitter le processus de paix[13]. La réintégration des ex-combattants doit être un processus accéléré, car la guerre est beaucoup plus profitable, surtout pour ceux dont la

ins%C3%A9curit %C3%A9-persiste-la-population-cherche-la-protection-de-la-monusco, consulté le 20 décembre 2020.

[12] « RDC : des anciens chefs de guerre de l'Ituri dépêchés par Tshisekedi pour une mission de sensibilisation à la paix à Djugu » sur *Actualité.cd*, https://actualite.cd/2020/07/05/rdc-des-anciens-chefs-de-guerre-de-lituri-depeches-par-tshisekedi-pour-une-mission-de, consulté le 21 décembre 2020.

[13] « RDC-Ituri : une faction des combattants CODECO se retire du processus de paix » sur *Actualité.cd*, en ligne, URL : https://actualite.cd/2020/10/17/rdc-ituri-une-faction-des-combattants-codeco-se-retire-du-processus-de-paix, consulté le 22 décembre 2020.

survie dépend de ce travail de combattant. Toutefois, le combattant/ la combattante est l'individu qui n'a pas connu que la guerre depuis son enfance.

Le caractère géostratégique de la province (les zones d'accès difficile : les montagnes, les forêts, le lac Albert), ses richesses, sa position frontalière, son histoire culturelle favorisant la permanence et la persistance des rebellions et de commerce illégal. Les massacres perpétrés se déroulant dans une économie du désordre chaotique dont l'insécurité est le mode d'opération privilégié. Une grande partie de l'économie de la région dépend du commerce transfrontalier. À titre d'exemple, la production du bois a un grand rôle dans la soutenance de l'économie de la région : le bois exploité en RDC et vendu à l'extérieur comme provenant de l'Ouganda. Également, des importants volumes de cacao ont été introduits clandestinement en Ouganda, et plus importante encore, les combattants ADF financent notamment leur activisme par la filière cacao[14].

Le conflit présente des dimensions multiples. L'ethnicité a un sens profond en Afrique et la dimension ethnique est la plus visible. Hema et Lendu sont des rivaux historiques, ils se sont constamment affrontés au fil du temps, mais les dimensions politiques et économiques sont beaucoup plus importantes. Sur la volonté de dominer les terres et le pouvoir local, il y a la militarisation pour obtenir des ressources naturelles. Le conflit ethnique a représenté également un instrument pour les deux Kabila. L'affirmation de Todorov est relevant dans ce cas : « ce ne sont pas les cultures qui entrent en guerre, ni les religions, ce sont le entités politiques » (Todorov, 2008) Le facteur ethnique ne pouvait pas avoir généré la violence sur une si grande échelle. Le discours de la haine, avec les réminiscences de la guerre lesquelles on ajoute la propagation des groupes armées et les intérêts prive dans les territoires en cause ont exacerbé la dimension ethnique et ont produit un conflit complexe.

En fin, comme l'explique Thierry Vircoulon (Vircoulon, 2005 :144), l'Ituri démontre la nécessité de penser la guerre au pluriel et d'élaborer un plan de paix capable de prendre en compte cette pluralité au dépit des difficultés existantes.

4. Conclusions

La crise d'Ituri est purement politique et militaire, malgré l'accent mis sur l'ethnicité. Ce sont toujours les opportunités économiques qui font aboutir à un véritable conflit. Toute réflexion faite, le conflit d'Ituri est une guerre dans la guerre et doit être analysé au pluriel, de l'intérieur à l'extérieur. À travers le temps, sur le soustrait ethnique conflictuel ont été déposées des éléments tout aussi explosifs (militarisation, instrumentalisation, extractions illicites, liens avec le Nord-Kivu voisin, implications étrangères) qui ont généré le conflit interminable qu'on connait aujourd'hui. L'environnement sécuritaire de la province s'est davantage dégradé dans le territoire à cause de l'infiltration des rebelles ADF dans la région.

Au fil du temps, la population congolais a appris à faire face à ce contexte de gouvernance et a développé une profonde suspicion envers l'État. Mauvaise gouvernance, abus du pouvoir, corruption sont les vrais problèmes de la RDC. La faible gouvernance permet aux groupes armés de continuer à extraire le coltan, l'or et d'autres ressources. Dans un pays ou les objectifs sont atteints avec l'arme à la main, les acteurs utilisent leur position et le contexte d'instabilité pour maintenir ou exercer le contrôle sur les

[14] Lettre datée du 23 décembre 2020, adressée au Président du Conseil de sécurité par le Groupe d'experts sur la République démocratique du Congo, Conseil de sécurité des Nations Unies, S/2020/1283, p. 8.

ressources. Dans ce cas, dynamique et déterminée, la société civile d'Ituri demande au président de respecter ses promesses.

La paix exige autant d'efforts que le conflit. Après deux années d'alternance politique, les résultats sont attendus depuis longtemps. Le dialogue, les négociations, un plan cohérent et une vision claire devraient accompagner les offensives militaires dans la province affectée. Tshisekedi voyait dans ces attaques « génocidaires » des tentatives de déstabilisation de son pouvoir. Mais un conflit porte en soi l'espérance de sa solution. On ne se trouve pas dans le même point qu'auparavant, mais il reste encore des nombreuses mesures à adopter et implémenter dans les territoires affectés. Bien évidemment, jusqu'à présent la voix dominante à Kinshasa était celle de Joseph Kabila, mais Tshisekedi a annoncé la rupture de la coalition avec son prédécesseur. En bref, Tshisekedi peut dorénavant agir selon ses promesses de pacifier la région de l'est.

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THE CAUSES, DIMENSIONS AND PARADOXES OF THE ROHINGYA CRISIS

Maria Adriana ŢIBOC [*]

Abstract. *The Rohingya Muslims, an ethno-religious minority group from Myanmar, are one of the most persecuted minorities in the world. The atrocities committed by Myanmar security forces against the Rohingya, including mass killings, sexual violence and widespread arson, are considered crimes against humanity. The global community has reacted against these persecutions and described the situation as a case of ethnic cleansing, even genocide. This paper will try to examine the facts that led to these oppressions, the reasons behind the Rohingya's loss of citizenship under the 1982 Citizenship Law and its consequences. It will also present their long history of severe discrimination, the numerous restrictions they were subject to and the unimaginable horrors they have experienced.*

Keywords: *nationalism, Buddhism, discrimination, ethnic cleansing, genocide, refugee, human rights.*

Introduction

Myanmar[1], the largest country in Southeast Asia, is characterized by great ethnic and cultural diversity. The country officially recognizes 135 ethnic groups, each having its own language, culture and a history of autonomous self-governance. The Bamar is the largest ethnic group, representing the majority of the population, about two-thirds, and it controls the military and the government. The minority ethnic nationalities, among which: Kachin, Kayah (Karenni), Karen, Chin, Burman, Mon, Rakhine, Shan, Kaman, or Zerbadee, live mainly in the border areas and hills of the country (Chingchit, Makisaka, Barron, Bernard, 2017: 106). About 90 percent of the 50 million population of Myanmar is Buddhist, while the Muslims represent a religious minority of only 4 percent of the population. The Rohingya represent the largest group of Muslim minorities. They are located in Rakhine State[2], a region characterized by poverty and poor infrastructure, situated on the western coast of Myanmar, bordering Bangladesh to the north. According to estimations, there are around one million Rohingya living in Rakhine State, the majority being concentrated in North Rakhine[3]. Their language is distinct to other languages spoken in Rakhine State and throughout Myanmar and it is similar to Chittagonian language, which is a dialect of Bangladesh (Mannan, 2017: 35-36).

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[1] In 1989, the ruling military government changed the name from Burma to Myanmar. However, most people continue to use both names interchangeably, *Myanmar* being the literary, written name of the country and *Burma* being more colloquial.

[2] Rakhine State corresponds to the historical Kingdom of Arakan.

[3] *Myanmar Rohingya: What you need to know about the crisis*, in BBC News, 23 January 2020, [https://www.bbc.com/news/world-asia-41566561], accessed in January 2021.

Rohingya Muslims have been subject to extreme violence and discrimination, they have been marginalized, persecuted and abused not only by the Buddhists living in the Rakhine State, but also and especially by the Myanmar's government. Over the years, the conflicts between the two communities, amplified by the military's interventions, often led to serious ethnic clashes, which turned the old region of Arakan into a bloody battlefield. This paper will examine the elements that led to this Rohingya crisis and all the aspects that influenced the Myanmar's authorities to act in the way they did and still do against the Rohingya. In the first part of this paper, I will analyze the historical background that shaped the present day situation in the Rakhine State, then, in the second part, I will present the long history of severe discrimination, the numerous restrictions the Rohingya were subject to and the unimaginable horrors they have experienced. In the third part of this paper, I will present the position of the International Community and the Myanmar government's reactions to the decision of the International Court of Justice from 2020. In the fourth part, I will analyze the three dimensions of this crisis: religious, geopolitical and economic, showing that the Rohingya are only poor victims of a corrupt State and of its business interests.

Historical background

Before analyzing the Myanmar's colonial period, which is considered to be the starting point in the Rohingya crisis, it is important to mention the long history of this minority in the Rakhine State. The Rohingya are followers of Islamic traditions, they are descendants of Muslims groups who have been present in the region for centuries. In this sense, the term *Rohingya* would be the historical name for the Muslims living in the Arakan (Rakhine) region, the term deriving from the old name of the Rakhine State, originally known as *Rosanga*. It was discovered that both Hindu and Muslim Bengalis living in *Rakhaing* even since the sixteenth century used to call themselves *Roainga* (Charney, 2005). Therefore, the use of the term Rohingya, because of its historical connection to the indigenous population of the Rakhine State, is extremely contested in Myanmar. The majority of the Buddhist population rejects this terminology and prefers to refer to the Rohingya using the term *Bengali* (originally from present-day Bangladesh), considering them illegal immigrants, with no cultural or religious bonds to Myanmar and with no legitimate claim to reside in the state (Mannan, 2017: 35-36).

In order to fully understand this Rohingya crisis, we need to look closely into the country's past, into its colonial period and try to observe how this period influenced the country's decisions and its policy during the years that followed its independence. In this sense, the historical background of Myanmar is relevant to our understanding of the Rohingya situation as it gives an insight into the root of their discrimination. Because of the rich natural resources of the country, Burma began to attract the British starting with 1824. At the end of the three Anglo-Burmese wars (1824–1826, 1852–1853, and 1885), Burma became part of the British Commonwealth. In order to encourage a great number of people from across the Indian Empire to come into the region and work in the fertile Arakan fields, the British put in practice an *open door* immigration policy, which determined many labourers from today's India and Bangladesh to migrate into the region (Chan, 2005: 399). This increased migration was roughly criticized by the Buddhists and it eventually led to the emergence of the Burmese nationalism. This nationalism intensified following the events that occurred during WWII and immediately afterwards. Under Japanese occupation, Buddhists and Muslims fought in different camps: Buddhists

in Arakan were recruited to fight on the side of the Japanese while the local Muslims were used by the British in their fight against the Japanese forces (Rosenthal, 2019).

The conflictual situation between the two major religious groups escalated after Myanmar's independence in 1948. The country struggled with armed ethnic conflict and political instability. Shortly after the independence, Rohingya Muslims mobilized and demanded autonomy of the region of Rakhine, but with no success, as their rebellion was strongly pushed back by the government (Mahmud, Md Khaled, Fariba, 2019: 3319). This rebellion was cruelly punished by the authorities in the following years. Therefore, although post-war Burmese independence recognized the Rohingya's indigenous status, things started to change dramatically for the Rohingya after the 1962 military coup in Myanmar. In 1962, the army seized power from the civilian government and set out violent campaigns against the Rohingya population. Beginning with the 1970s, the Rohingya had to suffer rape, detention, destruction of mosques and villages, and seizure of their lands. Hundreds of thousands Rohingya fled across the border to Bangladesh and became refugees. The Muslim population remaining in the Rakhine State were confined by the security forces to their villages, obliged to live in improper camps, with no freedom of movement and deprived of the basic rights (Head, 2018).

The stateless Rohingya

Though they have been living in the South East Asian country for generations, the majority of Rohingya in Myanmar are stateless[4], deprived of citizenship. The 1982 Citizenship Law[5] does not include them on the list of 135 recognized national ethnic groups, as the country considers them migrants settled in Myanmar during the colonial rule. Therefore, according to this 1982 Citizenship Law, a Rohingya and any other ethnic minority is eligible for citizenship only if he/she can provide proof that his/her ancestors have lived in the country before the British colonization, meaning prior to 1823. Because of the impossibility to obtain the adequate documentation and the right papers (often unavailable or denied to them), meant to prove their ancestry in Myanmar, the vast majority of Rohingya became stateless Muslims, migrants considered to have settled in Myanmar only after the Anglo-Burmese Wars and during British colonialization.

Not being eligible to full citizenship, Rohingya Muslims, instead of obtaining the National Registration Certificate, given to all categories of Myanmar citizens above the age of 15 (Nithya, 2018: 2), received some identity cards called *white cards*, cards that offer them the status of *temporary citizens*. These *white cards* confer them limited rights, meaning that they need to have the government permission in order to travel outside their villages, to get married or have children[6]. Although, at the beginning, these *white cards* offered Rohingya the right to vote, in February 2015, Buddhist nationalists protested to this Rohingya's right and put pressure on the president at that time, Thein Sein, who canceled their temporary identity cards and along with them their right to vote.

[4] The 1954 Convention Relating to the Status of Stateless Persons defines a stateless person as someone "*who is not considered as a national by any state under the operation of its law*", available at: [https://www.unhcr.org/ibelong/wp-content/uploads/1954-Convention-relating-to-the-Status-of-Stateless-Persons_ENG.pdf]. This definition is now part of customary international law.

[5] Burma Citizenship Law 1982, available at: [http://www.refworld.org/docid/3ae6b4f71b.html].

[6] *Rohingya Quest for Citizenship in Myanmar A Fact Finding Mission Report*, published by South Asians for Human Rights (SAHR), in Sri Lanka, 2018, [http://www.southasianrights.org/wp-content/uploads/2018/05/Report_of_FFM_on_Rohingya.pdf], accessed in January 2021.

Consequently, the 2015 elections had no Muslim parliamentary candidate (Albert, Maizland, 2020).

Citizenship is a legal status that gives a person the right to live in a state and to be under the protection of that state. Besides this legal status, citizenship also implies a feeling of identity, of *belonging*, it implies social relations of reciprocity and responsibility[7]. On the other side, lack of citizenship brings about implications at multiple levels, as those deprived of citizenship are not entitled to be part of civil service, they are deprived of the basic rights and of the security that a state offers to its citizens. Consequently, they become subject to abuses, to extreme violence and they suffer great losses and discriminations: loss of one's home, loss of government protection, loss of the right to movement, opinion, freedom, education and eventually life.

Hannah Arendt, in her book *The Origins of Totalitarianism (1968),* observed that the greatest problem is not that stateless people are deprived of specific rights, such as the right to life, liberty, pursuit of happiness, freedom of opinion. Their *rightlessness* is far more worse as it consists in the non-existence of any laws for them and in their not belonging to any community. There is no place where their opinions become significant and their actions effective (Arendt, 1968: 296). Once people became stateless, they lack the very *right to have rights*, as this supreme *right* can be achieved only in a political community in which people can transcend their characteristics given at birth, where they acquire recognition and become equal within a group, through their actions and opinions. "We are not born equal; we become equal as members of a group on the strength of our decision to guarantee ourselves mutually equal rights" (Arendt, 1968: 301).

In a world that has become a "completely organized humanity", being deprived of home and of political status means being expulsed from humanity (Arendt, 1968: 297). This expulsion, this alienation and marginalization of the Rohingya community exposes them to the greatest tragedies. The moment they lost their citizenship, the moment they were deprived of a particular socio-political identity, Rohingya ceased to be treated like human beings and became victims to a wide range of human rights violations: restrictions on freedom of movement, lack of access to livelihood, food, health care and education. The Rohingya's statelessness leaves them vulnerable, as they belong to no system that is meant to protect them. They become a target for extortion and their own confessions expose us to a world of oppression and unimaginable horrors, where human beings are being beaten, raped, abused, displaced and killed by the very system supposed to offer them protection:

"After entering our home, the army raped my two sisters, 14 and 17 years old, before the eyes of my elderly parents. They were raped collectively by at least eight army men. They had severely beaten my parents prior to raping my sisters." (a 22-year-old resident of Myaw Taung) (Canal, 2017)

"I was at home with my 13-year old uncle, when the army broke into the house […] They beat us with sticks, metal rods and kicks. We were crying, pleading for mercy[…]We were dragged out of the house, which was set on fire. My uncle, who attempted to flee was caught, beaten and thrown into a burning house." (Canal, 2017)

[7] *Citizenship: What Is It and Why Does It Matter?*, 28 March 2011, [https://migrationobservatory.ox.ac.uk/resources/primers/citizenship-what-is-it-and-why-does-it-matter/], accessed in January 2021.

The 1982 Citizenship Law was the final act of a long series of discriminations against the Rohingya and it embodied the deep-rooted hatred against this minority. Indeed, even before 1982, starting with the 1970s, the Rohingya have been target of violence perpetrated by both the state as well as by Buddist nationalist groups. During the Operation King Dragon, launched in 1978 by the military government, the Rohingya were subject to all forms of persecutions: arbitrary arrest, torture, rape, kidnapping and even death. To escape the extreme violence they faced, 200,000 Rohingya deserted their homeland and took refuge in Bangladesh. In 1991, after a second military operation, another 200,000 Rohingya crossed Myanmar border and fled again into Bangladesh (Akins, 2013).

The conflicts between the Buddhists and the Rohingya Muslims in the Rakhine State began to escalate starting with 2012 and they became more and more radical and violent throughout the years, with the emergence of the Arakan Rohingya Salvation Army in 2013 (ARSA), formed by members of the persecuted Rohingya. The unfortunate incident from June 2012, when a young Buddhist woman was raped and murdered by three Muslims, determined the local Rakhine activists to take action against the whole Muslim community from the Rakhine State: Rohingya homes were burnt, 280 Rohingya people killed and tens of thousands displaced. Myanmar government intervened in the conflict and declared a state of emergency in Rakhine, allowing the military to step in, in order to secure the protection of the country from terrorist attacks. The aftermath of this military intervention was catastrophic for the Rohingya: 650 Rohingyas killed, 1,200 missing and more than 80,000 displaced (Rahman, Anusara, Chanthamith, Hossain, Al Amin, 2018: 13-14).

Another attack from October 2016 against the Myanmar-Bangladesh Border Guard Police, that caused the death of nine Myanmar police officers, determined Myanmar military to intervene again. Although the attackers proved to be ARSA insurgents, Myanmar army engaged in indiscriminate violence against Rohingya villages: places of cultural significance to the Rohingya population were deliberately destroyed, houses were burnt and educated Rohingya members were arrested[8]. The government of Myanmar justified each time the military's persecution as the country's right and duty to protect its citizens from terrorist attacks and foreign intruders.

Claiming they were carrying out campaigns in order to fight against the ARSA terrorists so that stability in the country's western region could be reinstalled, Myanmar's security forces committed serious human rights abuses: indiscriminate killings of women and children (at least 6700 Rohingya were killed among whom 730 were children who were under the age of five), burning of Rohingya villages, torture, sexual violence, forced displacement, destruction of property and livelihood. Following these abuses, the conflict between the Rohingya and the Myanmar's security forces intensified and in 2017, the world witnessed one of the largest refugee crises in Southeast Asia: approximately 725,000 Rohingya sought asylum in southern Bangladesh, in the Cox's Bazar refugee camps[9], another 40,000 took refuge in India, 5,000 in Thailand, 150,000 in Malaysia, 1,000 in Indonesia, 350,000 in Pakistan, 10,000 in UAE, and 200,000 in Saudi Arabia,

[8] *Rohingya Quest for Citizenship in Myanmar A Fact Finding Mission Report* , published by *South Asians for Human Rights* (SAHR), Sri Lanka, 2018 [http://cgsdu.org/wpcontent/uploads/ 2019/03/Report_of_FFM_on_Rohingya.pdf], accessed in January 2021.

[9] *Ibidem.*

according to a report by Al Jazeera Channel[10]. The Rohingya exodus became the largest one in the 21st century.

The stateless Rohingya's tragedy is amplified by the fact that, because of their depravation of nationality, they are not recognized and welcomed anywhere. The discrimination they are subject to in their home state extends beyond the borders of this state. Not only they lost their homes, but also this statelessness made impossible for them to find a new one. In order to prevent this mistreatment of human beings, the international community assembled a set of guidelines, laws and conventions to ensure the adequate treatment of refugees and protect their human rights. Therefore, in July 1951, a diplomatic conference in Geneva adopted the Convention relating to the Status of Refugees. The 1951 Convention[11] clarifies the definition of a refugee and it defines the legal obligations of the states who decide to sign the document. Unfortunately for the Rohingya, Bangladesh has not acceded to the 1951 Convention or its 1967 Protocol, so there is no law that regulates the administration of refugee affairs in Bangladesh or guarantees the rights of refugees. This situation leaves the Rohingya exposed to serious restrictions and risks inside the refugee camps: no freedom of movement, no permission to work, no access to education, exposure to abuse and exploitation, lack of adequate health services and, in some cases, drug shortages, all these elements leading to a climate of despair[12].

Despite all these abominable living conditions and despite the "arrangement" between Bangladesh and Myanmar on the "return of displaced persons from the Rakhine state,"[13] refugees still refuse to return to Myanmar. They say that if they were to go back, they would do so only if they received assurances of safety and security, return of their property, freedom to practice their religion, as well as accountability and justice for the atrocities committed against their men, women and children.

Myanmar's policy towards Rohingya Muslims and the position of the International Community

Beginning with 2010, after years of military rule, Mynamar headed towards a gradual liberalization that ultimately led to the installation in 2016 of a civilian government led by veteran opposition leader Aung San Suu Kyi[14]. Aung San Suu Kyi, a human rights activist and Nobel Peace Prize winner, is the daughter of Aung San who led the Burmese Liberation Army in the Second World War and won independence from the British. After spending 20 years under house arrest and after years of fighting for democracy in Myanmar, she returned to politics in 2010 and she succeeded together with her party, the National League for Democracy (NLD), a great electoral victory in 2015. However, because of the 2008 Constitution, the military remains in power, still controlling the operations of the armed forces, security apparatus and bureaucracy. It continues to appoint a quarter of the Parliament and many key institutions, such as: Defence, Border

[10] *Who are the Rohingya?*, April 2018, [https://www.aljazeera.com/features/2018/4/18/who-are-the-rohingya], accessed in January 2021.

[11] *The 1951 Refugee Convention and 1967 Protocol*, UNHCR, the United Nations agency for refugees, Available from : https://www.unhcr.org/uk/1951-refugee-convention.html, accessed in January 2021.

[12] *Bangladesh*, [https://www.unhcr.org/474ac8da11.pdf], accessed in January 2021.

[13] *Rohingya crisis: Bangladesh and Myanmar agree repatriation timeframe*, 16 January 2018, [https://www.bbc.com/news/world-asia-42699602], accessed in January 2021.

[14] *Myanmar country profile*, 3 September 2018 [https://www.bbc.com/news/world-asia-pacific-12990563], accessed in January 2021.

Affairs and Home Affairs, remain under the control of the Commander-in-Chief (Paddock, 2018). Aung San Suu Kyi was not allowed to take control of the government after winning the 2015 elections, instead, she was given the title of State Counsellor and became Minister of Foreign Affairs.

Fearing the emergence of separatist movements inside the country, as there had been the case with the Rohingya from Rakhine before the 1962 military coup, the Myanmar military together with the State Chancellor, Aung San Suu Kyi, carry out violent campaigns against this minority, claiming to fight against the ARSA terrorists. They refuse to recognize the Rohingya as an ethnic group, they reject all accusations and abuses against the Rohingya and they restrict access to the Rakhine State for journalists and aid workers (Nithya, 2018: 7-8). Moreover, the government of Myanmar is using the religious dimension in order to manipulate people to act with violence and hatred against the Rohingya Muslims.

Following the 2017 events, the international community declared Rohingya the "most persecuted minority in the world" (UNHR, 2017). The Secretary General of the UN, António Guterres, accused Myanmar military of mass killings with "genocidal intent"(Mahmud, Md Khaled, Fariba, 2019: 3314), demanding the State Chancellor, Aung San Suu Kyi, and the country's security forces to put an end to the violence. Several rights groups, such as Amnesty International and Human Rights Watch, have also criticized the ethnic cleansing going on in Myanmar against the Rohingya. The US urged Myanmar's military to respect the rule of law and to stop the violence against the civilians from all communities, and the UK has suspended training courses for the Myanmar military (Nithya, 2018: 8).

In November 2019, the Gambia, acting with the support of the Organization of Islamic Cooperation which includes 57 member states, used Article IX of the Genocide Convention and filed a lawsuit at the International Court of Justice (ICJ) against Myanmar, accusing the country's army of launching "clearance operations" in Rakhine and claiming it was committing "an ongoing genocide against its minority Muslim Rohingya population"[15].

"The aim is to get Myanmar to account for its actions against its own people: the Rohingya. It's a shame for our generation that we do nothing while genocide is unfolding right under our own eyes," (Gambia's Justice Minister, Abubacarr Tambadou, at a news conference at The Hague, Netherlands) (Krishnankutty, 2019)

The panel of 17 judges at the International Court of Justice voted on 23 January 2020, unanimously, to order Myanmar to take "all measures within its power" to prevent genocide and declared that the country had "caused irreparable damage to the rights of the Rohingya" (Swart, 2020). The measures imposed by the ICJ are binding and not subject to appeal. However, the ICJ has no way of enforcing them. What the international community can do at this point is to put political pressure on Myanmar following this ICJ decision.

Although Western nations and humanitarian groups recognize that Rohingya is among the world's most persecuted minorities, the government of Myanmar and the

[15]*The Gambia Files Lawsuit Against Myanmar at the International Court of Justice*, November 2019,[http://globaljusticecenter.net/press-center/press-releases/1178-the-gambia-files-lawsuit-against-myanmar-at-the-international-court-of-justice], accessed in January 2021.

majority of its population consider Rohingya as foreigners with separatist intentions that threaten the security of their country. At the International Court of Justice in The Hague, in December 2019, Aung San Suu Kyi, once a hero of democracy, defended her country against accusations of genocide and accused the foreign observers of exaggeration. Moreover, during her discourse, she refused to use the word *Rohingya*, adhering to her government's position that no such ethnic group exists (Simons, Beech, 2019). Internationally, Aung San Suu Kyi has been roughly criticized for not having stood up for the rights of the oppressed Rohingya, after years of insisting that human rights are a universal birthright, and for her decision to support and to justify the crimes of the Myanmar military[16].

The country's Independent Commission of Enquiry (ICOE) carried out its own investigations and concluded that the Myanmar security forces committed "serious human rights violations, and violations of domestic law", but the commission found no evidence of genocide[17]. Whether the government admits or not the existence of a genocide, the International Community demands the country to put an end to this conflict, to grant the Rohingya Myanmar nationality, a legal status and civil rights such as the right to education and freedom of movement. Although Myanmar's authorities say they are ready to receive the Rohingya that return from Bangladesh, the refugees are reluctant and they refuse to go back until the Myanmar's government recognizes them as an official ethnic group and until protection and a safe return to their original villages and lands are ensured (Paul, 2019). Unfortunately, there is no evidence that the Myanmar's government is willing to meet these requirements very soon, fact that leaves the Rohingya crisis with no immediate solution.

Religious, geopolitical and economic dimensions

"As a Buddhist, I feel sorry for them. But these Muslims living in Myanmar, we can't just look at their human rights. They're not qualified to be citizens under our citizenship law ... If we let them out, the terrorist attacks will increase in Myanmar. There are 57 Islamic countries in the world, so if the leaders of those countries would take these people into their countries, there will be no problems in our country at all." (Buddhist monk U Par Mount Kha)[18]

The monk's confession above brings in an important factor to the Rohingya crisis in Rakhine State: the deeply-rooted Islam phobia among the Myanmar population. The geographical position of the country, surrounded by Islamic countries: Bangladesh, Malaysia and Indonesia, together with the deeply-entrenched Buddhist nationalism that emerged during the British colonial rule, coupled with sentiments such as disbelief, hatred against the Muslims, transformed the Myanmar Buddhist society, traditionally perceived as peaceful and harmonious, into an extremely violent one.

[16]*Aung San Suu Kyi: Myanmar democracy icon who fell from grace*, January 2020 [https://www.bbc.com/news/world-asia-pacific-11685977], accessed in January 2021.

[17]*Myanmar Rohingya: What you need to know about the crisis*, 23 January 2020, [https://www.bbc.com/news/world-asia-41566561], accessed in January 2021.

[18]*The Rohingya: Silent Abuse*, August 2017 [https://www.aljazeera.com/programmes/aljazeeraworld/2017/07/rohingya-silent-abuse-170730120336898.html], accessed in January 2021.

By identifying themselves as Rohingya, the ethnic Muslims from Rakhine group claim their connections and ties to the region. They created their own identity based on their historical journey throughout the centuries and based on their ancestors' settlement in the Arakan State. Therefore, by denying the Rohingya name, Myanmar government denies their history and their identity, considering them a recent invention created for political reasons, aimed to legitimize the Rohingya's possible fight for autonomy. Stripped of their identity and of their name, subject to many forms of discrimination, they are deliberately excluded from being citizens of Myanmar. In this violent exclusion and marginalization, some see the country's intention to build a mono-religious nation (Ullah, 2017).

However, the Rohingya crisis is not only about religion. A fight for resources and development of Myanmar makes matters worse for the Rohingya. Since the 1990s, the military has been taking away land from small landholders from different ethnic and religious groups without giving any compensation. In 2011, Myanmar instituted economic and political reforms, which turned Myanmar in "Asia's final frontier" and opened the country up to foreign investment. Since 2011, foreign investors entered the country bringing about their "development" projects: military base expansions, natural resource exploitation projects, agricultural projects and extraction, all to the detriment of the Myanmar farmers, who have become poorer or even lost their lands (Sassen, 2017).

Coastal areas of Rakhine State, one of the poorest of Myanmar's states but rich in natural resources, are of strategic importance to both India and China, countries neighboring Myanmar and both in search for such natural resources. In Rakhine State, Chinese and Indian interests turn around the construction of infrastructure and pipelines. China National Petroleum Company (CNPC) began operations in September 2013 for a transnational pipeline connecting Sittwe, the capital of Rakhine, to Kunming, China, the pipeline being completed in August 2014[19].

Seen from this angle, we can easily make connections between the economic and political reforms from 2011 and the series of violent conflicts that shattered the Rakhine state beginning with 2012. Therefore, this geopolitical dimension forces us to put questions about the Myanmar government's real reasons for the persecutions of the Rohingya. Forcing them to flee and leave their houses behind means freeing up land and water for further investments. Indeed, the reality is that a third of Myanmar's vast forests are gone and, with the purpose of further development, the government has allocated millions of hectares, including a significant allotment in Rakhine state[20]. The religious conflict and the hatred against the Rohingya, sustained and amplified by the government, prevent Myanmar population from interfering with the government's business and from putting pressure on it in order to stop evictions of all smallholders. Therefore, the religious focus has seized the attention of the national and international community, leaving other important dimensions of the conflict away from the public debate.

Conclusions

The tragedy of the Rohingya is that they have become collateral victims of a larger political struggle, victims of colonization and victims of a long, historical ethnic

[19] Sino-Myanmar Gas Pipeline, in Petroscanz Oil and Gaz [http://www.petroscaninspection.com/sino-myanmar-pipelines-latestpost-detail-32.aspx], accessed in January 2021.

[20] *Religion is not the only reason Rohingyas are being forced out of Myanmar*, September 2017, [https://theconversation.com/religion-is-not-the-only-reason-rohingyas-are-being-forced-out-of-myanmar-83726], accessed in January 2021.

conflict going on in Myanmar. What is surprising about this Rohingya crisis is the existence of some paradoxes that characterize it and amplify at the same time its dramatic dimension.

Peace and justice, but not for all peoples? Aung San Suu Kyi, a human rights activist, admired by people around the world, winner of the Nobel Peace Prize in 1991, has dedicated many years of her life fighting for democracy in Myanmar. Nevertheless, when in position to react and to do something for the abused ones, she refused to speak out, to stand by the Rohingya and to ease off their plight. Once on the side of the unfortunate and weak ones, now on the side of the strong ones, of those who had previously imprisoned her, she managed to destroy, at the international level, her image of peace icon and symbol of human rights.

Human rights, but for who? Deprived of their citizenship, the stateless Rohingya have nothing left but their humanity. Once they are nothing more but human beings, they are being stripped of their human rights. Although the Rights of Man are supposed to be inalienable, in reality we notice that these rights become *alienable* once they are outside the political context. Unfortunately, the Rohingya have found themselves caught in one of the most devastating consequences of this *human rights* paradox.

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COMPLICATED RELATIONS BETWEEN ARMENIA AND AZERBAIJAN IN THE CONTEXT OF RELATIONS WITH THE EU

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Abstract. *Geographically and geopolitically, Armenia and Azerbaijan are located in the South Caucasus region or the Transcaucasia region, as it is often called. The geopolitical situation in this region is very dynamic, characterized by politico-military tensions and the clash of interstate and international interests. The South Caucasus region and the Black Sea and Caspian subregion are of major importance, given the transit of energy resources from the Caspian Basin and Central Asia.*

Armenian-Azerbaijani relations constitute the main problematic direction in the foreign policy of both Armenia and Azerbaijan. From a legal point of view, these relations are practically absent, as both neighbouring states are neither at peace nor at war, there are no diplomatic, trade and economic relations between them.

Nagorno-Karabakh is a dispute over the province's status as a major source of tension between the governments of Armenia and Azerbaijan and the leadership of the self-proclaimed republic of Nagorno-Karabakh, in the mediation of which other international actors got involved, such as OSCE, the Minsk group consisting of France, the Russian Federation and the USA. In conclusion, it should be noted that the border of the Nagorno-Karabakh region, about 100 kilometers, is one of the most dangerous militarized areas in the vicinity of Europe.

Keywords: *Armenia, Azerbaijan, Nagorno-Karabakh, European Union, Russian Federation*

1. Introduction

Geographically and geopolitically, Armenia and Azerbaijan are located in the South Caucasus region or the Transcaucasia region, as it is often called. Transcaucasia is a geopolitical region located on the border between Eastern Europe and Southwest Asia, (Mulvey, 2000) in the southern part of the Caucasus Mountains, stretching from the southern border of Russia to Turkey, including the territories of Georgia, Azerbaijan and Armenia.

The geopolitical situation in this region is very dynamic, characterized by politico-military tensions and the clash of interstate and international interests. The South Caucasus region and the Black Sea and Caspian subregion are of major importance, given the transit of energy resources from the Caspian Basin and Central Asia (Галстян, 2011: 127). Thus,

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Azerbaijan and Armenia are in the centre of the geopolitical interests of the world and regional powers, given the strategic geographical location in the Caspian Sea region.

2. The geopolitical context and the interests of Armenia and Azerbaijan

Armenia

In the geopolitical context, Armenia is a small country, whose security and economic development depends on foreign relations. Armenia's geopolitical position is quite difficult because some neighbouring states have an unfriendly policy towards it. Armenia's role and place on the geopolitical picture of the 21st century are conditioned by the complex history of the Armenian people.

After the dissolution of the Union of Soviet Socialist Republics (USSR) and the restoration of the independence of the Republic of Armenia, the country was drawn into the Nagorno-Karabakh conflict, which dictated its foreign policy agenda, as the issue of conflict resolution remained a key area of Armenia's foreign policy (Атоян, 2015: 98).

Of special interest to Armenia is the Russian Federation. The Russian Federation is a strategic partner of major importance for Armenia. Of all the three states in the South Caucasus, Armenia has the closest economic and politico-military relations with Russia. Thus, under the current conditions, relations with Russia are strategic for Armenia's national security. According to Armenia's National Security Strategy 2020, Armenia's foreign policy priorities and the expansion of strategic cooperation relations with the Russian Federation in the political, trade, economic, military, cultural and humanitarian fields are among the top priorities (National Security Strategy of the Republic of Armenia 2020).

It is obvious that Armenia's decision to join the Eurasian Customs Union was taken, based on the security aspect, the Russian Federation being the guarantor of Armenia's security. In Armenia, complementarity as a principle of implementation of the external security strategy is stipulated in the National Security Strategy of Armenia. (National Security Strategy of the Republic of Armenia 2020).

Armenia's choice to cooperate with Russia is also determined by the fight against threats to territorial integrity in the context of the unresolved conflict in Nagorno Karabakh and the prevention of economic and political isolation in the region (National Security Strategy of the Republic of Armenia 2020).

The military cooperation between Russia and Armenia is close, as since 1995, on the territory of Armenia officially operates Military Base 102 of the Russian Federation, and the Armenian military together with the Russian ones defend the border of the country (Эламирян, 2020). Economically, Russia is Armenia's main trading partner with a share of 27.51% in Armenia's trade in 2019 (Отчёт о внешней торговле между Россией и Арменией в 2019 году, 2020).

It should be noted that Armenia, with strong ties to Russia, often subordinates its foreign policy to Russia's priorities. The country is dependent on Russian economic support and the Russian military presence (the Russians, in the context of the conflict with Azerbaijan, with the approval of Armenia until 2044, maintain more than 5,000 troops at the Gyumri base) (Ionescu, 2014).

Another important factor is that Russia has the largest Armenian diaspora in the world - 1, 18 million, according to 2010 data (Социально-демографический портрет России, 2012: 72). It should be noted that over several years, the two countries have concluded more than 250 interstate, intergovernmental and interdepartmental treaties and

agreements, including the Treaty of Friendship, Cooperation and Mutual Assistance of 29 August 1997, which regulates bilateral relations in all areas of cooperation (Bilateral Relations, Russia). At the same time, to Russia, Armenia is also of interest in the South Caucasus, which is its traditional "outpost" in this region. In addition, Armenia serves as the main basis for resisting NATO and Turkey's entry into the region.

The next priority of Armenia's foreign policy is cooperation with the United States of America in the field of reforms, strengthening democracy and defending human rights. Armenia's geographical and geopolitical position has determined the US interest in this country. The United States is practically the largest donor of humanitarian and technical assistance to Armenia (Bilateral Relations, United States of America). At the same time, the US is the second largest diaspora in the United States. It should be noted that Armenia is also cooperating with NATO, participating in peacekeeping operations in Kosovo and Afghanistan.

The cooperation with the European Union (EU) is in third place in the list of foreign policy priorities in Armenia's 2020 National Security Strategy. Cooperation relations between Armenia and the EU are based on the Comprehensive and Enhanced Partnership Agreement, signed in November 2017 and provisionally implemented in June 2018, pending ratification by all EU Member States (Jiráček, Carmona). This agreement deepens bilateral relations in various fields, while still honouring Armenia's membership within the Eurasian Economic Union (EAEU).

The European Union is the second largest trading partner after Russia and accounts for about 20% of Armenia's total trade (2019 data) (European Union, Trade in goods with Armenia). EU support to Armenia comes mainly under the European Neighborhood Instrument, i.e. over EUR 200 million in the period 2017-2020, and as a response to the COVID-19 pandemic, EU support has been substantially restructured and a total amount of EUR 92 million has been allocated to meet current needs. At the same time, the Eastern Partnership opened for Amenia several perspectives of collaboration, bringing the country closer to the European political and economic model.

Armenia's interest in participating in the Eastern Partnership was due to a number of factors (Prioritățile Parteneriatului dintre Uniunea Europeană și Armenia, 2017: 5-12) such as:

- Worsening relations between Russia and Georgia as a result of the conflict in South Ossetia have negatively affected the economic situation in Armenia;
- The cessation of relations between Russia and Georgia has also called into question Armenia's energy security. Due to the 2008 conflict, Georgia has reduced the supply of Russian gas to Armenia. Given that one of the main areas of cooperation between the EU and partner countries is the improvement of energy security mechanisms, Yerevan officials understood that it is quite important to participate in the EaP Program;
- The development of integration processes with the EU corresponded to Armenia's interests in diversifying the country's external economic activity;
- Deepening cooperation between Armenia and the EU was seen as necessary to balance political, energy, telecommunications and banking dependence on the Russian Federation.

  Given the geographical position, the blockade and the policy of isolation from Turkey and Azerbaijan, the development of relations with neighbours such as Georgia and Iran is of particular importance to Armenia. Economic cooperation between Georgia and Armenia largely includes the transit of goods from Russia to

Armenia and vice versa, passing through the territory of Georgia. However, Georgia is not a strategic partner for Armenia. Armenia is a member of the Eurasian Economic Union, the Collective Security Treaty Organization and a strategic partner of Russia, and Georgia in its turn aims to get closer to the EU, NATO and has a strategic partnership with Turkey and Azerbaijan (Минасян, 2020). In this sense, the political visions of these two countries are different.

It should be noted that the Armenian diaspora, which is very large in the world, is of great importance for Armenia's foreign policy and interests. The Armenian Diaspora, which is about 7 million in the world (Armenian Diaspora Communities), influential people of Armenian origin and various national organizations is an important "soft power" of Armenia.

Regarding other interests and priorities of Armenia, here we can highlight the development of cooperation with France, Germany, Greece, Cyprus, China, India and other countries (National Security Strategy of the Republic of Armenia 2020).

Azerbaijan

The Republic of Azerbaijan is the largest state in the South Caucasus region (86.6 thousand sq. km) and the richest, with a population of 10,067,100 inhabitants (Republic of Azerbaijan). Compared to its neighbouring country Armenia, Azerbaijan's geographical and geopolitical position is very successful. In the context of balancing power in the South Caucasus, Azerbaijan, rich in energy resources, plays an important role in the region. The geographical location of the country on the East-West and North-South energy corridors, at the intersection of major trade routes, offers Azerbaijan a favorable opportunity to become an important center in terms of energy and infrastructure (Мамедъяров).

Azerbaijan's natural resources, in addition to influencing the country's prosperity and people's well-being, are also an important factor in strengthening national security, political independence and the sovereignty of the republic. Azerbaijan's advantageous geographical position is determined by the fact that the country serves as a route for oil and gas transportation from the entire Caspian Basin to the west (Гаджиев, 2019: 99). Azerbaijan is at the center of the geopolitical interests of the major global and regional powers due to its geographical position.

Azerbaijan's strategic position in the South Caucasus region has determined the important role of the country in international, diplomatic and trade relations. Given the historical heritage of the Republic of Azerbaijan and the specifics of the geopolitical position, the multi-faceted and balanced foreign policy strategy was developed, based on national interests, which is still valid today (Мамедъяров, 2017: 18).

Azerbaijan's foreign policy is based on the country's national interests. One of the most important strategic documents in determining the course of Azerbaijan's foreign policy is the 2007 National Security Concept. The National Security Concept describes Azerbaijan's national interests, threats to national security and the main directions of the country's national security policy (National Security Concept of the Republic of Azerbaijan, 2007). Azerbaijan's main directions for securing foreign policy include restoring territorial integrity, integrating into European and Euro-Atlantic structures, and cooperating with international organizations (Аватков, 2020: 121). Geopolitically, Azerbaijan has built a foreign policy based on the logic of a diplomatic oscillation between Russia and the EU, but also between Iran, the USA and Turkey.

Taking a direction towards modernization and intensively developing political, economic and humanitarian relations with the EU, the OSCE, the Council of Europe, NATO, the USA and with several European states, Azerbaijan sees its geopolitical future

in the family of European countries. At the same time, Azerbaijan is developing mutually beneficial and cooperative relations with the CIS states and the Russian Federation (Дарабади). Today, Azerbaijan is trying to fully take advantage of the globalization process for further economic development and prosperity.

Azerbaijan pays special attention to bilateral relations with foreign states, including neighbouring states. In this sense, Azerbaijan's relations with Turkey, which is also a strategic partner, are special and very important. Turkey was the first country to recognize the independence of the Republic of Azerbaijan and has so far provided support in various fields. It is very important for Azerbaijan that the Turkish side has always supported its position in the Nagorno-Karabakh conflict. Between these two countries there are close relations of economic and energy cooperation.

Given the earlier conflict with Armenia over the Nagorno-Karabakh region, Azerbaijan was forced to move even closer to Turkey, to which it felt close in terms of the mutual sympathies inherited from the common Islamic culture and religion. The two states signed the Agreement on Strategic Partnership and Mutual Support in 2010 (Azərbaycan Respublikası və Türkiyə Respublikası arasında strateji tərəfdaşlıq və qarşılıqlı yardım haqqında). Turkey, by this treaty, undertakes to support the Azerbaijanis by any means, including the military. The proximity to Turkey also facilitated some openness to the United States. Russia's military cooperation and geopolitical common position with Iran have led Azerbaijan to further strengthen relations with Turkey as a strategic ally (Gerasymchuk, Matiychyk, Nantoi, Platon, 2013: 29).

Turkey, together with Italy and the Russian Federation, are Azerbaijan's main trading partners (Аббасова, 2017: 76). Important pipelines pass through the territory of Turkey, through which Azerbaijan gas and oil are delivered to Europe (Колесниченко, 2011: 66). Cooperation with Turkey is also very close in the military. To this end, Turkey is providing financial assistance to Azerbaijan in the sphere of defence.

An important direction of Azerbaijan's foreign policy represents bilateral relations with Iran. Contemporary bilateral relations between Azerbaijan and Iran are not simple, but they are developing quite intensively, even if there are several problems. It should be mentioned that in Iran there is the large Azerbaijani diaspora, about 16 million Azerbaijanis (Азербайджанский вопрос в Иране, 2019). Thus, almost 16% of Iran's population constitutes of ethnic Azerbaijanis (Ибрагимов, 2012: 61). Although Iran has close cooperation with Armenia, the country officially supports the Azerbaijani side in the Nagorno-Karabakh conflict.

An important regional partner of Azerbaijan is Georgia. The countries largely cooperate at the regional level in the field of energy, economy and transport. Thus, the main transport routes of Azerbaijani energy resources to Turkey and further to Europe pass through Georgia. According to statistics for 2020, Azerbaijan is Georgia's fourth largest economic partner (Азербайджан четвертый внешнеторговый партнер Грузии в 2020 году, 2021).

Of particular importance to Azerbaijan is the Russian Federation. Azerbaijan is cooperating with Russia on the basis of the 1997 Treaty of Friendship, Cooperation and Mutual Security (Договор о дружбе, 1998). There are close ties between these states in several areas. However, in the bilateral relations of these countries there are also unresolved issues, such as the division of the Caspian Sea (Внешнеполитические приоритеты Азербайджана, 2019).

A strategic partner for Azerbaijan is the United States. Azerbaijan is part of the US-led international counterterrorism coalition and actively supports the fight against terrorism (Внешняя политика Азербайджана: действенные факторы и приоритеты, 2009).

Cooperation with the EU plays an important role in Azerbaijan's foreign policy. Since gaining independence, the country has built cooperative relations with the EU, especially in the field of energy.

Among the important interests of Azerbaijan in the EaP are:

- Energy and energy security cooperation – ensuring a favourable geopolitical climate so that Azerbaijani oil can reach from the Caspian region to the Mediterranean through the BTC (Baku-Tbilisi-Ceyhan) pipeline, which runs from Azerbaijan through Georgia to the Mediterranean region in Turkey, being opened in 2005 and has a capacity of 1 million barrels per day (Baku-Tbilisi-Ceyhan (BTC) Pipeline);
- Transport security;
- Economic development;
- Preservation of the specific position of neutrality of Azerbaijan, without any accession guidelines to either the EU or the Eurasian Customs Union.

3. Armenia's bilateral relations with Azerbaijan and the Nagorno-Karabakh conflict

Bilateral diplomatic relations between Armenia and Azerbaijan are not established (Bilateral Relations). Armenian-Azerbaijani relations constitute the main problematic direction in the foreign policy of both Armenia and Azerbaijan. From a legal point of view, these relations are practically absent, as both neighbouring states are neither at peace nor at war, there are no diplomatic, trade and economic relations between them.

The Nagorno-Karabakh region is an enclave within Azerbaijan. In 1989, the population of the region was about 189,000, of which 76.9% were Armenians and 21.5% Azerbaijanis, and the rest were Russians, Ukrainians and others (Băhnăreanu, 2016: 10). Armenia considers Nagorno-Karabakh (Artsakh) to be a part of historical Armenia (Avakian, 2015: 8).

The roots of the Nagorno-Karabakh conflict are very old, and the contemporary stage of the conflict began in 1988, when the Nagorno-Karabakh autonomous region declared that it would leave the Soviet Socialist Republic of Azerbaijan. On December 28, 1991, Nagorno-Karabakh proclaimed itself a republic, and in the subsequent period it fought for independence with the new state of Azerbaijan. The Azerbaijani side did not accept the declaration, unlike Armenia, and imposed direct presidential control over the enclave. As a result, heavy fighting broke out between Armenian and Azerbaijani forces. The conflict has allowed Karabakh-Armenian forces to regain control of Nagorno-Karabakh, leaving Azerbaijan with about 15% less territory (Межгосударственные отношения Армении и Азербайджана, 2015).

Thus, by 1994, according to some data, more than 30,000 people had been killed and more than one million displaced (Что случилось в Нагорном Карабахе, 2020).

In March 1992, at an OSCE conference, the Minsk Group, consisting of France, the Russian Federation and the United States, was established. After a period of negotiations, on 4-5 May 1994, the delegates of the Commonwealth of Independent States agreed on a ceasefire protocol and the deployment of a peacekeeping force. On July 27, 1994, the agreement was extended indefinitely, with the signing of it by the defence ministers of Armenia and Azerbaijan and the military leader of Nagorno-Karabakh (Что случилось в Нагорном Карабахе, 2020).

After the ceasefire negotiated in 1994, Nagorno-Karabakh exists as an internationally unrecognized region, but supported by Armenia. Since 1994, the Nagorno-Karabakh conflict has been a "frozen" conflict until the resumption of military activities between Armenian and Azerbaijani forces in April 2016 for a period of about 5 days. Although a ceasefire agreement was reached in 1994, Armenia and Azerbaijan frequently accuse each other of attacks in this enclave and along the border between the two states.

The conflict between the two countries escalated in July 2020. Armenia and Azerbaijan have made mutual allegations of ceasefire violations. On September 27, 2020, military actions between the Armenian and Azerbaijani forces were resumed, which continued until November 10, 2020, and several thousand people were killed on both sides. Armenia was the first to declare a state of war, followed by Azerbaijan, but in the latter it was done so only in certain parts of the country. The two states blame each other for this serious deterioration of the situation (Конфликт Азербайджана и Армении, 2020).

The Nagorno-Karabakh conflict is of particular importance to the Russian Federation and Turkey. Armenia's traditional ally in this conflict is Russia. Moscow and Yerevan are very close. Both peoples are closely connected, including through the Orthodox Christian faith. In fact, Armenia is one of the former Soviet republics that are loyal to Russia. Both are part of the Eurasian Economic Union. The two countries are also military partners. Russia has a base in Gyumri, Armenia, and Armenia is a member of the Collective Security Treaty Organization, a post-Soviet military alliance. However, in the Nagorno-Karabakh conflict, Moscow does not position itself as an ally of Armenia, but as a mediator within the OSCE (Armenia şi Azerbaidjanul acceptă încetarea focului în Nagorno-Karabah, 2020).

According to information gathered by the Stockholm International Peace Research Institute (SIPRI) and published in 2020, Russia has been providing all Armenian arms imports for the past five years. In the same period, however, the Russians are the second largest supplier of arms to Azerbaijan, with 31% of imports, after Israel (60%). (Ce se ascunde în spatele conflictului dintre azeri şi armeni, 2020).

Turkey, on the other hand, supports Azerbaijan based on the "two states, one nation" formula. While cultivating ties with Azerbaijan, Turkey has no diplomatic relations with Armenia and the border between the two countries has been hermetically closed since 1993, and Ankara refuses to acknowledge the Armenian genocide. To strengthen military relations with Azerbaijan, Turkey has been involved in recruiting Syrian fighters from Idlib province and equipping the Azerbaijani army with drones that have been used in conflicts in Syria or Libya (Семь вопросов к миру в Карабахе).

Azerbaijan's position was strengthened by its alliance with Turkey, especially considering Erdogan's rule. Ankara and Baku have strong cultural relations, based on the common Turkish heritage. Turkey has started buying less gas from Gazprom and more from Socar. Thus, the mounting tension between the two neighbours in the Caucasus also comes in the context of competition between Turks and Russians in the Middle East and the Mediterranean, Libya and Syria, where their geostrategic interests are divergent. As a result, Azerbaijan and Armenia signed an agreement under Russian auspices to end hostilities in the Nagorno-Karabakh conflict, which marks Azerbaijan's military victories after six weeks of fighting. The agreement entered into force on 10 November 2020.

Under the agreement, Azerbaijan will retain the territory of Nagorno-Karabakh and the surrounding areas that it captured during the conflict. Azerbaijan has also called on Armenian forces to hand over some areas it owns outside the Nagorno-Karabakh

border, including the eastern district of Agdam and the western part of Kalbajar (Армения и Азербайджан очертили границы отношений, 2021).

Armenians will also lose the region of Lachin, where a crucial road connects Nagorno-Karabakh with Armenia. The agreement stipulates that a 5-kilometer-wide area in the so-called Lachin corridor will remain open and be protected by about 2,000 Russian peacekeepers. Shortly after the agreement was announced, thousands of angry protesters gathered in front of the Armenian government headquarters, and hundreds of them stormed the premises, breaking windows and robbing offices, including a council chamber. Thus, after the 6-week war with Azerbaijan in Nagorno-Karabakh, concluded with a ceasefire agreement, Armenia is entering an uncertain period due to internal political unrest and a serious humanitarian situation. This war has been the most violent clash since the ceasefire agreed in 1994 and meant Armenia's loss of control over part of Nagorno-Karabakh and the adjacent Azerbaijani districts it had controlled for 26 years (Jiráček, Carmona, 2020).

Azerbaijan's victory in the six-week war in Nagorno-Karabakh with Armenia, in which it enjoyed unconditional support from Turkey, a faithful ally, further strengthened President Aliyev's position, despite the country's economic difficulties. Following the ceasefire agreement, Azerbaijan regained control of districts adjacent to the Nagorno-Karabakh region that it had not controlled for more than 26 years, as well as part of Nagorno-Karabakh.

Negotiations are needed to identify a lasting solution to this conflict and to clarify the status of the Nagorno-Karabakh region. Meanwhile, Russian peacekeeping forces have been mobilized to monitor the armistice.

4. Conclusions

In conclusion, we can mention that Armenia has tense relations with its neighbours Azerbaijan and Turkey, given the frozen conflict in Nagorno-Karabakh and complicated relations with Turkey. Tense relations with Turkey are old and have their origins in Ottoman rule over Armenia. The atrocities committed by the Ottomans during the First World War left a strong imprint on the Armenian conscience. Turkey has not offered to respond positively to demands for apologies and financial compensation to the victims of what they call "Armenian genocide". Tense relations with Azerbaijan are caused by the territorial dispute over Nagorno-Karabakh.

Armenia has close ties with the Russian Federation and often subordinates its foreign policy to Russia's priorities, being dependent on Russian economic support and military presence. Being dependent on Russia, in the absence of any alternative, Armenia promotes a policy oriented towards Russia, perceiving such a type of dependence as a beneficial protectorate from a great power.

Azerbaijan is a Muslim country that has close contacts with the Islamic world, while being influenced by neighbouring Christian countries oriented towards Western culture. Its position at the intersection of West and East has allowed Azerbaijan to develop a symbiosis of values of both cultures. Azerbaijan wants to benefit from cooperation with the European Union, but also to impose a Russian-style model in its domestic policy.

Moreover, Azerbaijan is implementing a policy of balancing not only between Russia and the EU, but also between Iran, the USA and Turkey. While Turkey is strongly supported by the US, Iran and the Russian Federation are cooperating in the military and political fields, trying to withstand the growing weight of Turkey and the US in the Caspian Basin.

Azerbaijan has chosen Turkey as a strategic ally, and Armenia, in turn, is working closely with Iran, having hostile relations with Turkey. However, the chance for maneuvers is guaranteed to Azerbaijan by the natural resources it has at its disposal.

Azerbaijan can afford a position of 'armed neutrality'. On the one hand, it is close to the EU and the US, providing its natural resources to the European market. On the other hand, it assesses quite realistically the impact of the Russian Federation on European policies and avoids any confrontation with Moscow, although it does not express any desire to develop relations as close as Armenia.

Nagorno-Karabakh is a dispute over the province's status as a major source of tension between the governments of Armenia and Azerbaijan and the leadership of the self-proclaimed republic of Nagorno-Karabakh, in the mediation of which other international actors got involved, such as OSCE, the Minsk group consisting of France, the Russian Federation and the USA. In conclusion, it should be noted that the border of the Nagorno-Karabakh region, about 100 kilometers, is one of the most dangerous militarized areas in the vicinity of Europe.

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THE ROLE OF THE EU IN THE MANAGEMENT OF THE COVID-19 CRISIS

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Abstract. *Although the European Union's actions on the management of the Covid-19 crisis have been harshly criticized by the lack of dedicated mechanisms to protect the health of European citizens, an analysis of EU action in the field of health will give us the opportunity to know and understand the situation created in the European area as a result of the emergence of the Covid-19 pandemic.*

This Article aims to highlight the main actions taken by the EU in the field of health and in the management of the Covid-19 crisis.

Keywords: *Pandemic, Council-19, EU, European Union functional Treaty, Regulation, Decision*

Although belatedly, the European Union (EU) has managed to develop regulatory and financial measures to counter the effects of the health crisis and to stimulate regulatory solidarity between European countries. The EU has reacted angrily to the first signals of the spread of the COVID-19 virus. There were no mechanisms dedicated to the health protection of Europeans and to the rapid, coordinated and unified response to epidemiological threats on this scale. European solidarity between the EU and the Member States, but primarily between the Member States, has been put to the test by the rise of national interest. Some European governments have been overtaken by the rapid transmission of the virus, while others have resorted to uncoordinated action, such as restricting the marketing of medical equipment or circulating between states.

The lack of readily available instruments has generated a wave of creativity from the European institutions. But exceptional measures have only been launched where the EU has specific powers, not restricted by the competences of national authorities (State aid, internal market, public procurement, internal movement of goods, etc.). The 27 Member countries (plus the UK, which is in the process of transition until 31 December 2020) and six non-EU countries participating in the European Civil Protection Mechanism, activated by Italy, have not reacted.

Although the EU has been criticized sharply for not ensuring European solidarity, in reality, the European Treaties do not allow it to act differently (Cenușă D. *Efectele pandemiei*).

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In general, according to Article 6(a) of the Treaty on the Functioning of the European Union (TFEU), the Union has competence to provide support and protection for the purpose of improving human health. The Union cannot support, coordinate or complement the action of EU countries in this area. Legally binding Union acts adopted on the basis of supporting powers may not lead to harmonization of the laws or regulations of the Member States of particular importance is to clarify that there is a specific rule, namely Article 168 TFEU, which, in addition to providing a substantial legal basis for emergency interventions, sets out a general principle of particular importance in this matter, provided that "in definition and also in the implementation of all Union policies and activities, a high level of health protection must be ensured " (*Bruxelles: un plan* ..): Health protection is therefore a prerequisite and a leading role in the European Union's action under the auspices of the precautionary principle. It is noted that, by way of derogation from the general competence of support and in accordance with Article 4(2)(k) TFEU, the Union shares its competence with those of the Member States on common security issues in the field of public health. Although the subsidiarity principle in this area is understood in a particularly restrictive sense by health ministers and Member States, reluctant to see the European Union's influence on their health systems still exists (*Discorso della Presidente von der Leyen* ..).

Although there is no coordinated health system at European Union level, we can talk about a common European policy that goes through various mechanisms and competences, including those relating to the protection of the internal market and tax policies, which offers the European Union the opportunity to intervene in the way it has so far proved more suitable for its compliance: The role of regulator. It follows that the effects are often strong but difficult to see, as they target a programmatic view and address "physiological" situations. In this respect, the European Union's work in the field of public health also goes through the Regulation of standards to ensure an area of competition within the internal market, the Regulation of the countries' tax policies and the dissemination of good practices, development of joint research centers, health strategies and plans and establishment of a Directorate-General for Health and Food Safety (DG SANTE) (*Greer, N. Fahy, S. Rozenblum*).

It is also worth attention to 2014 when the European Medical Corps was established. In fact, the European Medical Corps can be defined as the "European Civil Protection Mechanism" which will be further explored, bringing together all medical response means pre-committed by the States in the European civil protection area. These are emergency medical teams, mobile bio security laboratories and medical evacuation resources made available by 11 States with financial support from the Union, which have so far been deployed for humanitarian missions in Mozambique and Samoa (*Protezione civile ...).*

Despite the shortcomings in direct intervention in the field of public health, the European Union does not have emergency tools. The COVID-19 pandemic is not the first crisis to be tackled at EU level, from the fall of the Gemene towers in 2001 to the SARS epidemic in 2003, through the sovereign debt crisis in 2008 and finally ISIS terrorist attacks in Europe in 2016. Each of these dramatic phases has put an effort on the Union, which has led it to adopt appropriate instruments for resolving future crises. Over time, the European Union has therefore equipped itself with a series of instruments to intervene in the management of disasters arising from the outbreak of epidemics or even pandemics.

The Treaty of Lisbon thus introduced a complementary competence for the European Union in the adoption of actions to support, coordinate and integrate Member

States' actions, between others in the field of civil protection. In this respect, Article 6(f) is the legally-established primary rule for the further development of a real body of legislation attributable to the category of the so-called EU disaster response Law (*Gestri M.*), which aims at addressing disasters or disasters, that is, „any situation that has or may have serious consequences for people, the environment or property, including cultural heritage" (*Decisione del Parlamento europeo e del Consiglio del 17 dicembre 2013*). The disaster response Act consists mainly of three instruments (*Casolari F.).*

Firstly, at the preventive level, the "European Civil Protection Mechanism" introduced by Decision 1313/2013/EU, adopted on the basis of Article 196 TFEU, establishes, among other things, a common competence of the European Union to: (i) support and complement member states' actions not only at national but also at regional and local level in terms of risk prevention, preparedness of civil protection actors in the member states and response to natural disasters; (ii) to promote swift and efficient operational cooperation within the Union between national civil protection services; (iii) and to foster consistency of international action in the field of civil protection (*Decisione del Parlamento europeo e del Consiglio del 17 dicembre*). This provision is capable of constituting the legal basis for legislative intervention under the ordinary legislative procedure by the European Parliament and the Council, thus going beyond previous legislation under which any intervention in this area by the European Union had to be adopted unanimously by the Council, with simple consultation of Parliament. In addition, this rule introduces a means of requesting help from Member States, with the intervention of other States vlude. On the basis of this mechanism, the European Commission decided on 19 March 2020 to create a strategic escort ("rerot EU"), i.e. a common European pool, of emergency medical equipment such as fans, protective masks and laboratory consumables for the EU countries in need (*Public health*).

This escort was financed by 90% by the European Commission and managed by the Emergency response coordination Center, or the so-called Emergency response coordination Center (the 'ICU'), which manages the distribution of equipment to ensure that it is distributed as needed in the affected areas (*Gestione della crisi*..).

The European Civil Protection Mechanism has found its application in the assistance and repatriation of EU citizens worldwide. Secondly, it aims to take active action to combat the current crisis. Article 222(1) TFEU thus provides for the solidarity clause under which the European Union is legally obliged to support any Member State that is the victim of a terrorist attack or a natural disaster, if requested by the Member State. The rule also States that "the Union shall mobilize all the instruments at its disposal, including military means made available to it by the Member States, to assist a Member State on its territory, at the request of the political authorities, in the event of a natural disaster [...] '. Therefore, on the basis of this rule, Member States are obliged to intervene in support of the Member State requesting it by adopting the most appropriate measures. So far, the rule has never been invoked by the Member State. However, despite the lack of a legal obligation to do so, there have been numerous moves of solidarity within the European Union: France donated one million masks to Italy and Germany sent 7 tons of medical materials (including money and anesthetic masks) to Italy and 100 Italian patients were admitted for intensive care (*Coronavirus: solidarietà europea in azione*).

According to the Decision 1082/2013/EU (*Decisione del Parlamento europeo e del Consiglio del 22 ottobre 2013*) introduces a provision on serious health threats, epidemiological surveillance, monitoring, early warning and the fight against serious

cross-border threats to health, including preparedness planning and response in relation to those activities, with a view to coordinating and integrating national policies.

The legal basis for the health dimension is also laid down in Article 168, paragraph 5 of the TFEU. In accordance with Part three of the TFEU entitled „Health, policies and internal action of the Union", a number of instruments, including legislative and intervention instruments, are established with reference to a situation of serious danger to public health or the so-called „Great scourge". The Regulation thus gives the European Commission a wide range of discretion, which, in cooperation with the Member States, can take "any useful initiative to promote such coordination, in particular initiatives aimed at defining guidelines and indicators, to organize the exchange of practices and to prepare the necessary elements for monitoring and periodic evaluation`. The European Parliament, in turn, is fully informed and jointly with the Council "acting in accordance with the ordinary legislative procedure and after consulting the Economic and Social Committee and the Committee of the Regions", may adopt "incentives [...] to combat cross-border scourge, measures on supervision, alarms and the fight against serious cross-border threats to health ". Finally, it should be recalled that the Council can also adopt recommendations on a proposal from the Commission.

In addition, with regard to the instruments mentioned so far, it is useful to bear in mind that the provisions relating to the European Union's internal market, based on the four fundamental freedoms enshrined in the Treaties, i3t is particularly useful in the context of the current health crisis related to the COVID-19 pandemic to support Member States, ensuring efficiency, synergies and, in particular, solidarity within the Union. From the point of view of the free movement of goods, historically the main instrument for the completion of the internal market, it is necessary to note that, following the health emergency related to the COVID-19 pandemic, they have been taken by some Member States. These export restrictions, mainly as regards masks, respiratory devices and other personal protective equipment, appear clearly to be contrary to the prohibition on quantitative export restrictions and measures having equivalent effect laid down in Article 35 TFEU. On the basis of Article 36 TFEU, Member States may adopt prohibitions or restrictions on grounds relating to the protection of human health and life. However, any such measures - genuine derogations from the prohibition laid down in Article 35 TFEU - are interpreted very narrowly in the case-law of the Court and must therefore respect the principles of necessity, appropriateness and proportionality in order to be considered legitimate (*Ex multis, la sentenza del 15 luglio 1982*).

In this respect, all courts prohibit exports without a clearly identified purpose, a reasonable reason and a limited duration will be easily considered disproportionate and therefore banned and subject - where they are not eliminated - to specific infringement procedures. The European Commission has therefore taken action to request an urgent correction of the more than 1300 prohibitions and restrictions adopted by Member States (*Commissione europea, comunicazione su una risposta economica coordinata alla pandemia di Covid-19, 13 marzo 2020*).

According to this, there is, in fact, an obligation for Member States to communicate the national measures they intend to adopt in order to ensure effective exchange of information and coordination within the Union. In order to provide useful guidance to national authorities, the Commission has also published guidelines on border management measures to protect health and ensure the availability of essential goods and services (*Commissione europea, Orientamenti per le misure*).

Finally, it is also worth mentioning that the European Commission has adopted a Regulation implementing Regulation (EU) 2015/479 on the common rules for exports (*Regolamento d'Esecuzione (UE) 2020/426 della Commissione europea del 19 Marzo 2020*). This implementing act is intended essentially to limit the export of personal protective equipment from outside the Union in exceptional cases (authorized by individual Member States), identifying a number of specific products in Annex I. The prohibition is initially valid for a period of six weeks, with the possibility of extension or amendment. In international trade law, such export restrictions are prohibited under Article XI(1) of the GATT 1994. In the present case, the exception referred to in paragraph 2(a) of this provision, which provides for the possibility of introducing restrictions to prevent the lack of food or other essential products for the Member of the World Trade Organization (in this case, the European Union, he was a member as of 1 january 1995).

In this context, in addition to the emergency measure, it is worth attention to the launch by the European Commission of a joint procurement procedure, in an accelerated and shared manner at the level of 26 Member States, To allow the acquisition of the necessary medical supplies from the European Union (*Public health*).

As regards the free movement of persons, by a Communication of 16 March 2020, the European Commission recommended to the European Council, in particular to the Member States which are part of the Schengen area, to temporarily restrict non-essential travel from third countries to the European Union (*Comunicazione della Commissione europea, comunicazione Covid-19: restrizione temporanea a viaggi non essenziali verso l'Unione europea, 16 marzo 2020*). The Commission also suggested that the States concerned discourage the travel of their citizens and long-term residents outside their territories. At the same time, the European Commission has proposed the above guidelines for border management measures. Both acts were approved by the European Council on 18 March 2020. This restriction shall be of a temporary duration of 30 days and shall not apply to citizens of all Member States of the Union and of States associated with the Schengen area (i.e. Iceland, Liechtenstein, Norway and Switzerland) which is outside the territory of the Union and intends to return to their countries of origin. This exemption also benefits third-country nationals who have long-term resident status under Directive 2003/109/EC, as well as a number of specified categories (e.g. medical staff, diplomatic corps, cross-border workers, etc.). Such a coordinated measure on external borders should discourage the maintenance of any internal border controls which risk having a serious impact on the functioning of the internal market characterized by a high level of integration and the daily transit of millions of people. The Commission Recommendation has in fact underlined the need for restrictive application of these exceptional checks at the internal borders of the Schengen area introduced by many Member States in accordance with Article 28 of the Schengen Borders Code (*Regolamento (UE) 2016/399 del Parlamento europeo e del Consiglio del 9 marzo 2016*).

In fact, this Article provides for the specific procedure for re-establishing border controls in cases where immediate action is needed, covering serious threats, public policy or internal security of a Member State The adoption of such measures must be duly motivated and communicated in context to the Commission and the other Member States The Member State concerned may, in specific and justified cases, extend the initial ten-day period for renewable periods of no more than 20 days up to a maximum of two months.

In addition, it is useful to mention that always in the context of the European Civil Protection Mechanism, the Center for coordination and response to emergencies coordinates all actions with EU Member States. To date and since the beginning of the COVID-19 pandemic, the European Civil Protection Mechanism has facilitated the return of more than 20.000 EU citizens to Europe from Wuhan, Japan, Oakland, Morocco, Tunisia, Georgia, the Philippines and Cape Verde (*Direzione Generale*).

In the context of the analysis of EU actions to combat the Covid-19 pandemic, the Commission should also pay attention to the sector that is hard hit by the current health crisis, namely civil aviation. In fact, all operators in the sector handled a large number of reimbursement requests, on the one hand, and, on the other, were forced to cancel many scheduled flights, given the sharp fall in demand. In order to mitigate the economic damage, the Commission has therefore proposed a suspension of the so-called 'use it or lose it' rule, laid down in Articles 8(2) and 10 of Regulation (EEC) No 95/93(*Regolamento (CEE) n . 95/93 del Consiglio del 18 gennaio 1993*), requiring an air carrier to use at least 80 % of its slots at a certain time of the year in order to maintain the right to use these slots in the corresponding period of the following year. The amendment proposed by the European Commission was urgently dealt with by the co-legislators by written procedure and by Regulation 2020/459 (*Regolamento (UE) 2020/459 del Parlamento europeo e del Consiglio, del 30 marzo 2020)* which entered into force on 1 April 2020. The new Article 10bis implies the suspension (at least) until 24 October 2020 of the "use it or lose it" rule with specific reference to the situation created for the overall impact of the COVID-19 pandemic. The suspension was retroactive from 23 January to 29 February 2020 as regards flights operated between the European Union and China or Hong Kong. In addition, the new Article 12a introduces a provision that the European Commission may extend the suspension of the rule by delegated act beyond 24 October 2020. The European Commission is obliged to report to the co-legislators on 15 September 2020 on the application of the suspension following continuous monitoring of the situation, in coordination with Eurocontrol (European Air Safety Organization). This change is certainly welcome and is an example of a rapid, coordinated and effective legislative process between the three institutions of the Union in times of emergency. From a technical and institutional point of view, the possibility for the European Commission to adopt delegated acts to extend the suspension will in fact ensure timely intervention by the European Commission in case of need and, at the same time, scrutiny by Parliament and the Council.

1. In the context of the Covid-19 pandemic, the EU has taken action in the field of competition policy. From a microeconomic perspective, competition policy in the internal market is subject to Articles 107 and 110 TFEU and to restrictive competition agreements. State aid is thus an important intervention instrument of the European Commission's Directorate-General for competition and is intended to prevent States from interfering with the operation through economic aid. To this end, whenever a resource attributed to the emergence of an advantage (financial or economic) to a company which could not receive it under normal market conditions and thereby injurious to competition and trade between Member States, the European Commission may intervene. Such aid shall be prohibited, except in the case of several safeguard clauses. In particular, there are two flexibility instruments provided to the Member States First, paragraph 2(b) of Article 107 TFEU provides for the compatibility of aid to make good the damage caused by natural disasters or other exceptional occurrences with the internal market. In this respect, the rule allows Member States to compensate companies for damage caused by

extraordinary events by taking measures in the air transport and tourism sectors. In addition, paragraph 3(e) of Article 107 TFEU introduces a flexibility clause which States that 'other categories of aid, determined by a Council decision on a proposal from the European Commission', may be considered compatible with the internal market. In applying this provision, the European Commission has adopted some urgent and provisional provisions to allow Member States to make full use of this flexibility for the purpose of supporting the economy. This flexibility clause for the adoption of a temporary framework has been invoked until today only during the 2008 financial crisis (*Comunicazione della Commissione — Quadro di riferimento temporaneo comunitario per le misure di aiuto di Stato a sostegno dell'accesso al finanziamento nell'attuale situazione di crisi finanziaria ed economica (2009/C 83/01), GU C83/1, 7.4.2009).* Specifically, within the temporary framework adopted on 20 March [9], Member States may grant five types of aid: (i) direct subsidies, selective tax exemptions and advance payments - with a ceiling of EUR 800.000 per company - for companies facing urgent liquidity needs; (ii) State guarantees for bank loans taken out by companies to enable banks continue lending to commercial customers in need; (iii) subsidized public loans to companies with favorable interest rates to cover immediate working capital and investment needs; (iv) guarantees to banks channeling State aid to the real economy by exploiting the existing lending capacities of banks and using them as a support channel for small and medium-sized enterprises ("SMEs"); and (v) short-term export credit insurance.

This temporary framework aims at pursuing a dual objective. On the one hand, allow Member States to act quickly and effectively to support citizens and businesses, in particular SMEs, who are experiencing economic difficulties due to the COVID-19 epidemic. On the other hand, identification of a concrete case study on aid falling under the temporary framework to examine any support measure taken by Member States in the light of a general framework that takes account of a future perspective (*Arbia E.).* In this respect, the main concern, as reflected in the statement by Margrethe Vestager, Executive Vice-President responsible for competition policy (*Discorso del Vice presidente esecutivo Margrethe Vestager*), is to avoid that 'this support to companies in a Member State does not harm united europeans". In this respect, Executive Vice-President Vestager says "we need to be able to rely on the European Single market to help our economy overcome the epidemic and recover strongly afterwards". Several Member States have so far submitted various notifications and have been approved by the European Commission. The second point concerns restrictive competition agreements referred to in Article 101 TFEU which are incompatible with the internal market and therefore prohibited, if they may affect trade between Member States and if their object or effect is to prevent, restrict or distort competition in the internal market. In this context, according to the Communication of the European competition Network which is an informal group bringing together the different national authorities of the The European Union and the European Commission (*La Commissione europea*).

At EU level, the European Commission and the other European institutions have put forward a series of initiatives aimed at minimizing the financial and social impact caused by the pandemic and mitigating the effects of the global economic slowdown.

On 26 March 2020, at an extraordinary plenary session, The European Parliament has adopted three urgent proposals, which will release funds to Member States to address the economic and social consequences of the COVID-19 pandemic:

1) The EU initiative for investment in response to Covid-19

The initiative aims to mobilize all existing resources from the EU budget to financially support Member States in their immediate response to the crisis caused by the coronavirus. This includes making advance payments, redirecting cohesion funds and assisting Member States in channeling funds as quickly as possible where money is most needed.

The EU initiative will mobilize **€37 billion from the European Structural and Investment Funds** (ESIF), initially set aside for the European Regional Development Fund (ERDF), the European Social Fund (ESF), the Cohesion Fund (CF) and the European Maritime and Fisheries Fund (EMFF) programs. Thus, EUR 8 billion comes from the unused pre-financing that Member States received in 2019 and which should have been reimbursed by the end of June 2020, while EUR 29 billion is co-financing from the EU budget. The use of the Structural Funds will allow healthcare expenditure to be eligible for reimbursement. In this way, Member States will be able to:

• To use the European Regional Development Fund **to help companies cope with short-term financial shocks** related to the crisis caused by the coronavirus.

• To use the ESF to temporarily support national schemes for reducing working time or for partial unemployment, which help mitigate the impact of the shock;

• To allocate funds from the ERDF and ESF **to invest in healthcare systems:** the purchase of health and safety equipment, disease prevention, e-health, medical devices, the safety of the working environment for health professionals and access to healthcare for vulnerable groups;

• To use the EMFF to protect the incomes of the fishermen and aquaculture farmers affected by the crisis.

2) EU Solidarity Fund

This legislative initiative extends the purpose of the EU Solidarity Fund, also including the public health crisis within its scope and defines the specific operations eligible for funding so that economic activity can resume in disaster-stricken regions. Eligible additional operations shall be limited to public emergency operations, including public assistance in the event of health crises and measures to prevent the spread of an infectious disease. For 2020, **EUR 800 million** will be available.

3) Temporary suspension of EU rules on slots at Community airports

This will prevent air carriers from operating empty flights during the pandemic. With this temporary suspension, airlines are no longer obliged to use the planned take-off and landing slots to keep them in the next season. Throughout the summer, from 29 March to 24 October 2020, this will give up the "use it or lose it" rule.

4) other European approaches adopted in the context of the COVID-19 pandemic

In addition to the measures taken by the European Union to mitigate the effects of this pandemic, The Commission announced **that the European Globalization Adjustment Fund** (EGF) could be mobilized to support redundant and self-employed workers, with an amount of **175 million EURO.**

The European adjustment fund could only be used if more than 500 workers are made redundant by a single company or if a large number of workers are made redundant in a given sector.

Fondul european de ajustare ar putea fi utilizat numai în cazul în care peste 500 de lucrători sunt concediați de o singură companie sau dacă un număr mare de lucrători sunt concediați într-un anumit sector.

The EGF can thus co-finance projects which include support measures aimed at: (A) job search; (b) vocational guidance; (c) education, training and retraining; (d) mentoring and training; (e) entrepreneurship and business start-ups.

EGF support may also be provided in the form of training, mobility/resettlement allowances, subsistence allowances, but does not co-finance social protection measures such as pensions and unemployment benefits. In addition, to allow Member States to make full use of the flexibility provided by the State aid rules, as well as to support liquidity provision and access to finance, in particular for SMEs, in the context of the COVID-19 pandemic, the European Commission has adopted, on march 19 a temporary state aid framework.

The framework provides for five types of aid:

• **Direct grants, selective tax advantages and advance payments:** Member States will be able to establish financing schemes of up to 800.000 euros to an enterprise in the form of direct subsidies, reimbursable advances, tax advantages.

• **State guarantees for loans taken out by companies from banks**: Member States will be able to provide state guarantees to ensure that banks continue to lend to customers who need them;

• **Subsidized public loans for companies:** member states will be able to grant loans to companies with favorable interest rates for both investment and working capital needs;

• **Guarantees for banks that direct State aid to the real economy**: Some Member States intend to build on existing bank lending capacities and use them as a channel of support for companies, especially SMEs. Such aid is considered to be direct aid to banks' customers, not to the banks themselves.

• **Short-term export-credit insurance:** The framework introduces additional flexibility as to the way it presents non-marketable risks, thus allowing the State to provide short-term export-credit insurance where necessary (*Strîmbovschi S.*).

The summit in the EU has no less importance

The end of the debate was announced at 5.31 by European Council President Charles Michel on Twitter by a single word: "Deal!" The head of the Belgian Government, Sophie Wilmès, immediately followed on Twitter, announcing euphoric the conclusion of the European agreement, with the figures originally desired: A common budget for 2021-2027 of 1.074 billion and an economic recovery plan of 750 billion. Angela Merkel said she was "happy". This Recovery Plan to get Europe out of the crisis, its creation and around which the negotiations have been conducted has in its midst a direct subsidy program of 390 billion, which will benefit primarily Italy, the EU country most affected by the Covid-19, But the other Mediterranean countries, like Spain, are equally touched. The total of 390 billion subsidies is much less than the 500 billion initially wanted by Germany, France and the EU Commission, but it is more than the 350 that the Netherlands kept insisting is the maximum acceptable. This rebalancing was a great concession to convince the "frugal", reticent countries: The Netherlands, Scandinavia and Austria. The remaining 360 billion will be distributed in loans guaranteed by the EU as a whole.

The negotiations lasted 90 hours, five days of dramas and rioking, and were the longest in the history of the EU. It was obvious from the beginning that it was not only about sharing money, but also about sharing national sovereignty. The adoption of the economic recovery plan also represents a personal victory for Angela Merkel and Emmanuel Macron, who was at its origin. This debt capacity of 750 billion euros excess

Recovery Fund adds to the EU's total budget over the next seven years (2021-2027), which is 1.074 billion euros. All in all: Over 1.800 billion approved after more than four days of exhaustion, to reassure markets and to show that Europe, the world's largest economy, remains United. However, the President of the European Commission, Ursula von der Leyen, expressed regret that some cuts and cuts had to be made in the health field itself. Another concession granted to the "frugals", but which was actually a claim of the majority of the Western countries, was the explicit condition of granting funds to respect the rule of law. The practical, technical and legal way in which this will be done is less important than the political signal sent to those countries, such as Hungary and Poland, which have slipped on an authoritarian, "illite" slope, and continue to benefit from the European financial hand. If no agreement had been reached that would have been acceptable to the countries of the South, the President of the European Parliament, Italy's David Sassoli, had warned that the EU legislature would veto the plan (*Bruxelles: un plan pentru vindecarea UE*).

In order to overcome the COVID-19 crisis, the European Union must strive for solidarity in the face of overcoming problems in the area of health and economy. The European Union has already taken action and continues its efforts at both European and individual Member States.

France was the first country to encourage the European Union to assess the extent of the crisis, calling for the extraordinary European Council (EC) to be convened on 10 March 2020, calling for coordinated action at the borders to avoid difficult situations. In the context of the discussions on the adoption of strategies to combat the Covid-19 crisis, the Heads of State and Government adopted seven measures to coordinate public health efforts, protect European citizens and mitigate the socio-economic consequences of the epidemic:

1. Share medical material (protective equipment, breathing equipment and laboratory equipment) with the creation of the first common stock of medical supplies and the award of joint public contracts for the purchase of personal protection equipment. This also implies a coordinated effort to increase production capacities. At the same time, an authorization was imposed for the export of personal protective equipment outside Europe.

2. Support investigations into the creation of a vaccine against COVID-19 with the mobilization of a budget of EUR 140 million.

3. Unify efforts to allow the return to their countries of European citizens stranded outside the Union.

4. Facilitating the movement within the European Union of goods through priority corridors at internal borders for the supply of medicines and protective materials to hospitals, shops and factories, mainly but also to persons when necessary, in particular border workers and European citizens who comes back to their countries.

5. Responsibility for the crisis by reallocating EUR 37 billion from the EU budget to cohesion policy.

6. Support companies and workers through flexibility in state aid regulations.

7. Suspension of the Stability Pact to allow Member States to withdraw budgetary rules in the face of the pandemic (*La solidaridad europea frente al COVID-19*).

Agreement", European Council President Charles Michel announced on Twitter at 31 (3:31 GMT) on 21 July, 2020. In the outcome of the summit that lasted.... (started on 17 july in the morning). The fund amounts to EUR 750.000 million (around USD 860.000 million) and consists of USD 445.000 million in subsidies and USD 410.000 million in

low-interest loans. The Fund is trying to support members of the bloc to mitigate the economic downturn caused by the 19-covas (*La Unión Europea llega*).

The document is an analysis of the actions taken by the European Union during the coronavirus epidemic and its effects on the economy. The document also reflected additional strategies to address challenges to the European project (*La Unión Europea*).

In this time of crisis, the EU and its Member States are working together and mutually reinforcing, mobilizing resources, delivering protective equipment, stimulating research and supporting our partners worldwide in need.

1. Slowing down the spread of virus. To help limit virus transmission in Europe and beyond, the EU has closed its external borders to non-essential travellers, while still ensuring the circulation of essential goods within the EU through the introduction of green color. It is also discouraged to move European citizens outside the EU. EU countries have agreed to start removing travel restrictions for residents of certain third countries as of 1 July 2020. The European Center for disease Prevention and Control provides rapid risk assessments and epidemiological updates for Europeans.

2. Supply of medical equipment, EU countries have rapid access to the first ever medical equipment pool, rework EU, such as mechanical fans and protective masks. In addition, the EU has launched four large international tenders allowing Member States to jointly purchase equipment and test kits.

3. Promotion of vaccine research. The EU's Horizon 2020 research program funds 18 research projects and 140 teams from across Europe to help achieve a rapid vaccine against COVID-19. The aim is to improve diagnosis, training, clinical management and treatment. The program also provides funding for SMEs and start-ups for innovative solutions to tackle the pandemic through the European Innovation Council Accelerator Program.

The EU has organized an online donor marathon to raise funds for a vaccine. The initiative on the global response to coravirus has delivered a promised EUR 15,9 billion. Governments have committed to ensuring universal access to medicines for the treatment of COVID-19. They also committed to helping to recover communities that have been severely affected by the pandemic in a fair and just manner.

4. Repatriation of EU citizens. EU Member States have worked together to provide consular support and the possibility of repatriation to EU citizens from third countries. More than 625 000 Europeans abroad have benefited from a coordinated return effort with the support of the EU, around 600 000 citizens were brought home. More than 85 000 citizens stranded around the world due to the pandemic were brought home thanks to joint repatriation flights co-financed by the EU budget up to 75%.

5. To stimulate European solidarity. The EU facilitates the deployment of medical teams through the EU Medical Corps so that teams from different Member States can support the health systems most affected by the crisis.

In a spirit of solidarity, Member States have helped each other. For example: Austria, Germany and Luxembourg have made their intensive care units available to Dutch, French and Italian patients in critical condition. Poland, Romania and Germany sent teams of doctors to help treat patients in Italian hospitals. Denmark is sending mechanical fans and equipment to the Italian campaign hospitals. The EU has also approved new rules allowing Member States to apply for financial assistance from the EU Solidarity Fund to cover health emergencies. With the recent extension of the Fund's scope, up to €800 million will be made available to Member States this year to combat this pandemic provoked by Covid-19.

6. Supporting the economy. The EU has put forward a €540 billion support package to tackle the crisis and support workers, businesses and Member States In addition, the European Central Bank provides EUR 1 350 billion for public debt reduction during the crisis, as well as EUR 120 billion in quantitative easing measures and EUR 20 billion in government securities purchases. The EU applies full flexibility in EU tax rules to help authorities support health systems and businesses and to maintain employment among the population during the crisis. EU state aid rules have also been relaxed so that governments can provide liquidity to the economy for support the citizens and enterpresis saving like that the jobs.

7. Protecting jobs. The EU is providing its Member States with EUR 37 billion of existing EU structural funds in 2020 to combat the crisis caused by the coronavirus and to support healthcare, businesses and workers. To ensure that employees can keep their jobs when companies interrupt their activities due to the coronavirus crisis, The EU introduces a temporary support instrument (SURE) of up to EUR 100 billion to support national programs on technical unemployment.

8. Contributing to the EU's recovery. To help the EU recover from the economic and social impact of the pandemic, the EU is working on a revised 2021-2027 budget, complemented by a recovery fund that will ensure it provides a massive investment in growth and will support our citizens, businesses and economies in the coming years.

9. Support partners worldwide. The crisis caused by COVID-19 is a global challenge that requires global solutions. The EU supports partner countries' efforts in fighting the virus by providing almost €36 billion in financial support to respond to the immediate health crisis and the humanitarian needs it brings. In addition, the EU has activated an EU humanitarian air bridge to provide humanitarian assistance by using empty departure flights during repatriation operations. The EU has also supported a debt freeze for developing countries, freeing up much needed resources that can be used to improve health systems and combat the pandemic.

10.Combating disinformation related to COVID-19. All Member States and the EU as a whole are threatened by the deliberate spread of false news in the context of the COVID-19 pandemic. The EU contributes to the detection, reporting and combating of disinformation by providing accurate and up-to-date information. The EU is also working with online platforms to promote reliable sources of information, defuse false news and eliminate illegal content.

The EU has also proposed concrete actions that can be implemented quickly to counter the massive wave of false or misleading information, including attempts by foreign actors to influence EU citizens and debates. At the same time, the EU will continue to ensure freedom of expression and support media, reports its independant accounts are essential during the coronavirus pandemic (*Strîmbovschi S.*)

Conclusions

The COVID-19 pandemic is a global challenge and requires a global response. During this crisis, EU countries stepped up their mutual support efforts, helping those most in need and sharing resources to combat the spread of the virus. This is a superlative illustration of EU solidarity. The EU has also provided help to its citizens stranded in third countries.

In the context of the fight against the Covid-19 crisis, the presence of the *principle of solidarity* enshrined in the Treaties is important, according to which, in situations of exogenous and symmetric shock, which is not caused by economic management (which

cannot really invoke any risk of moral hazard) but has large asymmetric effects, given the different vulnerabilities of the states. Moreover, there are sound economic arguments that have arisen in one or more countries that are unable to meet their debts in a context of higher interest rates.

The principle of fairness will play an equally essential role, as relaxing the rules of the single market will produce uneven results. The crisis has a negative impact on the economic sectors that depend on free movement and therefore intervention to correct and protect them is justified. But if such support is left to Member States alone, this will lead to an inevitable distortion of competition. Member States' support for their businesses will vary widely as a simple consequence of different financial and budgetary capacities. Equity therefore aims to safeguard the integrity of the internal market and avoid distortions of competition.

The principle of how to address policy objectives is no less important. The type of problems to be addressed (unsustainable levels of debt and protection of the integrity of the internal market) and the principles involved (solidarity and equity) suggest that the objective should be a form of centralized fiscal support available to any country. In order not to allow the increase in debt levels on a case-by-case basis and, at least in part, it is essential to provide EU grants or transfers rather than simply loans to States.

The used instruments are also important to mitigate the crisis. Single fiscal transfers in the form of grants cannot take place through ESM loans, given its current instruments and leading structure. Neither the ECB's securities purchase program (which is also critical) can play this role, except for the ECB's decision to keep these assets on a perpetual basis (and in this case the debt differential would still reflect the loan operation) (*Unione europea e Covid-19)*.

This is an ambitious but feasible proposal precisely because it offers solutions on several fronts. It does not require fiscal transfers between Member States, but it limits the impact of the current crisis on debt-laden States. It promotes solidarity but relies on ensuring fairness in the internal market. Builds the basis for a stronger EU budget and the necessary funding for a recovery fund without leading to an increase in national contributions. And it does all this while promoting the three key points of the EU agenda that goes beyond the Covid-19: regulating the digital economy, promoting environmental agreement and protecting the rule of law

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V. Institutions, Public Policy, and Socio-Economic Realities

EU COUNCIL DECISION-MAKING: A DISCUSSION ON THE LATE WEIGHTED VOTES CRITERION

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Abstract. *In the wider extended academic concern regarding the decision-making system that the EU is and should be using, a voting frame rediscussed in the Brexit context and whose modification proposals are usually widely debated, this paper focuses on a peculiar aspect of the intra-institutional decision-making process, i.e. on what was known as the weighted votes component of the qualified majority voting used in the EU Council. What was the logic of establishing this system, how did it develop and why the member states decided to abandon it? These are the main questions to whom the article will answer, with the aim to indicate that the current modified Lisbon system, despite its alleged improvements in terms of legitimacy, transparency and adaptability to enlargement waves, offered a new QMV definition that is still locked in the blocking minorities safety nets of the EU power politics game.*

Keywords: *Council of the European Union, European Union, qualified majority voting, weighted votes*

Introduction

A brief overview of the latest articles published by the most well-known academic journals focused on EU studies reveal that their main discussion topics dramatically changed when it comes to subjects regarding the decision-making process of the European Union. If a few years ago, there were plenty of articles offering in-depth analyses on how each EU institution was involved in the inter-institutional power game, today's literature – widely influenced by the successive crises EU faced – deals with more explanatory items (what is the ordinary legislative procedure, how it works, what are the actors' main preferences, etc.). However, considering the possible implications of the Brexit case, as well as the democratic exercise represented by the *Conference on the Future of Europe*, I believe that understanding (with the aim of improving) the current decision-making system (the "how" question) means firstly to answer to the "why" inquires: why do we have, in EU Council's case, for example, the current definition of the qualified majority voting (QMV)? Why it was different and the beginning and why it was changed? Why is it important to know these historical details when focusing on the future of the EU?

In the light of the previous arguments, this paper focuses on a peculiar aspect of the intra-institutional decision-making process, i.e. on what was known as the weighted votes component of the QMV used in the EU Council. What was the logic of establishing this system, how did it develop and why the member states decided to abandon it? These are the main questions to whom the article will answer, with the aim to indicate that the current modified Lisbon system, despite its alleged improvements in terms of legitimacy, transparency and adaptability to enlargement waves, offered a new QMV definition that is still locked in the blocking minorities safety nets of the EU power politics game.

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The first part of the article offers an in-depth image on the pre-Nice Council voting, while the second part refers to the most well-known case for the weighted votes subject, the Nice Treaty. The article ends with conclusions that point the relevance of the Constitutional Treaty for understanding the current Lisbon Treaty, with a decision-making system that granted (or deprived, that is still debatable) the EU Council with a new QMV definition without the weighted votes criterion.

The Pre – Nice Council Decision-Making System

The unique institutional architecture of the European Union[1] was established very carefully in the Rome treaties, as the optimal equilibrium between the double nature of the Communities – supranational and intergovernmental –, as well as the equilibrium between the small and large member states, was carefully considered[2]. When and why the weighted votes subject became a delicate issue on the negotiation table? Despite the presence of the voting weights even in the Constitutive European Economic Community Treaty (also, in the European Atomic Energy Community Treaty)[3], the long standing practice of using unanimity instead (remember, for example, the disruption provoked by the Empty Chair Crisis and solved by the Luxembourg Compromise) meant that, despite each new enlargement wave and new weighted votes allotted to new comers, the whole weighted system was rather not used. In this respect, the sovereign equality of states, the principle of ′one state, one vote′, sacrosanct in the international law, was the unwritten general rule in the European Union. Nevertheless, the creation of the single market, through the Single European Act (SEA), revealed the necessity of a more efficient decision-making process and this is the particular moment when QMV reached the first time the status that it has from that moment on (Galloway 2001). The institutional changes facilitated, therefore, - through the SEA adoption, and, mainly, the Treaty of Maastricht, as well as the 80s and mid90s enlargement waves -, a renewed interest in the QMV as a solution to avoid a *de facto* decision blocking.

Therefore, that was the time when the weighted votes emerged as a delicate issue on the member states agenda, as they realized that the initial balance between small and large partners was altered by significant differences between the populations of the new member states and that a new equilibrium was necessary in this small vs. large duel (fuelled by additional axes such as old versus new, North versus South, and, later, West versus East) complying with an intergovernmentalist logic. In this respect, one can mention the first ample discussions on the blocking minority idea; the act of testing that QMV was not going to be used anymore just as a mechanism for achieving consensus and that the new state of affairs would imply a real voting on different issues, which significantly increased the importance of the threshold, was what become known since March 1994 as the Ioannina Compromise. Briefly, it "foreseen that "if Members of the Council representing a total of 23 [the old blocking minority] to 26 [the new blocking minority] votes indicate their intention to oppose the adoption by the Council of a

[1] In this paper, the generic collocation "European Union" is used in order to describe its unique institutional framework, despite the historical differences existing between the European Communities period, the Maastricht acception or the eventually Lisbon Treaty legal implications.

[2] A brief history on the initial Treaties of Rome debates indicates in fact tensions between the adepts of the simple majority voting and those seeking for population-induced benefits – Germany and France -, favouring a weighted votes system (Moravcsik 1998, 153).

[3] The first European Coal and Steel Community had a different voting procedure for the Council (European Union, 2013).

Decision by qualified majority, the Council will do all within its power to reach, within a reasonable time and without prejudicing the obligatory time limits laid down by the Treaties and by secondary law (…) a satisfactory solution that can be adopted by at least 68 votes [the old QMV threshold]" (Council, 1994, art. 1; see also Milton and Keller-Noëllet, 2005, p. 74). In fact, this clause describes a possibility to change *ad hoc* the level of the threshold.

Table 1. The historical evolution of the QM in the Council

Year	**Total No of MS**	**Total Votes**	QM: Votes and %	Min. MS Forming QM	Min. No. of MS Forming a BM
1958	**6**	**17**	12 (70.59%)	3	2
1973	**9**	**58**	42 (72.41%)	5	2
1981	**10**	**63**	45 (71.43%)	5	2
1986	**12**	**76**	54 (71.05%)	7	3
1995	**15**	**87**	62 (71.26%)	8	3
2004	**25**	**321**[4]	232 (72.27%)	13 (17 if the proposal is not issued by the Commission)	4
2007[5]	**27**	**345**	255 (73.91%)	14 (18 if the proposal is not issued by the Commission)[6]	4

Source: Table based on the Opinion of the Commission, 'Adapting the institutions to make a success of enlargement' delivered on 26 January 2000, *COM* (2000) 34 *apud* Tsebellis and Yataganas (2002, p. 289). The grey cells represent the author's own updated contribution.

However, the next Treaty of Amsterdam did little on this QMV aspect, constraining itself to applying QMV to a broader area of policies (see Slapin 2011, pp. 102-104). Table 1 presents the evolution of the weighted acception of the QM in the Council and Table 2 offers an image of the same problem together with details for each member state of the Union for the period 1958 – 2014 (in order to have a full image on the

[4] The table does not include the transitional May – November 2004 period between the occurrence of the 10 new member states' accession wave and their actual compliance to the Nice requirements.

[5] The 2007 new data were applied until 1 November 2014 (the entering into force of the new definition of the qualified majority adopted in 2009 through the Lisbon Treaty); moreover, until 31 March 2017 a protocol annexed to the Lisbon Treaty foresaw the possibility of any Member State to ask for the weighted vote system to be applied in decisions implying qualified majority voting. For this reason, one could also mention the 7 weighted votes Croatia received through its Accession Treaty, situation which implied for the 2013-2014 period a total of 352 weighted votes and a 260 votes threshold, representing 73.86% from the amount, and being reached if 15 members were in favour (18 if the proposal was not issued by the Commission).

[6] In both 2004 and 2007 cases, the success of a legislative proposal could have also involved the compliance with the demographic clause (to be mentioned in this analysis), if a member state would have asked.

QMV evolution, I have updated the table with the grey cells, using Treaty of Nice, Treaties of Accession and Treaty of Lisbon data)[7].

Table 2. Qualified Majority Voting: Weights and populations

	1958-72			1973-80			1981-85			1986-94			1995-2004			2004-2007			2007-2013			2013-2014		
	Wt	%	% Pop	**Wt**	%	% Pop	**Wt**	%	% Pop	**Wt**	%	% Pop	**Wt**	%	% Pop	**Wt**	%	% Pop	**Wt**	%	% Pop	**Wt**	%	% Pop
Germany	**4**	23.5	32.2	**10**	17.2	24.2	**10**	15.9	22.8	**10**	13.2	18.9	**10**	11.5	21.9	**29**	9.0	18.0	**29**	8.4	16.6	**29**	8.2	15.9
UK		-	-	**10**	17.2	21.8	**10**	15.9	20.5	**10**	13.2	17.6	**10**	11.5	15.8	**29**	9.0	13.1	**29**	8.4	12.4	**29**	8.2	12.7
France	**4**	23.5	26.6	**10**	17.2	20.3	**10**	15.9	20.0	**10**	13.2	17.2	**10**	11.5	15.7	**29**	9.0	13.2	**29**	8.4	12.9	**29**	8.2	13.0
Italy	**4**	23.5	29.1	**10**	17.2	21.4	**10**	15.9	20.9	**10**	13.2	17.6	**10**	11.5	15.3	**29**	9.0	12.7	**29**	8.4	11.8	**29**	8.2	12.0
Spain		-	-		-	-		-	-	**8**	10.5	12.0	**8**	9.2	10.5	**27**	8.4	9.4	**27**	7.8	9.2	**27**	7.7	9.2
Poland		-	-		-	-		-	-		-	-		-	-	**27**	8.4	8.3	**27**	7.8	7.7	**27**	7.7	7.5
Romania		-	-		-	-		-	-		-	-		-	-		-	0.0	**14**	4.1	4.2	**14**	4.0	3.9
Netherlands	**2**	11.8	6.6	**5**	8.6	5.2	**5**	7.9	5.3	**5**	6.6	4.5	**5**	5.7	4.2	**13**	4.0	3.5	**13**	3.8	3.3	**13**	3.7	3.3
Greece		-	-		-	-	**5**	7.9	3.6	**5**	6.6	3.1	**5**	5.7	2.8	**12**	3.7	2.4	**12**	3.5	2.2	**12**	3.4	2.2
Belgium	**2**	11.8	5.4	**5**	8.6	3.8	**5**	7.9	3.6	**5**	6.6	3.1	**5**	5.7	2.7	**12**	3.7	2.3	**12**	3.5	2.1	**12**	3.4	2.2
Portugal		-	-		-	-		-	-	**5**	6.6	3.1	**5**	5.7	2.7	**12**	3.7	2.3	**12**	3.5	2.1	**12**	3.4	2.1
Czech Republic		-	-		-	-		-	-		-	-		-	-	**12**	3.7	2.2	**12**	3.5	2.1	**12**	3.4	2.1
Hungary		-	-		-	-		-	-		-	-		-	-	**12**	3.7	2.2	**12**	3.5	2.0	**12**	3.4	1.9
Sweden		-	-		-	-		-	-		-	-	**4**	4.6	2.4	**10**	3.1	2.0	**10**	2.9	1.9	**10**	2.8	1.9
Austria		-	-		-	-		-	-		-	-	**4**	4.6	2.2	**10**	3.1	1.8	**10**	2.9	1.7	**10**	2.8	1.7
Bulgaria		-	-		-	-		-	-		-	-		-	-		-	0.0	**10**	2.9	1.5	**10**	2.8	1.4
Denmark				**3**	5.2	2.0	**3**	4.8	1.9	**3**	3.9	1.6	**3**	3.4	1.4	**7**	2.2	1.2	**7**	2.0	1.1	**7**	2.0	1.1
Finland		-	-		-	-		-	-		-	-	**3**	3.4	1.4	**7**	2.2	1.1	**7**	2.0	1.1	**7**	2.0	1.1
Slovakia		-	-		-	-		-	-		-	-		-	-	**7**	2.2	1.2	**7**	2.0	1.1	**7**	2.0	1.1
Ireland		-	-	**3**	5.2	1.2	**3**	4.8	1.3	**3**	3.9	1.1	**3**	3.4	1.0	**7**	2.2	0.9	**7**	2.0	0.9	**7**	2.0	0.9
Croatia		-	-		-	-		-	-		-	-		-	-		-	0.0		-	0.0	**7**	2.0	0.8
Lithuania		-	-		-	-		-	-		-	-		-	-	**7**	2.2	0.7	**7**	2.0	0.6	**7**	2.0	0.6
Latvia		-	-		-	-		-	-		-	-		-	-	**4**	1.2	0.5	**4**	1.2	0.4	**4**	1.1	0.4
Slovenia		-	-		-	-		-	-		-	-		-	-	**4**	1.2	0.4	**4**	1.2	0.4	**4**	1.1	0.4
Estonia		-	-		-	-		-	-		-	-		-	-	**4**	1.2	0.3	**4**	1.2	0.3	**4**	1.1	0.3
Cyprus		-	-		-	-		-	-		-	-		-	-	**4**	1.2	0.2	**4**	1.2	0.2	**4**	1.1	0.2
Luxembourg	**1**	5.9	0.2	**2**	3.4	0.1	**2**	3.2	0.1	**2**	2.6	0.1	**2**	2.3	0.1	**4**	1.2	0.1	**4**	1.2	0.1	**4**	1.1	0.1
Malta		-	-		-	-		-	-		-	-		-	-	**3**	0.9	0.1	**3**	0.9	0.1	**3**	0.9	0.1
Total	**17**	100	100	**58**	100	100	**63**	100	100	**76**	100	100	**87**	100	100	**321**	100	100	**345**	100	100	**352**	100	100
Threshold	**12**	70.6		**41**	70.7		**45**	71.4		**54**	71.1		**62**	71.3		**232**	**72.2**		**255**	**73.9**		**260**	**73.9**	

Source *of the original table:* Leech 2002, p. 440. The table indicates the number of weighted votes, the percentage share and the percentage share of the total population. The grey cells represent my update of the original table.

In this last table I have also updated the information which stopped at the 1995 realities, and, using the Treaties for the number of weighted votes, as well as Eurostat data for the population analysis, I offer a complete image until 2014, including Croatia's accession[8].

The data presented above reveal some of the principles that guided the Council in establishing the QM coordinates and its subsequent changes: first, that the number of votes a state had was dependent to its population; second, the decisional process involving QMV was based on a supermajority as reflected by the threshold established (Leech, 2002, p. 439). One of the main concerns was to stress the independence of the smaller member states, by providing them more votes in comparison with the countries more populous. This situation conducted to an over-representation of the small countries and an under-representation of the larger members, an approach closer to the liberal

[7] I chose 2014 as the last year relevant for the old definition of the OMV in its weighted version due to the 1 November 2014 entering into force of the new Lisbon Council decision procedures.

[8] The Eurostat data have only an orientation role. I have use the 2006 data for the 2004 population, the 2008 data for the 2007 population and the 2014 data for the 2013 population, by rounding the population at millions and one decimal, and then calculating the percentage share of the total EU population.

intergovernmentalist logic than to the classical intergovernmentalist/realist one, as win-win scenarios are now accepted even in this context that might seem unfavourable to the most populous members. This initial design was considered fair enough for the Union's objectives – the QM threshold was set around 70% (and until its dismissal it slightly varied between 67.7% and 73.91%,) and the larger member states' population (an overwhelming 90%) was reflected in almost 70% of the Council's votes. But several enlargements changed this balance and the taken for granted idea to preserve, as much as possible, the founder equilibrium proved to be extremely difficult.

After the Treaty of Amsterdam, the imminent envisaged enlargement of the EU with 12 new states (as it was finally agreed in 1999, at the Helsinki summit, negotiation started with 12 candidate countries – 10 ex-communist states together with Cyprus and Malta) opened a debate on the limits of the weighting system and the impossibility to continue to modify the threshold of the QM on the existing algorithm. Taking into consideration the acute lack of correlation between the voting power of the states and their population, the requirement of the Treaty of Amsterdam "to 'compensate' the larger member states for relinquishing in the right to nominate a second commissioner through the system of Council vote weighting"[9] (Galloway, 2001, p. 66) and the problem of the influence that the new small and medium-sized states will have in an EU – 27, it was explicitly that on the agenda of the Nice[10] Intergovernmental Conference the weighting of votes in the Council will be one of the key issues.

Briefly, QMV is seen as simultaneously distinctive for the supranationalist current and divisive for the EU as a whole (Dinan 2010); foreseen by the Constitutive Treaties, repudiated in practice, trigger of the Empty Chair Crisis and constrained by the Luxembourg Compromise, it needed the Single European Act and especially the Maastricht Treaty to be fully accepted as a fundamental stepping stone for the construction of EU (Dinan 2010).

Nice negotiations were just a solid reminder and the final Treaty of Nice was extremely challenging in aspects relating to the general institutional reform, and QMV – especially with its weighted votes component – was an important piece of the puzzle. There were three major reasons for this reconfiguration of the weights: (a) successive enlargement waves that modified the original power balance between the members; (b) the envisaged enlargement to the East that would have brought an additional distress within the existing framework; (c) the reconfiguration of the Commission and the pressure to offset large member states for losing a second commissioner. Nice negotiations soon transformed in a small versus large states debate, each side making efforts to preserve a comfortable position in the power game either in terms of winning coalitions or, as it was proved in the end, in terms of reaching the new-established blocking minority thresholds (see Slapin 2011, pp. 116-117).

[9] The enlargement would have made impossible the existing size and composition of the Commission (20 members with the right of two commissioners for the larger states). By keeping these privileges, the future EU, up to 27 members, would have dealt with a too numerous, inefficient Commission.

[10] To be more specifically, the agenda of Nice was drafted not directly in the Amsterdam Treaty, but also in the Cologne and Helsinki summits (June 1999 and December 1999). So, three hot issues were proposed to be resolved at Nice: the size and the composition of the Commission, the weighting of votes in the Council together with the possibility to extend QMV, and the allocation of seats in the European Parliament (see also Galloway 2001).

A SPECIFIC CASE. THE TREATY OF NICE

The institutional design of the European Union decided at Nice on 26 February 2001 included the Treaty of Nice, one protocol (Protocol on the Enlargement of the EU) and two declarations (Declaration on the Enlargement of the EU, and the Declaration on the QMV and the number of votes for a blocking minority in the context of enlargement); it entered into force at 1 February 2003. According to some pre-agreed, unquestioned principles, the EU council decision-making system was supposed to "reflect the dual nature of the Union" (a Union of states and a Union of people), to be "equitable, transparent, efficient and easily understood by citizens" and to have the minimum threshold of population in QM over 50% (CONFER 2000). In reality, the notion of efficiency in decision-making was translated in each member's power politics approach to preserve as much influence as possible, through the redistribution of power procedures, in the enlarged Union envisaged; the negotiation procedures transformed, despite traditional negotiations (where coalitions were formed taking into consideration only one specific issue), into a 'large' versus 'small' opposition.

There were three approaches taken into consideration at Nice as possible solutions for the revising of the QM issue: a simple dual majority system, a weighted dual majority system and the reweighting of votes. There was a clash between the big members, with preferences for higher thresholds – as a prevention against a possible coalition against them, and the small ones, in favour of lower levels – a measure conceived to block a 'tyranny' of the great powers of the Union.

During the negotiation process, the solution of reweighting come to fore. In this respect, it was decided to reweight all the votes of the existing member states (and not only of the big players, as it was proposed in the first place) in an ascending manner and taking into consideration the clause from the Amsterdam Treaty requiring a compensation for the countries that gave up their right to a second commissioner. Moreover, taking into consideration the future new comers, new clusters of states were created in order to reflect a similar voting weight of states with relative same size. In the reweighting procedures it became obvious that the multiplying coefficient was more important for some countries than for the others. For example, if Luxemburg's coefficient was 2 (by passing from 2 votes to a number of 4), the votes of the "big players" like Germany, France, United Kingdom and Italy multiplied by 2.9 (reaching 29 votes). The voting weights were also important due to their indivisibility, irrespective of the internal divergent opinions within a Member State, as Leech and Aziz (2010) pointed out. From this aspect, even without weights, the issue was as important as before, and each state was still seen as a monolithic unit, a rather classic intergovernmentalist (realist inspired) image.

The system that was finally agreed in the IGC was, however, not a reweighting or a double majority, as its defenders tried to present it, but a real triple majority. The reasons to sustain this point of view are the following: even if it was stipulated that the decision was taken *if* the number of votes equals or exceed the QM threshold *and* a simple majority of the member states was in favour, there was also added a *safety net*, which meant that any member state *could* have asked for that particular decision to pass also a threshold of 62% of the Union's population. In reality, this facultative condition was as important as the first two. After a comparative analysis of the three additional acts of the Treaty of Nice, there are some important observations to be made referring to each of the three conditions necessary for reaching QM.

First, the threshold for a qualified majority. In the Protocol on the Enlargement of the European Union, when referring to provisions concerning the weighting of votes

in the Council after the 1 January 2005, article 3 operated changes in the Treaty and set the number of votes at 237 for an EU – 15, with a QM of 169 votes, which meant 71.31% of the total. Successive, in the Declaration on the Enlargement of the EU, for an EU – 27 it was established a 345 total number of votes and a QM of 74.78%. In this case, the blocking minority of 88 votes would have been very difficult to reach. These provisions were not the final ones, because in the third additional document, the so-called Threshold Declaration (Declaration on the QMV and the number of votes for a blocking minority in the context of enlargement), the maximum level for the threshold was fixed at 73.4%, which meant that, at the end of the enlargement, the QM became 255 votes and the level for BM was fixed at 91 and not at 93, as it would have resulted from the threshold percentage (which corresponds to 73.9%, as indicated in table no. 2)[11]. The minimum coalition that was able to block a decision should have been composed by three larger states and a smaller one.

Second, the simple majority of member states. This second condition in the process of decision-making by QMV reflected the request of the medium and small member states of the Union to compensate the reweighting of votes (made in favour of the major players) and to assure that no decision was to be taken against their wish. In other words, in an EU – 27, if a minority of large member states obtain the QM of their weighted votes, a majority of small member states can however oppose this decision even if they do not reach the blocking minority of the votes (Tsebellis and Yataganas, 2002, p. 287). This additional requirement made even more difficult the decision-making process as the smallest 14 member states, with approximate 10% of the Union's population could paralyze a decision. This requirement passed easily as the larger players could not envisage so many delicate issues where the smaller states to feel threaten about and to form a blocking coalition.

Third, the demographic clause. This safety net for the QMV was considered as a compensation offered for Germany for not claiming a different (to be read higher) number of votes than France. Hence, this clause was simpler to obtain only if Germany was against, having in mind the fact that, together with one other larger country the threshold of 38% of the population was acquired, in order to block a decision. Anyway, the collective power to act was even more decreased by adding the safety net.

These complex rules, obstructing an efficient decision-making system by claiming for legitimacy or adequacy, were an argument of the opponents for the issue of QMV extension. They argued that the progressive raise of areas where QMV can be applied was touching their sovereignty and that there would be no need for their formal inscription into the Treaties if, in practice, a consensus culture and informal "'preference for unanimity' exists in Council decision-making" (Mattila and Lane, 2001, p. 40; see also Milton and Keller-Noëllet, 2005, p. 57).

Hence, usually, more is less. Even though the solution designed was not reflecting the initial trend not to increase the rigidity in the Council QMV decision making, the states tried to underline that the outcome was double legitimate by the majority of the states and that of the Union's citizens. But, speaking of the threshold of the weighted votes, the general impression was not of a qualified majority efficiently oriented voting but of a blocking minority logic supporting various national interests (Galloway, 2001, p. 92). However, too high thresholds criticisms were refuted on studies

[11] See in this respect Laursen 2005, p. 426 quoting a *Europolitique* contribution from 20 December 2000.

indicating that there was no evidence of decision sclerosis, while the QMV appeared to perform accordingly to its set objectives (Leech and Aziz, 2010). The post-Nice EU worked not as a consequence of an optimal voting system, but due to its long consensus and negotiating tradition[12].

Even if the Treaty contained significant improvements (as the extension of QMV area), the feeling was of a failure: the augmented veto power of the member states favoured or almost reified the legislative *status quo* (Tsebellis, 2002, p. 304) in a context where the Union reached a series of limits (of policies, geographical, institutional) and less political designs of constrains were essential.

It can be said that the means, described by Olson, through which an organization can improve the situation of its members – by producing a bigger social pie (and giving them larger shares accordingly to the established hierarchies) or by offering these larger shares from the existing pie (Olson, 1971, p. 51), were intensively used during Nice negotiations, in the reweighting procedure. For this reason, even if the entity as a whole was losing, the members continued to pursue their self-interest, as long as their reward was greater than the divided social cost. Moreover, the logic of self-seeking led also to well-defined divisions (big versus small, in this case) and to a progressively more complex institutional rules.

In brief, at Nice, the outcome of the negotiation referring to the QMV decision-making, put across in the triple majority described above, even if respected the particular preferences of all the individual players, was not the best solution for the Union as an entity. It led to a rather opaque system due to the heavy negotiations and the discussions oriented towards assuring each side a proper access to minority blocking[13]. Apparently, the final system offered advantages to the medium and small states[14], both through the simple majority condition, as well as due to a large number of weighted votes allotted to Spain and Poland, accompanied by a limitation of the reunited Germany's ones. Underrepresentation of the big players was treated, in fact, as "a reasonable degree of

[12] See Dinan 2010 on the "deep-rooted culture of consensus" to which the new member states are soon socialized, as here QMV is seen as a facilitator, not as a proper tool in the voting process; also, Moberg (2010) wrote on "decisions in the shadow of a vote" where it is questioned only the form of the final decision, not its existence, as the existence of the QMV is merely a push towards the culture of negotiation. Kleinowski (2018) analysed the subsequent "compromise culture" of Lisbon and the habit of the member states failing to ensure a blocking minority to express their contradictory opinions. Nevertheless, even if "formal voting in the Council might be rare", the actual voting power is important, as it indicates the possibility of a decisional blockage (Warntjen 2017).

[13] On Nice and the ability of each separate criterion to block the voting process, see also Moberg 2010.

[14] Kirsch argued, however, that Nice voting weights, with their disproportionality between weights and populations and while respecting the degressive proportionality principle, did not automatically offer a real influence to small actors (with Luxembourg as study case), as "the quota plays a crucial role of a weighted voting system" (Kirsch 2010). After a comparative analysis of Nice and Constitutional/Lisbon programmatic inputs, he also underlined the advantages, and, respectively, the disadvantages of the big four, on the one hand, and of the middle-sized members, on the other (Spain and Poland), in that new institutional context. A special mention referred to the threshold modification occurred between the draft and the ICG version of the Constitutional treaty in order to be voted by all the member states, fact that later did not impede Poland to renegotiate its status, which was indeed less favourable in the ICG version (Kirsch 2010).

fairness in the distribution of voting power" (Leech and Aziz, 2010). The only one accepted argument was the discomfort to alter the thresholds and set new voting weights clusters with every new arrival in the EU family. Therefore, what system could have been imagined to replace the Nice one?

DISCUSSION AND CONCLUSIONS: THE CONSTITUTIONAL TREATY, THE MISSING LINK FOR UNDERSTANDING THE CURRENT LISOB DECISIONAL SYSTEM

The contested results of Nice were a sign that qualitative changes in the substance and the procedures of the Union were essential for a whole series of reasons: improving democratic legitimacy, providing an efficient EU in the international system, solving the equilibrium problems between firstly, the supranational and the intergovernmental forces, and, secondly, the equality of citizens and the equality of member states, handling the fear of the countries who seen the extension of the QMV as a possibility to be outvoted in traditional questions of national interest, and the list can continue.

In this respect, following the "Declaration on the Future of the Union", adopted at Nice, the new "Laeken Declaration on the Future of the European Union" (from December 2001) established the European Convention in terms of key players, the working procedures and, especially, the agenda meant to address fundamental questions for a regenerating Union. In fact, the Constitutional Treaty's history has two main important sequences: the Convention and the Intergovernmental Conference.

The voting system enforced by the Nice Treaty gave rise to a significant amount of criticisms. The Convention[15], aware of the importance of a different decision-making procedures for a renewed Union, considered that the alternative of the double majority (of member states and population) method would properly answer the requirements for simplicity, durability, fairness of reflection of this double nature (Milton and Keller-Noëllet 2005). The discussions enlightened again the idea that a consensus between the larger and the smaller members was difficult to reach in a context where the latter supported the idea of a double threshold set at 50% for both states and population and the former, having knowledge of the majority of small and medium sized countries in an enlarged Union, had in mind two separate thresholds - 50% of the member states and at least 60% of total population. The draft of the Constitutional Treaty, adopted by the Convention, reflected the point of view of the big actors (Germany being one of the most supporters of the new system), but it was clear that a group formed by the small states - as well as the new comers, especially Poland - and also Spain, would continue, from different reasons, to follow their self-interests in the Intergovernmental Conference that was succeeding the Convention's work.

Why the Convention's outcome is so different than the previous one? On the one hand, it could be that a weighted votes system could have proven ineffective in a larger membership; on the other, the convention method as such, replacing unanimity voting with a consensus orientation, could be another part of the answer, as in a typical IGC format, the veto power (blurring population differences between member states) usually favours the status-quo, while a genuine reforming process is rather hampered in this context (see also Slapin 2011, pp. 117, 120). It was agreed that the Convention had been a success from many aspects: it clarified the precise nature of the Union, it contributed to a

[15] The Convention took place between the 28 February 2002 until June 2003. See also Slapin 2011, pp. 117 for other peculiar traits of the Convention.

well-defined system of ordering the areas of responsibility (the Union's powers), it created a unique legal framework and it simplified the decision making instruments. Briefly, the favourable outcome of the Convention concerned the fundamentals[16]. However, even from the opening of the IGC[17], it was evident that some areas, especially QMV, would require further debates in order to get an agreement.

Nobody contested some of the advantages of the new voting system proposed - double legitimate, easy to understand, fitting whatever the future size of the Union. Nevertheless, a part of the member states had obvious reasons not to be satisfied with the changes and their demands were included in the IGC amendments of the Constitutional Treaty's draft[18]. On the one hand, it was the opposition of Spain and Poland, countries which desired to maintain the privileged status obtained at Nice (their power to block a decision) and strongly pleaded for a 70 % threshold of the population; finally, they agreed on a percentage of 65%[19] (see Milton and Keller-Noëllet 2005).

On the other hand, the smaller states addressed additional requests. Firstly, the percentage of 65% of the population could have been reached by only three large member states, this situation claiming for a correction, in the opinion of the small parties of the Union. So, it was consented that a blockage minority should contain at least four member states in order to be valid (which in fact lowers considerable the threshold for adopting a decision, only 58% of the population, 4% downwards difference from Nice). Secondly, the unequal level of thresholds constrained these states to ask for a minimum 5% difference between them. Nevertheless, the population threshold being already fixed at 65%, the only possible compromise was to raise by 5 % the threshold for member states needed for a decision to be adopted and to specify that in order to reach this 55% at least 15 member states are needed. This lack of simplicity can receive an explanation: 15 states mean 60% of the Union's 25 certain members, in conformity with the requirement of only 5% difference between the thresholds. However, in EU – 27, the threshold would lower back at the formally established 55%[20].

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[16] Stepping stones for the Union's political and institutional architecture: a new vision of the treaties, a new conception of the Union in comparison with the Communities, a clearer distinction between the Union's attributions and those shared with or completely left to the member states, less red tape associated with the decisional process, more input and output legitimacy of the same decision-making process, etc. (Milton and Keller-Noëllet, 2005, pp. 47-48).

[17] The IGC lasted form the autumn of 2003 until June 2004.

[18] The voting system of the final version of the Constitutional Treaty was supposed to be in force since 1 November 2009.

[19] One of the reasons for Spain's "retreat", as it was perceived, was the election of a new government party.

[20] Not even the population criterion established at Lisbon escape several criticisms when looking at the population data considered for calculating the 65% Lisbon threshold. If one corroborates art. 16.4 of TEU and art. 238.2 of TFEU with regulation no. 1260/2013 on European demographic statistics, one may see that the population considered each year when calculating qualified majority population threshold is based on what member states declare as residents, not citizens, also counting, therefore, nationals of other or third non-EU countries (Kleinowski 2018). Pukelsheim also argues that EU should clarify in its internal documents between "European citizens, nationals, residents, or voters", as well as it should look deeper at double counting cases (citizens counted in one member state as residents and in another state as voters), as well as the suggestion that the delicate situation of some large member states which experience a decline of the population figures might also be a possible explanation for some of these reporting anomalies (Pukelsheim 2010, 237).

This progressively complicated double majority system had, at the end, an additional condition, a safeguard clause, similar with the one specified in the "Ioannina compromise": any member state, if opposed to a specific issue but it could not reach a blocking minority, could suspend the decision-making process, invocating basic national inconvenient and handing the specific act back to the Council for its reconsideration in a specific time limit. It was interesting that the opposition needed – in order to be heard – member states whose population comprised at least ¾ of the Union's population or whose number represented at least ¾ of the number of member states foreseen for ensuring a blocking minority (see Milton and Keller-Noëllet, 2005, p.111); in different words, this clause reflected the exact blocking capacity that both Spain and Poland had under Nice Treaty. This 'coincidence' saved the negotiations and led to the adoption of the Constitutional treaty whose regulations, according to the voting power theory, preserved the blocking capability of the larger states, enforcing their positions (mainly through the population criteria in the vote apportionment), and assured the old EU-15 leading the new EU-27 configuration (Passarelli and Barr, 2004, p. 21).

"All animals are equal, but some animals are more equal than others" wrote George Orwell in "Animal Farm". It also applies to countries, if one took into consideration the influence of the population criterion within the EU (Dinan 2010). The text adopted by the ICG contained different stipulations on the Council voting, replacing the Convention's proposals and attenuating somehow the influence of the most populous states as provided in the Draft Treaty, while still preserving them a huge trump card in forming the blocking minorities (Dinan 2010, Moberg 2010). Nevertheless, here is a general brief of the characteristics of the new voting procedures agreed in 2004: easy to understand, more democratic and easy to adapt to membership fluctuations (see Leech and Aziz 2010).

Despite the optimism of the supporters of the Constitutional Treaty and the ambitious politico-institutional reforms, the results of the 2005 ratification referenda in France and the Netherlands showed the presence of national populations less sensitive to vague and distant European themes, and more responsive to national issues and concerns. Therefore, the rejection of the Constitutional Treaty and its resumption, two years later, in the older logic of the amending treaties, brought again into question the definition of the QMV, while taking over from the Constitutional Treaty the changes agreed in terms of negotiating procedures, as well as stipulations *per se*[21].

Is it fair to refer to residents when deciding European intricate power related mechanisms? Other EU member states nationals can vote for EP elections and can run for local elections in their country of residence, but they cannot vote in national elections. Meanwhile, non-EU residents do not have neither of these options. So? Is it fair to count all of them when establishing one EU country's population as a relevant criterion under the Lisbon Council voting framework? If one could find a solution to balance the voting power of any EU citizen, irrespective of her nationality, this could be treated as a fair output, in the light of our discussion. But what about the non-EU countries' residents whose input cannot be quantified? They have no direct, nor indirect voting power, but they influence the final data announced by the Member States.

[21] About the peculiarity of the speedy adopting process of the Treaty of Lisbon, a genuine reforming treaty in this logic of the previous modifying approaches, nevertheless considered a flawed process despite its uniqueness, see also Phinnemore 2013, a well-documented initiative that also indicated the impact that the preferences of the member states, together with the role of the German Council Presidency, had on the final configuration.

However, few analyses of the Treaty of Lisbon (at least those appeared in the first years after its entering into force) were willing to focus on the intricate debates that accompanied this new definition of the QMV inherited from the Constitutional Treaty; the general approach tended to list the changes Lisbon brought at the institutional and policies level, without paying too much attention to the delicate negotiating context, while diluting the general feedback in an optimistic expectance of a more legitimate and efficient outcome[22] following a so-called QMV simplifying acception (see, for example, Laursen 2012). Nevertheless, despite its dismissal of the weighted votes criterion and its alleged improvements in terms of legitimacy, transparency and adaptability to enlargement waves, the current modified Lisbon system offered a new QMV definition that is still locked in the blocking minorities safety nets of the EU power politics game.

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[22] The efficiency of the outcome is debatable, at least in some aspects. For example, Hosli underlined another – ignored, deliberately or not – aspect: the fact that the easiness of reaching a decision within the Council affects the balance of power between this one and the EP. In other words, diminishing the Council's capacity of delivering a decision (not only by allotting voting weights, but also by altering the quota or by increasing the EU membership) also decreases the EP influence and – dramatically argued by the author – consolidates intergovernmentalism, as member states are mainly focused on assuring blocking minorities within the Council (Hosli 2010).

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THE IMPACT OF PUBLIC PROCUREMENT IN THE ABSORPTION PROCESS OF NON-REFUNDABLE EUROPEAN FUNDS ASSIGNED TO ROMANIA BETWEEN 2014-2020

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Abstract. *Public acquisitions have been a constant challenge in the application process for public funds, especially in the application for European non-reimbursable funds.*

The low rate of absorption relating to the programming period 2014-2020 is closely linked to the manner of processing public acquisitions in Romania, these engendering most of the delays in the application process of non-reimbursable funds projects.

Although Romanian primary legislation relating to public acquisitions is balanced by the community's acquis, secondary legislation shows inconsistencies and leaves room for interpretation, with many scantily regulated subjects.

Corroborated by the lack of clear descriptions of the roles relating to the National Authority for Public Procurement and to the Managing Authorities in regards to the verification of public acquisitions made by beneficiaries of European funds, this causes not only delays in the application process of the projects, but also financial corrections and a low rate of absorption.

Keywords: *European funds, public acquisitions, absorption rate, cohesion policy*

The absorption of European non-reimbursable funds has become a topical issue, fulfilment of the commitments with regards to their efficient usage and the terms negotiated with the European authorities proving the ability of the liable national authorities of using them efficiently and effectively.

The effective rate of absorption[1] (Ministry of European Funds, 2020) in Romania at the end of August 2020, in accordance with the latest data published by the Ministry of European Funds, is of 26,07% relating to the operational programmes funded by way of FEDR, FSE and FC and of 35,75% should we also take into account the programmes dedicated to the agricultural and fishing sector, funded by way of FEADR and FEPAM.

Considering the fact that the programming period is coming to an end, and the rate of absorption is at a notably low level, questions regarding the causes of this situation are justifiable, as well as a way of their settlement, if possible.

At a closer look one may identify an array of causes which led to the low rate of absorption, such as:

- The launch of the first calls for projects in 2016, two years after the start-up of the scheduling term;
- The lack of prediction in regards to the launch of calls for projects;

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[1] *NB: The effective rate of absorption represents the actual sums reimbursed by the European Commission in Romania.*

- The administrative and financial inability of the applicants, in particular of the public ones, of applying for several calls for open projects concurrently;
- The lack of financial resources of the public applicant of ensuring their own financial resources necessary in the dossier precursory to the submission of the infrastructure projects (e.g. feasibility studies, field studies, etc.);
- The poor cooperation between the Managing Authorities responsible for the administration of operation programmes regarding complementary projects with soft (human resources) and hard (infrastructure) component;
- The faulty functioning of the computer application Mysmis;
- The public procurement legislation.

The factors leading to the low level of the rate of absorption are multiple and need to be approached at length in order to detect the root cause.

This article aims, though, to carry out an analysis of the way in which the public procurement legislation, in the present case Law 98/2016 *relating to public acquisitions with subsequent amendments and additions* generates delays and hindrances in the absorption process of European non-reimbursable funds, applicable in the case of operational programmes, wherein the effective rate of absorption is but 26,07%.

In addition, we shall detail practical examples and points of view issued by the Managing Authorities relating to the operational programmes, as well as the ones issued by the National Agency for Public Procurement (NAPP).

Romanian public applicants and beneficiaries for, respectively of, European non-reimbursable funds comply, in regards to procurement, with Law 98/2016 *relating to public acquisitions with subsequent amendments and additions*, as well as Judgement no. 395/2016 *of the approval of methodological norms for the implementation of provisions in respect of the procurement procedure/ framework agreement in Law 98/2016 in respect of public procurement.*

In conformity with the previously mentioned legislation, value thresholds are defined, which establish the applicable type of procurement for the services, goods or works in view of procurement.

The aim of the present work is not that of an in extenso outlining of the procurement legislation but, for a better understanding of the problems engendered by it in the process of accessing European non-reimbursable funds, some relevant elements shall be set forth.

Thus, the Contracting Authority (authorities and local or central public institutions, as well as structures in their body, which act as authorising officers and are accountable for the public procurement domain, public law bodies or associations consisting of at least one of the two types of institutions or bodies previously mentioned (N.A.P.P., 2016)) is entitled to direct procurement of goods or services whose estimated value of procurement is below the value threshold of 135.060 lei, non-VAT and works whose value is less than 450.200 lei, non-VAT (N.A.P.P., 2016).

At first sight, this provident is justified, its target being to forestall the lack of transparency in the usage of public funds. Corroborated though with the late launches of calls for projects and the lack of predictability of the Managing Authorities in regards to launch data, the above provident engendered, in practice, major problems in the process of absorption of European funds, respectively:

- **Financial corrections applicable to beneficiaries of European non-reimbursable funding;**

For instance, in the year of 2018, 10 calls for projects targeting local public authorities were launched, financed by means of the Regional Operational Programme, with the aim of infrastructural development (road, educational, tourism, social, etc.) some of these having as mode of selection a *first come, first served* basis.

A time table of these launches of calls for projects had not been published at the start of the year, thereby local public authorities did not have the possibility of coming up with an annual plan of realistic public acquisitions, nor could they compile a realistic financial planning. Thus, contracting authorities procured services as calls for projects were being launched, with the risk of them being non-settled after having been agreed upon in the funding contract.

- **The impossibility of submitting projects in the given time frame due to the lack of compulsory dossiers requested by the financing authority;**

On the other hand, the lack of predictability in the launch of calls for projects brought about the inability of public local authorities to submit projects as a consequence of the setbacks in acquiring services necessary for the dossiers' development.

- **Lack of personnel training within contracting authorities regarding Law 98/2016**

The lack of specialised personnel in the domain of public acquisition within contracting authorities represents, also, one of the reasons of applying financial corrections and, by default, a low rate of absorption.

In this case, a proper example would be the manner of developing procurement contracts of design services, in the present case that of feasibility studies. If across the given services contracts there are clauses stipulating the cession of economic copyrights, in concordance with art. 17, alin. 5 of HG 395/2016, the value of the services in question does not cumulate with other similar services acquired throughout the year, even if the total value of all the acquired designing services during the given year crosses the value threshold relating to direct acquisition.

In several cases, contracting authorities omitted to include such clause within design services procurement contracts, Managing Authorities proceeding to cumulate all design services contracts within the annual plan of public acquisition and applying corrections when settlement for the contracts was demanded.

All three given cases contributed to a low rate of absorption, engendered, indirectly, by the law of public procurement and, directly, by the lack of predictability and organisation of the authorities liable in the domain, but also due to the personnel's lack of training within contracting authorities.

A measure that may have succeeded in avoiding the situations which lead to a low rate of absorption would be a realistic timetable of launching calls for projects, set-up by Managing Authorities and which would allow contracting authorities to plan public acquisitions and apply Law 98/2016 without compromising project submission or not tying in with the time frame.

Should the lack of predictability not be possible, then a viable solution would be modifying Law 98/2016 and its implementing rules, thus allowing for the settlement of acquired services before the submission of the project, on the basis of the acquisition plan relating to the project (within which all acquisitions are encompassed, including the ones

made before having submitted the project) and not on the basis of the annual plan of public acquisitions relating to the institution. The solution proposed here would benefit both public local authorities, who intend to submit projects funded by European non-reimbursable grants, and Managing Authorities, thus engendering a lower rate of applied financial corrections and an increase in the rate of absorption.

Other types of procurement procedures applicable most often in the case of projects financed by European non-reimbursable grants (and not only) are the simplified procedure, open tendering procedure and negotiation without prior public record of a participation notice.

In the case of these procedures, too, deficiencies do show up, which engender delays in the process of implementing projects and financial corrections which influence the rate of absorption.

- **In conformity with HG 395/2016, art. 17, alin. 4, lit. b) the value of technical design services and assistance from the designer cumulates with the value of the works relating to the investment goal concerned** (N.A.P.P., 2016)**, the type of applicable acquisition procedure being thus determined.**

This provident led to two types of shortcomings in the implementing process of projects funded by non-reimbursable grants. On the one hand, it hindered the acquisition of technical project and execution details development services, engendering much longer time frames even in the case of those services whose value, analysed separately from the work value, did not cross the threshold of direct acquisition. Thus, design service acquisition expanded over a longer term compared to direct acquisition, involving more human resources and, by default, supplementary financial resources but, most importantly, the kick-off of the supply of services was cancelled. This last detail led, in its own part, to longer terms for the launch of the works procurement procedure (which can be done only on the basis of a finished technical project).

We could not identify a logical/reasonable justification to introduce the provident in the legislation of public procurement of cumulating the value of services of design and technical assistance with the work value, especially in the context that in the second half of the year 2020, after approximately four years since the entry into force of Law 98/2016 and of its implementing rules, this provident was repealed, the legislation returning to the provident OUG 34/2006 *regarding the award of the contracts of public procurement, of concession contracts of public works and of concession contracts of services* which provides that the procedure of public procurement applicable to services of technical design and assistance from the designer is determined by taking into consideration only their value, not cumulating with that of execution works.

On the other hand, in the case of several projects, in order to avoid stretching out acquisition time frames, beneficiaries opted for the cumulation of the technical design services and assistance from the designer with the building works, launching a single procurement, and settling on *Design and Build* contracts. Even though this choice is not inherently flawed, beneficiaries were face up either with a lack of tenderers (as work firms were needed to find partners represented by other design firms in order to be able to take part in the procurement procedure), or with increases in the value of acquired works. This last case was engendered by the fact that the offer was submitted on the basis of a Feasibility Study/Endorsement of Intervention Works Dossier, in the absence of a dossier that would outline the works (in the present case Technical Project and execution details).

Thus, in the case of *Design and Build* contracts, at the moment of the development of the technical project, additional costs were identified, needed to be supported by the local budget.

As one may see, in none of the options available to the beneficiaries was the legislation of public acquisitions favorable to them, thus leading both to the extension of the acquisition time frames and, by default, to delays in implementing, reflected, in particular, in the low level of absorption and the high risk of decommitment at the level of operational programmes, as well as in the additional sums allotted to the local budget.

- **Financial corrections applied to the work contract due to technical reasons**

Another problem that beneficiaries of non-reimbursable grants have to deal with is the implementation of financial corrections to the work contract due to reasons relating to the lack of insurance in legal treatment. These situations do happen, in fact, as in the technical project, endorsed by the donor and attached to the terms of reference uploaded on the platform SICAP, marks or brands are identified, fact forbidden by Law 98/2016, in conformity with art. 156, alin. 2, which demands that in the case of brands or marks, the compulsory presence of the item "or equivalent".

In the cases hereby presented, identifying marks or brands by the donor's verification department leads to the implementation of financial corrections between 5-25%.

Practical example[2]:

A beneficiary submitted a project funded by means of axis 7 of the Regional Operational Programme. Following the signing of the funding contract, services for the elaboration of the technical project and execution details were acquired. At the moment of its completion, this was submitted to the Regional Agency of Development towards its endorsement.

Following its endorsement, building works were acquired on the basis of the technical project.

NB: *The procedure imposed by the Managing Authority of the Regional Operational Programme in regards to acquisitions is that once the procedure is completed, the entire dossier relating to it be sent to verification in maximum 10 working days from the moment of signing the contract.*

It should also be mentioned that the MA does not deliver a point of view in regards to the equity of the acquisition but in the moment that the first payment application request is submitted for the settlement of the expenditure in the given contract. This practice is not inherently advantageous for the beneficiaries who, at the moment of receiving the nonconformity note, no longer have the possibility of annulling the works contract or even the funding contract, a part of the works having already been executed, although the present article does not aim to analyse the procedures of the MA.

After having signed the works contract, their partial execution and the submission of a first payment request, the beneficiary received financial corrections, the reasoning behind being: "unfair technical specifications," these being granted in the basis of HG 519/2014 *on establishing the rates relating to the percentual discounts/financial corrections applicable to the irregularities provided in OUG 66/2011 with subsequent amendments and additions.*

[2] The practical examples are taken from the current non-reimbursable funding projects conducted by the author.

The initial correction applied was of 25%, the beneficiary being granted a 20% percentual reduction, thus motivated: *"considering the fact that the procedure is below the threshold of issuing in Official Journal of the European Commission, no clarification about this detail was requested by any potential offerors, no application to set aside was submitted to the National Council for Solving Complaints it is considered that the percentual reduction may be decreased to 5%* (General Direction Of The Regional Operational Programme, 2019)*".*

Calculated at a works value of approximately four million euros, the correction of 5% exerts a significant pressure onto the local budget, also influencing the rate of absorption of European funds.

In the case of the enforcement of these types of financial corrections, I do not consider that the applicable legislation of public procurement represents a main factor to contribute to the decrease in the rate of absorption, but the lack of expertise among the personnel responsible with the preparation of the dossier relating to the acquisition procedure, corroborated by the lack of responsibility among the persons who check the technical dossier (both that of the beneficiary's personnel and of the Managing Authority's).

About the public procurement legislation, there is but one thing to be mentioned: considering the previously outlined casuistry and the fact that (1) no clarifications were requested by any potential offeror while the acquisition procedure took place and (2) a single firm took part in the procedure, thus there being no competition, corroborated by the provident relating to the decrease of the applied financial correction of 25% to 5%, then the arising question would be whether these corrections were indeed necessary since no potential offeror was affected. Some degree of flexibility in the public procurement legislation may be necessary, by means of adapting to specific cases, though this is a sensitive issue and one that proves difficult to be addressed by authorities who, indeed, have to maintain a balance between the cases with no impact on the governing principles of the public procurement legislation and the potential frauds caused by possible adjustments to their flexibility,

- **Implementation of financial corrections through erroneous legal interpretation**

Another shortcoming identified following the implementation of non-reimbursable grants is represented by the interpretation of the public procurement legislation by officers within financing institutions, while ignoring the legislation in force and, in particular, the points of view issued by the National Authority for Public Procurement. This leads to the implementation of financial corrections outside of the law, to an increase in the financial burden among beneficiaries by means of additional earmarking from the local budget and, by default, to a low rate of absorption.

Such an example[3] would be the implementation of financial corrections by the Managing Authority of the Regional Operational Programme onto the beneficiaries who acquired advisory services in management and advisory services in the progress of acquisition procedures whose cumulated value crosses the threshold of direct acquisition provided in Law 98/2016.

[3] The outlined example is factual, with information taken from the current non-reimbursable funding projects conducted by the author.

The reasoning (General Direction Of The Regional Operational Programme, 2019) behind implementing these financial corrections is an insubstantial one, by means of calling upon ISOs and occupational standards, without considering the legislation in force applicable to public acquisitions:

> *The act of managing a project includes an array of principles, practices and techniques used in order to lead the project's work team and control the time limitations, costs and risks towards producing the desired result. In conformity with the Romanian standard SR ISO 21500:2014, Guidelines in project management, art. 4.2.3, the advisory activity in acquisition is included in the project's management. There are several definitions but all of them point to the fact that the project's management includes the management of all the activities within the project. As such, counselling in the project's management involves, among other activities, counselling in the domain of public acquisitions made within the project.*
>
> The same conclusion also emerges from the occupational standard "Project manager", code COR 241919, approved by the National Authority for Qualifications, where, among the 9 categories of occupational competences are listed and detailed, among other things: the achievement of acquisition proceedings for a project, that is precisely the subject-matter in the two contracts concerned/under consideration.

Figure 1: Taken from the note of non-conformity issued by AMPOR – a Brief description of the manners in which the law was infringed

At first sight, the motivation of the Managing Authority seems fair, but the arising question is whether the public procurement legislation provides the same conditions in the cumulation of the two types of services. Thus, the answer, as one may note below, is no.

As this reason of correction is often met, with repercussions onto public beneficiaries, a point of view from NAPP was requested, precisely on the case mentioned above, in order to determine whether the two types of services cumulate in the moment of settling on the acquisition procedure.

The reply of the NAPP is outlined as follows:

> *For the advisory services in the organization of public acquisitions proceedings relating to a project we mention the fact that in the aforesaid Case Library, by accessing the "Estimated Value Calculation" tab in the section "FAQ" one may find Question No. 8, which is enlightening in this way.*
>
> *Thus, in the situation that these services are acquired after signing the funding contract, the estimated value of advisory services in the organization of public acquisitions proceedings will be calculated at the level of each individual project, towards choosing the assignment procedure.*
>
> *As such, after signing the funding contract, the estimated value and the assignment procedure applicable to the acquisition of advisory services in the management of the project (during the implementation period), as well as that of the auxiliary assistance services in the progress of acquisition procedures, will be determined by taking into consideration each type of service separately, without cumulating the estimated value of the two types of services.*

Figure 2: Taken from the reply of the NAPP with regards to the cumulation of advisory services in management with advisory services in the progress of acquisition procedures (N.A.P.P., 2020)

The interpretation of the acquisitions made by beneficiaries of European non-reimbursable funds outside of the applicable law causes not only confusion among them, but also delays in the acquisition of services need in the projects and financial burden on

the local budget, with additional costs generated for the Managing Authority and wasted time as most of the beneficiaries, on the basis of the reply from the NAPP, proceed to court in order to recover the sums declared ineligible.

To all of these, at a macroeconomic level, the reduced absorption of European non-reimbursable funds and the risk of decommitment are added.

Should, then, the Managing Authority interpret the legislation? Or should it (the MA) be based on the replies issued by the National Authority for Public Procurement, the sole one in Romania able to clarify the means of applying the public procurement legislation? It is up to each reader to answer these questions.

- **Erroneous interpretations of the legislation which lead either to the dismissal of projects, or to delays in their application**

Among the shortcomings in the area of public acquisitions that generate temporal and financial delays in their application, one may also find erroneous interpretations of the legislation which, in some cases, led to the unjustified dismissal of a project[4] impactful onto the local community or to the extension of the times of completion in acquisition procedures and, by default, to the extension of the period of application of the projects.

In this case, a proper example would be issuing a point of view from an Intermediary Body of POR with regards to the necessity of cumulating compulsory information and advertising services (in the present case, publishing press releases and creating a notice board), with specialised marketing services (implementing a marketing strategy). Even though cumulating acquisitions does not seem intricate, it generates delays (1) in the light of the lack of the identification of specialised suppliers to provide both types of services and (2) in the case of launching batch acquisitions, in the light of the lack of the supplier's presence in the acquisition of compulsory information and advertising services, the reasoning behind being the trivial amounts of money (usually, these are standardised through the Applicant's Guide at 10.000 lei), along with the excessive bureaucracy imposed by the legislation for a simplified procedure.

Thus, the lack of a literal interpretation of the law of public procurement engenders, in these cases too, impediments in the implementation of projects, generating adverse effects at each level involved in Managing European non-reimbursable funds.

According to a study published by the European Commission, it is estimated that over 48% of European structural and cohesion funds are expended as a result of the course of public acquisitions (European Commission, 2015).

The current low rate of absorption of European funds presents several root causes, with public acquisitions as a principal one.

The impact of the public acquisition legislation onto public investments financed by means of European structural and cohesion funds is a significant one, influencing several large institutions.

The implementation of the public acquisition legislation stands for a challenge from both the point of view of the beneficiaries of non-reimbursable funds, and of Managing Authorities and of National Authority for Public Procurement. Although, last years, notable efforts towards balancing national legislation with the European one were

[4] The present project is taken from the author's portfolio. It was rejected by the Intermediary Body but, following its objection submitted to the Managing Authority, its financing was granted, being implemented as we speak. It is possible that such cases are not singular.

made, as well as towards clarifying the norms and procedures applicable in the domain, these are, nevertheless, cumbersome.

From the point of view of the contracting authorities, the problems they are faced with are closely linked to their lack of experience, the absence of document models to aid them in preparing and launching the processes of acquisition, as well as the lack of predictability and the absence of clearly defined regulations, applicable at national level, without leaving any space for legislative interpretation.

On the other hand, however, the interpretation of public acquisition legislation done by Intermediary Bodies and by Managing Authorities generates not only confusion among the beneficiaries of non-reimbursable funding, but also in the implementation of differentiated measures which, in the end, lead to inequality amid them.

This situation was also confirmed by a report done by Delloite at the request of the European Commission, according to whom the National Authority for Public Procurement plays but an advisory role in relation to the Managing Authorities, while the NAPP only monitor the acquisition procedures made during non-reimbursable funds projects, issuing guidelines and recommendations to beneficiaries which, most of the time, are not balanced with the NAPP procedures (Delloite, 2011).

If (1) public acquisition legislation will not be optimised and clearly described so that it may be applied by beneficiaries of European funded projects, (2) there will be no clearly defined system of verification and control, applicable from the level of the National Authority for Public Procurement up to the level of the Managing Authorities, in the absence of applying interpretative legislation, the low rate of absorption of European non-reimbursable funds will remain in its reduced state and the efforts employed by all parts in Managing non-reimbursable funds projects, be it beneficiaries, Intermediary Bodies or Managing Authorities, will be rendered costly and inefficient.

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IMPACT OF THE COVID-19 CRISIS ON THE EDUCATION SYSTEM

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Abstract. *The currently Covid-19 crisis has repercussions on all areas of activity, including on the education system not only at the national level, but also at the international level. This article aims to highlight the main effects of the Covid-19 crisis on the education system.*

Keywords: *Covid-19 crisis, education system, impact.*

The COVID-19 pandemic has significant repercussions not only from a health and economic point of view but also from a social point of view, in particular from an educational point of view (*Шмис Т.)* . This is a dual crisis: an educational crisis linked to school closures and a general economic crisis that also affects the education sector". In particular, the closure of educational establishments in connection with pandemic leads to the suspension or slowing down of educational processes and to an increase in inequality in this area. The crisis is affecting the pupils themselves: They eat worse, their psychological condition is worsening and their vulnerability is increasing. The economic crisis is leading to a student exit, the use of child labor is on the rise, and parents are cutting the costs for educating children, the expert said. "The economic crisis is affecting the education system itself". He explained that governments are reducing spending on this area, the quality of education is decreasing and private schools are closed.

In the long term, all these measures lead to a reduction in the "human capital", to a further increase in poverty due to fewer skilled professionals and to an increase in social tension. It is necessary, in the short term to overcome these consequences, to promote further education, especially for poor students. It is necessary in the medium term, to ensure adequate funding for the education sector and in the long term to achieve sustainability in this area (*Шмис Т.).*

UNESCO, in turn, monitors the impact of Coronavirus on education. Since 20 April, school closures have affected more than 91,3% of students worldwide, which is 1.575.270.054 million (*El coronavirus Covid-19 y la educación superior)* . Also, due to the outbreak of Covid-19, the number of children, young people and adults not participating in the training process is significant. Governments around the world have decided to close down educational institutions in a bid to combat the COVID-19

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pandemic. According to UNESCO, more than 100 countries have implemented school closures across the country, affecting more than half of the world's students. Other countries have implemented local school closures and, if they also ordered the closure of schools and universities at national level, this would disrupt the learning process for millions of other students. According to the UNESCO Institute of Statistics:

• Bolivia, Cayman Islands, Equatorial Guinea, Guinea-Bissau, Iraq, Somalia, United Republic of Tanzania and Venezuela: There is no data on higher education programs.

• China: Schools have started to open, but most have remained closed.

• Finland: Pre-school education and classes 1-3 will continue for the children of people working in sectors critical to the functioning of society, as well as for children with special needs from pre-school to upper secondary education. Early childhood education and care will be provided to all children whose parents are unable to provide home care.

At other levels of education, contact learning may continue if deemed necessary to complete the course.

• Honduras: Although all schools were closed, universities had a choice: To remain open or not.

• Iceland: Primary schools remained open, if the number of children per class did not exceed 20.

• Japan: Universities were on spring holidays and therefore the closures are not linked to the corravirus (*Образование: от закрытия учебных заведений до*..).

In this context, it is also worth mentioning the position of the UN chief, António Guterres, that the decisions taken now in this respect will have a lasting effect on hundreds of millions of people and on the development of their countries. "We are facing a generational catastrophe that could waste the huge human potential, undermine decades of progress and aggravate the rooted inequalities," the UN secretary-general warned on Tuesday. António Guterres recalled that school closures due to the COVID-19 pandemic affected almost 1,6 billion students of all ages and countries, with immediate and long-term repercussions. In a video message to introduce the policy document on education and COVID-19, Guterres said this is a defining moment for children and young people from around the world. "The decisions that governments and partners are taking now will have a lasting effect on hundreds of millions of young people, as well as on the development prospects of countries for decades," he said. The emergency health situation has aggravated the already existing disparities in education and the prolonged closure of schools could reverse progress over the last five years, in particular in the education of girls and adolescents and young women. Predictions indicate that nearly 24 million students from elementary school to university could drop out due to the economic impact of the health crisis. The Secretary-General's policy document calls for preventing the existing learning crisis from becoming an irreparable disaster *(ibidem*) .

The COVID-19 pandemic and the closure of schools from around the world have had a negative impact on national education systems in different countries; the situation requires special measures, according to the authors of the study prepared by the World Bank. According to experts, the coronavirus pandemic has aggravated pre-existing problems in international education. Before the pandemic, 258 million children were not attending school; many students had studied too little and received inadequate education. In low- and middle-income countries, more than half of all 10-year-olds have been unable to read and understand simple stories appropriate to their age. Children from poor families had the least access to schooling, the highest school drop-out rates and the biggest

learning gaps. The objective adopted for sustainable development, which commits all countries to ensure that all children receive "free, fair and quality primary and secondary education", has not been achieved.

Experts from the World Bank have determined that the coronavirus pandemic threatens educational progress around the world by two main factors: first, the almost complete closure of schools at all levels and, secondly, the economic crisis caused by measures to combat the pandemic. "The pandemic had a profound impact on education, closing schools almost everywhere on the planet, in the greatest shock to all education systems in our lives. The damage will become even more severe as the health emergency escalate into a deep global recession," the report said.

According to the authors of the study, if countries react quickly to support the lifelong learning process, they can mitigate the damage and even turn the recovery into new opportunities. The experts propose measures to achieve this objective, dividing them into three overlapping phases: "Policy of holding", "continuous management" and "improvement and acceleration". In the first phase, States are encouraged to successfully cope with school closures, protecting health and safety and doing their utmost to prevent loss of student learning through distance learning. "At the same time, countries must start planning for the reopening of schools. This means preventing early school leaving, ensuring healthy school environments and adopting new methods it helps to restore faster learning in key areas once students return to school" (*Международное исследование…*).

Today, there are no areas which, to some extent or otherwise, are not affected by the consequences of the spread of COVID-19. The impact of the coronavirus pandemic has on the education system differs from country to country and has its specificities in different regions of the world. However, the overall driver of these changes can be sought: The pandemic has put universities in difficult conditions, forcing them to adapt to current events as soon as possible, to spend significant funds on accelerated digitization and often to take decisions without considering the possible consequences.

The pandemic has also had a negative impact on international cooperation in education and science: International travel has been canceled, exchange programs and academic mobility of students and academic staff have been suspended and many research cooperation programs have been discontinued.

The implications for the development of international student mobility are not so simple. There is every reason to believe that, after the end of the coronavirus crisis, universities will continue to fight for foreign students, but the international educational market will become more sensitive and competitive. The market can be geared to poorer countries where universities can offer more accessible educational programs. Professor Simon Marginson of the higher Education Research Center at the University of Melbourne expects it to take about five years before the student mobility market is restored. The most important factors in choosing a place of study will be the costs of training, safety and welfare (*Шмис Т.)*.

Universities have been forced to solve a lot of problems in a short time: in what forms to drive distance learning; what technical means to use for it; how to assess the acquisition of material by students; how to conduct final exams and how to recruit for the next academic year. This is particularly true for countries where final school exams have been canceled or postponed indefinitely. The urgent transition to distance learning has given rise to a number of interrelated problems:

• Some countries have failed to switch to online education for various reasons, including lack of material and technical support for universities, lack of wide coverage of

internet networks, low living standards of the population, etc. for example, Latin American countries have suspended university studies. One of the leading universities in Argentina, the University of Buenos Aires, has decided to cancel courses and change the academic calendar, rather than moving to online learning, believing that only full-time education can guarantee a high level of quality. Zimbabwe's national Institute of Science and Technology, like other African universities, has announced its closure until a new notification. Malaysia's Minister of Higher Education has suspended distance learning.

• In several countries, students organized an opposition to the switch to distance learning. In the Philippines, strikes have taken place against the transition to online format, requesting termination of the contract and the reimbursement of tuition fees, due to the fact that distance learning is not an equivalent substitute for traditional forms of education, as well as the lack of necessary equipment and poor access to the Internet. In many African universities, student unions opposed online learning due to a lack of necessary conditions and technical means. In Tunisia, student unions protested the government's decision to adapt online learning during the pandemic, calling it a discriminatory measure and calling for a boycott of online platforms. In Chile, students from the country's main public institution, the University of Chile and the private University of San Sebastian initiated online strikes. In Great Britain, over 300.000 students signed a petition requesting reimbursement of tuition fees.

•There is a significant decline in the quality of education during the transition to distance learning, in the absence of software for operational learning management systems in many countries –for the management of training courses in distance learning. For example, the Pakistan higher Education Committee has failed to develop clear and understandable online learning strategies and policies for public and private universities, creating confusion between faculties university administrators, faculties and students.

• Problems arise with online applications where universities conduct lectures or seminars remotely. Some universities have announced they are abandoning the Zoom platform and moving to Google get or other applications. In connection with the hacker's attacks, the online education of several universities has been temporarily suspended. A concept such as Zoom bombing has emerged, characterizing online space infringement actions, including virtual classroom hacking, posting pornographic or hate images, use of obscene language, etc.

• University sites have worked unstable due to increased loading on university databases and information systems.

• Employees' qualifications were not enough to move to online learning: Lack of knowledge of the platforms and services available for distance learning, their functionality, effective teaching methods online, etc. today, what is offered by most universities in developing countries does not meet in any way the high standards of online learning and online education. The pandemic has had a negative impact on the work of higher education institutions in all countries of the world without exception, but poor countries, foreign students and students from disadvantaged sections of the population have suffered the most.

Developing countries have experienced a lack of resources and experience to establish distance learning at a decent level. There are no experienced programs and web designers, institutional capacities, logistics, no proven high-quality educational resources, some teachers do not understand the characteristics of online teaching, distance learning methods. Thus, according to the report of the Association of universities of the 700 universities operating in Sub-Saharan Africa, few are trained and technically equipped to

provide distance learning. In developing countries, students from disadvantaged families have also experienced a lack of technical means and Internet connection. With limited Internet access and a small area of coverage, online learning opportunities are extremely limited, especially in rural areas.

According to the inter-American Development Bank (ADB), Latin America and the Caribbean is one of the regions where there is the greatest difference in technology and the smallest preparation in digital infrastructure. Weaknesses in distance learning, the cost of the digital devices and the important role that schools play in the health and well-being of pupils. The Education Division of the TIB, through the Information and Educational Management Systems (IEMS) project, has worked for more than two years with Latin American and Caribbean countries.

The closure of kindergarten facilities due to the COVID-19 pandemic left 40 million children without pre-school education, according to UN agency data. This change in the education system deprives the small of the necessary foundations for their social and intellectual development. The closure of pre-school centers due to the COVID-19 pandemic deprived at least 40 million children from 2020 of their formal training before entering primary education, reveals a new report by the United Nations Fund for children. The closure of activities also exposed an even deeper crisis for families with young children in low and middle income countries, where they already did not have social protection services. Since the start of the coronavirus, poor quality, high price or lack of access to child care and early education have forced many parents around the world to leave young children in unsafe environments or not to stimulate a critical stage in their development (*Международное исследование выявило)*. Worse still, more than 35 million children under the age of five have often been left without adult supervision, in addition to the fact that many fathers, and especially mothers, employed in the informal sector, had to take their children to work with them (*Sanz I.).*

In the Arab countries, the trend of growing inequality between different sectors of society is already being seen as a result of the transition to online learning - only 52% of residents have access to the Internet. According to UNESCO data, 826 million students in the world do not have personal computers, 706 million (43%) do not have internet access. Foreign students have found themselves in an equally difficult situation. As a result of requests to empty the hostels and the university campus as soon as possible, students have had difficulties finding accommodation; due to border closures and flight cancellations, many foreign students have not been able to return home, have faced financial difficulties due to their inability to find a job, have been given up medical care in campus. This will undoubtedly affect the recruitment of foreign students in the future. Many researchers expect a significant drop in the number of foreign students. The pandemic has caused a global change, in particular the switch to online surveys (*Covid-19: impacto en la educación).*

Another time that influences the educational process is massive open online courses that could compete with, or even undermine, traditional universities. Despite the fact that these fears were not intended to become a reality, today in relation to the pandemic, the question arises as to whether the current crisis will lead to universities becoming online institutions. Time will tell you what the consequences of the emergency transition to online format will be, but there is no doubt that they will occur in the short term.

Prominent Western experts on the development of higher education Philip Altbach and Hans de Wit in their recent Article "Post-pandemic perspective" stressed a bleak one

for the poor, and doubt that the pandemic will trigger a technological revolution in higher education. However, it is clear that the use of distance learning methods will be extended. Another problem is that the transition to effective online learning will require a lot of time and resources, as well as stakeholder support in the development of quality online education (*ibidem*).

Thus, the responses to the impact of the Covid-19 crisis on the education system can be summarized in three steps: tackling the pandemic, managing continuity and improving and accelerating learning. The aim of education systems when implementing these policies should be to recover without repeating the past, given that in many countries the pre-pandemic situation was already characterized by low learning, high levels of inequality and slow progress.

Just before the COVID-19 pandemic, the world is already experiencing a learning crisis. Before the pandemic, 258 million children and young people were outside school. The poverty rate in low- and middle-income countries was 53%, which meant that more than half of 10-year-olds could not read and understand a simple story appropriate to their age. Worse still, the crisis has not been evenly distributed: The worst-off children and young people have had the least access to school, with higher rates of school drop-out and higher learning deficits. All this means that the world was already far from being able to achieve the goal of sustainable development, which commits all nations to ensure that, among other ambitious goals, "all girls and boys complete primary and secondary education, which must be free, fair and quality ".

The pandemic has already had a huge impact on education as schools are closed in almost all parts of the planet, which is the most important simultaneous crisis that all education systems have experienced today. The damage will be even more serious as health emergencies spill into the economy and trigger a deep global recession.

Closing schools will cause a loss of learning, an increase in school drop-out and greater inequality. As a result of the emergence of the Covid-19 crisis, since the end of April 2020, schools have been closed in 180 countries and 85% of students worldwide have not participated in the education process. Without strong policies, this will have immediate costs for both learning and the health of children and young people.

The quality of studies will decrease and increase the rate of drop-out, especially among the most disadvantaged. For the most part, students will no longer learn academic subjects. The reduction in learning may be higher for children of pre-school age, as their families are less likely to give priority to learning during school-leaving. Inequality in education will increase, as only students from rich families will have support to continue education at home. Finally, the risk of school drop-outs will increase, as the attachment of vulnerable pupils to school may be reduced due to the lack of exposure of motivating teachers.

Lack of support and structure provided by schools will also affect health and safety. The nutrition and physical health of students will be at stake, as around 368 million children worldwide depend on school feeding programs. The mental health of students can also suffer from the isolation they have to maintain during the period of social distance and the trauma of the crisis on families. In addition, young people outside school can engage in more dangerous behavior and adolescent fertility can increase.

According to the International Monetary Fund (IMF) forecasts, the world economy will shrink by 3% in 2020, much more than during the global financial crisis of 2008-09. This crisis will have serious consequences for both governments and families, and will affect both the supply and demand sector in education: Early school leaving will

increase and many of these students will give up school forever. The highest drop-out rate will be concentrated in vulnerable groups. When schools reopened after about one academic year of closure due to the Ebola crisis in Sierra Leone, girls were 16 per cent less likely to go to school. The drop-out rate will be accompanied by an increase in the work of children and the marriages of children and teens.

The impact of on-line learning will be even greater due to economic pressures on households. Even for students who do not give up, their families will be able to pay less for school supplies (such as books) until the economy returns. In addition, many parents can transfer their children from private schools to public schools, overloading public systems and reducing their quality.

On the supply side, the economic impact will affect schools and teachers. Fiscal pressures will lead to a drop in investment in education, which will reduce the resources available to teachers. In addition, educational quality will suffer (either while online education is offered or when courses resume) as the health crisis will affect some teachers directly and others will suffer economic pressure due to wage cuts or late payments.

If these impacts are not controlled, they will have long-term costs for both students and society as a whole. Given the likely increase in poverty, the Covid-19 crisis could prevent a whole generation from realizing its full potential. Students who give up or have modest learning outcomes will have lower levels of personal and professional development, including lower income throughout their lives. Inequality will increase, as these impacts are likely to be greater for students from vulnerable families. Children who need more education to get out of poverty are likely to be the most deprived of it because of the crisis. This decline in the economic outlook could in turn lead to an increase in criminal activity and dangerous behavior. Social unrest among young people could also increase: In many low- and middle-income countries, the combination of a mass of young people with poverty prospects can be explosive. These adverse effects can be maintained for a long time, as the lower human capital in the current student cohort (concentrated among the most disadvantaged) perpetuates the vicious cycle of poverty and inequality.

These consequences (and in particular long-term impacts) are not inevitable. There is no doubt that in the short term the costs for education and everything that society is worth will be significant. However, if countries make the effort and react quickly to support the investment system, they can at least partially mitigate the damage. Only through appropriate planning and policies can countries take advantage of the crisis as an opportunity to create more effective and resilient education systems. Policies to change this situation can thus be grouped into three overlapping steps: tackling the pandemic, managing continuity, improving and accelerating studies.

In addition to protecting students, many countries are implementing additional nutrition programs or cash transfers to ensure that pupils who often depend on school feeding programs do not suffer from hunger. In order to prevent the decline in educational attainment, distance learning programs have been implemented worldwide from Nigeria to Norway (*Covid-19: impacto en la educación*). In just a few days, teachers around the world have digitized education processes. Millions of students began to receive education from a distance, and teachers abandoned the form of education lesson. At the same time, digital solutions in the field of education have not been used as actively as they would seem. The pandemic played a kind of stress test and once again raised the issue of "digital inequality", recalling that 40% of the world's population still lacks Internet access.

With the gradual transition of the education system to online learning, the drawbacks of the lack of an it strategy in universities have started to emerge. Previously,

educational institutions and teachers were able to use any platform they liked – Google, the MSFT teams, Coursera, Blackboard, Moodle, Canvas. The result of this freedom of choice was that, after the overall transition to distance education, it proved extremely difficult to centralize and create a single platform. The full implementation of the e-learning system requires a completely new business model for universities, with major changes in the approach to financial and staff management, as well as the complete digitalization of the administrative block. Many countries have quickly prepared their own technical solutions in response to the pandemic. Among the most interesting:

• the governments of South Korea, Japan and Lebanon have distributed interactive software to teach subjects ranging from calculation to fitness;

• over 100 million students from China have acquired knowledge through dedicated TV channels;

• lesson plans and lecture plans have started to be published more often on social media and instant messaging, for example in WhatsApp;

• collaboration was organized between government agencies, media, technology companies, editing and entertainment industry to digitize all necessary educational materials as quickly as possible.

As in most other areas, the pandemic exposed the problems and limitations of remote management of such a complex business as the university. However, it should also become a catalyst for positive changes. If the pace of digitalization of student learning and assessment is accelerating, so will the infrastructure to support education.

Global responses were diverse. UNESCO held a video conference in early March 2020 with representatives from more than 70 countries. Objective: to create a crisis group that will encourage the help of participants. The education ministries around the world have launched initiatives for online courses, TV lessons, digital platforms with different educational services or television programs. On the other hand, the European Commission has compiled the tools available for educators or information on various educational projects of different content and levels. Teachers face an unexpected challenge. They must guarantee massive learning with resources that have not been used so far and assess knowledge using unexplored methods. Education will be obliged to adapt and have alternative plans to mitigate the incidence of situations as devastating as those suffered with the COVID-19 pandemic (*Morán P. C.M., Ruiz F.D.).*

So, the Purdue Global organization offers a huge selection of online courses on various topics to students from all over the world. This includes the work of the oldest remote education institution in the world - open University in the UK with about 175 thousand students, making it the largest university in the country. Just as the Internet has become an integral part of life for half the planet, online education will soon cease to be unusual. Interaction with students in this format requires the support of many business processes, such as enrollment, performance evaluation and student data, document management. By bringing students and teachers together in one digital domain, we will make a revolutionary leap forward. Of course, we will have classes halls, classrooms and physical education lessons. Rather, it is about more integration of education institutions' training and digital management. Technologies will penetrate all aspects of the university's activities: Chats and digital assistants will be able to answer students' questions, block chain will protect the authenticity of digital diplomas, VR will recreate the real interaction with a teacher at an exam, predictive analytics will help identify the reasons for students' progress or failure, Internet of things will allow "intelligent" »Campuses manages its subsystems.

In order to better understand the impact of the Covid-19 crisis on the education system, the list of medium- and long-term effects of the pandemic should be drawn up:

• the approach of the Bring Your Own technology in the strategy of organizing the it structure of universities will change and become more centralized and standardized. There will be a rethink of teaching and learning, management of campus, finance and residents;

• the education sector has long started implementing cloud applications for university management. The process will go faster when universities see all the benefits of standardization, which will allow them to devote more time and attention to their core tasks: Learning, involvement in the education process and scientific activities;

• the digitalization of teaching research resources will also accelerate. Universities and schools will have much more flexibility in supporting new models of teaching and learning;

• digitalization will help to reduce the administrative costs of universities and to refocus toward the same basic tasks - training, involvement in education and scientific activity higher education is a high-level business, As demonstrated by the close attention of all industry participants in the results of the annual surveys, such as the world university ranking by the time. The COVID-19 crisis is likely to affect these rankings and universities that can turn turbulence into learning opportunities will prosper in the post pandemic world (*Вудфилд М.).*

In the context of an accelerated pandemic digitalization, it can be a strength test for teachers and the national education system. The outbreak of coronavirus infection has affected billions of people on the planet. In 188 countries of the world, decisions have been taken to temporarily close educational establishments to reduce the spread of the virus (Давлетов Ф.).

Firstly, the closure of educational establishments and the substitution of face-to-face courses through online and distance training should be considered as not having a possible alternative. In the current health crisis situation, there is no other possible solution than closing educational centers and replacing face-to-face courses with online training. Among the negative effects of school closures is that part of the learning process cannot be recovered. According to Joshua Goodman's position, (university professor Harvard) the academic effects of suspending courses for all students can be mitigated if there is a coordinated response and is not prolonged over time. This researcher shows that the closure of the Massachusetts sites due to snow has not had any significant academic repercussions. If school closures would take more than two weeks, then they could have a negative impact on long-term learning. Researchers David Jaume (Banco de Mexico) and Alexander Willen of the Norwegian School of Economics published an Article in the Labor Economy Journal in October 2019, which shows the long-term negative effects of the teachers' strike in Argentina. The suspension of primary classes in Argentina cut the salaries of its students many years later by up to 3,2% for men and 1,9% for women. Digital platforms, on their side, will have to face intensive use in a short period of time, to which not all platforms can resist with guarantees. Among the qualifying issues, online training provides access to education in a situation where face-to-face education is not possible (*Sanz I.).*

In these historic times, distance learning undoubtedly seems the only possible solution to provide some security at least in the school environment, the priority activities to be given here are those which offer knowledge, develop skills and educate pupils to become citizens: lessons, functional and preparatory activities for training and summary

evaluations, practical and laboratory activities (*La scuola ai tempi del Coronavirus*). Remote activities with Multimedia Mode to be enjoyed at home, organized and planned over time, not to interfere negatively with those present, but to complement and deepen them, can be collaborative: Self-contained, guided laboratory learning activities, group activities, debates, conferences.

A rapid transition will cause significant damage to the quality of teaching and therefore to the reputation of universities. When moving to distance education, it is worth taking into account the welfare factor of different societies, which will bring the problems of discrimination against different groups of the population to the fore and further gap between different layers of society (*Иностраные студенты).* In many countries, education will no longer be "universal".

The Covid-19 crisis has direct repercussions on all fields of activity, including the education system. Under the current circumstances, the main tasks for universities will be:

•strategic planning and accounting of associated risks to predict the short- and long-term impacts of a pandemic, including the expected economic downturn;

• development of measures to support students and teachers: Finding ways to level the inequality between students (access to the Internet, availability of the necessary equipment for all students, suspension of tuition fees, targeted material assistance, loans for students from disadvantaged families), Organizing training for faculties on teaching online teaching, functionalities and capabilities of existing platforms and services (including Google classroom, Microsoft groups, Wiz IQ Moodle, I Spring), organizing a special platform for the exchange of experience between teachers in the field of e-teaching, joint search for solutions to learning problems, methodological assistance in adapting programs to online learning. The ruling universities now pay special attention to psychological support for their students and staff.

• find ways to make an effective transition to online learning. In many countries, universities are encouraged to move to online education, regardless of when the quarantine is lifted. A large number of universities have developed and offer online education programs to students. According to the Dutch Study ports platform, the interest of pupils and parents in distance learning has doubled;

• alignment of knowledge assessment procedures and criteria with the new online program and pedagogical approaches. The development of methods for assessing distance learning will require significant effort, but this will ensure the future quality of learning and the validity of the final assessments;

• for universities in developing countries, one of the immediate tasks should be to establish partnerships with foreign universities that wish to share their resources, experience, especially in the field of online learning and online scientific cooperation.

Well-known foreign universities and well-known research institutes with stable incomes are expected to recover quickly from the crisis. At the same time, a number of universities can close down, mainly private ones, which are completely dependent on tuition fees. Millions of financially disabled students will have to drop out of higher education or opt for more accessible public universities. Universities with a significant number of international students will also face significant challenges.

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VI. Book Reviews

ON PROLIFERATION AND THE LOGIC OF THE NEW MARKET

Ioana ALBU*

Article Review of: Eliza Gheorghe, *Proliferation and the Logic of the Nuclear Market*, in *International Security*, Vol. 43, No. 4 (Spring 2019), pp. 88–127, https://doi.org/10.1162/ISEC_a_00344© 2019 by the President and Fellows of Harvard College and the Massachusetts Institute of Technology.

Keywords: *nuclear proliferation, supplier cartel, weaponization, thwarters, hedgers, nuclear trade, security rivalry, power politics, competition*

The article authored by PhD Eliza Gheorghe assistant lecturer in the International Relations Department at Bilkent University [*International Security* 43:4, 2019- *Proliferation and the Logic of the New Market*, pp. 88–127], analyzes the current state of the nuclear market, the competition onto it, focusing on *non/proliferation*. It is foreseen that competition will arise among suppliers for the development of nuclear weapons, the author being of opinion that should there be no supplier cartel that would have a regulatory role with regard to transfers of material and technology for nuclear weapons, competition for market share will become fierce. The author enploys two terms for describing the spread of nuclear weapons '*thwarters*' and '*hedgers*', where the former are the great powers who try to limit the suppliers, thus countering proliferation; the setting for this to happen being unipolarity, with a gradual decrease when entering bipolarity and being least likely to occur in multipolarity; while the latter [i.e. hedgers] are on the verge of weaponry usage. The global picture of the Cold War and post Cold war is used therefter, being known that more countries spent in the arms industry at the beginning of the Cold War than at the end of it. The author posits that in 1991 the USA having become the sole power was in the position to prevent countries from acquiring nuclear weapons, while as the world enters multipolarity, cooperation among the great powers for the market, this leading to nuclear proliferation.

The study starts by defining key terms within the area if nuclear proliferation, it continues with analyzing proliferation at latge in the period 1945-2014. The central part of the study examines the two superpowers – herein identified as 'thwarters'- US and the Soviet Union- influenced the evolution of nuclear market. The study pays special attention to India's nuclear program, then South Korea and last but not least, Romania. The pathway to the bomb is described accordingly to consolidate the nuclear bomb capability. The author states that the nuclear market is a significant pathway to proliferation, which has contributed in varying degrees to the nuclear programs of a majority of the world's

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states on top in terms of nuclear weapons: China, France, India, Israel, North Korea, Pakistan, South Africa and the Soviet Union [E.Gheorghe, IS: 43:4/92].

The nuclear market and its mechanisms are described in a minute analysis, showing how its main protagonists, i.e. *buyers*, *suppliers* and *thwarters* engage in commercial transactions to trade products used to build nuclear weapons. *Buyers* that are determined to become proliferators, it is shown further on in the article, can have two options as their goals, i.e. becoming a nuclear hedger or a nuclear weapons state, according to A.E. Levite quoted by the author [IS 27:3, p.58-88]. As for *suppliers*, these are countries exporting nuclear technology, materials and expertise used both for civilian and military purposes. *Thwarters* are the great powers, acting as market regulators. What they mainly do is prevent the sale of technology that facilitates proliferation. The measures employed are designed to inhibit, contain and roll back proliferation.

Security is the overriding concern of states, being at the core of countries' endeavours of becoming *hedgers* or *nuclear weapons states*, since posssessing a nuclear arsenal is the highest priority for all states in the international system. Politics or prestige of a country also justify a country's pursuit for acquiring nuclear weapons. Successful implementation of market regulation in order to curb proliferation by the great powers depens to a great extent on the distribution of power among them and on the other hand, on the rivalry between them.

Proliferation is directly influenced by inflexions the great power politics. The rivalry between the US and the Soviet Union during the Cold War had two contrasting waves; it was much more intense at the outset, 1945 to 1974 than at the end, 1975 to 1990, the international system having turned from bipolarity to unipolarity in the post-Cold War period of time, until 2014. Proliferation followed the same pattern of inflexions, accordingly, i.e. increased markedly in the early Cold War period, slowed down in the late Cold War period and levelled off after the Cold War respectively. In terms of numbers a statistics is provided, i.e. seven nuclear weapons states appeared in the I-st period: from 1945 to 1974, wheres in the II-nd, from 1945 to 1990 only two, while from 1991 to 2014 their number levelled off, North Korea being a new addittion while South Africa's decision was that of stepping out nuclearization. Following this state of affairs, the nuclear market ‚ebbed and flowed' in accordance with the growth and/or slowdown of nuclear weapons trade. The Nuclear Suppliers Group was created in 1975 by the joint cooperation of US and the Soviet Union, a suppliers' cartel that was meant to curb the sale of ENR technology. The analysis shows that the number of proliferators at the start and end of the post-Cold War period stayed the same, being nine, few nuclear transfers having occurred during this time.

As mentioned before, the US and the Soviet Union entered the nuclear age as thwarters, the perception of the US leaders being that the US should be the only country to possess nuclear weapons [Maddock p.68 in *Nuclear Apartheid*, quoted by E.Gheorghe] and thus adopted the Atomic Energy Act of 1946, having restricted collaboration with Britain and Canada, its two wartime partners. At the other end, the Soviet Union discouraged nuclear development among its Eastern European allies. Apart from the two superpowers, there was a select group of countries: Britain, Canada, France, Norway and Sweden who did not share the two superpowers' plight to prevent the spread of nuclear weapons, having possessed both expertise and materials to build nuclear power plants and ENR facilities altogether. It was these countries that contributed to the creation of the nuclear market at the beginning of the 1950s. The two superpowers, being both concerned about the nuclear trade and dissatisfied with the outcome of their efforts to prevent

proliferation, decided to shape the market and to supply nuclear technology themselves, having thus attempted to create a monopoly in 1946 under UN authority, but this initiative having failed, they set up subsequenttly in 1957 an agency called the International Atomic Eneregy Agency. This one, however, had little authority. As an outcome of the two endeavours the market was affected and proliferation spread throughout the world. US and the Soviet Union could not work together, competition of suppliers over the market share became fierce, there being few restricitons on sale.

The case of India. According to the author, India became a hedger in 1964. In 1948, under the rule of premier Jawaharlal Nehru, India created a civilian nuclear program.The Atomic Energy Commission of India was set up at the time. India was in the position to exploit the competitiveness of the market, having had access to suppliers in both the West and the East. India's interest in nuclear energy determined suppliers to see opportunities for business to grow, in spite of US efforts to stop the emergence of the nuclear market at the outset. As a result, nuclear trade negotiations intensified. The US retaliated and defcided to sell nuclear technology to interested buyers, in an attempt to influence the market and prevent proliferation. Thus India itself signed a cooperation agreement with the US in 1955. Technology transfers were being negotiated further on. For fear that India might develop nuclear weapons capability, both the US and the Soviet Union wanted to sell it nuclear technology. This was wisely managed by the authorities in India, in the sense that they secured themselves a profitable financial package, as well as better technology and more favourable terms of use, better than they would have received from the Soviet Union. As a result, India first produced plutonium in 1964 [Perkovich, p.28 *India's Nuclear Bomb* quoted by. E.Gheorghe, p.109]. As to the transactions with the suppliers (Canada, France and Britain, once on the same side during the Cold War), India did play her role very well by manipulating them, [according to the minutes of a meeting held by India's premier in 1960 Jan.16], as there was fierce competition among these states to export nuclear technology. India then made a deal with Britain, which yielded more advantages than it agreement with France, as it gave it more control over the nuclear technology it got. The whole prospect of India's acquiring the bomb by means of transfers from foreign suppliers worried the US, as it weakened their ability to thwart India's nuclear ambitions. India refused to place the facilities that they imported under international security warranties, favouring concluding bilateral agreements with the suppliers. By the late 1960s the superpowers' efforts to stop proliferation had failed, although the relations between them improved. India became a proliferator further to the nuclear technology transfers. The nuclear test it conducted in 1974 was determined rather by China's nuclear test in 1964. Given the failure of the superpowers to form a cartel to regulate the nuclear market, due to the animosities between them. Conclusively, the author states that India effectively manipulated the market to great effect and the message felt throughout the world was that countries could avail themselves of the market in order to become proliferators, in spite of the non-proliferation efforts made by the superpowers, thus a major wave of proliferation swept accross countries, both West (Italy, West Germany, Pakistan, China) and East (Czechoslovakia, Yugoslavia and Romania), these countries having looked for nuclear assistance from the superpowers. The US, the Soviet Union and Britain proceeded to apply the agenda and throughout the entire late Cold War period nonproliferation was the very core of superpowers' uniterrupted cooperation despite their global rivalry.

The study analyzes further on the case of South Korea which initiated a peaceful nuclear program in the 1950s. The country was making efforts to rebuild the country after the Korean War. To this end, foreign suppliers helped South Korea build a nuclear industry.

The situation of the market change as the world system turned to unipolarity, with the US being the sole superpower and thwarter. Iraq developed a clandestine nuclear weapons program in 1991, which had been helped by foreign assistance during the Cold War.

The case of Romania deserves attention, being a country which was an aspiring hedger. Romania, too, started building a peaceful nuclear program in the 1950s. According to the author, Romania received a Soviet-type reactor for training purposes, but the Soviet Union preferred to grant assistance to Central European countries (Czechoslovakia, East Germany and Poland) on the ground that these countries had the strongest iondustries in the Eastern bloc. Having perceived reluctance from the Soviet Union, Romanian turned to the West, to suppliers, thus plans for enacting an extensive nuclear program took shape, being an indicator to the fact that there were no peaceful intentions, Romania making her intentions of building nuclear weapons clear, provided it did not lack technological capability. This was followed by the openly-declared intention of N. Ceausescu, the then Secretary General of the Romanian Communist Party to build an atomic weapon in cooperation with Israel. By intending to secure itself the capabilities to enable her to weaponize shortly make out of Romania a hedger. The Soviet Union became worried about proliferation given China's nuclear test in 1964 and tried to hinder as well Romania's nuclear aspirations, proposing an arrangement that would have conferred it considerable control over Romania's nuclear program, but the efforts failed because until 1978 Romania managed to acquire products from suppliers. It negotiated for nuclear power plants with Canada, Italy, Sweden, US and West Germany. France and the US provided a technology that was crucial for Romania's ongoing nuclear option. By 1976 with the change in the American administration, the situation changed for Romania, opportunities rapidly closing and Romania ended its negotiations with the American firms in the field of atomic energy. It turned to France, instead, for a better price and loose inspection. Once with the end of the Cold War there came the end of the Romanian leader Ceasusescu, as well, who was ousted and sentenced to death in 1989 and Romania decided to focus on a civilian nuclear program. Thus, Romania was able to acquire nuclear transfers at the beginning of the Cold War by "exploiting the competition in the nuclear market"- according to the author. In the late Cold War, however, the picture looked different, having become difficult for Romania to acquire nuclear technology, being pushed off proliferation.

What does the future hold in this respect? Being known that multipolarity has made its way into the international system, wherein China is rising as a great power and Russia is recovering, rivalry at security level mounting among these superpowers, US included and there appears to weaken the NSG. Renewed competition among suppliers is attested by Saudi Arabia's ambitious nuclear plans as of 2018. Worth to be noted is the fact that the US and Russia did have succes in their attempts to slow down proliferation, each developing their own model, on the one hand, the US's "gold standard"of nuclear cooperation agreements , while Russia implemented its own business model that implies control throughout the entire process of a nuclear facility, from construction to waste disposal. It remains to be seen whether China will require similar agreements on nuclear exports. The players in the field wil re-arrange their positions accordingly. Turkey may reconsider its terms of negotiation with Russia, Iraq and egypt might as well be tempted to resume their nuclear weapons program, while Saudi Arabia will want to acquire ENR

technology, it is concluded in the article. At the same time the UAE, no longer bound to the US gold standard, might feel entitled now to enrich.

Conclusively, the article focussed on the evolution and late developments of the nuclear market over time. It was shown that the great powers can limit proliferation by creating a cartel to regulate competition among suppliers as well as to regulate what they can sell and posits that how succesful they are ultimately depends on the global distribution of power and the rivalry among them on security matters. The author posits that the great powers should avoid pursuing foolish policies that could have bad consequences. Security competition will inevitably lead to disputes and that waging possible wars will imply serious costs on proliferation. The cartel is essential to preventing the expansion of the nuclear core. Pathways for future research are identified following the present study as to the relationship between buyers and suppliers, manipulation, diversifying the supply sources being but a few of the issues to be considered. A complete picture of the nuclear market was offered to the reader, highly important for understanding proliferation and last but not least, for preventing it altogether.

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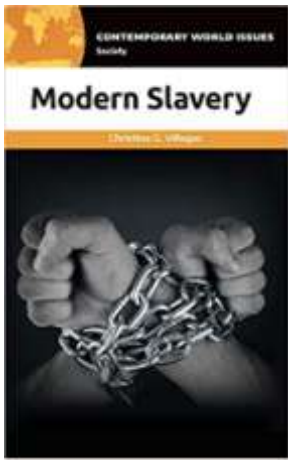
AN OVERVIEW OF THE CAUSES, CHALLENGES, SOLUTIONS, AND BEST PRACTICES IN THE AREA OF PREVENTING, COMBATING, AND ERRADICATING HUMAN TRAFFICKING WORLDWIDE

Anca IUHAS*

Review of: Villegas, Christina G., *Modern Slavery: A Reference Handbook*, Santa Barbara, California: ABC-CLIO, 2020, ISBN-13: 9781440859762



The book *Modern Slavery: A Reference Handbook*[1], written by Christina G. Villegas, was published in 2020 by ABC-CLIO in Santa Barbara, California and tackles the issue of human trafficking or, *modern slavery*, as the authors prefers to call it, compiling various information on the causes, challenges, solutions and best practices models in preventing, combating and eradicating this global phenomenon.

Christina Villegas is a Senior Fellow at the Independent Women's Forum. She holds a Ph. D. in Politics from the Institute for Philosophic Studies at the University of Dallas and is currently an associate professor of political science at California State University, San Bernardino, where she teaches courses in American government, public policy, and political thought. As the author herself states in the *Preface* of the book, the target audience are students and general readers seeking to identify the key issues of the worldwide epidemic of modern slavery and the various abolitionist efforts.

The handbook is organized in seven chapters, as follows:

Chapter One, "Background and History," examines the causes and the defining moments of slavery in the past and how it has continued up to the present, despite significant efforts to abolish it worldwide. The author describes the various geographic, political, cultural, and economic contexts of modern slavery and gives examples of areas and cultures where sex trafficking, as well as labour trafficking are still considered to be the privilege of the elite.

Chapter Two, "Problems, Controversies, and Solutions," deals with major problems defining the issue of modern slavery, some of which are the quantification and identification of victims, the competing legal approaches to prostitution, the need to enhance criminal accountability, with a focus on developing public justice systems, as well as task forces and partnerships between governments, the civil society, NGOs and other organisations. The author dedicates a special section to explaining the root issues of labour trafficking and the solutions that could be implemented to eradicate it. She briefly points to the need of reducing slavery in supply chains and gives a few examples of what

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has already been achieved in this field. Other major problems identified are the urgent need to empower the poor, rehabilitate survivors by focusing on long-term solution to build their future. She mentions the role of the US globally through the TIP Report, as well as the importance of taking action locally.

Chapter Three, "Perspectives", contains a series of articles written by several authors, including policy experts, victim advocates, and survivors, from a variety of viewpoints, on the subject of human trafficking. To mention some of them: *Prostitution: Upholding Women's Rights as Human Rights with the Equality Model* written by Autumn Burris, who is a sex trafficking survivor and legislative advocate. Another essay is *Ending Child Sex Trafficking through Prevention*, written by Carl Ralston, who is the founder and president of Remember Nhu, where he explains the efforts adopted at Remember NHU as the most efficient in preventing and eradicating child sex trafficking.

Chapter Four, "Profiles," details the work of 36 different governmental and non-governmental organizations involved in the fight against human trafficking, offering a wide spectrum of solutions and models of best practices that have already proven to work. Some of them are: A21, Anti-Slavery International, Coalition to Abolish Slavery and Trafficking, Deliver Fund, ECPAT, Free the Slaves, International Justice Mission, International Labour Organization, International Organization for Migration, La Strada International, Operation Underground Railroad, Shared Hope International, Walk Free Foundation etc.

Chapter 5, "Data and Documents," offers a few key data source documents, including conventions, laws, executive orders, speeches, and testimonies, to provide readers with first-hand information on the following: the scope of modern slavery, the victims and the patterns of victimization, the causes and the perpetrators, the insights that can be gained from survivors, solutions that can be applied at local, national, and international level to stop the perpetuation of human trafficking, as well as to eradicate and prevent it.

Chapter 6, "Resources," provides a list of selected books, articles, and reports on a variety of topics related to modern slavery, which are useful guidelines for further research.

Chapter 7, "Chronology," marks the defining moments and major events affecting slavery in the twentieth and twenty-first centuries.

The book concludes with a glossary of key terms relating to modern slavery.

Overall, *Modern Slavery: A Reference Handbook*, as the title itself clearly points, is an overview of the widespread phenomenon of human trafficking, offering a bird's-eye view on the most important aspects of this issue and being a useful resource for readers who want to map out the various areas from which they can choose to further their study. However, it does not contain exhaustive information on the issue and the avid researcher will find it to be a mere starting point for an in-depth study on the phenomenon.

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CREATING AND GOVERNING CULTURAL HERITAGE IN THE EUROPEAN UNION

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Review of: Tuuli Lähdesmäki , Viktorija L . A. Čeginskas, Sigrid Kaasik-Krogerus, Katja Mäkinen, and Johanna Turunen, *Creating and covering Cultural Heritage in the European Union,* New York, Routledge, 2020, ISBN: 978- 0- 429- 05354- 2

The European Union started to give greater consideration to the Cultural Heritage in recent years. A considerable change in EU's attitude towards heritage could be observed after the Maastricht Treaty, but starting with 2015 when the European identity was threatened by the waves of immigrants and refugees, the European Union's interest for cultural heritage increased.

This book emphasizes the European Heritage Label's impact and effects upon the economic, social, political and cultural matters of the European Union and presents from a critical point of view the EU's actions towards European identity, culture and heritage. The research is very complex, but well-structured and the information is catchy and very useful, aspects that make this study accessible for both specialists and researchers in this field and for the amateurs or unspecialized ones who want to learn about this subject. The book does not neglect the threating factors for culture and heritage such as populism, nationalism and others challenging aspects for the European Unity and Identity and it is issuing a word of warning by highlighting the importance of European Institutions involvement is this area.

The authors of this book are all researchers in Culture Studies, Sociology and Art, Music and Culture Departments from Finland University, their Academic background having a great impact upon the research process for this book and upon the conclusions they draw. Moreover, I consider their book as one of the most important works in this area of study firstly because in the last years, scholars interest for Cultural and Heritage conservation was very low and this lack of interest can be easily observed in the small number of articles, books, studies launched in the last years regarding this matter.

The book "Creating and Governing Cultural Heritage in the European Union" is a unique work as it is "the first published scholarly monograph on the European Heritage Label." The main area of interest of this book is actually the European Heritage Label and all the theories and subjects are discussed around this award. The European Heritage Label is an initiative under the Creative Europe Programme, its aims being clearly related to the rise of awareness toward the sites that have a significant European symbolic value

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and represent the common European history and indirectly to promote European values, culture and traditions.

The book is structured in four main parts, each of them being divided into two chapters. The first part – "Governing Europe" is presenting heritage as being a political tool and slightly approach the concept of multilevel governance, while the Part II named "Geo- graphing Europe", takes the reader to the geographical dimension of the cultural heritage and develops an unusual concept, namely the heritage as a geopolitical tool. The third part of the book entitled "Engaging Europe" focus on the concepts of participation, belonging, community, and the negative perceptions regarding heritage, but through the spectrum of EHL, which obviously is the leitmotif of this book. Part IV of the book and the last one - "Embodying Europe" introduce the idea of poly-space, presents a perception of the relationships between time, space, and heritage and it is in the same time a report of the fieldwork experiences' of the authors.

However, this book review is more concerned with the first part of the book - "Governing Europe", as I am more interested of the political aspect of the heritage. In this part of the book are approached more concepts and ideas regarding the European heritage and Commission's role in creating a strong network of actors, such as states and European non-governmental organizations, which are interested and preoccupied with bringing back into the spotlight the forgotten European treasures.

In this regard, The European Commission considers the heritage as being an "irreplaceable repository of knowledge and a valuable resource for economic growth, employment and social cohesion", a reason why in the last years, the cultural heritage became an important part of EU governance.

Another important aspect that is emphasized in this book, it is the economic one, specifically the funds that EU allocate for cultural and heritage related actions and organizations. The authors highlighted the idea that even if The European Union has some major projects and ambitious plans that involves cultural heritage activities (cross-border cultural cooperation, mobility between EU member states) the funding assigned for culture is still low.

However, one of the bravest actions of the European Union is the European Heritage Label, an award offered for the valuable sites from a cultural point of view, and a concept that in this book is presented as a heritage brand, following the idea that: "*the EU brands the sites and the sites brand the EU".* The concept of branding the EU is not a new one, as the former European Commissioner Willy De Clerq, in a 1993 report proposed that Europe should be treated as a 'brand product' and since then, the European Union started to implement this idea by organizing he European Heritage Days, Europa Nostra Awards and Creative Europe programme.

The main objective of the European Heritage Label is "to strengthen the sense of belonging of citizens to the European Union based on shared values and elements of European history and cultural heritage", as the European Commission mentions, but no matter how noble it may seem, the aims are purely political and the difficulties are not missing as there are clearly differences between what heritage represents and what the political interest are. Therefore, the gap between the mentalities and aims *("stability versus change, value of history versus economic profit")* have a negative impact on this action, as this European Heritage Label for sites seems to be granted on political and economic criteria.

As a conclusion, I dare to affirm that the book "Creating and Governing Cultural Heritage in the European Union" is the bible of the heritage in the EU, as it is the best-

written book I have read so far on this subject. The authors came up with a totally new approach, presenting the information, the dimensions of cultural heritage in the European Union by always reporting it to the European Heritage Label, an area that have not been studied by many scholars yet. I consider the information being curdled, easily to follow and understandable even if the concepts presented are very complex and from different areas. In closing, I think that the authors of this book succeed to enrich the academic world with an important study that is and will remain valuable and useful in any future studies and research related to the European heritage, culture and identity.

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ON THE RISE AND FALL OF THE LIBERAL INTERNATIONAL ORDER: JOHN J. MEARSHEIMER

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Review of: John J. Mearsheimer, *Bound to Fail: The Rise and Fall of the Liberal International Order*, in *International Security* (2019) 43 (4): 7–50 published by the President and Fellows of Harvard College and the Massachusetts Institute of Technology.

Keywords: *liberal international order, Western foreign policy elites, hyper-globalized economy, multipolarity, multifaceted international institutions, bounded orders, the great powers, security commitment, military capability, political divisions*

Professor John J. Mearsheimer's 'Bound to Fail' article **The Rise and Fall of the Liberal International Order** [*International Security* 43:4, 2019- *Bound to Fail. The Rise and Fall of the Liberal International Order*] provides the reader with a thorough insight into the *liberal international order at the end of 2019*, the deep troubles it currently undergoes, asserting that it was 'destined to fail from the start', as well as providing a minute research into how the new order will look like thereafter. The study aims at exploring why the liberal order was doomed to destruction whilst envisaging the type of international order to replace it. It has righteously been assumed, particularly by the Western elites-to whose dismay little can be done to rescue it- that this order was and remains essential for promoting peace and prosperity in the world. Who was to blame for that, the question is posed, there having been voices incriminating president Trump for his attempts at tearing it down ever since campaigning for elections.

Three sets of arguments support the analysis, the *first* one referring to the fact that international *orders* the distribution of power are related to one-another. The liberal international order, being in a unipolar system, its leading state is a liberal democracy. *Secondly*, the attention focuses on the misperception of the Cold War order as being wrongly labeled as "the liberal international order", there being made a clear distinction between the former and the post-Cold War [US-led] which was a liberal international one. *Thirdly*, while admitting that spreading liberal democracy around the globe is of utmost importance, building such an order proved to be extremely difficult, if not impossible, ultimately leading to disaster. Nationalism, as the most powerful ideology, hinders democracy, thereto being added the power politics. The support for the liberal order was also weakened and has been ultimately toppled by the globalized economy that has exceeded borders, with the whole array of negative issues: losing jobs, low wages, the

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staggering of the financial system, political problems adding to the dwindling of the liberal order.

Further on, it is illustrated how a highly globalized economy continuously undermines the order in the international system, thus undermining unipolarity to the detriment of the liberal order. The rise of China, the 'rebirth' of powerful Russia are but illustrative to the fact that countries other than the unipolar world gain precedence over the latter, thus ending the liberal order. A new international order is configured with a multipolar world to manage the global economy and the host of common issues of great concern the world is currently confronted with, from climate change, to arms control.

Starting from a thorough insight into the definition of *order* and its importance to international politics, the rise and decline of international orders, analyzing the emergence of the liberal international order and describing the different Cold War orders, the author explains why the liberal international order failed, ultimately leading to multipolarity and a current outlook for the new order.

A complete picture of the international scene is presented in the subchapter devoted to the *liberal international order of 1990-2019*, when at the end of the Cold War, once with the demise of the Soviet Union, the US was the pole of the unipolar world. President Bush, according to prof. J. Mearsheimer, *decided to take the realist Western order and spread it worldwide, turning it into a liberal international order*. It was thus that what the 'new world order' was called, was created, incorporating the institutions that had made up the Cold War era international order (UN and arms control agreements). This tremendous endeavour belonged to the US and all the US leaders starting with president Bush and his successors meant to create an entirely different international order from the one existent during the Cold War. Creating such a transformation implied both creating a net of new institutions with universal membership; creating an international economy wherein free trade and capital markets would dominate, and last but not least, spreading liberal democracy around the world. Liberal democracies in Western Europe particularly and East Asia joined their efforts to this ambitious project. The overall aim to be achieved by the initiators of the order was that of ultimately creating a peaceful world, whilst integrating China and Russia as powerful actors on the world arena. The US policy toward China as well as NATO expansion to Eastern Europe are both examples of the efforts to turn the Western order into a liberal international order, according to various scholars, contrary to the firm belief that eastward NATO expansion was part of a strategy aimed at containing Russia, perceived as potentially aggressive. Illustrative with respect to US's policy of building a liberal international order is the Bush Doctrine (2002). Right after the Cold War, there seemed no viable alternative to liberal democracy, which appeared to be the most proper political order for the world looming ahead of it.

In the years to follow, integrating China and Russia into the new world order key institutions [IMF and the World Bank, WTO, proved to be a successful endeavour for the US and its allies. The world scene seemed to rally itself to the project, Europe and the creation of the EU by the Maastricht treaty in 1992 was seen as a major step in promoting integration. The analysis is extended further, covering the Greater Middle East, where efforts seemed to yield positive results in incorporating the region into the liberal international order, though more slowly. Democracy gained ground throughout the world by late 2000. After this positive spur, the setbacks did not delay to appear during the 1990s. Illustrative in this respect are the events in India and Pakistan, Somalia, Rwanda, Haiti, Iraq, Afghanistan, to mention but the most prominent ones. Coming back to Europe, the EU suffered a major problem by 2010 with the rejection of the Treaty for Establishing

a Constitution for Europe and the Eurozone crisis that triggered a host of tensions between countries and political problems (e.g. the case of Greece, Brexit, a.o.), a wave of xenophobia having swept over Europe. To be mentioned as well that tensions escalated in Ukraine, too, having as a result the deterioration of Russia's relations to the West, leading to a crisis which largely resulted from EU and NATO expansion, besides the efforts made by the West to install democracy in Ukraine and Georgia. What is worrying is that there are signs that the tensions are not going to end up in the near future.

On top of all this sensitive state of affairs, transatlantic relations have worsened once with president Trump taking office, being perceived [J. Kanter, 2017] as a real 'threat to the EU future' .

Thus, the trend of liberal democracies has been reversed, these having registered an acute decline since 2006 fostered by another turning point in the evolution of world order, the financial crisis of 2001-2008 and not last by the fact that the American political system itself looks unstable, questioning the very future of American democracy itself [W. Galston cited by J. Mearsheimer, p.30].

What happened when the major powers relations turned into enmity and discord: Out of realist reasons, China and Russia have resisted US's [unipolar power] efforts to shape their domestic policies, the latter having relied on NGOs towards making these countries embrace liberal democracy. Smaller powers have resisted the same, since it would have been a US-dominated liberal world order that they did oppose, the international system having thus been dominated at economic, political and military level. Another reason for this, provided by the author [J. Mearsheimer, p.34, *Bound to Fail*] is that sovereignty and self-determination matters a great deal to states when nationalism is the most powerful political ideologies.

There came then, the reverse effects of '*hyperglobalization*'-that has become synonymous with '*creative destruction*' quoting prof. Mearsheimer- where the author is of opinion that though it has helped countless of people getting out of poverty in countries such as India and China, it has caused major problems as well having destroyed entirely the economic base of entire regions, that governments do not have the means to counteract 'playing by the rules', the international economy being extremely dynamic, changes in one country having visible effects in another. A series of major problems was triggered, thus undermining the legitimacy of the liberal world order in the states at the core. Job security has disappeared, sectors of a country's economy the same, unemployment rose and incomes of the middle class kept at low level, while the wages of the upper class having greatly increased. Having come at a deadlock with gloomy perspectives ahead, markets not being able to fix the problems but worsen them, the liberal international order fell out of favour entirely. According to the author[J.J. Mearsheimer], given the very fast mobility of capital across borders, more financial crises the kind of the 1997 Asian financial crisis and the world crisis of 2007 will occur weakening the present order. The Euro problem-a particular feature of the liberal international order as acknowledged by the author, does not stand apart either in this respect. Being established with the aim of achieving monetary union among EU member states, came to a major crisis in 2009, producing problems both of economic and political nature. Problems were solved with the help not only of European institutions [ECB], but also from US government. Admittedly though, the problem was fixed temporarily only, there being envisaged more crises to come.

The international system has turned into a multipolar world in which attempts at turning China and Russia into liberal democracies have failed dramatically. The liberal order, however, would not have resisted, on the one hand since orders shift in time in the

international system, and on the other hand, because of it own shortcomings, or, as the author asserts, "the liberal international order was destined to fail being fatally flawed at birth".

Conclusively, various factors and processes have been responsible for the eroding of the liberal international order. Deep political divisions occurred among actors and have yielded irreversible political consequences. What could replace it so that things should find their own path? A less ambitious order, according to professor Mearsheimer, since no kind of liberal order is likely to be maintained in the years to come. The multipower system and great powers are at the core of events. Realist international orders will take shape, in which the US, China and Russia will compete on security matters and the focus will be on arms control agreements. On the economic level, the picture looks different, as there are huge economic transactions between the US and China, the rivalry between them being unlikely to diminish the flow.

Turning to Russia, the analysis questions the position of Russia in the US-China equation. Would it fear the geographic proximity to powerful China, or it would rather become ally with the US, consolidating mutual relations? According to specialists in the field it could well stay aloof as a great power and not align itself with any of them.

Finally, Europe is perceived as a minor power with relation to the poles, not having the capacity to play a major role towards China. US will want EU inside the bounded order created by them, economic reasons being at stake here. US military troops are stationed and will remain in Europe, maintaining NATO (despite president Trump's considering it 'obsolete'), continuing to maintain the role of 'pacifier' in the region.

The world order created by the US during the Cold War and its allies was extraordinary, but its sole purpose was that of keeping an eye on security competition with a rival/order dominated by the other power at the time-the Soviet Union. In the aftermath of the Cold War, the liberal order was a promising one, apparently working in the intended direction, but in 2005, problems occurred, more and more along time, up to the point of disintegrating. In the author's view, it was destined to fall shorter than expected, the end of unipolarity meant the end of the liberal order, unipolarity being a pre-requisite for it. It caused significant political problems within the states, too. Addressing the question of how the US should act losing the goal it had ambitiously set forth, that of ardently working on creating a liberal international order, the author critically asserts that it should definitely resist pursuing a forced spread of democracy around the world countries by a change of regime, no matter how ardently it believes in the values of democracy and in spite of the perennial temptation to remake the world. Maintaining a favourable position in the global distribution of power to come, since increasing its influence in the economic institutions that will make up the emergent international order. Containing China expansion and Chinese domination of the economic institutions and gaining power over the US should be the focus of US policy makers. The rivalry between Chinese-led bounded orders and US-led bounded orders will have both economic and military dimensions. The US will have to engage in the balance of power equation with China and Russia, rather making efforts to integrate Russia into the US-led order, while trying to increase its influence in the key international institutions that will have a word to say in the new configuration. Professor J.Mearsheimer in his study concludes that a realist order is likely to be forged in the times to come, in which managing the world economy, facilitating interstate cooperation and maintaining arms control agreements will be the goals to pursue and that the realist order, whilst leaving behind the liberal international order, must be attuned to the US interests.

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