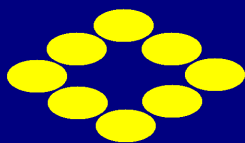


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BALCANES: PROCESO DE RECONSTRUCCIÓN Y PERSPECTIVAS DE INTEGRACIÓN EN LA UNIÓN EUROPEA

BALKANS: RECONSTRUCTION PROCESS AND INTEGRATION PERSPECTIVES IN THE EUROPEAN UNION

(Kostas Ifantis, coord.)

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NOTA EDITORIAL / EDITOR'S NOTE

Antonio Marquina¹
Director de UNISCI

El número de la revista aborda diversos temas de actualidad en Europa, Asia, Iberoamérica, África y también temas transversales como el extremismo ideológico.

Con respecto a Europa, el profesor Kostas Ifantis ha coordinado un conjunto de estudios sobre los Balcanes. La aceptación de la se cesión e independenciam de Kosovo ha creado un precedente que se ha aplicado luego por Rusia a Abkhasia y a Osetia del Sur en Georgia. Los casos no son similares, pero indiscutiblemente era un precedente, por más que la secretaria del Consejo intentara convencernos de otra cosa. Los artículos se centran en los temas de la Justicia Internacional por los crímenes en la antigua Yugoslavia, la administración internacional de Naciones Unidas y el proceso de integración de los Estados de los Balcanes en la Unión Europea, la democratización, justicia y reconciliación y los condicionantes e implicaciones de la integración en la Unión Europea de estos Estados.

Eunsook Yang nos explica el proceso de cambios que está teniendo lugar bajo la presidencia de Lee Myung-bak. Los cambios son de gran entidad y la política con respecto a Corea del Norte es uno de los puntos más delicados, dada la muy grave enfermedad del presidente Kim Yong-il y las posibles repercusiones que, sin duda, tendrá su sucesión. En el plano interno la situación económica es otro de los puntos fundamentales que pondrán a prueba al nuevo presidente. Como puede comprobarse en este estudio, los cambios en la política exterior de la República de Corea son muy notables y la búsqueda de equilibrios en el nordeste de Asia tendrá también su impacto en la opción fundamental de fortalecimiento de la alianza con los Estados Unidos.

Inga Hardardottir, por su parte, nos da una visión del sur de Asia desde la perspectiva de la cooperación regional. La relevancia de la India es indiscutible, pero la profunda desconfianza existente entre varios Estados vecinos mina las posibilidades de avance. Desde el punto de vista económico, el despegue económico y tecnológico de la India permite hablar de la existencia ya de una clara complementariedad económica en la SAARC.

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En lo que respecta a Iberoamérica los dos artículos de John E. Griffiths y de Jonás García son complementarios. El profesor Griffiths presenta una serie de premisas básicas para entender la seguridad en Iberoamérica y señala el fortalecimiento de la capacidad del Estado como uno de los puntos fundamentales, enfatizando los aspectos no-militares de la seguridad. A su vez, Jonás García expone la iniciativa de Brasil para crear un Consejo de Defensa Sudamericano que supliría las carencias ante los desafíos comunes, pero que incide en los aspectos externos de la seguridad y defensa de los Estados lo que le da una perspectiva distinta a lo sostenido en el anterior artículo, mostrando las dificultades de su aceptación.

Por su parte, María Ángeles Alaminos describe la constitución del mando militar estadounidense para África y detalla el proceso y su desgajamiento del EUCOM y, en menor medida, del CENTCOM y del PACOM para la realización de un amplio espectro de operaciones, incluyendo la lucha antiterrorista. Asimismo explica las reticencias de los Estados africanos. El artículo es de un interés muy notable dado que África se ha convertido en un continente en competición.

Un artículo de Rohan Gunaratna sobre el desafío del extremismo ideológico como uno de los aspectos fundamentales para la seguridad nacional sirve para recordar los cambios y transmutaciones que se están operando en los movimientos terroristas y más en concreto en Al Qaeda. Explica el contexto actual de la amenaza y los desarrollos de los próximos años en las diversas zonas regionales y el papel de los conversos y las migraciones, así como la diversificación de la amenaza. Posteriormente hace unas propuestas de interés para mitigar la amenaza en los próximos años que constituyen elementos de reflexión que no pueden caer en saco roto.

Quede nuestro agradecimiento a Kostas Ifantis, miembro del comité científico, a los diversos autores y al Comité de redacción por su esfuerzo en la preparación de este número.



**UNITED NATIONS AT CROSSROADS: INTERNATIONAL
ADMINISTRATION OF TERRITORIES AND DOMESTIC POLITICAL
CULTURES.
THE KOSOVO AND EAST TIMOR EXPERIENCE**

Antonia Zervaki¹
University of Peloponnese

Abstract:

Chapter VII has only been invoked twice for the establishment of international territorial administrations, in East Timor and Kosovo. Despite the institutional and political heritage of similar operations under the League of Nations and the United Nations framework, these two operations, seem to be established not only in an institutional vacuum due to the absence of a definition in the Charter, but also in an unsystematic manner, following a case by case approach in the selection of territories to be administered, the means for the implementation of 'international governance' and the final goals of these operations. These structural deficiencies influence the processes of civic society building, which is essential for the successful implementation of institutional reforms and consensual resolution of conflicts, elements that constitute the main pillars of peace-building operations. In this paper the institutional and conceptual framework of this new generation of operations is presented followed by an examination of the evolution of the concept of international governance and its contribution to the transition processes of the domestic political cultures in the territories concerned.

Keywords: International administration; peacebuilding; East Timor; Kosovo; governance; political culture; civic culture.

Resumen:

El Capítulo VII solo ha sido invocado en dos ocasiones para el establecimiento de administraciones territoriales internacionales, en el caso de Timor Leste y Kosovo. A pesar del legado institucional y político de estas operaciones similares bajo el mandato de la Liga de Naciones y el marco de las Naciones Unidas, parecen establecerse no sólo en un vacío institucional debido a la ausencia de una definición en la Carta de las Naciones Unidas, sino también de una forma no sistemática, siguiendo un enfoque casuístico en relación con la selección de los territorios a ser administrados, los medios para la ejecución de la "gobernanza internacional" y los fines últimos de estas operaciones. Estas deficiencias estructurales influyen los procesos de construcción de identidad cívica, lo cual es esencial para la ejecución de las reformas institucionales y la resolución consensual de conflictos, elementos que constituyen los principales pilares de las operaciones de construcción de paz. En este artículo el marco institucional y conceptual de esta nueva generación de operaciones es presentado con un examen a continuación, de la evolución del concepto de gobernanza internacional y su contribución al proceso de transición y las culturas políticas domésticas en los territorios concernidos.

Palabras clave: *Administración internacional; peacebuilding; Timor Leste; Kosovo; gobernanza; cultura política; cultura cívica.*

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1. Governance of territories by international organizations: a new practice?

The dawn of the 21st century was marked by important developments for the United Nations. Apart from the Millennium Declaration, the ongoing reform process and the new security challenges that emerged, the Security Council adopted two very important resolutions under Chapter VII on the administration of territories namely, East Timor and Kosovo.

The exercise of territorial prerogatives by an international organization is not a new concept.² Its roots are traced in the League of Nations practice. In the beginning of the 20th century, the League of Nations undertook similar responsibilities for the region of Saar³ or the cities of Danzig and Leticia.⁴

Nevertheless, both operations are different, not only from the League of Nations' first attempt of what could be defined as "territorial" international governance but also from the other more recent UN administration projects in Cambodia,⁵ East Slavonia,⁶ West New Guinea⁷ or Mostar and Bosnia-Herzegovina,⁸ since their mandates did not only aim to establish peace in the region but they constituted, either clearly stated in their mandates or not, a prelude to statehood.

² Wilde, Ralph: "Representing International Territorial Administration: A Critique of Some Approaches", *EJIL*, vol. 15, no. 1, (2004), p. 81.

³ The 15 year successful administration of the Saar region by an international commission appointed by the League of Nations ended up with the conduct of a referendum that granted the area to Germany. See MacQueen, Norrie (2006): *Peacekeeping in the International System*, London-New York, Routledge, pp. 35-38.

⁴ Danzig was declared a 'Free City' under the 'guarantee of the League of Nations'. For a period before the establishment of the 'Free City' status quo, it was administered by a British official supported by a British-French security force. The city of Leticia was also administered by a League of Nations governing commission. *Ibid*, pp. 39-41, and Khun-Bleimaier, John: "The Legal Status of the Free City of Danzig 1920-1939: Lessons to be Derived from the Experiences of a Non State Entity in the International Community", *The Hague Yearbook of International Law* (1989), pp. 69-93.

⁵ In the case of Cambodia, the resolution establishing the United Nations Transitional Administration adopted under Chapter VI presupposed the consent of the Supreme National Council. See SC Res745 (1992) 28th February 1992.

⁶ The United Nations Transitional Administration for Eastern Slavonia, Baranja and Western Sirmium (UNTAES) established by Security Council Resolution 1037 (1996), 15th January 1996, oversaw the reintegration of this territory into Croatia within a 2-year transitional period.

⁷ It is one of the first operations of its kind established within the United Nations framework. Given the Cold War political environment the Temporary Executive Authority and Security Force (UNTEA/UNSF) its presence in the area was a success. The operation was deployed during 1962-1963 and the outcome of the United Nations' involvement was defined: the aim was a transfer of territory under the control of the Netherlands to Indonesia. See GA Res 1752(XVII) 21st September 1962 and MacQueen, *op. cit.*, p. 148.

⁸ Security Council Resolution 1305 (1995) 21st December 1995, established the United Nations International Police Task Force and a United Nations civilians office. "The creation of the Office of the High Representative was a *sui generis* international entity created by the Dayton Peace Agreement and over time it asserted the right *inter alia* to impose legislation and dismiss elected government officials" see Wilde, *op. cit.*, p. 82. The mandate of operation, known as the United Nations Mission in Bosnia Herzegovina, was expanded by a series of Security Council Resolutions.



1.1. The Institutional and Conceptual Framework of International Administration under Chapter VII

As far as the institutional status of the operations in East Timor and Kosovo is concerned, it should be noted that the Charter does not provide a definition for administering territories, with the exception of the Trusteeship System.⁹ Establishing territorial administrations under Chapter VII constitutes an institutional novelty of the 90s. These operations belong to the post Cold War generation of operations established by resolutions that link the traditional concept of “threat to international peace and security” with the need of intervention on humanitarian grounds.¹⁰

As far as their conceptual framework is concerned they are part of the broad category of peace building operations.¹¹ The concept of post-conflict peace-building emerged in the early 90s in the Agenda for Peace as the “*opportunity for post-conflict peace-building, which can prevent the recurrence of violence among nations and peoples*”.¹² In the Agenda for Peace Supplement the concept of post conflict peace building is further specified through the enumeration of concrete measures namely “*demilitarization, small arms control, institutional reform, improved police and judicial systems, human rights monitoring, electoral reform and social and economic development*”.¹³ The same document introduced operations of that kind as “*multifunctional*”.¹⁴

Finally, the Brahimi Report published in 2000 refers to the operations in East Timor and Kosovo as “*transitional civil administration[s]*”¹⁵ which “*face challenges and responsibilities that are unique among UN operations*”.¹⁶

Still, the issue of the legitimacy of the resolutions for the establishment of international civil administrations schemes under Chapter VII remains focal. The interpretation of article

⁹ Since the creation of the UN in 1945, eleven territories were placed under the International Trusteeship System in accordance to Chapter XII. In 1957 Togoland, administered since 1922 by the United Kingdom under the League of Nations mandate became the first UN ‘Trust Territory’ under British administration. The Trusteeship Council suspended its operation in 1994 when Palau, the last Territory under US administration became an independent state. See <http://www.un.org/Depts/dpi/decolonization/trust.htm> (25/08/2008). It should be noted that the wording of article 81 which conferred the administering authority to “*one or more states or the organisation itself*”, enhanced the role of the colonial states or powerful (war victor) states of the time, which became privileged partners in the transition process of these territories, eliminating at the same time the scenarios for direct UN responsibility for the administration of the Trust Territories (a proposal submitted by China and initially supported by the US at the San Francisco Conference in 1945). <http://www.nationsencyclopedia.com/United-Nations/The-Trusteeship-Council.html> (25/08/2008).

¹⁰ Before 1992 operations established on humanitarian grounds were distinct from those that aimed at the protection of international peace and security. The new generation of resolutions of mixed character was inaugurated with the cases of Bosnia-Herzegovina (Security Council Resolution 770(1992) 13th August 1992) and Somalia (Security Council Resolution 794 (1992) 2nd December 1992). See Corten, Olivier; Klein, Pierre: “Action humanitaire et Chapitre VII: La redéfinition du mandat et des moyens d’action des forces des Nations Unies”, *AFDI*, Vol. XXXIX (1993), pp. 107-109.

¹¹ See Yokaris, Angelos: “Intervention et Administration Internationale du Territoire”, *RHDI*, Tome 1 (2006), pp. 407-414.

¹² See A/47/277 - S/24111, 17th June 1992, § 21.

¹³ Supplement to an Agenda for Peace: Position Paper of the Secretary General on the Occasion of the Fiftieth Anniversary of the United Nations, *Report of the Secretary General on the Work of the Organisation*, A/50/60-S/1995/1, 3rd January 1995, § 47.

¹⁴ *Ibid*, § 49.

¹⁵ Comprehensive review of the whole question of peacekeeping operations in all their aspects, A/55/35 S/2000/809, 21st August 2000, §76.

¹⁶ *Ibid*, § 77.



41 for the deployment of the operations in the case of East Timor and Kosovo was considered to be rather broad. Moreover, the fact that these Security Council resolutions were based on the concept of intervention on humanitarian grounds and were also related to the promotion of human rights and democracy in order to protect international peace and security has created major criticism.¹⁷ Thus, the ontological question of the Brahimi Report on “*whether the UN should be in this business at all [...]*”¹⁸ seems quite reasonable.

1.2 The East Timor and Kosovo experience

Security Council Resolutions 1244¹⁹ and 1264²⁰ establishing the new international civil administration schemes introduced in 1999 were structured on the following axes:

- As far as the institutional dimension was concerned, both resolutions were adopted under Chapter VII establishing multidimensional operations comprising of military and civil components.

- In relation to the preservation of the fundamental principles of the UN Charter, both resolutions paid respect to the concepts of sovereignty and territorial integrity.²¹

- As far as the ‘mixed nature’ of the resolutions was concerned and in line with the major “*social purposes of the international society*”,²² apart from the traditional references to peace and security, humanitarian prerogatives and human rights protection were included as well.²³

- In reference to the nature of the operations both resolutions conferred to the international administrations overall responsibility for the administration of certain territories, empowering them to exercise the executive and legislative authority, including the implementation of justice.

- Regarding the acceptance of the parties concerned, both resolutions, despite their non consensual character due to Chapter VII legal basis, has obtained the consensus of the governments involved.

Nevertheless, significant differences between the two resolutions stemming from fundamental dissimilarities of the historical, social and political background of the two cases can be easily traced.

¹⁷ It should be noted that the inclusion of human rights violation to the interpretation of ‘threats to peace and security’ has been contested by major non-Western states such as India and China. See Zaum, Dominik: “The Authority of International Administrations in International Society”, *Review of International Studies*, n° 32 (2006), p. 465.

¹⁸ *Comprehensive review of the whole question of peacekeeping operations in all their aspects, op. cit.*, §78.

¹⁹ Security Council Resolution 1244 (1999) 10th June 1999.

²⁰ Security Council Resolution 1264 (1999) 12th September 1999.

²¹ In Resolution 1244 the Security Council reaffirms “*the commitment of all Member States to the sovereignty and territorial integrity of the Federal Republic of Yugoslavia and the other states of the region, as set out in the Helsinki Final Act and Annex 2*” while in Resolution 1264 it reaffirms “*respect for the sovereignty and territorial integrity of Indonesia*”.

²² Zaum, *op. cit.*, p. 465.

²³ In the Preamble of Resolution 1244 the Security Council expresses its determination to “*resolve the grave humanitarian situation in Kosovo, FRY*” while in the Preamble of Resolutions 1264 and 1272 expresses “*its concern at reports indicating that systematic, widespread and flagrant violations of international humanitarian and human rights law have been committed in East Timor*”.



An important qualitative characteristic that underlies United Nations decisions and operational action in East Timor was that the process towards its independence since 1999, was the last phase of the territory's decolonization process which has frozen due to the 1975 Indonesian invasion and occupation. Moreover, the consent of Portugal and Indonesia as far as the final status of the territory and the transitional period administration parameters were concerned was given. In addition, the resolution establishing the Interim Administration followed a public consultation ensuring internal social legitimization as well. As a result, the Security Council's mandate was clearly conducted in order to guide the transition of East Timor to independence,²⁴ having ensured -at least initially- internal (social), bilateral (Portugal and Indonesia) and international consent and support.

In relation to Kosovo though, the political and cultural setting was different. First of all, the historical, political and cultural basis of the conflict did not constitute part of the late decolonization process as was the case with East Timor; consequently, the use of the principle of self determination as institutionalized after the Second World War within the framework of the United Nations²⁵ was out of context.

Secondly, the conditions under which the consent was granted for the deployment of a peace building operation in the form of international civil administration were rather ambiguous. In Resolution 1244 the Security Council welcomes the [ex] Federal Republic of Yugoslavia's acceptance for the creation of an interim administration. This consent though was achieved when one of the parts of the conflict involved, the Federal Republic of Yugoslavia, was in a very difficult position²⁶ following a NATO military campaign (realized without the approval of the Security Council).²⁷

As a result of these two parameters, and in order to ensure a minimum level of consensus in the Security Council, the final goal concerning the future status of the territory remained undetermined in Resolution 1244; apart from the fundamental aim of securing peace and stability in the region, the Security Council Resolution did not clearly state towards which direction the current status quo would change. Instead, it declared the establishment, pending a final settlement, of substantial autonomy.²⁸

Thus, the main difference between the two mandates, ontological in character, was that 1272 resolution promoted statehood and self-determination claims, while resolution 1244 was

²⁴ One could support that UNTAET cannot be identified as a typical 'post-conflict' mission, since its presence was conceived before the violence that swept the territory after the referendum. See Wilde, *op. cit.*, p.84.

²⁵ See *Charter of the United Nations*, Article 1 §2, *International Covenant on Civil and Political Rights*, Part I, Article 1, *International Covenant on Economic, Social and Cultural Rights*, Part I, Article 1, *Declaration on the granting of independence to colonial countries and peoples*, GA Resolution 1524 (XV), 14 December 1960, Resolution 1541 (XV), *Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations*, GA Resolution 2625 (XXV), 24 October 1970, *Western Sahara, Advisory Opinion of 16 October 1975*, International Court of Justice, <http://www.icj-cij.org/> (20/9/2008).

²⁶ See Zaum, *op. cit.*, p. 460.

²⁷ See Joyner, Daniel H.: "The Kosovo Intervention: Legal Analysis and a More Persuasive Paradigm", *EJIL*, vol.13, n° 3 (2002), pp. 597-619.

²⁸ According to the resolution 1244 the Security Council authorized "the Secretary-General, with the assistance of relevant international organizations, to establish an international civil presence in Kosovo in order to provide an interim administration for Kosovo under which the people of Kosovo can enjoy substantial autonomy within the Federal Republic of Yugoslavia, and which will provide transitional administration while establishing and overseeing the development of provisional democratic self-governing institutions to ensure conditions for a peaceful and normal life for all inhabitants of Kosovo"



limited to the establishment of political institutions without having settled the overall institutional framework and status these institutions would function in.

Undoubtedly, the uncertain outcome of the deployment of the UN operation in Kosovo in terms of the future legal status of the administered entity, ensured the minimum consensus for the adoption of a decision within the Security Council fragile environment; nevertheless, it left more space for political maneuvers both in the interior of the FYR (including Kosovo) as well as among other states that revealed a vivid interest in the area.

The entanglement of the Contact Group comprising of countries with a vivid interest in the area (USA, UK, France, Russian Federation, Germany and Italy) to the process of delivering a final solution to the problem of the final status even within the United Nations framework (the UN-facilitated Kosovo future status process was led by UN Special Envoy Martti Ahtisaari) serves as a good example of this approach let alone it reminded the methods the Great Powers adopted in the beginning of the 20th century for the settlement of similar disputes.

During the last 9 years, the UN led an ambitious institution building effort which has created a unique status quo for the area: it dispatched the territory's public sector from the Serbian state apparatus without making any progress in the domain of political compromise for the final status.

As a result, the final status settlement proposal of the UN Special Envoy clearly stated that Kosovo's reintegration to Serbia would not be viable; instead it recommended independence subject to international supervision for a certain period. The report of the Special Envoy concluded that "*Kosovo's case is unique that demands a unique solution. It does not create a precedent for other unresolved conflicts*".²⁹ Pristina has accepted the final status settlement proposal while Belgrade rejected it. In February 2008 Kosovo's unilateral declaration of independence created mixed reactions among the members of the international community.

Even if the Report of the UN Secretary General on the situation in Kosovo that followed Kosovo's declaration of independence clearly states that resolution 1244 is still in force until the Security Council decides otherwise and that UNMIK will continue to operate under its mandate,³⁰ 47 countries have formally recognised Kosovo. Moreover, the perplexity of the situation is evident in the framework of the European Union (21 out of 27 member states of the European Union have already recognised Kosovo's independence) not to mention the Security Council itself where 3 out of 5 permanent members have proceeded to formal recognition, while, Russia and China, together with India released a joint statement in May 2008 where they called for new negotiations between the authorities of Belgrade and Pristina while the Secretary General of the United Nations.

Recent developments in Caucasus, concerning Abkhazia and South Ossetia, confirm that following Kosovo's unilateral declaration of independence the Pandora's box has just opened.

²⁹ *Report of the Special Envoy of the Secretary-General on Kosovo's future status*, S/2007/128, 26th March 2007, <http://www.unosek.org/docref/report-english.pdf> (20/9/2008).

³⁰ *Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo*, S/2008/211, 28th March 2008, § 29.



2. International governance and domestic political cultures in transition

2.1 International civil administration and the evolving concept of international governance

The practice of establishing international civil administrations or even the more general concept of peace building as introduced in the 90s is part of the broader liberal concept of international governance. The concept of governance, often defined as “*the act, process, or power of governing*” or “*the state of being governed*”, encompasses that of “government”³¹ which is linked to state organisation and functions, namely:

(a) the political regime or the constitutional foundations of a given polity, including the primordial concept of power division,

(b) policy formation and implementation, and

(c) coercion within a given territory.

Governance involves processes that make decisions, define expectations, grant power and verify performance. It consists either of a separate process or of a specific part of management or leadership processes. Setting up a government aims at the administration of these processes and systems. International governance could be defined as “*the shaping or managing of some form of rule-based and often hierarchically ordered relations in the international system, through the medium of institutions and following pre-set norms, with the effect of conditioning a common pattern of thought or behaviour of states and non-state actors*”.³² More specifically, traditional international governance conceived as policy making at the international sphere through the functions of international organizations was linked to the management of specific policy fields according to international organizations’ competences.

After the end of Cold War, the need to ensure patterns of democratic governance based on the concept of **social justice** at international level was brought to the fore more urgently than before. Moreover, the principle of **democratic governance** started to be promoted by the decisions and operational action of the organizations outside their “institutional environment” not only at the level of values, norms or rules but also “on the field” (that is contributing to institution building in countries that recover from serious political problems, monitoring elections etc) and in the various levels of negotiation procedures (e.g. for states’ membership in international organizations or funding).³³ What is also interesting is that for the first time, international organizations began to seek the acceptance and the accreditation not only from governments but from their peoples as well (even in the framework of Chapter VII mandates).

As a result, during the last decades we have witnessed a “*shift from international functionalism to constitutionalism*” through the institutional reinforcement of human rights

³¹ <http://www.answers.com/topic/governance> (6/7/2008).

³² Hsiung, James C.: “Anarchy, Hierarchy, and Actio Popularis: An International Governance Perspective”, *The International Studies Association (ISA) Annual Meeting, Montreal, Canada*, (19 April, 2004), http://www.nyu.edu/gsas/dept/politics/faculty/hsiung/hsiung_ahap.pdf

³³ Sicilianos, Alexandros: «La réforme du système européen des droits de l’homme», *AFDI*, Vol. XLIX (2004), pp. 611-640.



policies, democratic standards and the humanitarian dimension in the work of international organizations.³⁴

This shift reveals the effort of international organisations to address new security challenges and to adjust in the post Cold War international globalised environment, through the initiation of processes for structural changes, the “modernization” of their operational action, the preservation of political values and ideals that could be marginalized in the globalised international system and the introduction of novel practices where needed or where possible.

Within this context, the establishment of Transitional Authorities under Chapter VII reveals that the concept of international governance itself has undergone a substantial change: through the creation of subsidiary organs such as UNTAET and UNMIK which were territorial agents, the territorial dimension of international policy is further enhanced through a more ‘domestic’ perception of international presence on the given territory.

2.2 International governance and domestic political culture

In order to ensure international peace and security the United Nations expanded its action under Chapter VII in a field considered to fall within the domestic jurisdiction of states: that of internal governance. An eminent element of the resolutions establishing transitional administrations in East Timor and Kosovo was the thriving need to ensure the protection of human rights and to promote democratic culture and institutions in these territories. Thus, the role of the United Nations transcended the traditional practice of promoting an international culture of peace and security among states.

The new role of the organization was now aiming at the transfer of standards and rules of constitutional character (especially as far as the protection of human rights is concerned), in the heart of the organization structure of services and governing schemes of the above mentioned territories. The United Nations contributed to the creation of new, transitional political cultures in the internal order of these territories.

Almond and Verba in their classic work *Civic Culture* define the political culture “as the particular distribution of patterns of orientation toward political objects among the members of the nation”.³⁵ The authors of *Civic Culture* move on to the classification of political cultures, focusing on the political objects individuals are oriented to, namely, the parochial, the subject and the participant political cultures.³⁶ Finally, they define *civic culture* which

³⁴ Petersmann, Ernst-Urlich (2001): “Time for Integrating Human Rights into the Law of Worldwide Organisations. Lessons from European Integration Law for Global Integration Law”, *Jean Monnet Working Paper*, EUI 07/01; Dupuy, René-Jean: “L’ordre public en droit international” in Polin, Raymond (dir.) (1996): *L’ordre public. Colloque de Paris des 22 et 23 mars 1995*, Paris, Académie des sciences morales et politiques, Fondation Singer-Polignac/PUF, pp. 103-116.

³⁵ Almond, Gabriel A.; Verba, Sidney (1963): *The Civic Culture*, Princeton, Princeton University Press. Based on Parsons’ and Shils’ approach to the concept of “orientation” they formulate a typology of orientations: “(1) *cognitive orientation*, that is knowledge of and belief of the political system, its roles and the incumbents of these roles, its inputs, and its outputs; (2) *affective orientation*, or feelings about the political system, its roles, personnel, and performance, and (3) *evaluational orientation*, the judgments and opinions about political objects that typically involve the combination of value standards and criteria with information and feelings”. *Ibid*, p. 14.

³⁶ *Ibid*, pp. 16-18.



draws from the rationalist-participant model of citizenship that underlies democratic government.

Thus, in terms of the political culture literature, both international administrations' aim was to foster the transition from subjective or parochial to rational political culture. More specifically, they tried to consolidate or even impose on the population of the territories administered what is conceived as civic culture that is "*not a modern culture but one that combines modernity with tradition [...] a pluralistic culture based on communication and persuasion, a culture of consensus and diversity, a culture that permit[s] change but moderate[s] it*".³⁷ This concept of 'civic culture from above' is related to the openness and the democratic character of the polity that is going to be established.

Nevertheless, identifying elements of civic culture in a society requires a certain degree of public confidence in political institutions of a state. It is rational to refer to the process of civic culture building in states in political transition or in new states. This was the case with post communist states or new states that emerged in the post colonial and post Cold War environment. The case of East Timor falls into this category. For Kosovo though, the setting was different: lacking the political compromise both at international and internal level for a final settlement of the territory's status, a "standards before status" policy was adopted, which meant that the Provisional Institutions had to achieve certain standards, or benchmarks, before the final status of Kosovo could be addressed.³⁸ As a result of resolution's 1244 open mandate the emphasis was given on institution building without setting the most important legitimizing parameter of change and social orientation, that of the final status. This fact has created a permanent handicap to the realization of the international community's main purpose: to create a *demos, a multi-ethnic society in the context of civic culture model* and not an *ethnos that would breed parochial patterns of behavior*.

In this process of developing models of civic behavior, the influence of political culture in the outcomes of political processes was underestimated. In the case of international administrations, political culture as a system of collective beliefs, attitudes and symbols was conceived as an important parameter in the formation of social action. Nevertheless, political culture should be understood dynamically; not just as the social environment or macrostructure where human behavior or institutional change is formulated, but as a social agency, as the driving force of political change and continuity. In the case of East Timor the concept of independence functioned as a civic narrative for the population; in Kosovo the insecurity of the final outcome created serious drawbacks in political socialization and civic identity building processes.

Concluding remarks

Since the end of Cold War and while its institutional apparatus has not undergone substantial changes, the UN had to address a series of new challenges. The establishment of interim authorities for the administration of post-conflict territories under Chapter VII constitutes an important development as far as the effort of the organisation to assume its responsibilities *vis à vis* the evolving international security environment is concerned. Undoubtedly, invoking

³⁷ *Ibid*, pp. 5-6.

³⁸ The eight standards to be met concern: functioning democratic institutions; the rule of law; freedom of movement; returns and reintegration; economy; property rights; dialogue with Belgrade; and the Kosovo Protection Corps. <http://www.unmikonline.org/standards/priorities.htm> (19/9/2008).



Chapter VII in the decisions concerning the creation of interim administrations reveals a new, post colonial and post Cold War approach of the Security Council interpretation of the concept of ‘peace and security’. Administering territories and societies, for the first time after the suspension of operation of the Trusteeship Council and after the fundamental changes international relations have undergone since the 90s, revealed a new aura in the Security Council’s resolutions.

Nevertheless, the emergence of the new generation of international administration schemes for post-conflict societies in 1999 raises several questions over:

(a) Which organ of the United Nations is more suitable for the decision and also for the design of such multilevel and multifunctional operations. Up to now, the initiative was left to the Security Council, leading to political and institutional marginalization principle organs of the United Nations such as the ECOSOC which is primarily responsible for social and economic issues directly related to policy implementation, and the General Assembly (with the exception of budget approval) which is the only representative organ and which, according to the “Uniting for Peace Resolution” possesses “*independent responsibilities and rights with regard to the maintenance of international peace and security*”.³⁹ Last but not least, the marginalization and the adoption of *ad hoc* provisions concerning the role of other international actors especially international judicial bodies, leave more space for politics than implementation of the principle of equality before the law.⁴⁰

(b) The social (both international and internal) legitimization of their presence in the territories in question. At international level, these resolutions influence the geopolitical status of regions. As a result, consent among members of the international community especially the most privileged ones, namely the 5 permanent members of the Security Council, on the final status of the territories should be established. On the other hand, the population of the territories concerned should consent too. Even when international organizations presence as international administration is adopted under Chapter VII, obtaining the consent not only of the governments ‘involved’ but also of the population is a crucial parameter for success,⁴¹ since internal social legitimization of the authority of these administrations forms a fundamental precondition for the acceptance on behalf of the population of its legitimacy so that obedience is achieved voluntarily and not through coercion. Only in this way the creation of rationalist-participant models of citizenship that sustain consensual peace and democratic governance would be feasible.

(c) The implications of such operations for the management of other conflicts around the globe. The success story or failures of UN institutional and operational practice in both East Timor and Kosovo serve as precedents of international governance of post conflict and/or disputed territories or as a remedy to unilateral interventions. Despite the uniqueness of each case, there is a common institutional and ideological ground in both operations. Nevertheless, since the decision of establishing international administration schemes is restricted to the Security Council, political antagonisms will have a decisive role to play. The case of South Ossetia and Abkhazia is the first case where the international community (both states and the

³⁹ Joyner, *op. cit.*, p. 612.

⁴⁰ The most characteristic example is Security Council’s Resolution 1244 (2002) that requested from the International Criminal Court to defer potential prosecutions of peace keepers from non state parties to its Statute for a 12-month period. See Stahn, Carsten: “The Ambiguities of Security Council Resolution 1422 (2002)”, *EJIL*, vol. 14, n° 1 (2003), pp. 85-104.

⁴¹ See Zaum, *op. cit.*, p. 460; Chesterman, Simon (2004): *You, The People: The United Nations Territorial Administration and State Building*, Oxford, Oxford University Press.



UN) will be called to assume responsibilities as far as the interpretation and implementation of basic principles and rules of contemporary international society are concerned, such as territorial integrity and self determination, and the role of international territorial agents in their evolution.

Nevertheless and, despite the growing criticism concerning its operation, it should be mentioned that the UN system represents the international public order and thus provides a legitimate and concise macro-structure for the management of contemporary international affairs. The domain of peace building operations and especially the experience gained from territorial administration schemes in East Timor and Kosovo may and should contribute to the evolution of the organisation in the framework of its reform process.



TRANSITIONAL JUSTICE IN PRACTICE: THE INTERNATIONAL CRIMINAL TRIBUNAL FOR THE FORMER YUGOSLAVIA AND BEYOND¹

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Abstract:

This paper reviews the critical debates of the transitional justice mechanisms employed in the former Yugoslavia. It summarizes the various positions, showing the present divergences and consensus. Given the fact that the ICTY is the dominant transitional justice mechanism in the former Yugoslavia, the paper gives particular emphasis in the literature on the Tribunal and places the ICTY in the much broader field of transitional justice and to some extent relates it to the rest of the instruments present in the region. In that context, the discussion focuses on some of the issues, problems, dilemmas and effects that the implementation of the ICTY presents.

Keywords: Transitional justice; ICTY; Yugoslavia.

Resumen:

Este artículo revisa los debates más importantes sobre los mecanismos de justicia transicional en la antigua Yugoslavia. Resume las diversas posturas, mostrando el consenso existente y reconociendo las divergencias que aún permanecen. Dado el hecho de que el ICTY es el mecanismo dominante para impartir justicia transicional en la antigua Yugoslavia, el artículo pone especial énfasis en la literatura sobre el Tribunal y sitúa el ICTY en un campo mucho más amplio de justicia transicional y en cierta medida lo relaciona con el resto de instrumentos presentes en la región. En tal contexto, la discusión se centra en algunos de los asuntos, problemas, dilemas y efectos que la ejecución del ICTY conlleva.

Palabras clave: Justicia Transicional; ICTY; Yugoslavia.

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1. Introducing transitional justice

1.1. The purpose of the article

Karadzic's first appearance before the International Criminal Tribunal for the Former Yugoslavia (hereafter ICTY) in July 2008 was in the West as a break through event.⁴ It was regarded to signal not only a possible turning point in the domestic political environment in Serbia but, for some optimists, also forged expectations for more positive prospects about reconciliation and social development for the whole region. Yet, it would not be self-evident for someone unaware of the Balkan developments why an indictment and prosecution in The Hague could signal so much for the socio-political progress in the other corner of the continent. Quite the opposite, those following the developments in Southeast Europe in the last two decades cannot stress enough the significance of this novel judicial institution.

After a troublesome decade for Southeast Europe the region may be at last stabilizing. Slovenia, Romania, and Bulgaria are already members of the European Union (hereafter EU). Croatia and Albania have recently joined NATO. Croatia is at the doorstep of the EU; it will before long make the first state involved in the bloodbath of the 1990s to join the European club. The remaining Balkan states are in various stages of the process of joining the Union. Even the long-expected Kosovo declaration of independence – hailed by the West as the last chapter in the breakup of Yugoslavia – has taken place without noteworthy essential violence and extreme incidents. And the ICTY, arguably the most important international body for the region in the last fifteen years is preparing its completion strategy. It is thus high time to assess the role of Tribunal in the context of the socio-political developments in the region. And also importantly, it is time to start considering the consequences of the centrality of this institution and the effects of the lack of other supplementary institutions.

The purpose of this article is to offer a review the critical debates of the transitional justice mechanisms employed in the former Yugoslavia; it will do so by summarizing the various positions, showing consensus and acknowledging the remaining divergences. Given the fact that the ICTY is the dominant transitional justice mechanism in the former Yugoslavia, this article will give particular emphasis in the literature on the Tribunal; at the same time, the article will attempt to place the ICTY in the much broader field of transitional justice and to some extent relate it to the rest of the instruments present in the region. More specifically, the purpose of the article is:

- a) To make a review of some key debates in the literature on ICTY
- b) To show some of the issues, problems, dilemmas and effects of the implementation of the ICTY as a tool, i.e. ICTY in practice
- c) To provide pointers as to the general transitional justice strategy situation in former Yugoslavia
- d) To briefly review the practice of two representative non-ICTY transitional justice tools and to relate them to the ICTY

⁴ E.g. Human Rights Watch: "Bosnia: Karadzic Arrest a blow Against Impunity", July 2008



- e) To offer some initial remarks as to the evaluation of the transitional justice tools in former Yugoslavia, and especially the ICTY

1.2. Peace building, transitional justice, and the post-Yugoslav states

1.2.1. From conflict to peace: peace building and transitional justice

In the last few decades, and especially after the collapse of the communist bloc, we have witnessed a steady rise in the number of democratic and post-authoritarian regimes globally. Notwithstanding the, not infrequent but brief, setbacks democratization has been a constant of our globalizing world and tends to gradually incorporate a growing number of members of the international society.⁵ This *third wave* democratization forces new governing elites to confront serious public policy dilemmas among which the key is how the transitional polities will deal with the legacy of the authoritarian past.⁶

While democratization was giving rise to public policies of dealing with the past, the proliferation in internal conflicts and a renewed interest in their resolution observed in the post-Cold War 1990s have also brought to the forefront similar policy concerns. As in the case of democratizing polities, the question of dealing with the crimes of the traumatic past in those post-conflict polities became imperative.⁷ New ideas and perspectives in public policy emerged as a result. The key objective for scholars and policy makers in post-conflict situations is also societal reconciliation, or the "...process through which a society moves from a divided past to a shared future".⁸ In the inherently difficult post-conflict peace building efforts the public policy jigsaw involves putting together the problems of the past and their current effects as well as a vision for a shared future. In other words, a key concern becomes how to deal with the past, especially with the legacy and actual deeds of past war crimes and violations of human rights, while at the same time laying the ground for reconciliation.

The concept that brings all these together in contemporary post-conflict and post-authoritarian regime policy making is *transitional justice*. The concept became popular in recent years as a general platform that may incorporate in varying degrees policy thinking and ideas, specific short and long term policy measures, public policy dilemmas and responses to transitional polities' policy concerns. Notwithstanding its popularity, the notion of transitional justice remains to a certain extent elusive in the sense that the definition of the concept allows for multiple and elastic interpretations regarding its objectives. What is broadly understood by the term is "...the full range of processes and mechanisms associated with a society's

⁵ Fukuyama, Francis (1992): *The End of History and the Last Man*, London, Penguin

⁶ Huntington, Samuel (1991): *The third wave. Democratization in the late twentieth century*, Norman, Oklahoma University Press.

⁷ According to Christine Bell, dealing with the past comprises both 'undoing the past', i.e. undoing the effects of the conflict, and 'accounting for the past', i.e. dealing with the responsibility for crimes and offering explanations for the conflict. See Bell, Christine; Campbell, Colm and Ni Aolain, Fionnuala: "Justice Discourses in Transition", *Social and Legal Studies*, vol. 13(3), (2004), p. 314.

⁸ Bloomfield, David, Barnes, Teresa and Huyse, Luc (2003): *Reconciliation after violent conflict. A Handbook*, Handbook Series, Stockholm, International Institute for Democracy and Electoral Assistance. Reconciliation was of course not new; but it was until recently dominated by theologians and philosophers. In recent years, social scientists studying conflicts and policy makers wishing to employ it for peace building purposes soon discovered that earlier thinking on reconciliation was not immediately useful "...as a policy objective applicable to situations of violent intra-state conflicts". Jakobsson Hatay, Ann-Sofi: "Peacebuilding and reconciliation in Bosnia and Herzegovina, Kosovo and Macedonia 1995-2004, Report (2005), Department of Peace and Conflict Research-Uppsala University.



attempts to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation. These may include both judicial and non-judicial mechanisms, with differing levels of international involvement (or none at all)...”⁹. The objectives of transitional justice range between the minimalist approach of truth recovery to the more maximalist aspirations of establishing accountability and imposing punishment for the perpetrators of past crimes, gratifying the needs of the victims, establishing a common truth, and re-establishing the rule of law.

It would not be implausible to characterize the 1990s as the decade of transitional justice.¹⁰ The confluence of several international factors, from the end of the Cold War and the brief period of superpower consensus, to the proliferation of transitions to democracy, the renewed interest in the resolution of internal conflicts, and the consolidation of the international human rights regime, brought transitional justice concerns, discourses, and policies to the international vanguard. Importantly, the contemporary international political situation, with regards to the problems of internal conflicts, also further stimulates the search for transitional justice solutions. Bell, Campbell, and NiAolain (2004), in their examination of the changing transitional justice discourse and its role in formulating post-conflict social and political realities, point to four key global trends affecting this complex relationship:

- a) the sharp rise in the number of negotiated settlements of internal conflicts, which, due to their inbuilt compromises, underscore dilemmas about the role of law in transition,
- b) the increased significance of human rights law within and between states,
- c) the higher emphasis on accountability for past human rights violations as a result of the increased concerns about human rights and humanitarian law in the conduct of warring sides in internal conflict, and, in obvious contradiction to the above,
- d) the post-9/11 American unilateralism in international affairs that goes against the international trend of constraints posed to states by international law – but at the same time continues to use the language of ‘transition’ and ‘democratization’.

Evidently, all four trends, despite the fact that their logics are sometimes divergent, contribute to emphasizing the key role that transitional justice issues hold in the contemporary world.

1.2.2. Transitional justice mechanisms and tools

It is surely necessary here to qualify the term ‘justice’. This is of course not another scholarly term unfamiliar to the wider lay public. In fact, awarding justice is certainly the most sensitive of the post-conflict public policy concerns, especially for the vast majority of victims and their families. But justice as a lay term does not *necessarily* coincide with transitional

⁹ United Nations Security Council, S/2004/616, “The rule of law and transitional Justice in conflict and post-conflict societies” (2004), p. 4.

¹⁰ Vinjamury, Leslie and Snyder, Jack: “Advocacy and Scholarship in the Study of International War Crimes Tribunals and Transitional Justice”, *Annual Review of Political Science*, Vol. 7 (2004), pp. 345-362; Snyder, Jack and Vinjamury, Leslie: “Trials and Errors. Principle and Pragmatism in Strategies of International Justice”, *International Security*, vol. 28, n°. 3 (2003), pp. 5-44.



justice.¹¹ It may or it may not, depending on the context and the specific society at hand. According to Richard Goldstone, a prominent transitional justice figure internationally, all methods of dealing with a past of serious human rights violations except blanket immunity from prosecution or indemnity for past criminal acts have to be considered as forms of (transitional) justice.¹² Thus transitional justice may not include judicial methods, prosecutions and trials; it may constitute, for example, a Truth and Reconciliation Commission offering indemnities. Such solutions may still be forms of transitional justice opted by policy makers, while for victims for example they may equal non-justice.

Transitional justice mechanisms can be categorized according to various criteria, each approach being conducive to different and not uncommonly conflicting results: they can be legal or non-legal in nature, aiming at punishing the perpetrator or satisfying and rehabilitating the victim, directed towards the individuals or the collective, domestic or international. There are two key distinct models of transitional justice: the retributive and the restorative.¹³ Retributive justice is punitive; it concentrates its efforts in punishing past crimes and sees dealing with the past and reconciliation as passing through the reinstatement of the rule of law and the moral order that were unbalanced by those crimes. Restorative justice claims to restore communal identities and relations broken by the conflict; it claims that because of this objective it is more effective than the short-term gains of punitive measures. There are several transitional justice tools associated with each model of transitional justice with retributive justice directed more towards judicial tools and especially prosecutions and trials, and restorative justice more towards truth commissions, reparations, education and others.¹⁴

Retributive justice is probably the most common type of transitional justice used in post conflict societies. Since it is also the type of transitional justice rendered by the ICTY it is important for this paper to outline some of the characteristics and strengths of retributive justice as they appear in the literature. The direct aim of retributive justice is to concentrate on holding individual perpetrators, making them accountable for their actions, and redress their wrongdoing by ascribing to them a punishment commensurate to the crime committed. Nevertheless, important indirect positive impacts of retributive justice are also crucial and conducive to long-term societal benefits. Through the operation of retributive justice post-conflict societies get educated in the rule of law and judicial procedures, which is a prerequisite for the good functioning of a democratic state. In addition, retributive justice in the form of an international tribunal like the ICTY has, according to its supporters, the advantage of not being prejudiced and not yielding to pressures for applying a ‘victor’s justice’. Furthermore, retributive justice is supposed to contribute to reconciliation by offering an objective base of undisputed facts about the past upon which a ‘master narrative’ unifying the society could be built.

¹¹ The same is also the case for ‘reconciliation’, see Armakolas, Ioannis: “The International Criminal Tribunal for Former Yugoslavia and the question of Reconciliation in the former Yugoslavia”, paper presented at the International Conference: “The legal, political and historical consequences of the ICTY verdicts”, *Foundation Truth, Justice & Reconciliation* (October 2007).

¹² See Goldstone, Richard: “Justice as a tool for peace-making: Truth Commissions and International Criminal Tribunals”, *Journal of International Law & Politics*, vol. 28 (1995-1996), p. 492.

¹³ Barton, Charles: “Empowerment and Retribution in Criminal and Restorative Justice”, *Journal of Professional Ethics*, vol. 7, n° 3&4 (1999), pp. 111 – 135; Cohen, Stanley: “State crimes of previous regimes: knowledge, accountability and the policing of the past”, *Law and social Inquiry*, vol. 20, n° 1 (1995), pp. 7-50.

¹⁴ See more on transitional justice tools in the next section.



Most importantly for our discussion in this paper, retributive justice by individualising the guilt is supposed to prevent or reduce collective victimization; consequently it promotes reconciliation not only because it punishes the perpetrators, but also by doing so individually – most frequently targeting high level perpetrators - it removes the blame from the collective. Their subsequent stigmatization and removal from the public and political sphere contributes to the construction of a new social order¹⁵. Furthermore, retributive justice, according to its proponents, constitutes a method of deterrence for future perpetrators, satisfies the need for judicial resolution of grievances and hence prevents acts of revenge. Finally, the publicity that war crimes trials acquire assists in rendering widely known the abuses of human rights and their public prosecution enhances the legitimacy and the prospects of establishment of the rule of law. These are all advantages that retributive justice and consequently the ICTY are supposed to have over other methods of dealing with the past.¹⁶ The operation of these in practice, however, is predictably a different story.¹⁷

Closing this section, we need to mention the different mechanisms and tools of transitional justice that, as we have seen in the previous paragraph, do not necessarily coincide with punitive measures. A United National Development Programme assessment report on Balkan transitional justice identifies four broad categories of mechanisms: a) prosecutions, i.e. domestic and international war crimes trials, b) lustration and vetting, c) truth-seeking initiatives, i.e. truth commissions, documentation efforts, initiatives for establishing the fate of missing persons, and media initiatives, and d) reparations, i.e. material reparations between states, material reparations within states, and symbolic reparations, such as public apologies and memorials.¹⁸ Yet, other studies and reports expand further the list to include parliamentary debates on war crimes, unofficial and civil society initiatives for fact-finding, and institutional and judicial reform.¹⁹

¹⁵ United Nations Security Council, S/2004/616, *op. cit.*, p.13.

¹⁶ For elaborations of the advantages of retributive justice, see: Yacoubian, George: “Sanctioning Alternatives in International Criminal Law: Recommendations for the International Criminal Tribunals for Rwanda and Yugoslavia” *World Affairs*, vol. 161 (1998), p. 51; Heribert, Adam: “Divided Memories: Reckoning with a Criminal Regime” in Gabriel, Ricci (ed.) (2003): *Justice and Politics of Memory. Religion and Public Life*, London, Transaction Publishers, pp. 1-20; Albon, Mary: “Project on Justice in Times of Transition: Report of the Project’s Inaugural Meeting” in Kritz, Neil (ed.) (1995): *Transitional Justice: How Emerging Democracies Reckon with Former Regimes* (Vol. I), United States Institute of Peace, Washington D.C., pp.42-54; Kaminski M. Marek, Nalepa, Monica and O’Neill, Barry: “Normative and Strategic Aspects of Transitional Justice”, *Journal of Conflict Resolution*, vol. 50, n° 3 (2006) pp. 295-302; Llewellyn J. Jennifer: “Restorative Justice in Transitions and Beyond”, in Borer, Tristan Anne (ed.) (2006): *Telling the Truths: Truth-telling and Peace-Building in Post-conflict Societies*, Notre Dame, University of Notre Dame, pp. 85-100; Mani Rama, (2002): *Beyond Retribution. Seeking Justice in the Shadows of War*, Cambridge, Polity Press; Nino S. Carlos: “The Duty to Punish Past Abuses of Human Rights Put into Context: The Case of Argentina”, *The Yale Law Journal*, vol. 100, n° 8 (1991), pp. 2619-2640; Orentlicher, Diane: “Settling Accounts: The Duty to Prosecute Human Rights Violations of a Prior Regime”, *The Yale Law Journal*, vol. 100, n° 8 (1991), pp. 2537- 2615; O’Donnell, Guillermo and Schmitter C. Phellippe (1995) “Transitions from Authoritarian Rule: Tentative Conclusions about Uncertain Democracies”, in Kritz, Neil (ed.) (1995): *Transitional Justice: How Emerging Democracies Reckon with Former Regimes*, (Vol. I), Washington D.C., United States Institute of Peace, pp.57-64.

¹⁷ For an analysis of the ambivalent status of the purported advantages of retributive justice in Bosnia and Herzegovina, see Armakolas: “International Criminal Tribunal for Former Yugoslavia...” *op.cit.*

¹⁸ Aucoin, Louis and Babbitt, Eileen: “Transitional Justice: Assessment Survey of Conditions in the Former Yugoslavia”, Report (June 2006), Belgrade, United Nations Development Program-UNDP

¹⁹ See, among others, Cruvellier and Valinas (2006), HLC (2007), Mani (2005). In such an expansive list, arguably over-stretched, a whole range of post-conflict public policies from return of property and reconstruction, to media reform, to public administration and judicial reform would fall, one way or another, under transitional justice.



1.2.3. Choosing a strategy and mixing tools

In the question of seeking a strategy of transitional justice Snyder and Vinjamuri identify different approaches to the issue: the ‘logic of appropriateness’ and the ‘logic of consequences’.²⁰ The ‘logics’ of course correspond to different policy makers and scholars advocating different solutions. The ‘logic of appropriateness’ prioritises the judicial solutions and punitive measures for human rights violations. The solutions corresponding to this logic have to be the ‘appropriate’ with regards to the past deeds that need to be penalized. The opposite logic does not disregard the past deeds but incorporates political concerns and the consequences of transitional justice measures in the calculations for the preferred policy actions. A policy maker following the ‘logic of consequences’ will not rush into punitive measures if, for example, these risk destabilizing the transitory regime or the communal peace. According to Snyder and Vinjamuri, the proponents of the former position (‘appropriateness’) are usually legal scholars or policy makers of the idealist persuasion, while those of the latter position (‘consequences’) are political scientists or policy makers of the realist persuasion. The significance of the distinctions presented by the two ‘logics’ will become yet more evident in the next two sections, which will introduce two fundamental policy dilemmas in ICTY-type retributive justice.

A point regarding the selection of transitional justice methods and tools is due here. Although the, presented above, retributive and restorative justice are distinct models, they are not mutually exclusive. Although we need to be cautious about the compatibility of different tools,²¹ in theory there are no advance prohibitions of efforts to combine transitional justice methods and tools for achieving better results. There are only a few but crucial features that have to be taken into account when designing a transitional justice strategy: a society and its leaders have to decide whether they actually want to deal with the past or simply desire to ‘forget the whole thing’; the designers have to have the specific local socio-political context keep in mind and not general theoretical schemes; they have to know in accordance to that context where ‘they wish to go’, what are the benchmarks of the transitional justice programme; there should not be presumptions about models and approaches that ‘must’ be adopted because they ‘worked’ elsewhere; and finally the full array of possibilities and available tools has to be kept in sight.

Last but not least, it’s important to make here a note of the implications of the choices made, especially in the field of justice. Only with retributive justice as the main strategic priority, justice is served in the commonly understood way. For restorative justice systems to function, the common understanding of justice has to transform in order to fit the objectives of this strategy. While reconciliation efforts and other transitional justice tools can be employed even if a judicial process is adopted, it is impossible for justice in its punitive form to survive if we remove from the picture retributive justice. In other words, justice as we commonly understand it cannot exist outside the courts. If punitive-judicial measures are *not* adopted a certain sense of justice may still remain. But this justice is transformed, changed to fit the needs of a post-conflict society; it’s not justice as we commonly know it. Therefore, if it is to be successful a change of mindset is necessary whereby victims will develop a new

²⁰ The authors identify also a third logic, that of emotion, which will not concern us here. See Snyder and Vinjamuri, *Trials and Errors...*, *op. cit.*, pp. 5-44.

²¹ See for example the views of the prominent transitional justice theorist Luc Huyse presented in Ilic, Dejan: “The Yugoslav truth and reconciliation commission. Overcoming cognitive blocks”, *Eurozine*, (24 April 2004), at <http://www.eurozine.com>



understanding of justice and perpetrators a deep sense of responsibility. None of this is straightforward in a sensitive post-conflict society.

1.2.4. Transitional justice fundamentals I: Are peace and justice irreconcilable?

At the core of the debate on transitional justice is the tension between the pursuit of peace and the firm priority on justice, a debate that obviously resembles the two ‘logics’ of transitional justice presented above.²² Should the prosecution of war criminals be a firm moral choice, a non-negotiable and strict priority of peace building, or, is there a hazard that prosecutions could complicate or delay the peace building activities, especially when the potential indicted individuals are indispensable negotiation partners of a peace deal?

There is an overall consensus by the international actors that human rights violations during an armed conflict necessitate to be addressed especially in instances of large scale and systematic violations of human rights and the laws of war. Yet, the beneficiary role of justice, especially in the form of international war tribunals is contested by many scholars, not to mention practitioners involved in peace brokering. Further dilemmas arise: are criminal prosecution and reconciliation compatible? Are law and politics compatible? To put it in other words, how much interference of politics is there in the judicial process, and what repercussions are there from this? Authors like Shinoda, Snyder and Vinjamuri, Fletcher and Weinstein, and Meernik provide us with comprehensive analyses of the two principal paradigms that seek to propose efficient strategies of conflict resolution and peace building in periods when human rights violations have ceased enjoying impunity²³.

1.2.5. Transitional justice fundamentals II: The paradigms of law and politics

The legal approach²⁴ supported by constructivist theorists highlights the normative power of the law and the judiciary: norms impose moral obligations influencing in this way actors’ behaviours. Institutionalized norms can be powerful enough as to shape the actors’ understanding of interest²⁵, have an efficient enforcement and, subsequently, deterrence mechanism. According to the legal approach, the rule of law must be the leading principal in peace building thanks to its beneficial corollaries: individual accountability, truth exposure, acknowledgement of the victims’ suffering, revealing systematic patterns of violations.²⁶ Hence, the legal theory does not recognise any incompatibility between law and peace- it rather perceives the former as a precondition to the latter. Additionally, legalist adherents

²² See previous section and footnote 13.

²³ Shinoda, Hideaki: “Peace-building by the Rule of Law: An Examination of Intervention in the Form of International Tribunals”, *The International Journal of Peace Studies*, vol.7, n° 1 (2000); Snyder and Vinjamuri, *Advocacy and Scholarship in the Study of International War Crime Tribunals and Transitional Justice Annual Reviews*, *op. cit.*, pp. 345- 362; Snyder and Vinjamuri, *Trials and Errors*, *op. cit.*, pp. 5- 44; Fletcher, Laurel E. and Weinstein, Harvey: “Violence and Social repair: Rethinking the Contribution of Justice to Reconciliation” *Human Rights Quarterly*, vol. 24 (2002), pp. 573- 639; Meernik, James: “Victor’s Justice or the Law?: Judging and Punishing at the International Criminal Tribunal for the Former Yugoslavia”, *The Journal of Conflict Resolution*, vol. 47, n° 2 (April 2003), pp. 140- 162.

²⁴ Fletcher and Weinstein refer to the ‘legal and political paradigm’, See Fletcher and Weinstein, *Violence and Social repair...r*, *op. cit.*, p. 582; Meernik uses the terms ‘political and legal model’, See Meernik, *op. cit.*, p. 144 and 149; Snyder and Vinjamuri use the term ‘logic of appropriateness’, See Snyder and Vinjamuri, *Trials and Errors*, *op. cit.*, p. 8, see above section 1.2.3.

²⁵ See Snyder and Vinjamuri, *Trials and Errors*, *op. cit.*, p. 8.

²⁶ Richard Goldstone and Payam Akhavan quoted in Shinoda *op. cit.*, p. 46.



argue that legal variables are most predictive of judicial behaviour²⁷; they thus tackle the issue of political interference in the workings of justice by stressing the principle of legal independence - principally guaranteed by international tribunals.

The political approach²⁸ claims to represent a more realist rationale, in which choices made by negotiators are unavoidably a product of a pragmatic bargaining, often obligating them to agree to compromises which can hardly be justified on ‘moral’ grounds or as just and equitable; rather, they need to correspond to the political reality and the existing power relations in order to become and remain viable and effective. As a consequence, prosecutions may cause further instability; they may jeopardize a peace agreement when that needs to be negotiated with local elite members-‘candidates’ for indictments, while there also the danger of further persecutions of civilians.²⁹ Realists do not refute the need for criminal justice altogether. They, nonetheless, demonstrate a partial and conditional acceptance of justice: most of them approve of the imposition of accountability but only after peace is consolidated; all at once, they may view amnesties as potentially necessary tools for peace. However, some supporters of this approach by accepting the political character of justice inevitably avow to the fact that war tribunals reflect in reality the underlying balance of power and subsequently can never be impartial.³⁰

1.2.6. Transitional justice in the former Yugoslavia

Having sketched the field of transitional justice we now turn to the former Yugoslavia. The Yugoslav wars have been the paradigmatic conflicts of the post-Cold War period. Their features rendered content and meaning to the so-called ‘new wars’ paradigm.³¹ And they have been the ones to attract unprecedented international attention of both the policy makers and the global public opinion.³² Albeit being the quintessential 1990s conflicts, however, the Yugoslav wars have not attracted any elaborate consideration of the transitional justice mechanisms that could potentially be employed. The key concern of the 1990s post-conflict policy making – transitional justice – was missed in the former Yugoslavia. But what transitional justice was there in former the Yugoslavia?

The central transitional justice development was the creation of the ICTY already during the Bosnian war. Its formation had more to do with the enormity, unprecedented in recent times, of the crimes committed in former Yugoslavia than with an actual transitional justice strategy. The formation of the ICTY reflected the need of the international policy makers to supply a pressure valve to soothe and deflect the global outcry. In the views of most analysts, the Tribunal was a substitute for the military intervention to stop the carnage, an intervention that was not coming. And even so, as we will see below, it was set up in such a way that for some time after its creation the ICTY remained a void letter. Its officials had to

²⁷ See Meernik, *op. cit.*, p. 149.

²⁸ Snyder and Vinjamuri, *Trials and Errors*, *op. cit.*, p.13, use the term ‘logic of consequences’; see above section 1.2.3.

²⁹ See Snyder and Vinjamuri, *Trials and Errors*, *op. cit.*, p. 15.

³⁰ See Meernik, *op. cit.*, p. 149.

³¹ Kaldor, Mary (1999): *New and old wars. Organized violence in a global era*, Cambridge, Polity.

³² Armakolas, Ioannis: “Identity and conflict in globalizing times: experiencing the global in areas raged by conflict and the case of the Bosnian Serbs”, in Catherine Danks and Paul Kennedy (eds.) (2001) *Globalization and national identities: crisis or opportunity?*, Basingstoke, Palgrave, pp. 46- 63.



struggle for its survival and for gaining the political support that later secured its undisrupted and effective operation.

It is not without significance for this analysis to note that the formation of the ICTY transcends the division between the ‘logic of appropriateness’ and the ‘logic of consequences’ presented above. The formation of the ICTY corresponds to the ‘logic of appropriateness’, and thus a more idealistic perspective of international relations. At the same time, though, the Tribunal did not enjoy the support necessary for implementing this idealist cause. Yet more perplexingly, through its formation the international community established a direct link between the awarding of justice and the reinstatement of peace. But in this way the ‘logic of consequences’ comes back in the picture in a peculiar way. How could peace be achieved through negotiations when the newly established international institution was laying the ground for the prosecution of those local leaders the international community was negotiating peace with?

We will address all these points in more detail in the following chapter which deals specifically with the debates surrounding the formation and operation of the ICTY. At this point, we can outline a key twin argument, which will be qualified and corroborated in the analysis that follows. The ICTY, as the principal transitional justice intervention in the region, was at once: a) in a difficult position as to its operation as a transitional justice tool, and later due to the high expectations nurtured for it, and b) left alone, without a complex programme of supplementary measures that would form a clear strategy of dealing with the past and reconciliation.

In closing this section, it suffices here to move one step back and raise again the issue of reconciliation and its relation to transitional justice measures. The following brief discussion can be seen as a first illustration of the confusions and problems that will be analysed at various levels in the rest of the article. Post-conflict reconciliation can be achieved through five different strategies: a) contact and interaction, b) cooperation, c) identity change, d) truth, and e) justice.³³ This is of course in theory because all too often transitional justice measures are taken without clear reference to a reconciliation strategy and without the policy makers having a well-thought off plan for the effects of their public policies when dealing with the past. In addition, elements of different strategies can be in operation concurrently. No post-Yugoslav country has had a planned and well executed reconciliation and transitional justice strategy. Not even in Bosnia and Herzegovina, which has been effectively co-run by international administrators, was there a defined strategy on the issue. In fact, different measures, not necessarily all of transitional justice nature, point to different priorities and ‘strategies’ when it comes to reconciliation.³⁴ Elements of both a ‘functionalism’ of the ‘contact and interaction’ strategy and the identity focus of the ‘identity change’ strategy could be found for example in the High Representative policies of removing obstacles to interaction.³⁵ Similarly, later projects, like the “jobs and justice”, also combined the logic of the justice strategy with other reconciliation strategies.³⁶

³³ Jakobsson Hatay, *op. cit.*, pp. 63-71.

³⁴ For the characteristics of the policies by different High Representatives in Bosnia, see Sahovic, Dzenan: “Socio-cultural viability of international intervention in war-torn societies. A case study of Bosnia-Herzegovina”, *Report*, Department of Political Science-Umea University (2007).

³⁵ For the idea of the functionalist identity projects, see: Armakolas “Identity and conflict in globalizing times...” *op. cit.*

³⁶ Armakolas, “The International Criminal Tribunal for Former Yugoslavia...”, *op.cit.*



2. Transitional justice tools: the retributive justice of the ICTY

2.1. Putting the ICTY under the microscope

In this section, we will seek to summarize some key debates in the extensive literature on the ICTY and review the multiple, interlinked, and nuanced debates over its creation, design and efficiency.

At the core of the debate on the ICTY has from the beginning been the alleged political character of the ICTY and how this reflects on or should we say deflects from the judicial mission of the court. This debate has flowered into many deriving discussions. The first issue we will look into is therefore the interaction between law and politics: what are the implications of the political character of the tribunal on its judicial function? And if there is a tension between politics and justice, which one was given the priority in the case of the Balkans?

An answer to these questions may be sought in the institutional design of the ICTY. Was it adequately constructed and endowed to correspond to its mandate, judged by (obviously) its written charter but also by the expectations which beyond its explicit mandate have been placed in this new institution? At issue is not only the impact of this international legal institution in the particular region of its jurisdiction but also the positive effects which the tribunal has had in terms of a contribution to international humanitarian law and the position of human rights in international relations.

Looking at the impact on developments in the geographic area the issue of politics emerges a new, this time raising the issue of how the domestic politics there have influenced the substantive impact of the ICTY in the post conflict societies concerned. Obviously in addressing these questions we should have a clear mind of the criteria by which the ICTY should be judged. This would entail an objective evaluation not only of the correspondence to the tasks assigned but also of aspirations projected, and its institutional capacity.

As Stover and Weinstein point out, there is a gap between the international community's aspirations for justice and how this application was perceived by those most affected in the region³⁷. An important consideration that should accompany every evaluation of the ICTY is a conscious understanding of the limits of international criminal justice. Thus every criticism about the failings of the ICTY should be examined under the lens of its real potential. For instance, when considering the contribution of the ICTY in the exercise of peace building we might consider the routes that the presence and functioning of a judicial institution opens up (for example as a means of legitimising the rule of law) instead of looking into whether the ICTY has helped bringing about lull in violence.

Finally, as we have seen already, much of the criticism developed in the transitional justice literature is the tension between peace and justice. The notions of peace and justice are, however, abstract terms, open to a vast range of interpretations. Consequently, a minimalist or maximalist understanding of either peace or justice will affect our judgement on how the ICTY has served them.

³⁷ Stover and Weinstein quoted in Kerr, Rachel: "Peace through Justice? The International Criminal tribunal for the Former Yugoslavia" *Southeast Europe and Black Sea Studies*, vol. 7, n° 3, (2007), p. 379.



2.2. Formation, politics, and problems

2.2.1. The origins and statutory goals of the ICTY

On the 25th of May 1993, the Security Council of the United Nations (thereafter UNSC) passed Resolution 827 that brought the ICTY into existence. As proclaimed in the statute, the mandate of the Tribunal was the “punishment of war criminals and the restoration of peace and security”³⁸. The Resolution was delivered under the chapter VII of the UN Charter as a threat to international peace and security. Therefore, importantly for what was to follow and our discussion here, the Tribunal was “...founded upon the recognition of a direct link between peace and justice.”³⁹ Furthermore, social reconstruction or national reconciliation even though not formulated to become a direct goal of the ICTY, were considered to be an indirect yet ‘natural’ and desirable effect of its prosecutorial activity⁴⁰.

Consensus exists that the ICTY is a legal institution that has been created by a political resolution. But no consensus has been reached on whether the politicisation of the ICTY has compromised its work of rendering justice, either by affecting the principal of impartiality, or annulling the effectiveness of justice. Many authors believe that the rendering of justice was sacrificed on the altar of political convenience, compromise and opportunism. They are sceptical towards ad hoc international tribunals, as they perceive them as a mere “reflection of the underlying balance of power”⁴¹ and argue that political considerations manipulate and influence the work of the tribunal. This debate is referred to in the literature as the “asymmetry of the powers of law and politics”⁴².

There is a group of authors who believe that the genesis of the ICTY as a subsidiary UNSC body already compromises its judiciary mission. As already mentioned, in creating the ICTY the Security Council responded to the widespread and grave violations of international humanitarian law in the territory of the former Yugoslavia. In its introductory considerations the Council stated that these violations constituted a threat to international peace and security. From there the UNSC concluded that an ad hoc international tribunal was necessary for the restoration and maintenance of peace and security and decided accordingly⁴³.

Although the UNSC does have the legal power to create subsidiary bodies, a nexus between peace and justice constituted a legal requirement for the Council to apply Chapter VII (peace and security being the mandate of the UNSC). The decision of the UNSC to integrate the ICTY into its peacemaking strategy has not been without criticism; it is seen by many as arbitrarily and substantially enlarging the powers of the Security Council, hence casting additional doubts about the motives behind the creation of the Tribunal.⁴⁴

³⁸ United Nations, S/RES/827, (1993) at <http://un.org/icty/legaldoc-e/index.htm>

³⁹ Goldstone, “Justice as a tool...”, *op. cit.*, p.486.

⁴⁰ Barrian, Lilian A.; Roper, Steven D.: “How effective are International Criminal Tribunals? An analysis of the ICTY and ICTR”, *International Journal of Human Rights*, vol. 9, n° 3 (September 2005), p. 357; Fletcher, Laurel and Weinstein, Harvey: “A world unto itself? The application of international Justice in the former Yugoslavia” in Eric Stover and Harvey Weinstein (eds.) (2004): *My neighbour, My enemy: Justice and Community in the Aftermath of Man Atrocity*, Cambridge, Cambridge University Press, pp. 36- 37.

⁴¹ Meernik, *op. cit.*, p.145.

⁴² Hazan, Pierre, (2004): *Justice in a time of war: the true story behind the International Criminal Tribunal for the former Yugoslavia*, Texas A & M University Press, p. 92.

⁴³ See S/RES/827, (1993).

⁴⁴ See Akhavan, Payam: “The Yugoslav Tribunal at a Crossroads: The Dayton Peace Agreement and Beyond”, *Human Rights Quarterly*, vol. 18, n° 2, (1996), p. 260. See also Zackling for further discussion over the UNSC competence to create legal institutions: Zacklin, Ralph: “Some Major Problems in the Drafting of the ICTY



In the same vein, authors like Johnson, D'Amato, Zacklin and Lombardi denounce the validity of the ICTY as a transitional justice mechanism in the Balkans, on the grounds of the irreconcilable tension between law and politics.⁴⁵ As we have already mentioned above, for many analysts the primary motives behind the creation of the ICTY were not to bring accountability and justice to the thousands of victims but more politically driven considerations such as: to find an excuse for not intervening militarily.⁴⁶ In their view at least, some of the proponents of the ICTY resolution were guided less by an effective peace and security strategy rather than by a responding 'domestically' to the sensitivities of their constituencies shocked by the findings of mass graves, the revelation of systematic racial persecution and ethnic cleansing. For many analysts the ICTY was installed to compensate for earlier negligence. Kerr, essentially a benevolent critic of the ICTY, agrees with Gow when he notes that the establishment of the ICTY must be viewed in the light of political 'instrumentalisation': instead of taking a pro-active and concerted stance the international community as a whole followed a course that was characterised by inconsistency and lack of will⁴⁷.

In the literature there is rich and diverse argumentation about the corollaries of political origins of the ICTY. The fact that the creation of the ICTY was not solely aimed at holding accountable the perpetrators for the atrocities, but rather served to either compensate for earlier lack of will to intervene actively in the war or as a lever that would accommodate a peace agreement (a political goal), affected the work of the Tribunal in the long run. According to Lombardi, the tribunal's real purpose was never to function, but rather to stop the war; a consideration that automatically annuls the legitimacy of a judicial institution⁴⁸. The politically tainted origin of the ICTY was seen to have resulted in a lack of institutional clarity. The Tribunal was overburdened by a double assignment to render justice and function as a peacemaking tool in order to compensate for the failure of the international community to take the political and military steps necessary to stop the war.⁴⁹ But this as we already mentioned earlier was a tall task. Rendering justice and peacemaking became increasingly difficult to coalesce. The international community brought itself in the position where it had to negotiate peace agreements with individuals who would consequently have to face an indictment in the framework of the very peace agreement which they were expected to sign up to.⁵⁰

Statute", *Journal of International Criminal Justice*, vol. 2, (2004b), p. 362. Zacklin notes, however, that the VII Chapter does not justify the discretion of legislation and that the latter constitutes an extension of UNSC competences.

⁴⁵ Johnson, Scott: "On the Road to Disaster: the Rights of the Accused and the International Criminal Tribunal for the former Yugoslavia", *International Legal Perspectives*, vol. 10, n° 1, (1998), pp. 111- 192; Lombardi, Gregory: "Legitimacy and the Expanding Power of the ICTY", *New England Law Review*, vol. 37, n° 4 (2003), pp. 887- 901; Zacklin, Ralph: "The failings of ad hoc International Tribunals", *Journal of International Criminal Justice* vol. 2 (2004), pp. 541-545; D' Amato, Anthony: "Peace vs. Accountability in Bosnia", *American Journal of International Law*, vol. 88, n° 3 (1994), pp. 500- 506.

⁴⁶ Bass, Gary; Beigbeder, Yves; Holbrook; Richard; Robertson; Geoffrey quoted in Meernik, *op. cit.*, p. 142.

⁴⁷ Gow, James: "Triumph of the Lack of Will: International Diplomacy and the Yugoslav War" (1997), Hurst, London; Kerr, Rachel: "International Judicial Intervention: The International Criminal Tribunal for the Former Yugoslavia", *International Relations 2000*, vol. 15, n° 17, (2000), p 18.

⁴⁸ See Lombardi, *op. cit.*, p. 900.

⁴⁹ Teitel, Ruti: "Bringing the Messiah through the law" in Hesse, Carla; Post, Robert (eds.) *Human Rights in political transition from Gettysburg to Bosnia* (1999), New York, Zone Books, p. 179.

⁵⁰ The polemic over the immunity that peace envoy Richard Holbrook allegedly had to offer to Radovan Karadzic is an obvious case in point here.



A general consensus wants it that the creation of the Tribunal constituted a ‘judicial intervention’ from the part of the United Nations which was not supported by the domestic political elites in the countries of the region. Consequently, the utilitarian nature and the instrumentalisation of the ICTY, as the court was perceived in the region, condemned the court to function in a “political vacuum”⁵¹. The umbilical cord that connected the ICTY with the Security Council i.e. the political interest of international actors had never been removed: the Tribunal’s existential and financial dependence from the UNSC rendered it impossible for the ICTY to establish legitimacy especially in the eyes of the polarised post-conflict societies.⁵²

Nevertheless, in the transitional justice debates there is also a counter-argument: namely that international funding guarantees impartiality of the procedures; local sponsorship instead would have resulted in prejudiced operation and failure. This, however, does not seem to be the case in the former Yugoslavia, where the popularity of the ICTY is generally low in large parts of the local societies.⁵³

2.2.2. Early deficiencies, their politics, and their effects

We have already alluded to some major problems that inhibited the work of the ICTY, at least in its early phase; we will now present these in more detail. During the first years of the tribunal’s function analysts and academics were seeking to analyse the impact of the political dependency of the ICTY on its workings. The strongest arguments advanced by those criticising the political dependence of the institutions had been the absolute absence of indictments. By this measure it was easy enough to claim that the ICTY was a void letter. Lawyers and judges admit that in the first two years the ICTY was mainly preoccupied with writing the rules of procedure. The incapability to issue indictments fuelled serious concerns especially when the budget started being jeopardised due to the lack of deliverability of the prosecution⁵⁴. The court’s lack of efficiency is further corroborated by the testimonies of the ICTY personnel who had been recruited for the initial inception phase. The picture they paint of gives credence to their claim that “despite its desirability [...] the tribunal did not have the prospects of being very effective”⁵⁵. They point to the fact that for a number of years, prosecutors and judges were not in a position to properly investigate and issue indictments. This created a psychology of defeatism in the gulfs of the tribunal⁵⁶.

If the priority of the ICTY had indeed been to prosecute the primary responsible of human rights violations in the understanding that the legal response to the atrocities would eventually lead to a long-term peace, then the mechanisms of the ICTY have hardly been the adequate ones. Even authors like Hazan, who endorses the benefits and the necessity of international criminal justice, recognise that the ICTY’s “dependence on international politics put a limit on the workings of the tribunal”⁵⁷. Hazan, though, urges us to judge the tribunal more in the long perspective and recognise its contribution on normative and substantive

⁵¹ *Ibid.*, p. 181.

⁵² See Lombardi, *op. cit.*, p. 887.

⁵³ Klarin, Mirko: “The tribunal’s four battles”, *Journal of International Criminal Justice*, vol. 2, n° 2, (2004), pp. 553. See more on this issue below.

⁵⁴ Interview with Richard Goldstone in documentary: “Against all Odds” (2004), SENS Tribunal.

⁵⁵ Meron, Theodor, “The case for War Crimes Trials in Yugoslavia”, *Foreign Affairs*, vol. 72, n° 3, (Summer 1993), p. 132.

⁵⁶ Louise Arbour’s interview in documentary “Against all Odds”, (2003), SENS Tribunal.

⁵⁷ See Hazan, *op. cit.*, pp. 86- 89.



questions. Nonetheless the argumentation of these authors who welcome the creation of the ICTY shows that they are fully aware of the intricacies caused by the political character of the ICTY.

Authors like Meron or O' Brien, who studied the ICTY already in 1993 only a few months after the commencement of its work, foresaw quite clearly the difficulties to arise: lack of funding and personnel, absence of cooperation by relevant authorities in the territories of the former Yugoslavia, the lack of a system providing for incentives to co-operate or sanctions for non cooperation⁵⁸. O' Brien emphasises the fact that the widespread atrocities in the former Yugoslavia politically obliged the Council to create the ICTY and lauds its statute and rules that provide a sound structure for determining individual responsibility. But he too eventually concludes that the Tribunal's success depended on the one hand on the states that had to provide the adequate resources for enforcement and on the other in creating a political climate in which the tribunal would have the chance to succeed.⁵⁹ Bringing these two issues together, Gow shows how the key development in awarding justice in the ICTY and in the shifting the political landscape in post-conflict Bosnia have been the war crimes enforcement by the international forces from 1997 onwards.⁶⁰

The architects of the ICTY were very cautious in designing the powers and mechanism of this body. Their national demands were factors that did form eventually the institutional design of the ICTY. Hazan gives a detailed account of the national diplomatic considerations which mortgaged the structure of tribunal manifested to particular national interest: the English, for instance, were very persistent in erasing any reference to the obligation to cooperation. The French refused to authorise their military to testify in The Hague.⁶¹

Klarin states that only few, even among the founding fathers, believed that the tribunal would ever become a functional institution. According to Klarin, the effect of this general scepticism made those to whom threat was addressed to, perceive the tribunal- at best- as a mere instrument of political pressure, in the interest of achieving some kind of peace in the Balkans.⁶²

2.2.3. Judicial independence⁶³

The authors hitherto quoted have mostly based their analysis on the incompatibility between political underpinnings and the ambition to effectively render criminal justice; an equation in which the justice objective seemed the weaker one. At the same time authors like Meron⁶⁴ were commenting on the design deficiencies of the ICTY, which led to lack of deliverability

⁵⁸ Meron, *op. cit.* pp. 133- 134; O'Brien, James: "The International Tribunal for Violations of International Humanitarian Law in the former Yugoslavia", *American Journal of International Law*, vol. 87, n° 4, (1993), pp. 642.

⁵⁹ See O'Brien, *op. cit.*, pp. 658- 659.

⁶⁰ Gow, James, "The ICTY, War Crimes Enforcement and Dayton: The Ghost in the Machine", *Ethnopolitics*, vol. 5, n° 1 (March 2006), pp. 49-65.

⁶¹ See Hazan, *op. cit.*, p. 98- 103; See also Olofson, George: "Envisioning the ICTY" in Allcock, John (ed.) (2006): *The International Criminal Tribunal for the Former Yugoslavia*, The Scholars' Initiative – Research Team 10, p. 110.

⁶² Klarin, *op. cit.*, p. 547.

⁶³ See Meernik, *op. cit.*, p. 149.

⁶⁴ See Meron, *op. cit.*, p. 133.



and inefficiency. These arguments could be used, as shown, to support the opinion that the architects of the ICTY created an institution that from the beginning had manifested weaknesses that were to be detrimental for its function. This rationale could be further used to highlight the tension between law and politics and cast doubt on the strategy of the international justice donors.

However, authors like O' Brien do not underestimate the important beneficial impact that it eventually had despite the deficiencies and unfavourable circumstances. In this view, the creation of the tribunal is considered as an unprecedented decision of tremendous significance in the treatment of human rights in international politics and endorsed its goal to bring justice to the thousands of victims. The eventual judicial intervention by a supra national body of the Security Council was considered to be necessary due to "the catastrophic failure of the national states to protect their citizens and the likelihood that those states would not prosecute the perpetrators through national trials"⁶⁵. International tribunals are perceived by the United Nations to be tribunals of the last resort and their function is to deliver justice in the wake of the breakdown of national judicial systems. Most importantly their existence manifests a decisive shift within the international community away from impunity.

Authors like Humphrey, O'Brien and Hochkammer belong to the analysts who argue in favour of the UNSC rationale of creating stability in the former Yugoslavia through the enforcement of international humanitarian law.⁶⁶ Humphrey sees the ICTY as only one element of a complex and multifaceted institutionalised strategy which – alongside diplomatic cease-fire and peace negotiations - constituted a specific response to the atrocities⁶⁷.

Earlier, we introduced the debate on the incompatibility of law and politics and so far we elaborated the rationale of the 'political model'⁶⁸, which purports that in this relationship law is subordinate to politics. The counter-argument to this posture asserts that the judicial process cannot be conceived in isolation from politics. The advocates of this position do not only see no tension between the objectives of politics and justice but also perceive politics as the vital space that enables justice to function by ensuring both its legitimacy and effectiveness.⁶⁹ In their view, international criminal justice, effectuated not in its traditional national context of law but in the space in-between states, where the relationship between power and law is particularly evident, 'must be understood in the context of politics and not detached from it'.⁷⁰ As Kerr comments: "The ICTY was established by a political process [...] and the success or failure of the enterprise is ultimately determined by the political will because of the need for political support and action to underpin the legal process. However, while politics permeates every other aspect of the tribunal, it does not enter the courtroom and impinge on due process of law"⁷¹.

⁶⁵ Humphrey, Michael: "International intervention, justice and national reconciliation: the role of the ICTY and ICTR in Bosnia and Rwanda", *Journal of Human Rights*, vol. 2, no. 4, (2003), p. 495.

⁶⁶ See Humphrey, *op. cit.* pp. 495- 505; O' Brien, *op. cit.* pp. 639- 644; Hochkammer, Karl: "The Yugoslav war Crimes Tribunal: the Compatibility of Peace, Politics and International Law", *Vanderbilt Journal of Transnational Law*, vol. 28, n° 119, (1995), p. 170.

⁶⁷ See Humphrey, *op. cit.*, p. 495.

⁶⁸ Term adopted from Meernik, *op. cit.*, p. 144.

⁶⁹ Allcock, John: "The political character of the ICTY", in Allcock, John (ed.), *op. cit.*, pp. 119-125 (Also at <http://www.salzburgseminar.org/ihjr/si/si/Report-10g.pdf>); Also see Kerr, (2000), *op. cit.*, p. 24.

⁷⁰ Bass, Gary quoted in Allcock, John (ed.), *op. cit.*, p. 92.

⁷¹ See Kerr (2000) *op. cit.*, p. 24-25.



One of the greatest fears expressed during the initial phase of the tribunal was that its dependence on international politics would have a toll on the partiality of its indictments and decisions. Authors like Scharf commented in 1996 that although the ICTY proved a clear improvement of international justice since Nuremberg also in terms of the fairness of the trials, the scales of justice in the ICTY were tipping more in disadvantage of the Serbs since it was predominantly members of this group who had to sit on the dock.⁷² This argument contradicts the declared by the transitional justice literature key advantage of the retributive paradigm, which we saw above; that is, that individual culpability removes of the collective guilt and stigmatisation.⁷³

Meernik provides us with a host of arguments expressed about the concerns of partiality, concerns which remained unfounded. He examines in detail the arguments claiming that international criminal tribunals are ‘no more than instruments of victor’s justice in disguise’. In an elaborated system of fairness evaluation he concludes that although the ICTY started as a window dressing to veil the lack of international willpower, in its further course it did develop legitimacy. Furthermore, he states that it subsequently had positive impact on the international humanitarian law development, on the institutionalisation of the law in international politics. Importantly he confirms that no ethnic group has been singled out for unfair treatment and that as a long-term evaluation the ICTY has not been influenced by political actors and that the monitor mechanisms of the ICTY under the auspices of the UN are a sound guarantee of fairness.⁷⁴ Bass argues that war crimes tribunals have generally sought to apply, to the extent possible, legal criteria based on widely accepted international conventions.⁷⁵

Similarly, Klarin argues that after 1997 the Tribunal acquired its own momentum accompanied by an impressive rise in the number of the indictments (having started even while Dayton was in full swing) and he registers them as encouraging signs of good collaboration from behalf of SFOR.⁷⁶ These achievements in the field were rewarded by ICTY–record budget for 1998.⁷⁷ He concludes that despite the seemingly insurmountable obstacles, on its tenth anniversary, the tribunal was precisely doing what it was created to do, namely prosecute the principal perpetrators and importantly converting the suffering of thousands of silent victims into an undeniable historical event.⁷⁸

2.3. Evaluating the ICTY

2.3.1. The evaluation of the ICTY according to its statutory objectives

A more objective mode to assess the ICTY is to measure its achievements against its mandate. An analysis of the ICTY mandate leads to some important issues both fundamental to the assessment of the ICTY but also relevant to transitional justice tools in general.

⁷² Scharf, Michael: “A critique of the Yugoslavia War Crimes Tribunal”, *Denver Journal of International Law and Policy*, vol. 25, n° 2, (1996- 1997), pp. 310- 311.

⁷³ To this point we will return later in the paper.

⁷⁴ See Meernik, *op. cit.*, p. 156.

⁷⁵ Garry Bass quoted in Meernik, p.149.

⁷⁶ See Klarin, *op. cit.*, p. 551. Gow, “The ICTY, War Crimes Enforcement and Dayton...” *op. cit.*

⁷⁷ See Meernik, *op. cit.*, p. 552.

⁷⁸ *Ibid.*, p. 554.



As already mentioned the declared primary objectives of the ICTY were to punish the war criminals restore peace and guarantee security in the region. The statutory jurisdiction of the Tribunal was not directly aimed to reach beyond providing an immediate response to the humanitarian situation by promoting social reconstruction and long term reconciliation⁷⁹. Although punishment and peace were both the primary statutory aims of the ICTY, different authors focus on one of the two goals baptizing it as the ‘major goal’. Those who consider the ICTY as principally a retributive justice tool (Cassese, Kerr, Klarin, Olofson)⁸⁰ are satisfied that in the long run justice has not been compromised in the pursuit of peace. Those who view the ICTY as a means to reach peace (Lombardi, Zackling)⁸¹ believe that this very objective backfired on the effectiveness of the Tribunal not only weakening its role in ending the war, acquiring judicial legitimacy, and serving as a substantive tool of reconciliation.

General consensus exists on the fact that the ICTY did not fulfil its utmost mandate: the shocking incident of Srebrenica as well as the outbreak of the war in Kosovo seemed to illustrate that the ICTY had not been a successful deterrence factor. In this respect the literature is concerned with primarily one issue, namely how and why did the ICTY fail to have a greater impact as a tool of peace building?

Not infrequently commentators and authors draw the attention to the fact that the signatory states are accountable for the tribunal’s success; they should provide it with adequate resources, cooperation and create a climate in which the tribunal has a chance to succeed⁸². The question then to ask becomes whether the failure to achieve the goals set and the aspirations projected on this institution were a corollary of inevitable weaknesses (for instance due to lack of institutional experience or due to circumstances connected to the political realities) or whether they were indeed the outcome of political considerations. In other words was the ICTY intentionally designed to be a weak institution, so as not to be able to acquire too much of a judiciary momentum and impose obstacles in possible political settlements aiming at the restoration of peace and order? How much did politics affect the institutional design of the ICTY?

2.3.2. Endowed institutional weaknesses: a contradiction between aspirations and design?

Many critics perceive incongruence between the imperatives of the ICTY mandate and its institutional design. A large part of the literature on the institutional failures of the ICTY criticizes the lack of enforcement⁸³ and its dependence on cooperation.⁸⁴ Although cooperation with the ICTY became provision of the Dayton Agreement, there was neither an effective mechanism of enforcing such cooperation nor a system of sanctions. The post-Yugoslav states have been exhibited extensive obstructionism in their cooperation with the

⁷⁹ Fletcher and Weinstein, “A world unto itself?...” *op. cit.*, p.36.

⁸⁰ Cassese, Antonio: “The ICTY: A Living and Vital Reality”, *Journal of International Criminal Justice*, Vol. 2, (2004), pp. 585- 597; Klarin, *op. cit.*, pp. 546- 557; Olofson, *op. cit.*, pp. 109- 118; Kerr, *op. cit.*

⁸¹ See Lombardi, *op. cit.*, p. 887- 901; See Zackling, “The failings of ad hoc international tribunals”, *op. cit.*, p. 541- 545.

⁸² See O’ Brien, *op. cit.*, 659.

⁸³ McDonald, Gabriele: “Problems, Obstacles and Achievements of the ICTY”, *Journal of International Justice*, vol. 2, (2004), pp. 559- 560; Askin, Kelly: “Reflections of the Most Significant Achievements of the ICTY”, *New England Law Review*, vol. 37, n° 4 , (2003), p. 903; Also see Klarin, *op. cit.*, p. 458.

⁸⁴ See MacDonald, *op. cit.*, pp. 559- 560.



ICTY, for instance by not making evidence available to the prosecution. Moreover, the ICTY relies on the signatory states to undertake arrests, as it does not have its own police force.

Judge Mc Donald commenting on the lack of cooperation that the tribunal confronted in particular during the first years of its existence said that not only did the resolutions of the Security Council fail to end the blatant non-compliance of Serbia and facilitate the tribunal access to Kosovo; the international community itself often ignored her own appeals to act as violence was escalating in Kosovo.⁸⁵ With no enforcement personnel of its own, often unwilling partners to get involved into arrests (criticism against NATO forces and the international forces who refused to assist in the arrests of the indicted)⁸⁶ and with the obstructionism posed by the state authorities of the indicted; the Tribunal quickly gained the characterization of an ineffective and slow functioning body.

Klarin said that even the impact of Dayton on the Tribunal was minimal. Although the peace accords were obliging the regimes to full cooperation there were no provisions enforcing sanctions in the failure of it.⁸⁷ However, the literature does not offer any alternative institutional options to the absence of enforcement mechanisms. It seems that at present there is no viable institutional concept for international criminal institutions to develop their own enforcement and sanctions systems.

This is corollary to the still initial phases of the development of international criminal justice and not a failure particular to the ICTY. The ICC, an institution, which to a large extent was built upon the ICTY and the ICTR precedents, although functioning under different rules (the ICC is not a UN body) and a permanent institution remains dependent upon the cooperation of the signatory states. As Cassese rightly points out, it is wrong to reach conclusions on the ICTY by comparing it with a national court, because an international ad hoc tribunal is not supported in its function by an entire state apparatus that underpins and complements its work.⁸⁸ Is this an inevitable reality of international justice? Pessimists would probably agree; Zacklin, for example, is arguing that it is impossible to envisage the establishment of a similar tribunal in new situations, considering that it is not only costly but also inefficient and ineffective.⁸⁹ Optimists on the other hand point out the contribution of the ICTY in the development of international humanitarian law. As Askin argued it is still very early to expect international justice systems to reach these levels of efficacy and institutional soundness that took hundreds of years to the domestic judicial systems to achieve.⁹⁰

Being an unprecedented institution, the architects and practitioners of the ICTY acted often on a trial and error basis. On the one hand, some scholars suggest that the diversity of the personnel and the differing but co-existent procedures of civil and common law put an additional burden on the function. Incompatible disparities between legal traditions slowed down the procedures and cause confusion many times as to what would be a legal practice and what not.⁹¹ Institutional insufficiencies, scarce legal procedural precedent, handicaps in

⁸⁵ *Ibid.*, pp. 563- 564.

⁸⁶ See Hazan, *op. cit.*, pp. 94- 95 and Klarin, *op. cit.*, p. 550.

⁸⁷ See Klarin, *op. cit.*, p. 550. It has to be noted though here that although the provisions were not there, the international community in time did develop its own political tools for enforcing cooperation with the ICTY, not least by incorporating this element in the European Union conditionalities to the Western Balkan states.

⁸⁸ Cassese, *op. cit.*, p. 587.

⁸⁹ See Zacklin, "The failings of ad hoc tribunals", *op. cit.*, p. 545.

⁹⁰ See Askin, *op. cit.*, p. 914.

⁹¹ Schrag, Mina: "Lessons Learned from ICTY Experience", *Journal of International Justice*, vol. 2, (2004), p. 432.



acquiring evidence and securing arrests coupled by scarce resources, both in personnel and in material marked the daily routine in the premises of the ICTY.⁹² As a consequence, issuing an indictment was as a slow process as were the trial procedures themselves. This general inefficiency and hampered deliverability had a direct impact on its legitimacy⁹³.

What was particularly seen to be inflicting upon the defendants' rights were the extraordinarily extended detention periods before their trial which was an unfortunate but expected result of the workload and the obstruction in the collection of evidence. The cumbersome beginning of the ICTY dictated to an extent its prosecution strategy, which initially had to be restrained on the low or mid levels instead of the high echelons of the command. The difficult and at times inhibited for the above reasons access to evidence rendered it impossible for Goldstone, chief prosecutor of the ICTY between 1994 and 1996, to indict the leadership- owners of functional responsibility. Instead his pyramid policy concentrated on the executors since evidence was by far and large more easily available thanks to the testimonies of victims. Yet this practice undermined the perception of fairness⁹⁴, and became again the recipient of criticism. Some critics viewed the initial prosecution strategy that focused on the "example setters" (i.e. not those bearing functional responsibility, namely the leadership, but the execution organs)⁹⁵, as an alienation of the tribunal's work from its declared purposes that stemmed in the alleged unwillingness to reach to the leadership.

2.4. ICTY judged by results in the Balkans

2.4.1. Expectations

Some have argued that the validity of the ICTY should not be judged on whether it had an immediate deterrence effect or whether it contributed to an immediate ceasefire but rather on long-term substantial issues, such as contributing to sustainable peace. We have already by looking at its mandate established that the ICTY did not have as a statutory goal to become a medium of social transformation. However, transitional justice scholars ascribe to the criminal justice mechanisms a number of virtues that are according to the theorists conducive to the transformation of a post conflict society into a reconciled one in which democracy and the rule of law prevail. Yet, what are the preconditions that will allow an international body to have an impact on the dynamics of national politics and the domestic society what exactly is the role of law in the process of transition?

Several scholars who evaluate the effect of the ICTY on the region believe that in order for the Tribunal to become a factor in the processes of democratization and reconciliation it needs to become part of the political competition; in other words, it needs to become a political issue that would gain the support of those political forces that endorse democratization. Bell, Campbell and NiAolain point to the fact that "institutional reforms become intrinsically tied up with the ongoing experiment of political accommodation".⁹⁶

⁹² See Askin, *op. cit.*, p. 903.

⁹³ See Schrag, *op. cit.*, p. 430.

⁹⁴ Schrag, Mina, *op. cit.*, p. 430.

⁹⁵ Del Ponte, Carla: "Prosecuting the Individuals bearing the Highest Level of Responsibility", *Journal of International Criminal Justice*, vol. 2, (2004), pp. 516- 519.

⁹⁶ See Bell et al, *op. cit.*, p. 313.



A number of other transitional justice authors believe in the *potential* pedagogical nature of international trials by contributing to collective memory and strengthening peoples' awareness. The task of the international courts is not constrained to the mere conduct of trials but also to the support of the development of parallel teaching and rehabilitative structures addressed to domestic audiences⁹⁷. Furthermore, public pedagogy ought to take place also within the institutions whereby the international legal system should become a point of reference for the adequate development of the domestic one⁹⁸. According to Bell, Campbell and NiAolain one needs to perceive the transitional process in terms of the reversal of the delegitimation of domestic law and of legal institutions that occurred during the conflict; thus transition becomes a project of building the legitimacy of the law.⁹⁹

Fletcher and Weinstein argue that through these educative virtues international criminal justice *might* contribute to achieving justice in the broader sense.¹⁰⁰ However, these authors discern the failure of the ICTY to do so. Equally Teitel, stresses that "...the ICTY symbolises the possibility of change in the region [...] from persecutory violence to the rule of law [...] and represents the rule of law in a transitional form, as an image of the possibility of liberal justice and a symbol of a potential change."¹⁰¹ In the aftermath of a large scale conflict, where severe and systematic human rights violations took place, every notion of accountability, lawfulness and justice collapses and the value of the 'third power' needs to be re-established as the principle guarantee for the individual. The rule of law is the cornerstone of a democratic state and its necessity in the consolidation of peace in a diverse society is indispensable for coexistence after a conflict. Teitel, however, adds that the ICTY failed to have the expected impact on these respects. Along the same lines Tolbert had expressed the hope that the ICTY would have had a long- term impact on the systems of justice in the area of the conflict, yet recognising that the impact in this field had been minimal.¹⁰²

2.4.2. Why fail?

There are various arguments in the bibliography why international criminal tribunals cannot – at least when applied exclusively – have a strong impact on substantive reconciliation and social transformation. The question whether or not international criminal justice is beneficiary to social reconciliation also depends on the breadth one gives to the term. For Fletcher and Weinstein this broader sense of justice translates into the process of "social repair"¹⁰³. Although they recognise the value of international trials as a response to atrocities, they argue that trials do not constitute a sufficient answer to a social reconstruction because this approach of transitional justice is responsive only to one dimension of the abuse of power and manifests limits in addressing the social and collective forces that lead to violence¹⁰⁴. Their research has shown that criminal justice fails to redress the totality of the complex issue of social reconciliation. For instance bystanders and unindicted persons who directly or indirectly profited from violence remain untouched. Additionally trials only concentrate to perpetrators

⁹⁷ See Fletcher and Weinstein, *A world unto itself?...*, *op. cit.*, p. 43.

⁹⁸ *Ibid.*, p. 30.

⁹⁹ See Bell et al., *op. cit.*, p. 323.

¹⁰⁰ See Fletcher and Weinstein, *A world unto itself?...*, *op. cit.*, p. 43.

¹⁰¹ See Teitel, *op.cit.*, pp. 188- 189.

¹⁰² Tolbert, David: "The International Criminal Tribunal for the Former Yugoslavia: Unforeseen Successes and Forseeable Shortcomings", *Fletcher Forum World Affairs*, vol. 26, n° 2, (Summer/ Fall 2002), p. 8.

¹⁰³ Fletcher, Laurel and Weinstein, Harvey: "Violence and Social repair: Rethinking the Contribution of Justice to Reconciliation", *Human Rights Quarterly*, vol. 24, (2002), pp. 573- 639.

¹⁰⁴ *Ibid.*, p. 636.



leaving to broader initiatives the issues of democracy building, humanitarian assistance and economic development¹⁰⁵.

2.4.3. Local trials

There is general consent in the literature that domestic courts in the former Yugoslavia suffer from low capacity and manifest low willingness to prosecute war criminals. According to a research in Bosnia and Herzegovina in 2004, the Bosnian judicial system “suffers from neglect, remains subject to influence by nationalist elements, political parties and the executive branch”.¹⁰⁶ The research concludes that this failure is to be attributed to the lack of a comprehensive vision in the area of transitional justice. Although the Dayton Agreement set out a broad framework for building the new state of Bosnia and Herzegovina, the overall transitional justice efforts have been ad hoc and incomplete. The conclusion of this research is one among many that support the argument that what was needed in the former Yugoslavia was a well aimed and targeted strategy of transitional justice within which the ICTY could have played a strategic role as one component of a holistic approach.

An equivalent but more recent research on war crimes tribunals in Serbia concludes that radical nationalists have frequently attacked the work of the war crimes tribunals, while moderate nationalists never publicly supported war crimes prosecutions¹⁰⁷. Moreover, as in 2008 Serbia is lagging very much behind both Bosnia and Croatia in the number of indictments¹⁰⁸. Regarding the issue of the institutional impact of the ICTY on the domestic courts, no use has been made of the ICTY jurisprudence conserving issues of substantive law by the domestic Chambers principally due to the lack of experience in international humanitarian law. Nonetheless, the same research confirms that the ICTY has contributed in many other ways to the functioning of war crimes chamber in Serbia, principally through training of judges and prosecutors in substantive international law.¹⁰⁹

Zogling commenting in 2005 on Croatia’s status of domestic criminal justice system comments that “cases are marred with intimidation towards witnesses, politicization and double standards; [...] there is a general lack of ability and will to dispense justice”.¹¹⁰ Although much of the ineffectiveness of domestic courts render justice is due to the weak institutional capacities, the dominant inhibiting factor appears to be the unwillingness of the governments to promote domestic trials, but also a general state of denial that prevails in the masses. Zogling’s argument then that holding up all or parts of some ICTY trials in the region would help in the acceptance of transitional criminal justice in the region¹¹¹ or the argument of other authors that the remoteness of the ICTY rendered it too distant as to have a substantial impact on the region do not hold water. The problem of acceptance of either international or domestic criminal justice it seems lies also more in the reconciliation and the acceptance of the past and not only in the legitimacy of the international tribunal.

¹⁰⁵ *Ibid.*, p. 580.

¹⁰⁶ International Centre for Transitional Justice at “Bosnia and Herzegovina- Selected developments on Transitional Justice, (October 2004) at <http://www.ictj.org/images/content/1/1/113.pdf>

¹⁰⁷ International Centre for transitional Justice: “Against the Current: War Crimes Prosecutions in Serbia”, (2007), pp. 2-3.

¹⁰⁸ *Ibid.*, p. 5.

¹⁰⁹ *Ibid.*, pp. 35- 38.

¹¹⁰ Zoglin, Katie: “The Future of War Crimes Prosecutions in the Former Yugoslavia: Accountability or Junk Justice?”, *Human Rights Quarterly*, vol. 27, (2005), pp. 55- 56.

¹¹¹ *Ibid.*, p. 75.



2.4.4. The problem of the acceptance of the ICTY in the region

In any case, various researches affirm that the legitimacy and acceptance the ICTY enjoys in the region is considerably low. It is telling that the tribunal's popularity is inversely proportionate to the number of accused that come from the countries or entities and ethnic communities concerned, whereas in every country or entity it is the minority that has a positive view of the tribunal.¹¹²

The most common criticism about why the ICTY failed to have a strong and profound impact in the region was its dislocation from the actual domestic context. Some critics believed that it has been a mistake holding the trials in an outside place such as The Hague because this remoteness had as an effect the absence of a feeling of ownership. Zogling suggested that holding all or parts of some ICTY trials in the region would have advanced the goal of reaching one truth. It would have helped to involve to a greater extent the national judiciaries securing impartial trials and raise awareness in the populations.¹¹³

The physical remoteness becomes more of an issue if seen as a further element obstructing the proper communication of the tribunal. The architects of the ICTY have been criticised for failing to create the right mechanisms that would function as routes of communication between the international body and the region under its jurisdiction. Analysts but also ICTY professionals considered as neglect the fact that for the first six years the ICTY was not equipped with a kind of outreach mechanism that would undertake the awareness rising of the populations with regards to the work of the tribunal.¹¹⁴ Other analysts still, question the extent to which a court ought to develop extensive awareness raising mechanisms and point to the evident failure of the international organisations active in Bosnia and Kosovo to make full use of the ICTY verdicts and available primary knowledge for informational purposes.¹¹⁵

The failure to address its constituencies affected substantially the attitude towards the tribunal in the countries of the region, which became a manipulated issue under the control of the local political power and the media.¹¹⁶ As a consequence, according to the same critics, the failure to embed the ICTY into the local political and social context had a direct effect on the popularity the tribunal enjoyed in the local populations.¹¹⁷

2.4.5. Politics

¹¹² See Klarin, *op. cit.*, p. 553.

¹¹³ See Zoglin, *op. cit.*, p. 76.

¹¹⁴ Tolbert, *op. cit.*, p. 13. For interesting examples of awareness raising projects of the ICTY's Outreach Program, see Helsinki Committee for Human Rights in Republika Srpska: "Priblizavanje MKSJ-a lokalnim zajednicama u Bosni i Hercegovini", Conference series; and Open Society Fund Bosnia & Herzegovina: "Zlocin i Kazna. Procesuiranje ratnih zlocina pocinjenih u Bosni i Hercegovini pred Medjunarodnim Krivicnim Sudom za Bivsu Jugoslaviju", (2007), Sarajevo; George, Alexandra: "Justice Requires Outreach: A Vital Communication Tool in Rendering Justice", OSCE Mission in Bosnia-Herzegovina (April 2007), Report at <http://www.oscebih.org/public>. General information about the Outreach Program can be found at http://www.un.org/icty/bhs/outreach/outreach_info.htm.

¹¹⁵ Armakolas: "The International Criminal Tribunal for Former Yugoslavia..." *op. cit.*

¹¹⁶ See Klarin, *op. cit.*, p. 553; Tolbert, *op. cit.*, p. 13.

¹¹⁷ See Klarin, *op. cit.*, 553.



As elaborated in detail above, a number of scholars recognised that the ICTY as an externally imposed criminal justice institution functioned in a political vacuum. The assumed effect that the pursuit of the perpetrators would lead to their stigmatisation also in their domestic context and their removal from their activity domestic politics did not apparently materialize. Although arguably this is still an ongoing process, and without underestimating the progress achieved in recent years, it is true, as it is evident for example from the political situation in Bosnia and Herzegovina, that nationalism and ethnic politics are still a hard currency in the region. The Western Balkans were considered by analysts to have gone through a very disrupted and difficult political transition even before the beginning of the war owing to regressive local elite competition and the continuing strength of ethnic nationalism. In addition, the Balkan wars had ended without the total defeat of one of the parties which in that state could have provoked the people to hold their leaders responsible not only for the outcome, but also for aggressions and atrocities. Most leaders that played the role of ethnic entrepreneurs during the 1990s conflicts have remained in power even after peace agreements. Where they were removed, other politicians also viewing politics through ethnic nationalist lenses took over. Contrary to the expectations, the ICTY has only partially succeeded in excluding the criminals from the public discourse.

2.4.6. Victims' expectations...

An important issue that has to be raised here concerns the extent to which the needs of the victims are met and their perspectives taken into account through the activity of the ICTY. Delpla makes some very interesting observations: firstly she concludes that the ICTY engages citizens of Bosnia mainly at the level of the arrests and sentences rather than the trials themselves; she has pinpointed that once arrests are completed trials attract less attention. In addition, she adds that the notion of justice includes financial and material aspects for the victims, a request definitely beyond the jurisdiction of the ICTY. Finally, the victims expect international criminal justice to offer them both individual and collective recognition. Yet trials in The Hague do not bring about a shared recognition or an improvement of the social or symbolic status of the victims.¹¹⁸ It is fair to argue that the ICTY has not been able to totally satisfy the needs of the victims who on the one hand believe and support the role of the ICTY but on the other desire to see more justice being dispensed according to their own standards.

2.4.7. ...and actual impact

In contrast to such a pessimistic view many scholars and practitioners of international law make us aware of the potentials of international criminal justice and how they were – even partially – advanced by the ICTY. The latter could not possibly tackle victims' aspirations for compensations, the dogma of restorative justice; the Tribunal nonetheless provided a historical record accredited by historians as a credible historical account.¹¹⁹ According to Kerr, the historical record itself produced by the ICTY should be regarded as a means of restorative justice.¹²⁰ The extensive use of witness statements had multiple positive effects:

¹¹⁸ Delpla, Isabelle: "In the Midst of Justice: The ICTY from the Perspective of some victim Associations", in Bougarel, Xavier, Helms, Elissa and Duijzings, Ger (eds.) (2007): *The New Mosaic: Identities, Memories and Moral Claims in a Post- War Society*, Ashgate, p. 231.

¹¹⁹ Wilson, Richard Ashby: "Judging History: The Historical record of the International Criminal Tribunal for the Former Yugoslavia", *Human Rights Quarterly*, vol. 27, (2005), p. 908- 942.

¹²⁰ Kerr, Rachel, (2004): *The International Criminal Tribunal for the Former Yugoslavia: An Exercise in Law, Politics and Diplomacy*, Oxford University Press, p. 61.



apart from creating a historical account, their testimonies in an international tribunal made their voices heard, gave to their suffering global acknowledgement and recognition and acted as a purgatory mechanism that contributes to social healing. Moreover, the ICTY “has undertaken historical documentation without being lured into debates about national identity [...] and the ICTY judgements contain extensive historical interpretation of the causes of the conflict.”¹²¹ Therefore, we can safely argue that the truth exposed before the tribunal has had a healing effect on the victims satisfying to a smaller or larger extent their aspirations of justice and preventing acts of revenge; it consequently has also a collective value.

As we have seen earlier in the paper, another strong argument projected by the legal school of thought in transitional justice is the notion of *individual* culpability. Holding individuals accountable for their acts prevents the *collective* stigmatization of groups. The virtue of this approach is that it breaks ‘old cycles of ethnic retribution’ and thus advances ‘ethnic reconciliation’¹²². In contrast to political interventions during conflict resolution, which focus on the peace between warring parties, the judicial intervention removes the focus away from the group onto the individual, eradicating the evil elements and perceptions from the group.¹²³ This constitutes one of the major advantages of the judicial intervention, as it is thought to be setting the foundations for a future restoration of the destroyed social bonds between the various sections of the society.

Still, the advantages of individual culpability are to a large extent lost in the former Yugoslavia. ICTY decisions in the post-Yugoslav counties are still interpreted through national lenses. For the Serbs, and to a lesser extent the Croats, the argument on the avoidance of collective stigmatisation is mostly missed. In fact, large parts of the Serbian public view the ICTY as specifically the institution that advances their collective stigmatisation. The point is missed in reverse also among Bosnjaks (Bosnian Muslims), especially the victims and their families. In their view, it is specifically the awarding of justice by the ICTY that confirms their victimhood and should corroborate their *collective* political demands.¹²⁴ Overall, the great advantage of retributive justice, the non-stigmatisation of the collectives, seems untenable in the former Yugoslavia.¹²⁵

With regards, finally, to the impact on the political transition and the weakening of nationalist forces the picture appears in the literature to be mixed. On the one hand, surely there is some truth to the claims that the justice rendered in The Hague contributed to the delegitimisation of the Milosevic regime, to Croatia’s steps towards EU integration and to some extent changing the civic landscape in Bosnia.¹²⁶ In the same line, the key development

¹²¹ See Wilson, *op. cit.* p. 921- 922.

¹²² See Teitel, *op. cit.*, p. 183.

¹²³ Shinoda, *op. cit.*, p. 52.

¹²⁴ Delpla, *op. cit.*

¹²⁵ For the perceptions of the ICTY in Serbia, see Gordy, Eric: “Public opinion on the ICTY and Reconciliation”, in Allcock (ed), *op. cit.*, OSCE Mission in Serbia & Beogradski centar za ljudska prava: “Javno mnjenje u Srbiji - Stavovi prema domacem pravosudju za ratne zlocine i Haskom tribunal” (December 2006); Strategic Marketing: “Stavovi prema ICTY” (July 2004), at http://www.humanrights.gov.yu/files/doc/Stavovi_prema ICTY Jul 2004.doc; Logar, Svetlana and Bogosavljevic, Srdjan (2001): “Vidjenje istine u Srbiji”, quoted in Ilic, Dejan: “The Yugoslav truth and reconciliation commission. Overcoming cognitive blocks”, *Eurozine*, (24 April 2004), at <http://www.eurozine.com>. For the fate of the ‘individual culpability’ thesis in the former Yugoslavia see also the discussion in Armakolas (2007), *op. cit.*

¹²⁶ Akhavan, Payam: “Beyond Impunity: Can International Criminal Justice Prevent Future Atrocities?”, *American Journal of International Law*, vol. 95, n° 70, (2001), pp. 12- 13.



with regards to the ICTY role in the political processes came when the Tribunal became an issue of power struggle between opposing political forces.¹²⁷

But on the other hand it is also true that many years after the end of war in Bosnia politics in the country are still divided along ethnic lines and a new generation of nationalist politicians, admittedly of more pragmatic postures, have replaced the old guard who were indicted by the ICTY. At the same time, the Tribunal continues to enjoy only limited legitimacy especially among Serbs and many Croats.

2.5. Beyond the Balkans - The universal impacts of the ICTY

Considering the weaknesses of the ICTY and the inconsistencies of the international community in its strategy of judicial intervention in the Balkans there is a large consensus in the literature that the ICTY has been a success story. This has to be considered no small thing. The challenging and often unfavourable circumstances in which the ICTY had to function should not be neglected. Crimes within the jurisdiction of the ICTY involve complex factual, legal, and evidentiary issues, such as the exhumation of mass graves and the testimonies of victims who, when still alive, are traumatised or intimidated.¹²⁸ More intricate yet is the judicial process when trying the crime of genocide, in which investigation in support of the prosecution is particularly difficult, delicate, and complex. Even the analysis of propaganda or hate speech, as the prosecution tried to establish in its indictment against Vojislav Seselj, is a very elusive terrain for factual proof; it is yet necessarily for proving systematic discrimination and instigation to atrocities. As Akhavan points out with regards to some of the difficulties facing ICTY prosecution endeavours:

“An international organised crime investigation on such a grand scale is time consuming and resource intensive, and individual criminal accountability cannot be based on newspaper clippings and human rights reports [...] the ICTY initially could not grasp the complex legal and evidentiary contours of organised crimes at the highest echelons of state authority”.¹²⁹

However, leaving aside the structural and circumstantial conditions that render the ICTY an overall successful endeavour, the Tribunal signifies an irrevocable alteration in the culture of impunity¹³⁰ and “the emergence of accountability as a significant element of international relations”.¹³¹ Akhavan discerns a phenomenon which he denominates under the term ‘new realism’ or pragmatic idealism’.¹³² His argument is that there is a broad realisation that impunity constitutes a source of continuous instability and threat to the international order; hence the pursuit or accountability reflects the notion of a ‘new realism’ and begins to constitute a substantial element of post-conflict peace building and reconciliation.¹³³ The value of the ICTY in this development has been instrumental not only as the pioneer and symbolic institution but also as a substantial point of reference. The ICTY has contributed in the clarification of many elements of international criminal law and has elaborated a set of

¹²⁷ *Ibid*, p. 21.

¹²⁸ See Askin, *op. cit.*, p. 913.

¹²⁹ See Akhavan: “Beyond Impunity...”, *op. cit.*, p. 19.

¹³⁰ See Mc Donald, , *op. cit.*, 568.

¹³¹ See Akhavan “Beyond Impunity...”, *op. cit.*, p. 7.

¹³² *Ibid*, p. 30- 31.

¹³³ *Ibid*, p. 30- 31.



rules and procedures¹³⁴ that constitute a valuable legal heritage for other ad hoc tribunals as well as for the permanent International Criminal Court (ICC). In adopting, refining and applying the rules of procedure and evidence there has been an immediate impact upon the international criminal law practice and procedure, which have taken a far more tangible and concrete form.¹³⁵ The enrichment of international criminal law is also established by the recognition of rape and other sexual assaults as crimes against humanity and by the joint criminal enterprise theory of responsibility.¹³⁶

3. Transitional justice tools: supplementary retributive and restorative justice tools.¹³⁷

3.1. Restorative justice responses: the initiatives for Truth and Reconciliation Commissions

3.1.1. The initiatives in practice

Initiatives for uncovering the truth through truth commissions about past events have been particularly important in Latin America in the 1980s but it was the Truth and Reconciliation Commission (TRC) in South Africa¹³⁸ – set up in 1995 - which gave the tool its international attention.¹³⁹ Since the mid-1990s Truth Commissions are considered among the key transitional justice tools and among the most important public policy considerations in post-

¹³⁴ See Cassese *op. cit.*, p. 591.

¹³⁵ See Askin, *op. cit.*, p. 907.

¹³⁶ *Ibid.*, p. 909.

¹³⁷ It would be impossible to analyse all transitional justice tools – utilized or not in the post-Yugoslav states – in the limited space of this article. The reader is urged to look into other studies and reports for information on those tools. See, among others, Alic, Anes: “Missing persons, ever-present divide”, *International Relations and Security Network*, 26 June 2008; Alic, Anes: “Missing persons politics”, *International Relations and Security Network*, 14 March 2007; Ahmetasevic, Nidzara: “Bosnia’s Book of the Dead”, *Balkan Investigative Reporting Network Justice Report*, 22 June 2007; Ahmetasevic, Nidzara; Mekic, Mirna: “Multiple Versions of the Truth”, *Balkan Investigative Reporting Network Justice Report*, 26 April 2006; Armakolas: “The International Criminal Tribunal for Former Yugoslavia...”, *op. cit.*; Aucoin and Babbitt, *op. cit.*; BBC Monitoring European: “Bosnian Federation TV pessimistic about work of Sarajevo Truth Commission” (January 2007), Report; Buljugic, Mirna: “No Progress for Sarajevo Truth Commission”, *Balkan Investigative Reporting Network Justice Report*, 23 February 2007; Cruvellier, Thierry and Valinas, Marta: “Croatia: selected developments in transitional justice”, Report (December 2006); Djordjevic, Djordje: “A Casualty of Politics: Overview of Acts and Projects of Reparation On the Territory of Former Yugoslavia”, Report (July 2002), International Centre For Transitional Justice; Freeman, Mark: “Bosnia and Herzegovina: selected developments in transitional justice”, Report (October 2004), International Centre for Transitional Justice; Humanitarian Law Centre (HLC): “Transitional justice in post-Yugoslav countries”, Report (2007); Humanitarian Law Centre (HLC): “Izvestaj o tranzicionoj pravdi u Srbiji, Crnoj Gori i na Kosovu 1999-2005.”, Report (2006); International Centre For Transitional Justice: “The former Yugoslavia. ICTJ activity”, Report (March 2008); International Centre For Transitional Justice: “Bosnia and Herzegovina. ICTJ activity”, Report (February 2006); International Centre For Transitional Justice: “Serbia and Montenegro (and Kosovo). ICTJ activity”, Report (February 2006); Jakobsson, *op. cit.*; Karup-Drusko, Dzenana: “Bosanska knjiga mrtvih”, *Nezavisne Novine*, 29 June 2007; Nettlefield, Lara: “Documenting the Victims of Conflict”, reproduced in *Bosnia Daily*, 7 July 2008; Rozajac, S.: “Amor Masovic nakon presude Suda pravde. Srbi ne ze le opstanak Komisije za Sarajevo”, *Oslobodjenje*, 14 March 2007; Skrbic, Mirna: “Counting the dead”, *Transitions Online*, 4 April 2006

¹³⁸ Wilson, Richard (2001): “The politics of truth and reconciliation in South Africa. Legitimizing the post-apartheid state”, Cambridge, Cambridge University Press.

¹³⁹ A 2005 updated list at the United States Institute for Peace digital archive lists twenty four Truth Commissions (<http://www.usip.org/library/truth.html#tc>, accessed 25/9/2008). The first Commissions were established in Latin American countries, while initiatives proliferated after the end of the Cold War.



conflict peace building settings.¹⁴⁰ TRCs are often perceived in opposition to classical justice tools, such as the prosecutions for past human rights abuses. In reality, they have to be considered as a different form of justice. According to Richard Goldstone, who has served in both the South African TRC and the ICTY:¹⁴¹

Criminal prosecution is the most common form of justice. Prosecution is, however, not the only form, nor necessarily the most appropriate form in every case. The public and official exposure of the truth is itself a form of justice, and it does not matter whether that exposure takes place in criminal or civil proceedings. The work of truth commissions or judicial inquiries share with criminal prosecutions the ability to bring significant satisfaction to victims. If that satisfaction is sufficiently widespread within a community, it can have a soothing effect upon a whole society.

In former Yugoslavia there have been initiatives for the formation and operation of Truth Commissions. At various stages of the initiatives local political elites, influential local and international NGOs, prominent think tanks, and the United National Development Programme were involved. But the attempts have not been systematic, suffered from design problems, encountered political obstacles and opposition, and have therefore not been successful thus far.¹⁴²

The only TRC formed by a post-Yugoslav state was the result of the initiative of Vojislav Kostunica, then president of the Federal Republic of Yugoslavia (later Serbia-Montenegro), who formed such a Commission in March 2001.¹⁴³ The Commission failed to produce any report and its existence officially ended with the formation of the new state union of Serbia and Montenegro in February 2003. Civil society observers identified serious problems in the Commission's set up, mandate and methodology of work, including the non-involvement of civic-oriented civil society actors and minority groups, and the neglect for victims' perspectives.¹⁴⁴ The Commission never gained any legitimacy among non-nationalist civil society and neighbouring states; rather, its formation was seen as an attempt by members of the political elites, and president Kostunica in particular, to "secure an interpretation of history from the Serb point of view and as an attempt to convince the international community that, in the case of the Federal Republic of Yugoslavia, priority has to be given to

¹⁴⁰ For the Truth and Reconciliation Commissions, see, among others, Avruch, Kevin and Vejarano, Beatriz: "Truth and Reconciliation Commissions: A Review Essay and Annotated Bibliography", *Online Journal of Peace and Conflict Resolution*, vol. 4, n° 2 (2002), pp. 37-76; Feher, Michael: "Terms of Reconciliation". in Hesse, Carla, *op. cit.*, and Post, Robert (eds.) (1999) *Human Rights in Political Transitions: Gettysburg to Bosnia*, New York, Zone Books, pp. 325-338; Hayner, Priscilla: "International Guidelines for the Creation and Operation of Truth Commissions: A Preliminary Proposal", *Law and Contemporary Problems*, vol. 59, n° 4 (Autumn, 1996), pp. 173-180; Hayner, Priscilla (1996) 'Commissioning the Truth: Further Research Questions', *Third World Quarterly*, vol. 17 (1), pp. 19-22; Hayner B. Priscilla (1994) 'Fifteen Truth Commission – 1974 to 1994: A Comparative Study', *Human Rights Quarterly*, vol. 16 (4), pp. 597-655; Hayner, Priscilla (2002) 'Unspeakable Truths. Facing the Challenges of Truth Commissions', London, Routledge. See also critical perspectives in Dyzenhaus, David: "Justifying the Truth and Reconciliation Commission", *Journal of Political Philosophy*, vol. 8, n° 4 (2000), pp. 470-496; Mani, Rama: "Rebuilding an Inclusive Political Community After War", *Security Dialogue*, vol. 36, n° 4 (2005), pp. 511- 526; Petrovic, Maja: "The practices of Justice and Understanding the Truth", *Eurozine*, (December, 2003), at <http://www.eurozine.com>

¹⁴¹ Goldstone, Richard J: "Ethnic Reconciliation Needs the Help of a Truth Commission", *International Herald Tribune*, 28 October 1998, p. 491.

¹⁴² For evaluations and summaries of the initiatives see especially Cruvellier and Valinas *op. cit.*, Freeman *op. cit.*, HLC (2007), *op. cit.*; HLC (2006), *op. cit.*

¹⁴³ For the Yugoslav Truth Commission, see especially: Ilic, *op. cit.*

¹⁴⁴ HLC (2006), *op. cit.*, p.11; ICTJ (2008), *op. cit.* p. 2.



the...[TRC] and not the trials of the Hague Tribunal”¹⁴⁵. This becomes clear when one looks into the Commission’s membership, its internal workings and conflicts, which resulted in the resigning of those members associated with civic and non-nationalist perspectives.¹⁴⁶ Evidently, the Yugoslav Truth Commission’s true objectives have been quite the reverse of the standard aim of TRCs to question the role of one’s own nation and the crimes committed in the name of the same.

Still, the bulk of activities in relation to a TRC were in Bosnia, in which paradoxically the Commission was never in fact formed. A TRC project was initiated at least three times, with the first already in the immediate post-war period.¹⁴⁷ The idea for a Bosnian TRC was aired again in 2000-1 by local and international activists.¹⁴⁸ Consultations took place, including ones in the form of a large international conference, and even a draft law was prepared but with no visible success. Later on, an initiative by the international NGO Dayton Project, in collaboration with the United States Institute for Peace (USIP), involved Bosnian parliamentarians of all three groups and resulted in the finalization of a state level draft law in early 2006.¹⁴⁹ Despite opinion polls suggesting that there is sufficient public approval for the formation of the Commission¹⁵⁰ the process was again halted and the draft law was never adopted. The draft law may have fallen victim to the general elections forthcoming at the time in Bosnia. But civil society and victims associations’ lukewarm attitude or opposition has also contributed to the stalemate.¹⁵¹ Yet, the calls for a Bosnian TRC are still there and both local and international actors stress that such an initiative can provide a crucial missing building block in the picture of the misplaced reconciliation in the country. There are of course various debates surrounding the issue, including the questionable ‘maturity’ of the Bosnian society to undertake such a task and the problem of the right timing, which cannot be analysed here.¹⁵²

Last but not least, there are the attempts by civil society actors in the region to advance the cause of a regional approach to the issue.¹⁵³ The process has culminated in the recent initiative by three prominent civic-oriented NGOs to revisit the establishment of a Truth Commission. The *Humanitarian Law Centre* in Belgrade, *Documenta* in Zagreb, and the *Research and Documentation Centre* in Sarajevo, all three NGOs with extensive involvement in the areas of transitional justice and issues of dealing with the past, reportedly having secured the backing of dozens of victims’ associations, joined forces in proposing a Truth Commission or a Commission for establishing the facts about war crimes with a regional,

¹⁴⁵ HLC (2006), *op. cit.*, p.11.

¹⁴⁶ Ilic, *op. cit.*

¹⁴⁷ Jelacic, Nerma and Ahmetasevic, Nidzara: “Truth Commission Divides Bosnia”, *Balkaninsight Special Report* (March 2006), at <http://www.iwpr.net/index.php?>

¹⁴⁸ Freeman, *op. cit.*; Kritz, Neil and Finci, Jakob: “A Truth and Reconciliation Commission in Bosnia and Herzegovina: An Idea Whose Time has Come”, *International Law FORUM du Droit international*, vol. 3 (2001), pp. 50-58.

¹⁴⁹ HLC (2007), *op. cit.*, pp. 23-24.

¹⁵⁰ Data from the UNDP early warning system quoted in HLC (2007), *op. cit.*, p. 23.

¹⁵¹ For the debate and criticisms see Finci, Jakob: “Ready for the truth?”, *Transitions Online*, 8 December 2008; Freeman *op. cit.*; Hadzovic, Eldin: “Truth Commission – concerting a story for \$20 million?”, Bosnian Institute (reproduced from *Dani*), 10 March 2006; Hodzic, Edin: “Truth and Reconciliation Commission (II): A forum to end myth-making”, *Pulsdemokratije*, 27 September 2006; Jelacic and Ahmetasevic, *op.cit.*; Peric 2001; Suljagic, Emir: “Komisija za istinu i pomirenje (I): Pomirenje kao krvavi cinizam”, *Pulsdemokratije*, 1 September 2006; Tokaca, Mirsad: “Truth and Reconciliation Commission (III): Truth as Admission and Compassion”, *Pulsdemokratije*, 19 November 2006.

¹⁵² See, among others, the works in footnote 2 and the discussion in Armakolas 2007.

¹⁵³ HLC (2007), *op. cit.*, pp. 25-26.



rather than country specific, scope.¹⁵⁴ It is still too early to assess the merits of the initiative, although the three organizations are among the most professional NGOs in the region with many friends and supporters in the international community. Clearly, though, the initiative cannot take off and have deep impact without the active political support of official political institutions.¹⁵⁵ Similarly, the success of the Commission will require the active involvement of not only the victims' associations, but also of mass civil society actors that are not always in good terms with the non-nationalist and civic-oriented NGO scene.

3.1.2. Relationship to retributive justice tools (ICTY war crimes trials)

ICTY's first prosecutor Richard Goldstone, himself a South African, was among the very first officials associated to the Tribunal to have offered their backing to the formation of a TRC in Bosnia.¹⁵⁶ Still, the ICTY - TRC-to-be relationship has not been without troubles. ICTY officials had feared that the establishment of a TRC might undermine the work of the Tribunal. Concerns over duplication of efforts, political exploitation of the TRC platform by the ethnic political elites in an attempt to circumvent the Tribunal, gradual prioritization of amnesty solutions over the criminal responsibility tried in the Hague, and eventually impunity for war crimes executed were some only of the fears of the these officials.¹⁵⁷ The concerns were echoed also by many local NGO activists and victims' associations, who complained for not having being consulted and feared that war crimes perpetrators could go unpunished should the Truth Commission be allowed to undermine the work of the ICTY. In Bosnia, in particular, the draft law of the Truth Commission produced in 2006 added to the original concerns since, as critics argued, it did not adequately addressed the problem of the relationship between the Commission and the war crimes prosecution offices.¹⁵⁸

Such fears have to be seen in the context of the Tribunal's struggle during the first years of its existence to secure funding, political support, the means to follow its mandate, and ultimately secure its survival and the capacity to pursue its objectives. These concerns, as we have seen above, were far from illegitimate since it took several years of hard work and aggressive lobbying to reach the reputation and political support that the ICTY enjoys today. A new body, which in other countries it has been associated with amnesties and non-punitive transitional justice, could not but alarm Tribunal officials and victims associations. ICTY's concerns seemed to have gradually soothed. In a speech at a conference on the establishment of a TRC in May 2001 in Sarajevo Claude Jorda, then ICTY's President, acknowledged the complementarity of a TRC with the work of ICTY. He viewed TRC's function as supplementing and, if necessary, reinforcing the ICTY in its mission of reconciliation.¹⁵⁹ He thus appeared to reassure those ICTY officials and backers of the Tribunal who remained skeptical of the Truth Commission. ICTY officials provided comments and suggested revisions to the draft TRC law. Jorda was convinced that if the necessary changes would be done to prevent overlaps in mandates and clarify the exclusivity

¹⁵⁴ ICTJ (2008), *op. cit.*; Gaffney, Conor; Alic, Aida: "First Regional Truth Commission Runs Into Doubts", *Balkaninsight* (August 2008), at www.balkaninsight.com/en/main/analysis/12257/; Roknic, Aleksandar: "NGOS call for War Crimes Commission", *Tribunal Update*, n° 556, 20 June 2008.

¹⁵⁵ Gaffney and Alic, *op. cit.*

¹⁵⁶ Goldstone, "Justice as a tool ...", *op. cit.*

¹⁵⁷ Freeman, *op. cit.*

¹⁵⁸ HLC (2007), *op. cit.*, p. 24; Freeman, *op. cit.*, p. 8. For other related criticisms, some of which questioning the very concepts of truth and reconciliation that a TRC strives to advance, see the works in footnote 2.

¹⁵⁹ Jorda, Claude: "The ICTY and the Truth and Reconciliation Commission in Bosnia and Herzegovina", speech delivered on 12 May 2001, Sarajevo.



of the Tribunal's judicial powers the work of the TRC - in its complementary and distinct role - would prove important. Taking as given that the scope of the Tribunal's peacemaking is limited, Jorda goes as far as outlining four areas in which the work of a Bosnian TRC would best supplement the work of the Tribunal: dealing with the lower ranking executioners, reparations to victims, formulation of a historical narrative about the causes that led to the conflict, and the formulation of a collective, shared by all memory of the war.¹⁶⁰

The change in moods must not have been unrelated to the exhibited by the international community and some local politicians in recent years full support to the work of the ICTY as well as the successful strategy of pressures employed by international, which resulted in the arrest and transfer to the Hague of most indicted, including top politicians. Other factors were probably also at play: the gradual physical or political demise of the wartime political leadership in all post-Yugoslav countries, the clarification of the complementary relationship between the trials and the truth commission tools, the gradual widening of support for the initiative among civil society actors.¹⁶¹ In addition, the international community, after peaking its intervention and state-building drive in Bosnia, has gradually come to terms with the inconvenient truth that the divisions within the Bosnian society and political system are deeper than originally assumed. International factors have thus gradually and recently started realising that only a more comprehensive strategy for dealing with the recent Bosnian past can truly contribute to reconciliation in the country.¹⁶²

3.1.3. General issues

It is obvious from the above brief presentation that the TRC in practice in former Yugoslavia proved a puzzling affair. Still, some key interrelated elements and issues can be identified.

Should the Truth Commission be a top-down or bottom up initiative? The above-described initiatives included all sorts of different paths: a government-formed and fully controlled Commission in Serbia, the initiative of grass root civil society actors for the regional Commission, and different degrees and combinations of activist initiative and political elite involvement in the various attempts to create a Commission in Bosnia. The practice has shown that in the case of the TRC political elites cannot work in isolation from the civil society activists and vice versa. The TRC in Serbia failed because it was a smokescreen for the continuing dominance of the elite-sponsored nationalist discourse; without desire for real change, and without the support of non-nationalist civil society, the minorities, and the victims associations the initiative was destined to fail. The regional initiative in contrast risks becoming a failure if it does not manage to involve the political class and the mass civil society organizations; in other words it will not take off as an effective Truth Commission if it does not move beyond the liberal and non-nationalist civil society circles to reach the wider public.

What should be the level of involvement of political elites and official political institutions? Early attempts in Bosnia might have been hopeless due to the fact that the political personnel still included key members of the nationalist elites that led the country to war. These politicians, several of whom ended up in The Hague, would have the incentive to

¹⁶⁰ Jorda, *op. cit.*

¹⁶¹ See Kritz and Finzi, *op. cit.*

¹⁶² See Armakolas "The International Criminal Tribunal for Former Yugoslavia...", *op. cit.*; Mrkic, Jelena: "Miroslav Lajcak: Bosnia needs justice", *Justice Report*, 6 August 2007



manipulate the issue of the Commission in their effort to avoid ICTY indictments. Similarly, the TRC initiative in new Yugoslavia was marred by the same nationalist tendencies of the then President Vojislav Kostunica. Although the wartime political class has with very few exceptions disappeared from the political scene, it is far from certain that the current political leaderships, some of which exhibiting equal virulent nationalism, will not want to influence the TRC process. But it is equally inconceivable to think of an official TRC platform without the active commitment of political elites. It is fair to argue that, although the exact level of political leadership and official political institutions involvement will be negotiated by each society and political system depending on its socio-political circumstances, an effective TRC cannot but involve political leaders and institutions.

What should the role of the civil society be and what civic actors have to be involved? Past examples of Truth Commissions from Latin America to South Africa point to the key role played by the civil society in the process of the initial forming and actively supporting the platform. In contrast, in Rwanda, where civil society in the first years after the genocide was not sufficiently active, a top-down approach and mixed tools, such as *Gacaca*, were employed to make up for the missing civic engagement.¹⁶³ In the countries of former Yugoslavia the lack of civil society is a non-issue. In fact, the opposite problem would be more pertinent. It is more the case that there is a wide variety of different and often conflicting actors that such an initiative would have to make sure to have on-board. Non-nationalist and civic oriented organizations have been the champions of the international community and have played a key role in opening up the discourses in formerly bounded nationalist communities in the post-war years. The same organizations, many of which highly professional after several years of collaborating and being funded by the international community, are at the forefront of the efforts to deal with the past and beat the legacy of war crimes. It is, however, other civil society organisations, many of which with strong links to the nationalist parties and often advocates of exclusivism, which can claim large membership and appeal to the wider public, albeit of their own exclusive ethnic communities. To make the picture even more complex, the same often communitarian or nationalist organizations represent victims or their families, the very constituency that is of any Truth Commission. Clearly, a genuine and effective TRC cannot engage only the 'usual suspects' of the liberal and progressive civil society and will have to engage the above-described 'hard cases' of mass organizations of often regressive politics.¹⁶⁴

Last but not least, what should the truth function of the TRC be: to produce a new truth or to contribute to the acceptance of already established truth? This is obviously the 'million dollar question' that cannot be answered with any certainty here. Will the involvement of victims associations and nationalist civil society actors have the effect of diluting responsibility and producing a resultant truth of competing influences and narratives? Clearly the risk is there. TRC will have to produce victim-centred narrative that may shake some of the solid foundations of our reading of the conflict. Still, to the extent that these will be results of genuine engagement with victims and their multiple versions of truth it will be a welcome development. For example, one of the standard observations of all local and international observers of the post-Yugoslav societies is that there is still, even several years after the war, largely no consensus about the fundamental facts of the Yugoslav wars, even those that are by now established beyond doubt through the work of the Hague Tribunal. And this is arguably reinforced by the exhibited limited interest of the public in the lengthy and

¹⁶³ See Kritz and Finci, *op. cit.*, pp. 54-55.

¹⁶⁴ See Armakolas, *op. cit.*



strenuous trials in The Hague.¹⁶⁵ Still, given the predominance of the transitional justice tool of the ICTY and the delay in forming a TRC the post-Yugoslav countries will have to be quite creative so as to devise new instruments within a Truth Commission. Such instruments will, for example, make use of the facts established in The Hague, not as a political weapon or a higher level of truth but as auxiliaries to the normal operation of truth seeking. If a common narrative that would form the base for a new unified community is difficult to formulate, still a truth that would unify more than divide is imperative.

3.1.4. Assessment

All in all, TRC initiatives have been arguably delayed and their initiation has in practice, initially at least, suffered from the predominance of the ICTY as transitional justice tool. The example of the Yugoslav Truth Commission is illustrative of the dangers of badly conceived and implemented commission. Since, as experts admit, it is better to have no commission whatsoever than to have a badly designed and implemented one¹⁶⁶, the failure to create a Bosnian TRC may prove a blessing. A well-designed and implemented TRC may prove a significant tool that can be used as part of a comprehensive strategy of dealing with the past in former Yugoslavia; such a strategy is after all one way or another sought after by officials and critics at different quarters.¹⁶⁷ Whether the regional initiative will prove more successful than earlier attempts will depend on solving the puzzle of the involvement of the official political and governmental institutions. Still, the marked delay in initiating a serious and professional TRC may allow for devising ways and functions that will make the initiative significantly more effective. Such functions can be to the direction of combining standard truth recovery sessions with disseminating the body of primary knowledge produced from other transitional justice operations, as for example the truth about events established in The Hague.¹⁶⁸ Similarly, a TRC can function better by collecting testimonies, not only of inconvenient truths, but also of positive examples of inter-group solidarity.¹⁶⁹ Finally, it has to be made clear that there are no ideal conditions for the creation of a TRC and the societies in the former Yugoslav countries cannot afford to 'sit and wait' for the social and communal-level 'maturity' in order to create the 'ideal TRC'. Such ideal institution is only the result of the negotiation of the problem by social and political actors and within the context and the constraints of the given environment. Instead, viewing the objective of reconciliation as a process rather than an end-product will illuminate the key significance of the formation and operation of such institutions even if not created in 'ideal' conditions.¹⁷⁰ Or to put in the words of two key advocates of a TRC in Bosnia, a Truth Commission "...is about a society beginning a soul-searching exploration of its own ills and defects..."¹⁷¹

¹⁶⁵ Grego, Suzana: "Truth and Acknowledge in the Former Yugoslavia", Report (October 2007), International Center for Transitional Justice.

¹⁶⁶ Hayner, "Unspeakable Truths..." *op. cit.*

¹⁶⁷ Jorda, *op. cit.*; See Kritz and Finci, *op. cit.*; See Tokaca, *op. cit.*

¹⁶⁸ See Armakolas: "The International Criminal Tribunal for Former Yugoslavia...", *op. cit.*

¹⁶⁹ See Kritz and Finci, *op. cit.* Although admittedly a more mature and vibrant civil society would probably perform this task equally good, if not better than an official Commission.

¹⁷⁰ See Armakolas: "The International Criminal Tribunal for Former Yugoslavia...", *op. cit.*

¹⁷¹ See Kritz and Finci, *op. cit.*, p. 54.



3.2. Lustration and vetting¹⁷²

3.2.1. The initiatives in practice

Little has been done as far as lustration and vetting is concerned in any post-Yugoslav country other than Bosnia.¹⁷³ Serbia is the only post-Yugoslav state to have adopted a lustration law. The “law on the accountability for the violation of human rights” was adopted in 2003. It bars individuals who have violated the human rights stipulated in the law from public functions; or if they already hold such offices it foresees their resignation.¹⁷⁴ Still, although the law has been adopted it has not been implemented; this was mainly due to the hostility of the nationalist faction in the Serbian parliament, while even the pro-Western Democratic Party seems to believe that the momentum for lustration measures has been lost.¹⁷⁵ Other attempts for informal vetting process in the judiciary also failed. And civil society actors strongly, and at times successfully, opposed the appointment to public functions of individuals “...for whom there are credible allegations on accountability for violations of human rights”.¹⁷⁶ In Croatia draft lustration laws targeting officials who had had duties during the communist regime were twice rejected in the parliament. As a legacy of the nationalist politics of the 1990s the minorities in the judiciary are seriously under-represented. This so called ‘creeping lustration’, executed against individuals from the former regime and minorities, has been attacked by civil society organizations.¹⁷⁷ Generally, there has been no systematic attempt to undertake a vetting process in the judiciary, security forces, or the political system. And only an informal vetting process has taken place in the form of retirements, replacements, and re-assignments.¹⁷⁸

Bosnia and Herzegovina is quite a different story due mainly to the presence of the international community. Miroslav Lajcak, the High Representative in Bosnia and Herzegovina, admitted last year that was already too late to consider a lustration programme.¹⁷⁹ The lack of formal lustration notwithstanding, the influence of the international community in the country has led to a series of extensive, and in part successful, vetting processes based on misconduct during the Bosnian war and other serious offenses. Between 1999 and 2002 24,000 police officers were vetted by the United Nations Mission in Bosnia and Herzegovina (hereafter UNMIBH), with 96% of them receiving certification and more than 500 failing to pass the process. The vetting of the judiciary took place, after an initial failed attempt, between 2002 and 2004. As many as 1,000 judges and prosecutors were vetted by the High Judicial and Prosecutorial Council created by the Office of the High Representative; the Council was created in an effort to reform and professionalize the judicial sector under the supervision of the internationally sponsored Independent Judicial Commission. Some 200 judges and prosecutors were not re-appointed as a result of the

¹⁷² The two terms are used here interchangeably although in reality they are not the same. The type of processes observed in the post-Yugoslav countries is best described by the term vetting; lustration, instead, implies a programme that is wider than the screening of individual cases. Still, because of the fact that the term lustration is widely used in the region we will use it also here without, nevertheless, implying that the two terms actually coincide. See HLC (2007), *op. cit.*, p. 19.

¹⁷³ For a more detailed presentation of the lustration issues in the Balkans, see Hatschikjan, Magarditsch, Reljic, Dusan and Seber, Nenad (eds.) (2005): *Disclosing hidden history: Lustration in the Western Balkans. A project documentation*, Thessaloniki, Center for Democracy and Reconciliation in Southeast Europe.

¹⁷⁴ HLC (2006), *op. cit.*, pp. 35-36.

¹⁷⁵ ICTJ (2008), *op. cit.* p. 3.

¹⁷⁶ HLC (2007), *op. cit.*, p. 21.

¹⁷⁷ HLC (2007), *op. cit.*, p. 22.

¹⁷⁸ See Cruvellier and Valinas, *op. cit.*, p. 32-33.

¹⁷⁹ See Mrkic, *op. cit.*



vetting process of the judicial reform.¹⁸⁰ Under international pressure and guided by the international community agents the Bosnian Central Election Commission has also established and continues to successfully operate a screening process for any individual elected at the state-level parliament and government. Furthermore, the State Investigations and Protection Agency (SIPA) is involved in the verification of the wartime bio data provided by all members of the state-level government (Council of Ministers) and provides reports to the relevant committees of the Bosnian (state-level) parliament.¹⁸¹ Importantly, both the Central Election Commission and SIPA have been formed under the aegis of the international community, are organized and operate at the state level, and are among the most professional and successful post-war Bosnian state institutions.

It is however unfortunate that the vetting process in Bosnia got associated to one of the most controversial cases of international interventions in the country, one that was deemed to illustrate the problem of non-accountability of the country's international administrators and the clash between human rights and the country's international obligations.¹⁸² The case was the above-mentioned decertification of police officers. The certification process was executed by the UNMIBH, and more specifically by its International Police Task Force. After several failed efforts, the full execution of the process took place only in the final months of the UN's presence in the country and shortly before the European Union Police Mission took over. The results of the process met strong resistance from those police officers who were decertified. As many as 150 of them challenged the decisions in local courts and several continued with an appeal at the European Court of Human Rights. The case has attracted extensive local and international media coverage. The UN vetting procedure was challenged as violating the European Convention on Human Rights by the Venice Commission of the Council of Europe and the Commissioner for Human Rights of the same organization himself. After having also been attacked by the influential research and advocacy group *European Stability Initiative*¹⁸³, the case against UN's vetting gained even more legitimacy when the High Representative of the time Christian Schwartz Schilling supported the local appeals for a revisiting of the process. Concerns over the effects of the problematical process had earlier been expressed also by previous High Representative Paddy Ashdown. The UN for some time resisted revisiting its decision and pressured the Bosnian government not to make any attempts towards cancelling the UN's fait accompli. In such a move the UN saw a dangerous precedent for other post-conflict countries wishing to dismantle the political legacy of internationally sponsored state-building. Still, later on, bowing no less to serious international and local pressure, the UN retracted from its earlier position and attempted a political compromise; it allowed the decertified policemen, not to review and challenge their

¹⁸⁰ For details on the certification processes and an assessment of their merits, see Freeman, *op. cit.*, pp. 12-14, and, especially, Mayer-Rieckh, Alexander: "Vetting to prevent future abuses: reforming the police, courts, and prosecutor's office in Bosnia and Herzegovina", in Mayer-Rieckh and de Greiff, Pablo (eds.) (2008): *Justice as prevention: Vetting public employees in transitional societies*, New York, Columbia University Press, pp.181-220. The latter includes also statistics of the vetting processes. Mayer-Rieckh was the Chief of Human Rights Office of UNMIBH from 1999 to 2001 and oversaw the initial screening phase that preceded the police officers' certification process. Interesting information can also be found at the informational DVD of the High Judicial and Prosecutorial Council of Bosnia and Herzegovina (no date) and the website <http://www.hjpc.ba/>

¹⁸¹ See details in HLC (2007), *op. cit.*, pp. 19-20.

¹⁸² For the tension between human rights and international obligations, see Topic, Boris: "Decertified Police Officers: A State Caught Between Human Rights and International Obligations", *Pulsdemokratije*, 15 May 2007. For the general problem of the non-accountability of the international administrators, see Caplan, Richard: "Who guards the guardians? International accountability in Bosnia", *International Peacekeeping*, vol. 12, n° 3, (Autumn 2005), pp. 463-476.

¹⁸³ European Stability Initiative: "On Mount Olympus. How the UN violated human rights in Bosnia and Herzegovina, and why nothing has been done to correct it", Report (10 February 2007).



decertification process, but to re-apply for law enforcement jobs. The solution did not, however, satisfy the decertified policemen and human rights activists.¹⁸⁴

A final point relates to a usually over-looked aspect of the vetting process in Bosnia. This is the dismissal of public officials and elected political office-holders based on the powers vested on the High Representative at the Bonn meeting of the Peace Implementation Council (the so called ‘Bonn powers’)¹⁸⁵. This aspect does not appear in any transitional justice reports of international and non-governmental organizations; and understandably so. Such dismissals do not conform to the standard understanding vetting, not least because they are usually responses to contemporary political postures and not to wartime misconduct: formally the sacking of elected politicians takes place as a result of political actions that went against the peace agreements and their implementation. Still, it is important to mention these dismissals in the context of the practice of transitional justice. On the one hand because they are understood by locals as being a continuation of and in line with the other more formal vetting processes and on the other because they have had a more lasting effect on the relationship of the local communities and political elites to the international administrators. It was the sacking of politicians that set the tone of the international involvement in the country, demonstrated the determination to deal with obstructionists and their wartime power structures, and raised the stakes in the competition with local elites.¹⁸⁶

In addition, it can be argued that the characteristics of vetting and dismissals of politicians in Bosnia have some resemblance to properties of classic lustration. The reasons behind vetting and dismissals cannot be clearly distinguished from past deeds and structural properties of a whole political class in the Bosnian polity. By dismissing a public official for obstructionism the international community was pointing to the very situation created during the war; the targeted official was simply protecting a system created by past deeds. Furthermore, it was not unusual for the international administrators to simply use the ‘Bonn powers’ not to punish certain acts obstructionism but rather to weaken power structures and dispose of key strongmen empowered during the war. To be sure, vetting and removals of politicians in Bosnia had several problems: it was done with questionable commitment to due process; it had problematic political motives; it often came with considerable delay, which had the effect of alienating victim organizations and those seeking more justice; and it was often done, not with providing the true reasons, but by deliberately misleading about the real issues, which had the effect of generating distrust. Above all, it was done in an ineffective way, since it proved counter-productive as far as the objective of winning over the electoral body and moderating the nationalist tendencies inherent in the political system is concerned. Perhaps, the most important problem was that, regardless of its unsystematic approach, it was perceived as an effective lustration programme and for that reason it reaped the fruits of the public’s dissatisfaction. The international community failed to aptly and timely get rid of politicians that had a catalytic imprint on the early post-war period; but still it did not eschew being perceived as an autocratic hegemon by the locals.

3.2.2. Assessment

¹⁸⁴ For details on the issue, see Ahmetasevic, Nidzara: “Sacked Police Hope for Justice at Last in Bosnia”, *Balkan Investigative Reporting Network Justice Report*, 24 May 2007; European Stability Initiative, *op. cit.*; Freeman, *op. cit.*; Mayer-Rieckh, *op. cit.*; Topic, *op. cit.*

¹⁸⁵ See Sahovic, *op. cit.* p. 188-196.

¹⁸⁶ See Armakolas: “The International Criminal Tribunal for Former Yugoslavia...”, *op. cit.*



In sum, the vetting and sacking of individual officials in Bosnia produced few positive effects and more negative side effects. The IC missed the opportunity to pursue a comprehensive lustration programme in the early post-war or the even post-Bonn conference Bosnia. Had it attempted such a programme it would have removed a whole generation of nationalist wartime politicians who, unfit for peacetime statesmanship, had a particularly negative influence over the post-war political system and the justice efforts of the time. It is highly likely that more lasting effects on the political and social system and more extensive contribution to reconciliation would have been achieved.

Conclusions

At the start of this article we set out to present the main dilemmas, problems, and obstacles that transitional justice in practice entailed in the former Yugoslavia through a review of the literature on ICTY and a series of other theses, arguments, and analyses. The objective was to reach some first conclusions about transitional justice in the region as well as to provide a rough assessment of the ICTY. The impetus for this study has been the relative relaxation of the political atmosphere of crisis in the region that enables us to start drawing some more general conclusions. More importantly, our ‘driver’ was a ‘puzzle’ evident in the condition of transitional justice in the region: the ICTY has been the dominant transitional justice tool in former Yugoslavia, but the evaluation about its impact and success are usually mixed. Why has this been the case if the ICTY tool was the absolute champion of the international community in the region?

The primacy of the ICTY per se was not a problem. It constituted a specific transitional justice path of the region. It is after all true that each post-conflict society selects its own path and adjusts the transitional justice tools to its needs. Instead, we argue that the above mentioned ‘puzzle’ is linked to four different but inter-connected elements: a) the specific conditions of the creation of the ICTY, b) the problems it encountered throughout its operation, and especially at its early phase, c) an ‘expectations gap’, i.e. the unrealistically raised expectations about its role, and perhaps most importantly d) the lack of a comprehensive dealing with the past and transitional justice strategy.

In this last chapter we will focus on the latter two, which, in our view, they have not enjoyed the appropriate attention in the literature. With regards to the ‘expectations gap’, the opinions of Richard Goldstone are instructive: “[we]...must not expect too much from justice, for justice is merely one aspect of a many-faceted approach needed to secure enduring peace in a transitional society”.¹⁸⁷ Given the nature of judicial tools, the novel institution that the ICTY was, and the problems at its initial phase, it would have probably been wise not to have high expectations of the Tribunal. Still, the ICTY became the ‘panacea for all evils’.¹⁸⁸ The expectations were raised unrealistically high from all sides: a) by the creators of the ICTY themselves when they directly connected it to the goal of stopping the violence in the Balkans, and at the same time they did not confer it with their full support, b) by the agents of the international community active in the former Yugoslavia when they failed to design a transitional strategy and the ICTY was left to do all the “dealing with the past” job; furthermore, the international community active in the field showed inability or unwillingness to connect its policies to the Tribunal’s work, other than that of putting pressure on local

¹⁸⁷ Goldstone: “Justice as a tool ...”, *op. cit.*, p.486.

¹⁸⁸ Delpla, *op. cit.*



politicians for the issue of the cooperation with the ICTY; for example, not much was done to promote the primary knowledge and truths established in The Hague, and c) by the victims and the local constituencies themselves, since they failed to comprehend the nature of the judicial tool, they exhibited unwillingness to engage with other transitional justice and reconciliation tools, and continued to ‘politicize’ at the one direction or the other the Tribunal verdicts.

Turning our attention to the transitional justice tools, we observe the following constants: a) there was not in the beginning, or even at a later stage, an elaborate reflection about what kind of transitional justice tools can be used and for what purpose; in other words, there was no conception of combining tools and mechanisms in a unified manner and for achieving an overall and well defined objective, b) the ICTY and its prosecutorial method was from the beginning the dominant tool, and for a long period of time the only tool, and c) there was an evident neglect for other supplementary tools. No matter the fact that the UN itself advises that in situations “...where transitional justice is required, strategies must be holistic, incorporating integrated attention to individual prosecutions, reparations, truth-seeking, institutional reforms, vetting or an appropriate conceived combination thereof”.¹⁸⁹ The elaborate thinking on these issues was and continued for long to be missing.

The effects of both the lack of transitional justice strategy and the lack of support to the ICTY were far reaching. When ideas about additional transitional justice tools that would contribute to reconciliation and peace building were suggested these were at first seen as a threat to the ICTY, which was still struggling to survive and pursue its objectives. With only few exceptions, which came with considerable delay, there were no efforts to link other tools to the work and the results produced by the ICTY. Initiatives for Truth and Reconciliation Commissions in the region were delayed, badly conceived, with no large support and pressure on behalf of the international community; moreover, they were for some time seen as a threat by the ICTY officials. Lustration and vetting initiatives were unsystematic, without far reaching strategy and direct linkage to the ICTY; the international community reaped the dissatisfaction of the local publics without gaining the full potential that was available from the usage of vetting. Other transitional justice tools, which we did not have the chance to present in this article, were also ineffective, politically ambivalent and with many resistances, with no effective pressure by the international community, and not fully linked to the ICTY; with few notable exceptions, such as the reports on the Srebrenica events, the other transitional justice tools did not become part of a strategy for change.

And what is then the assessment about the impact and success of the ICTY? Regardless of the many problems the creation and operation of the ICTY was a key development against immunity in the former Yugoslavia and internationally. Given the difficulties, the unrealistically raised expectations, and the lack of a comprehensive strategy, the ICTY managed to bring justice in the Balkans. In fact, the full assessment is only now, that the ICTY is nearing its closure, starting. There is a need for new and creative assessment tools and outlooks. There is also a need to evaluate the properties of the ‘expectations gap’ and its effects. And finally, the weaknesses and problems of the ICTY will soon have to be realistically considered and analysed further. All these will have to be done in the context of the complexity of transitional justice in practice in the region.

¹⁸⁹ United Nations Security Council, S/2004/616, p. 7.



AN INTRODUCTION TO THE CONCEPT OF TRANSITIONAL JUSTICE: WESTERN BALKANS AND EU CONDITIONALITY

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Abstract:

This paper has a twofold purpose: First, it attempts to evaluate the different types of transitional justice (retributive-restorative-distributive) as a means of reconciliation in the context of post-conflict reconstruction. Through the assessment of each approach I argue that while trials, truth commissions and reparations provide useful tools for achieving the goal of national and individual reconciliation each mechanism has its limitations and its deficiencies. Moreover, there is no single formula which can a priori guarantee success. A multitude of intertwining variables such as the context in which the transition is attempted, cultural patterns and religious beliefs play a crucial role in determining which combination of transitional justice mechanisms should be implemented to best handle each individual case. Second, the discussion assesses the EU war crimes policy in the Western Balkans arguing that the latter, to the extent that it focused on co-operation with the ICTY has failed largely to promote the ultimate goal of any integrated transitional justice strategy that is regional reconciliation.

Keywords: Transitional justice; reconciliation; EU; Western Balkans.

Resumen:

Este artículo tiene un doble propósito: primero, intenta evaluar los diferentes tipos de justicia transicional (retributiva-restaurativa-distributiva) como medios de reconciliación en el contexto de la reconstrucción post-conflicto. A través de la evaluación de cada enfoque, argumento que mientras los juicios, comisiones de verificación y reparaciones proporcionan instrumentos útiles para el objetivo de la reconciliación nacional e individual, cada mecanismo tiene sus limitaciones y deficiencias. Además no hay una única fórmula que pueda garantizar a priori el éxito. Una multitud de variables interconectadas tales como el contexto en el cual la transición tiene lugar y los patrones culturales y religiosos juegan un papel crucial a la hora de determinar qué combinación de mecanismos de justicia para la transición pueden ser ejecutados de la mejor manera para cada caso particular. Segundo, nuestra discusión evalúa la política de la UE frente los crímenes de guerra en los Balcanes Occidentales sosteniendo que esta última, en la medida de que está enfocada sobre cooperación con la ICTY, ha fracasado en gran medida para promover el fin último de toda estrategia de justicia que es a fin de cuentas la reconciliación regional.

Palabras Clave: Justicia Transicional; reconciliación; EU; Balcanes Occidentales.

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Introduction

During the last decades of the twentieth century, many countries the world over have overthrown authoritarian regimes and military dictatorships to instate a new democratic order. From Latin America and Eastern Europe to South Africa and East Timor, the transition has proven to be a complex process during which the successor regime, as part of the post-conflict reconstruction agenda and in order to establish a sustainable peace, has to deal with the legacy of the past where atrocities and mass human rights violations have deeply divided the members of society.

Reconciliation is both a primary goal for every post-conflict society and a long, painful, process that cannot be externally imposed or internally legislated.² It has been described as the route that leads from a dividing past to a promising future through the restoration of shattered relations and as “creative space where mercy and truth meet justice and peace”.³ However, dealing with the past can be a double edged sword for the newborn democracy. While it is a precondition for reconciliation to flourish, re-opening past wounds has also the potential to lead to a new round of violence.

In this context, justice should not be understood solely as a blind goddess seeking to implement universal norms and to hold accountable all those responsible for past crimes, but rather as a sum of complementary mechanisms and processes (judicial and non-judicial) aiming to: a) rebuild the ruined or dysfunctional judicial infrastructure through the re-establishment of the rule of law b) deal with the crimes committed by the agents of the former regime by trials or truth commissions and c) address “the structural and systemic injustices that led to conflict” through reparation and compensation.⁴ A holistic, multidimensional approach is more suited to deal with the complex reality of post-conflict societies, promote reconciliation and ensure the successful passage to the state of positive peace.⁵

1. Retributive justice and the rule of law in the aftermath of violent conflict

In the aftermath of violent conflict, establishing minimal justice through the rule of law is one of the most important elements in building a stable peace.⁶ This principle provides an answer to the pressing societal demand for change, as it implies that government authority may only be exercised in accordance with written laws, adopted through an established procedure and

² Rigby, Andrew (2001): *Justice and Reconciliation After the Conflict*, Colorado, Lynne Rienner Publications, pp.139-141.

³ Lederach, John P. (1999): *The path towards Reconciliation*, Scottsdale, Herald Press, p. 65.

⁴ Mani, Rama (2002): *Beyond retribution: Seeking justice in the Shadows of War*, Cambridge, Polity Press, pp. 3-11.

⁵ A schematic presentation of the transition from negative to positive peace through the mechanism of transitional justice is offered in Annex IV.

⁶ Before discussing attempts to restore the Rule of Law during transitional periods it is important to define the concept and distinguish between Rule of Law and Rule by Law. According to the World Bank's “*Legal and Judicial Reform - Observations, Experiences, and Approach of the Legal Vice 2002*” the concept of the Rule of Law entails 4 basic elements: (i) the government itself should be bound by the law, (ii) every person should be treated equally under the law, (iii) the human dignity of each individual should be recognized and protected by law and (iv) justice should be accessible to all. On the other hand, Rule by Law can also describe authoritarian legal orders. For example Nazi Germany, Stalinist USSR and Apartheid South Africa ruled by Law. However all of them were regimes operating under repressive legal orders where the principle of the Rule of Law did not apply.



intends to be a safeguard against arbitrary governmental rulings often connected in the minds of people with the predecessor regime.⁷ Achieving judicial reform during a transitional period takes time especially when the system has been in severe disrepair and requires plenty of resources that the new regime may not possess.⁸ The role of international community is of utmost importance in the reconstruction of an independent judiciary and various international organizations like the World Bank and the United Nations contribute significantly to the process.⁹ However, the “justice packages” that these agencies offer in order to consolidate the rule of law in the target post-conflict society are, according to Mani, subject to three fundamental flaws: a) they provide generic solutions by adopting a “one size fits all approach” which does not take into account the legal culture of the post conflict society, b) they focus on the technical aspects of the issue and tend to ignore the political realities and c) they adopt a minimalist approach of the rule of law emphasizing on rebuilding institutions and neglect the “substantiate content” of the law.¹⁰

Yet, these attempts to rebuild the institutional infrastructure and restore order in a divided society promote public confidence in the judicial system and the new government. Moreover, re-establishing the rule of law is a necessary precondition for prosecuting human rights abusers and war criminals simply because the imposed procedural standards ensure the credibility of the judicial process.¹¹ As Mobekk points out “It is futile to discuss the positive and negative effects of trials [on the process of reconciliation] if the judicial system is completely flawed.” Even if trials are not chosen as a means of addressing past crimes, the judicial system reform must be a top priority of the reconstruction agenda as the re-establishment of the rule of law serves as a crucial underpinning of security and stability.¹²

Prosecution has been the classic response of many successor regimes facing the dilemma of how to deal with mass human rights violations that occurred throughout the period of conflict.¹³ The main instruments of the retributive approach are criminal courts formed on national or international level.¹⁴ During the last years an international consensus has been reached on the necessity to prosecute the most severe war crimes. The development of the international humanitarian law and the rise of the human rights movement have significantly contributed towards that direction. For the proponents of retributive justice, trials play a crucial role in the pursuit of reconciliation in five distinct ways:¹⁵

⁷ Mani refers to a “crucial tripod” namely, judiciary-police-prison system reform as a sine qua non for the establishment of the rule of law.

For a detailed description see: Mani, *op. cit.*, p. 55-68.

⁸ Kritz, Neil J. (2001): “The Rule of Law in the Postconflict Phase” in Crocker, C.A. Hampson, F.O. and Aall, P. (eds): *Turbulent Peace: The Challenges of managing International Conflict*, Washington, United States Institute for Peace Press (USIP), p. 804-805.

⁹ Ibid.

¹⁰ Mani, Rama: “The Rule of Law or the Rule of Might?: Restoring Legal Justice in the Aftermath of Conflict” in Pugh, Michael (2000) (ed): *Regeneration of War-Torn Societies*, Basingstoke, Macmillan Press, p. 90-111.

¹¹ Kritz, *op. cit.* p. 813-814.

¹² Mobekk, Eirin: “Transitional Justice in Post- Conflict Societies-Approaches to Reconciliation”, pp. 274 available at www.bmlv.g.at/wissen-forschung/publikationen/publikation.php?id=239.

¹³ The cases of Argentina and Greece are striking examples of handling with the past by conducting trials. For similarities and differences of these two study cases check.

¹⁴ A distinction should be made between ad hoc international tribunals like the ICTY and the ICTR and the ICC which is the first permanent international tribunal created to put to trial those responsible for the worst international crimes (genocide, crimes against humanity and war crimes are included in its jurisdiction).

¹⁵ The list of pros and cons of the retributive approach that follows was extracted from the IDEA Handbook (2003): “*Reconciliation after Violent Conflict: Policy Summary*”, IDEA Publications, pp. 13-14 available at: www.idea.int/publications/reconciliation/index/cfm



First, by prosecuting the perpetrators in trials under the rule of law, retributive justice serves as a *deterrent against acts of private revenge*. Summary justice or vigilantism might be the response on the part of the victims and their families if the demand that “justice be done” is not met by the government.

Second, prosecution serves to *break the circle of impunity and discourages future violations* making clear that no individual is above the law. Moreover, as Rigby has pointed out “trials show that there are other ways of dealing with disputes than resorting to violence”.¹⁶

Third, *trials fulfil a moral obligation to the victims*. Many scholars argue that society cannot forget what it cannot punish and for the majority of the victims that is true.¹⁷ Consequently, penal justice by holding accountable those who had committed punishable acts, by acknowledging the suffering of the survivors and by establishing a record of the past misdeeds can be seen as the first step in the process of healing the societal and the individual trauma.

Fourth, the restoration of functioning relations between the former adversaries requires the dissolution of dichotomist perceptions and nihilistic stereotypes which stigmatize entire communities and might lead to a new round of violence. Criminal justice by *individualizing guilt* contributes significantly towards this direction.¹⁸

Fifth, retributive justice provides a *guarantee that those who had committed war crimes will not retain positions with power* in the new democracy.

Despite the robust arguments in favour of criminal prosecution, in complex post conflict settings, trials may not always be a viable solution especially when reconciliation is hoped for. Critics of retributive justice argue that trials: a) focus on punishing the perpetrators and *cannot heal the trauma of the victims*, b) they are “*combative encounters*” that fail to promote the revelation of truth,¹⁹ which is an essential element of reconciliation, c) they do not recognize the general patterns of abuse and thus their deterrent value against future conflicts is trivial, d) they fail to recognise that many perpetrators were at the same time “victims” of a repressive structure²⁰ and e) they can *destabilize a fragile peace agreement as the defeated side might consider them as “victor’s justice.”*²¹

Moreover, in contemporary intra-state conflicts the number of those involved in atrocities is vast²² and the practise so far, has shown that both national courts and international tribunals cannot deal with every individual case and do not contribute significantly to long-term

¹⁶ Rigby, *op. cit.*, p. 4.

¹⁷ Landsman, Stephen, “Alternative Responses to Serious Human Rights Abuses: Of Prosecution and Truth Commissions”, *Law and Contemporary Problems*, vol. 59, n° 4 (1997), pp. 83-85.

¹⁸ *Ibid.*

¹⁹ To this point Barahona De Brito comments: “Trial “truths” can be partial and can get lost in the morass of juridical and evidentiary detail” Moreover, truth is a highly contested concept especially in the aftermath of conflict as most of the times adversaries have fought for their own version of truth”

Barahona de Brito, Alexandra; Fernandez-Dominguez, Carmen; Aguilar, Paloma (2001) (ed): *The politics of memory: Transitional Justice in Democratizing Societies*, Oxford: Oxford University Press, p.28.

²⁰ Low-level officials of the communist regimes of Eastern Europe when acting as enforcers of the law at the same time were victims of structural violence having no freedom to choose an alternative path without risking severe punishment. For a plethora of examples read: Rigby, *op. cit.*, pp 5-6.

²¹ IDEA Handbook, *op. cit.*, pp. 14. For a vindication of retributive justice against criticism see Mobekk, *op. cit.*, pp. 277-280.

²² Rwanda, Sierra Leone and Liberia are striking examples.



reconciliation. The scarcity of resources and the dysfunctional infrastructure pose dire practical limits to the effectiveness of the former while the latter try only the most prominent agents of the old regime and do not entail the element of local ownership in the process.²³ Can justice be done or at least seem to be done if the majority of the perpetrators escape conviction? On the other hand, how feasible is it to hope for reconciliation if justice means that thousands must be purged? Are trials a continuation of war by legal means as many critics of retributive justice argue? Do they imply new division rather than a new start for the war-torn society? The dilemmas are grave and no easy answer can be given. Furthermore, it is precisely in those societies in which the call for robust and comprehensive punishment is strongest that the difficulty in achieving it is greatest. The clash between the normative and the practical dimension of prosecuting war criminals (between retribution and reconciliation one might say) in the post-conflict context is immense.²⁴

When there is no clear winner and peace is achieved through compromise or negotiations, “collective amnesia” and granting amnesty to perpetrators of human rights abuses might be alternatives to retribution.²⁵ The “forgive and forget” approach has often been justified on the grounds of promoting societal reconciliation or as the only viable solution where former human rights abusers preserve significant power in relation to the new regime.²⁶ To this point Tina Rosenberg comments: “The kind of reconciliation that lets bygones be bygones is not true reconciliation.”²⁷ Amnesties have been severely criticized, particularly because: a) their

²³ The tendency of forming tribunals combining both international and national mechanisms like the Special Panels with Exclusive Jurisdiction over Serious Crimes in East Timor and the SCSL in Sierra Leone is a recent solution aiming to combine the benefits of both mechanisms and provide a more flexible response, adapted to the needs of each post-conflict society. Moreover, another pattern that should be mentioned here is trials taking place in third countries under the principle of universal jurisdiction. “The principle allows courts to trial cases of genocide, war crimes and crimes against humanity even if they didn’t take place in their territory.” For a short yet concise introduction to the topic read Kritiz, Neil J.: “Where are we and how we got here: An Overview of Developments in the search for Justice and Reconciliation”, in Henkin, Alice H. (2002) (ed): *The Legacy of Abuse: Confronting the Past Facing the Future*, Washington, Aspen Institute, pp. 41-54. For the principle of universal jurisdiction see J. Zalaquet “*The Pinochet case: International and Domestic Repercussions*” in Henkin, *op. cit.*, pp. 47-71. Also see IDEA Handbook, *op. cit.*, p. 15. For an account of ICTR role in promoting reconciliation in post-genocide Rwanda, the challenges that had to be addressed and the problems that were faced during the process and how these have affected its contribution to the reconciliation process see Olonisakin, Funmi, “*Peace and Justice in Africa: Post Cold War Issues*”, *International Relations*, Vol. XV, n° 1 (April 2000), pp. 45-49 and Alana Erin Tiemessen, “*After Arusha: Gacaca Justice in post-genocide Rwanda*” *African Studies Quarterly*, vol. 8 n° 1, (Fall 2004), pp. 61-64.

²⁴ Here lies a fundamental tension between those who aspire to the discipline of conflict resolution and those who emphasize on the concept of democratic governance, between conflict managers and “democratizers”. The former consider reconciliation as the ultimate goal of post-conflict reconstruction. They adopt a pragmatic approach. Negotiation is a necessary part of a process that seeks to compromise antithetic interests. On the other hand, “democratizers” consider justice to be the primary objective of peace. Universal principles that cannot be negotiated form the core of this approach. However, controversy arises because most transitional policies adopt a “middle way” combining elements from both schools of thought. Please see Annex I for a comparative analysis of the two approaches. For a detailed analysis of this major debate in contemporary conflict resolution see O. Baker, “*Conflict Resolution and Democratic Governance: Divergent Paths to Peace*” in Crocker *et al.*, pp. 753-764 (Special attention should be given on the diagram of p. 759).

²⁵ Spain and Cambodia are cases where past abuses were not prosecuted and the path of collective amnesia was chosen instead of prosecution as a consensus between the elites has been reached. Brazil in the seventies followed the path of amnesty as a consequence of the negotiated type of transition to democracy. For these two important case studies see Rigby, *op. cit.*, pp.39-40 and pp. 64-65.

²⁶ D. Pankhurst: “Issues of justice and reconciliation in complex political emergencies: conceptualising reconciliation, justice and peace”, *Third World Quarterly*, vol. 20, n° 1, (1999), p. 248.

²⁷ Cited in Boraine, Alex (1997): *Dealing with the Past: Truth and Reconciliation in South Africa*, Cape Town: IDASA Publications, p.66.



logic is contradictory to the standards of international law, b) they can foster a sense of impunity and c) may further encourage the continuation of human rights violations.²⁸

To summarize, retributive justice has both the potential to be an effective way for the new regime to address the demons of the past and foster reconciliation but in certain post-conflict contexts, purges might re-inflate violence. A compromise, between the ethical imperatives and the international legal norms that urge for retribution on the one hand and the complex political reality on the other, must be reached in order to ensure that justice is pursued in tandem with the overarching purpose of national reconciliation.²⁹ However cynical this approach may be for the families of the victims and the survivors of war crimes who demand that justice be done, maintaining the delicate balance between justice and reconciliation is the only viable option for a fragile democracy emerging out of violent conflict. Yet, justice may come in various forms and retribution is just one of them.

2. Restorative justice.

Restorative justice seeks to address the issue of human rights violations committed during periods of conflict based on a different logic.³⁰ Reconciliation and forgiveness, through a mending process that requires the active participation of the community (even though the focus is on the victims, the involvement of both victims and offenders is equally important) and is based on flexible rules of evidence rather than an established procedure, lie at the core of the concept.³¹

The truth commission, (TC) which has been described as a “third way” between trials and “national amnesia”, is the most prominent mechanism of restorative justice. TCs are temporary, non-judicial bodies created most of the times by national governments with the contribution of the international community to establish a historical record of the committed human rights violations, promote truth telling and provide a place for the victims to publicly express their suffering.³² While trials focus on punishing the offender, at the epicenter of restorative justice stands the victim.

²⁸ Teitel, Ruti G. (2000): *Transitional Justice*, Oxford: Oxford University Press, p.54-59.

²⁹ Kritz, Neil J.: “Where are we and how we got here: An Overview of Developments in the search for Justice and Reconciliation”, in Alice H. Henkin (ed) *op. cit.*, pp. 41.

³⁰ The different logic through which restorative and retributive justice seek to tackle with the past is clearly depicted in Annexes II and III.

³¹ Brahm, Eric (2005) “Getting to the Bottom of Truth: Evaluating the role of truth commissions to post conflict societies”, available at www.beyondintractability.org

³² Since 1980 TCs were created in Argentina, Bolivia, Chad, Chile, East Timor, Ecuador, El Salvador, Ethiopia, Federal Republic of Yugoslavia, Ghana, Guatemala, Haiti, Honduras, Nepal, Nigeria, Panama, Peru, Philippines, Sierra Leone, South Africa, Sri Lanka, Uganda, Uruguay, Zambia and Zimbabwe. Moreover, other traditional justice mechanisms such as the Gacaca courts in Rwanda and the Ajaweed experts in Sudan are also facets of restorative justice. However, many objections have been raised on the suitability of the latter to deal with systematic abuses of human rights. The flexibility of due process, the implementation of different standards from case to case and the humiliation often suffered by the defendants during the process are weaknesses that cannot be easily overlooked. The bibliography on TCs is extensive. For a variety of key articles on the function of truth commissions access the website www.ictg.org. For case studies read Rigby *op. cit.* pp. 63-94 and Hugo Van der Merde, “National and Community Reconciliation Competing agendas in the South African Truth and Reconciliation Commission” in Bigar, Nigel (ed) (2003): *Burying the Past: Making Peace and Doing Justice After Civil Conflict*, Washington, Georgetown University Press, pp. 101-125. For a critical review of the Gacaca courts please see Tiemessen, *op. cit.*, pp 64-68 and Alexander, Jane, (2003): “A scoping study on transitional justice and poverty reduction”, *Final Report of the Department of International Development*.



Although non-legal punishment may also be seen as part of restorative justice, forgiveness from the part of the victims, reintegration of the offenders into the social web and restoration of the co-operative spirit of the community are the ultimate goals.³³ The latter is of utmost importance in post-conflict settings where the absence or the proximity of territorial borders between the former adversaries means that the victims have to learn to live side by side with the perpetrators in the aftermath of a negotiated peace settlement.³⁴ In the context of post-Apartheid South Africa and in order to counter the argument of those who claimed that the TRC process failed to satisfy the victims' demand for justice while it has deteriorated the relations between the different racial groups, Desmond Tutu commented: "while the Allies could pack and go home after Nuremburg, we in South Africa have to live with one another."³⁵

Proponents of restorative justice argue that truths commissions can play a more constructive role in promoting reconciliation than trials which might instead deepen the division between former antagonistic ethnic/racial/cultural groups. Through the revelation of truth,³⁶ TCs foster the healing of the traumas without forgetting the past and help to restore relationships at individual and community level.³⁷ "I m ready to forgive but I have to know whom to forgive and for what" cry some of the victims and restorative justice mechanisms seem more capable to respond to this demand.

However, the issue becomes more complex where in order to reach truth, amnesties are granted to former human rights abusers. Truth-seeking might be an important first step towards reconciliation however the moral credibility of the trade-off, amnesty in exchange of truth, is disputable. To this point, Rigby comments: "...to put it at its crudest, the criminals provide a version of the truth in return for amnesty and victims are left to do the reconciling...[however he adds]... but maybe this is the price that has to be paid for democracy and the restoration of human rights."³⁸ Moreover, even if the truth (despite of the elusive nature of the concept) is revealed can everything be forgiven?³⁹

In addition to the aforementioned moral dilemma there is also a practical aspect of TCs that has to be critically examined in order to reach an overall assessment of restorative justice mechanisms. It has been argued that process of truth telling can also lead the survivors to relive the trauma.⁴⁰ Although the risk of re-victimization applies also to the case of trials, in the context of restorative justice it acquires special importance as the therapeutic quality of the latter is considered to be its main strength.⁴¹

Moreover, TCs have received severe criticism because they do not possess the authority to allocate legal punishment or reparations. Their role is restricted to suggestions which can be ignored by the political leadership whether because the new regime lacks the resources to

³² IDEA Handbook, *op. cit.*, pp 16-17.

³³ Alexander, *op. cit.*, pp 18-20.

³⁴ BiH is a prominent example of the case.

³⁵ Tutu, Desmond (1999): *No Future without Forgiveness*, London, Rider, p.25.

³⁶ Zalaquet, José and Méndez, Juan in Boraïne *et al.*, *op. cit.* pp. 33-57.

³⁷ Brahm, *op. cit.* pp. 4-6.

³⁸ Rigby, *op. cit.* p. 9.

³⁹ On the topic please see the excellent critique of J. Derrida, "On Cosmopolitanism and Forgiveness", (London/New York: Routledge, 2001) pp. 25-59.

⁴⁰ Mobek, *op. cit.* pp 271-273.

⁴¹ *Ibid.*



implement them or because other priorities come first in the reconstruction agenda. Such an outcome is likely to foster disillusionment and frustration to the victims rather than contribute to societal reconciliation.⁴²

A key question is whether restorative justice mechanisms should be understood as alternative or as complementary to retribution. On the one hand, those who consider restorative justice an alternative to tribunals emphasize the fact that the former entails the element of punishment.⁴³ During the process the perpetrators have to confess their crimes, reveal the truth and consequently sustain the social outcry for their misdeeds. In that way the compromise which takes place is not one sided as non-criminal sanctions are part of it.⁴⁴ On the other, those who claim that restorative mechanisms are a useful complement to trials argue that although healing and truth telling are important elements in the process of reconciliation it is important to be supplemented by guarantees that the past will not be repeated. At this point the deterrent value of a non-judiciary mechanism such as the truth commission is highly debatable.⁴⁵

During the last two decades, restorative justice mechanisms have become an integral part of most transitional justice strategies. Either as an alternative or as a supplement to trials and despite various criticisms, their contribution in dealing with the past and reconciling divided societies had been significant.

3. Distributive justice

While retributive and restorative dimensions of transitional justice focus on the consequences of conflict, distributive justice seeks to “tackle the roots of the unrest” by addressing the structural factors that led to the escalation of conflict to violence.⁴⁶ Not all conflicts are consequences of political, economical, social and cultural injustices however, dealing with them during the reconstruction phase, is really important in order to ensure peace, establish a more just order and promote national reconciliation.

The obligation of successor regimes to compensate the victims of war crimes and human rights violations even if these acts were committed by its predecessor is enshrined in various international law documents.⁴⁷ Yet, the focus is on property restitution. The latter is a burning issue in many post-conflict settings where returning refugees find their land and their houses taken by new occupants.⁴⁸ If the new government fails to compensate the returnees, this may destabilize the peace process and obscure reconciliation.

Reparations are the key element of distributive justice. The term entails a wide range of measures aiming to: a) rectify past wrongs, b) restore property or rights and c) provide

⁴² In El Salvador for example none of the recommendations of the TC has ever been implemented.

⁴³ Stovel, Laura (2003): “When the enemy comes home: Restoring justice after mass atrocity”, pp. 3-14. available at <http://www.sfu.ca/cfrj/fulltext/stovel.pdf>

⁴⁴ Ibid. pp. 36-38.

⁴⁵ Ramsbotham, Oliver, Woodhouse, Tom; Miall, Hugh (ed) (2005): “*Conflict Resolution in Contemporary Conflict*”, Cambridge, Polity Press, pp.232-233.

⁴⁶ Mani, *op. cit.*, pp. 7-11.

⁴⁷ Teitel *op. cit.*, pp. 119-147.

⁴⁸ South Osetia, Burundi and Bosnia are striking examples.



compensation, rehabilitation and satisfaction to the victims.⁴⁹ They may come as the outcome of a judicial process or as the implementation of the recommendations made by a truth commission and may be allocated individually or collectively.⁵⁰ Reparations can be either material, in the form of provision of goods, services and monetary compensation or “moral”⁵¹ in the form of apologies, acknowledgement of truth and commemoration of victims.

Moreover, reparations provide: a) a mechanism to deal with the practical/financial aspects of social injustice, b) a means for the new government to officially acknowledge crimes committed under the former regime and c) (as they bear significant economic costs) a deterrent to future state misconduct.⁵² Hence, their contribution to the process of societal reconciliation is not to be underestimated.

Yet, redistribution of assets should be closely interrelated with retributive and restorative justice. Holding trials and establishing truth commissions without any compensation for the victims delegitimizes these processes, and confines their contribution to reconciliation. On the other hand, providing reparations without prior resolution of a tribunal or a TC, can be perceived as way to “buy” victims’ silence.⁵³ Moreover, how feasible is it to fully compensate mass numbers of victims of a repressive socio-political structure especially when the resources available are scarce?

Reparations whether material or symbolic, cannot totally compensate the victims for the loss and the trauma that was inflicted upon them.⁵⁴ In addition, many scholars argue that reparations focus exclusively on the past while reconciliation is forward looking. However, temporal continuity binds the past with the present and the future. Therefore, addressing the structural factors that led to the escalation of conflict to violence is crucial in order to transform social relations.⁵⁵

Lederach defines reconciliation as a “creative space where mercy and truth meet justice and peace”. The process works on different levels (individual-community-national) takes time and requires painful compromises between the afore-mentioned constitutive elements.⁵⁶ To this point Rigby notes: “Just as it takes time for wounds to heal and for people to work through anger and bitterness so that they are in a position to offer the gift of forgiveness, so it takes time to achieve truth, peace and justice. These struggles do not end with the conviction of a war criminal, the publication of a truth commission report or the attempt of successor regimes to sweep the past under the carpet.”⁵⁷ The variety of transitional justice mechanisms provide useful tools to deal with the complex post-conflict reality, but none of them should be considered a panacea in every attempt to bridge the gap between a violent past and a promising future. Between South Africa and Germany; between East Timor and Rwanda the distance is not merely spatial. Different historical backgrounds, religious beliefs, cultural

⁴⁹ Gunnar, Thiessen, “*Supporting Justice, Co-existence and Reconciliation after Armed Conflict: Strategies for dealing with the past*” pp. 8-9 and Rigby, *op. cit.*, pp. 10-12.

⁵⁰ IDEA Handbook *op. cit.*, pp. 23-29.

⁵¹ “Chile’s TRC introduced the term “moral” reparations to publicly of those who perished from the stigma of having been falsely accused as enemies of the state” see R. Teitel, *op. cit.* 126.

⁵² Kritz, Neil J. (1995), *Transitional Justice: How emerging Democracies reckon with former regimes, Vol.3*, Washington, USIP Publications, p. xxix.

⁵³ Rigby, *op. cit.*, pp. 10-11.

⁵⁴ Alexander, *op. cit.*, pp. 40-43.

⁵⁵ For the various linkages between past-present-future in relation with the process of reconciliation see Lederach, John P. (1999): *The path towards Reconciliation*, Scottsdale, Herald Press, pp. 65-77.

⁵⁶ *Ibid.*, p. 65.

⁵⁷ Rigby, *op. cit.* p.13.



patterns are also important parameters of the equation that should not be neglected. The re-establishment of the rule of law, the implementation of a combination of retributive and restorative measures along with reparations for the victims and their families form the general cadre of any integrated policy addressing issues of transitional justice and reconciliation in post conflict societies. However, there is no single formula, nor a single best way to deal with the atrocities of the past. In every post-conflict society a plethora of interlocking variables (i.e. the context in which the transition is to be attempted, the intensity of the past conflict, the depth of the individual and the societal trauma) determine the path that should be followed in order for reconciliation both as a goal and as a process to fructify. A holistic transitional justice strategy is a vital element for the successful passage from the state of negative peace (absence of direct violence) to that of positive peace (absence of direct, structural and cultural violence).⁵⁸ In this context, International Humanitarian Law seems too important to be ignored however and because transitional justice is a delicate context dependent compromise western legal standards and norms cannot provide viable solutions in every post-conflict setting.⁵⁹

In what follows, through the examination of EU's war crimes policy in the Western Balkans it will be established that the formulation of a transitional justice strategy should incorporate all or at least several of the afore-mentioned elements. Unfortunately EU's strategy with respect to the legacy of mass atrocities that took place during the last decade of the 20th century in the region seems almost entirely focused on retribution handed down by an ad hoc international tribunal (i.e. ICTY). As such it does not incorporate the vital element of local ownership in the process and systematically neglects to include restorative and the distributive transitional justice mechanisms in its conditionality agenda. This monolithic approach bears major deficits that do not only delegitimize the role of ICTY but most importantly narrow the scope of the process of transitional justice thus failing to make a significant contribution to the over-arching purpose of regional reconciliation.

4. EU conditionality in the Western Balkans: political criteria co-operation with icty and the progress so far

Shortly after the collapse of the Communist regimes of Eastern Europe and as a consequence of the resurgence of ethnic tensions in the Balkans, EU faced the threat of an instability spill-over spreading from the periphery to the core of the continent. Since the early nineties the Union, influenced by B. Russett's democratic peace theory⁶⁰ systematically tried to forge closer relations with the former socialist republics and become an agent of democratic reform and stability for the region through the implementation of an integrated 'carrot' and 'stick' policy.⁶¹ The latter has been based to a large extent on the principle of conditionality which linked the association and accession process of all candidate and potential candidate countries

⁵⁸ Galtung, Johan: "Cultural Violence", *Journal of Peace Research*, vol. 27 n° 3 (1990) pp. 291-305.

⁵⁹ "Restoring democratic institutions is also important. However, "even the most effective democratic institutions cannot ensure the passage from negative peace to positive peace when society remains divided" IDEA Handbook *op. cit.*, pp 16-17.

⁶⁰ For an introduction in the Democratic Peace Theory see: Russett, Bruce (1993): *Grasping the Democratic Peace*, Princeton, Princeton University Press, and Russett, Bruce; Oneal, John, "Triangulating Peace: Democracy, Interdependence and International Organisation" (New York: Norton Pubs. 2001)

⁶¹ For a short yet concise overview of the development of EU's relations with the post-communist Balkans read: Papadimitriou, Dimitris "The EU's Strategy in the Post-communist Balkans", *Southeast European and Black Sea Studies*, vol. 1, no. 3, (September 2001), pp. 69-94.



to the fulfillment of a set of political and economic standards, widely known today as the Copenhagen Criteria.⁶² While in the economic field establishing a functioning market economy able to withstand the competition pressures of the free market became a *sine qua non*, the political pillar of the Copenhagen Criteria prioritized the establishment of democratic institutions, the rule of law, human rights and protection of minorities. In its perpetually evolving process the Union incorporated the afore-mentioned criteria (with the exception of the area of minorities' protection which was excluded for political reasons) in the Treaty of Amsterdam as preconditions that any future candidate country should fulfill before accession.⁶³

Parallel to the adoption of the Copenhagen Criteria and in order to supplement the Dayton Agreement, the General Affairs Council of 26-27 February 1996 launched the Regional Approach for the Balkans. Focused on the Balkan Peninsula and structured around three major pillars namely, stability, economic recovery and good neighborliness the afore-mentioned strategy sought to provide a framework that would promote socio-economic reforms and enhance the transition of the post-war Balkans to a stable order.⁶⁴ However, the breakdown of the Rambouillet talks on Kosovo and the subsequent NATO bombing of FRY in March 1999 highlighted the limited contribution of EU's 'civilian' approach in stabilizing the region and urged for the adoption of more integrated regional strategy.⁶⁵ In June 1999, EU in co-operation with various international actors responded to the challenge by launching the Stability Pact.⁶⁶ Consolidating a lasting peace, establishing functioning market-democracies and promoting regional reconciliation were declared as the ultimate goals of the initiative.

Within the broader framework of the Stability Pact and through the initiation the Stabilization and Association Process (SAP), a new type of relationship with the countries of the Western Balkans emerged. The SAP offered not only autonomous trade measures and substantial financial assistance but also enabled Albania, FYROM, Bosnia Herzegovina, Croatia and FRY to forge closer bonds with the Union by signing, on a bilateral basis, Stabilization and Association Agreements (SAAs).⁶⁷ However, the signing of the latter was once again conditioned on compliance to a second set of standards closely resembling to but distinct from the Copenhagen criteria. The SAP put special emphasis on democratization, institution building and regional cooperation as well as in the areas of human and minority rights.⁶⁸ Moreover in the context of the SAP the Union recognized that dealing with the crimes of the recent past is an essential element for the consolidation of a lasting peace as well as a precondition for regional reconciliation.⁶⁹ Therefore, full-cooperation with the International Criminal Tribunal for the Former Yugoslavia (ICTY) was included in the EU's

⁶² Established in 1993 in the conclusions of the Copenhagen European Council, the Copenhagen Criteria are considered the cornerstone of EU conditionality. See *Bull. EU* 6-1993, Pt. I. 13.

⁶³ See Articles 6 and 49 of the Treaty of the European Union (TEU).

⁶⁴ Papadimitriou, *op. cit.*, p. 74-75.

⁶⁵ *Ibid.*

⁶⁶ The Stability Pact was officially launched by the Cologne Special International Summit on 10 June 1999. The participants of the summit were the foreign ministers of the EU, Albania, Bosnia, Bulgaria, Canada, Croatia, Hungary, Japan, Romania, Russia, Slovenia, FYROM, Turkey and US; representatives from the OSCE, the UN, CoE NATO OECD IMF, WB, EBRD, and other regional organisations. More information on the Stability Pact is available at <http://ec.europa.eu/enlargement>

⁶⁷ The SAAs are second generation agreements that move beyond the narrow confines of trade and cooperation agreements (first generation agreements) and are often described as slightly differentiated equivalents of the Europe Agreements that were signed between the EU and CEEs in the first half of the nineties as a preparatory stage for accession.

⁶⁸ See COM (99) 235 of 26 May 1999.

⁶⁹ Papadimitriou, *op. cit.*, p. 77.



conditionality agenda for those countries that participated in the Bosnian war.⁷⁰ Ever since, co-operation with the ICTY has become the thorniest issue in the relations of EU with Serbia, Croatia and BiH. To this respect, while the European Council of Thessaloniki (19-20 June 2003) dangled the carrot of membership to all three countries by nominating them potential candidates⁷¹ at the same time both the Commission in its Annual Report on SAP and the Council made clear that the road to Europe passes through courtrooms of Hague.⁷²

The strong commitment of the Union on full co-operation with the ICTY as well as the effectiveness of the EU's conditionality strategy was clearly demonstrated in the case of Croatia. After the 2000 elections the newly-elected Mesic government managed in short time to make significant progress in reforming the state bureaucracy and the security sector.⁷³ By 2002 the country was also regarded a functioning market economy with stable democratic institutions while it enjoyed solid political backing from Austria.⁷⁴ As a result, five months after the issue of a positive avis from the Commission (in May 2000) an SAA was signed to regulate the relations between the two parties until Croatia reached the status of membership.⁷⁵ Despite the county's rapid progress and the emerging consensus over Croatia's European future the initiation of the accession negotiations came to a temporary stalemate in 2004 as a result of Croatian authorities' failure to deliver General Ante Govotina to ICTY.⁷⁶ Based on the report of the Chief Prosecutor Carla Del Ponte which highlighted the reluctance of the Croatian government to provide information that would lead to the arrest of Croatia's remaining ICTY indictee, the Council on 16 March 2005 decided to postpone the whole process until the outstanding condition was met. It was not until the publication of a new report by Del Ponte on the 3rd of October of the same year and the positive assessment that co-operation was now full that the Council decided to open accession negotiations with the country.⁷⁷

Shortly after the suspension of Croatia's negotiations the other two countries of the Western Balkans increased their efforts to comply with ICTY conditionality. Neither Serbia nor BiH have managed to fully meet the afore-mentioned requirement. Consequently contractual relations between the Union and have not yet been established.⁷⁸ As important indictees are still on the run enjoying shelter in the territory of Serbia the Commission on the

⁷⁰ *Ibid.*

⁷¹ Institute of European Affairs, Balkans Update no. 5 July 2003 available at http://www.iiea.com/newsxtest.php?news_id=33

⁷² To this point the Thesalloniki Agenda for the Western Balkans reads in part: "*The EU urges all concerned countries and parties to co-operate fully with the International Criminal Tribunal for the former Yugoslavia. Recalling that respect for international law is an essential element of the SAP, the EU reiterates that full co-operation with ICTY, in particular with regard to the transfer to The Hague of all indictees and full access to documents and witnesses, is vital for further movement towards the EU*", see http://ec.europa.eu/enlargement/enlargement_process/accession_process/how_does_a_country_join_the_eu/sap/t_hessaloniki_agenda_en.htm. Also see COM(2003)139, COM(2004)202

⁷³ Democracy challenged

⁷⁴ See the 2002 Annual Commission Report on SAA COM(2002)163

⁷⁵ A more detailed overview of the evolution of EU-Croatia relations is available at http://ec.europa.eu/enlargement/croatia/index_en.htm

⁷⁶ Rangelov, Iavor, "EU Association Conditionality and Transitional Justice in Former Yugoslavia", *European Policy Conference 2006*, London School of Economics (LSE) and King's College London, p. 2, available at <http://www.lse.ac.uk/Depts/intrel/EFPC/Papers/RANGELOV.pdf>

⁷⁷ The reports of the High Prosecutor Carla Del Ponte on Croatia's cooperation with the ICTY are available at www.un.org/icty

⁷⁸ Zupan, Natasha, "Facing the Past and Transitional Justice in the countries of Former Yugoslavia", *Project "Bosnia-Ten Years after Dayton"*, Berghof Forschungszentrum für Konstruktive Konfliktbearbeitung, pp. 328-329, available at http://www.berghof-center.org/uploads/download/dayton_zupan_rec.pdf



3rd of May 2006 froze the negotiations for the signing of an SAA with the country urging the Serbian authorities to overcome the obstacles and cooperate with the Tribunal in order for the SAA to be concluded.⁷⁹ However, it is important to notice that although not up to a satisfactory degree, progress towards meeting the criterion of co-operation with ICTY has been made.⁸⁰ To this point and despite the initial insistence of the Serbian government to pursue the path of national trials, by June 2005 Generals Lukic and Pavlovic were among a large number of indictees who were finally transferred to Hague in order to answer for the crimes they have committed during the war period.⁸¹

5. Assessing the impact of eu conditionality on the process of transitional justice in the countries of former Yugoslavia

Combined with the substantial financial assistance provided by the Union to the countries of the Western Balkans through the Community Assistance for Reconstruction Development and Stabilization programme (CARDS) as well as through the European Initiative for Democracy and Human Rights (EIDHR) conditionality forms the core of EU's 'civilian' approach in the region and is often described as one of its most effective tools in promoting democratic reforms. However, the image turns bleak when the contribution of the current conditionality criteria in dealing with the legacy of the past and in promoting the over-arching purpose of regional reconciliation is put on the table.

Rangelov notes that "with EU conditionality focusing exclusively on co-operation with the ICTY the wider process of transitional justice in the societies of Former Yugoslavia has been largely ignored."⁸² From the broad range of transitional justice mechanisms the Union has chosen to prioritize retributive justice by prosecuting the perpetrators of war crimes and human rights violations in an international Tribunal. At the same time though, the Union's conditionality agenda for the region showed profound disregard for other equally important facets of transitional justice while the vital element of local ownership in the process has not been included in the Union's approach.

6. Reparations

Up to date there has been no official government-sponsored programmes for the victims of war and the survivors of human rights violations have been established in the respective countries. As a result several lawsuits have been filled. The first country to submit an application in the ICJ⁸³ demanding reparations for alleged violations of the Convention on the Prevention and Punishment of the Crime of Genocide of 1948 from the Former Yugoslavia was BiH in March 1993.⁸⁴ Six years later Croatia followed the example of the latter pursuing the same route to hold Yugoslavia accountable for ethnic cleansing and extensive property

⁷⁹ On the current status of EU-Serbia relations, see http://ec.europa.eu/enlargement/serbia/eu_serbia_relations_en.htm

⁸⁰ Zupan, *op. cit.*

⁸¹ Rangelov, *op. cit.*, p. 2-3.

⁸² *Ibid.*

⁸³ Bosnia Serbia and Croatia have all signed and ratified the Statute of ICJ.

⁸⁴ Application of the Convention on the Prevention and Punishment of the Crime of Genocide (BiH vs. Yugoslavia) Application, 20 March 1993 available at www.icj-cij.org



destruction.⁸⁵ The final judgment on both applications is still pending however the way that the demand for reparations has been articulated sets further impediments to the process of regional reconciliation by accentuating antagonistic truths.⁸⁶ This is not to say that reparations should be excluded from the transitional justice agenda but rather to imply that in the context of the Western Balkans the latter should come as the eventual outcome of dialogue and genuine reckoning with the past. Only in such a way compensation for the victims material or symbolic can make a positive contribution to inter-ethnic and cross-border reconciliation.

7. Truth telling

As has been noted earlier, in the aftermath of violent conflict the importance of establishing a widely accepted truth about what happened in the past, however a difficult and elusive task it might be, is of utmost significance especially when reconciliation is hoped for. However, in the countries of Western Balkans the restorative transitional justice mechanisms remain largely excluded from the process of transitional justice. While in Croatia there has been no attempt to establish a truth and reconciliation commission the short-lived 2001 Serbian TRC paradigm is often quoted as an example of what one should avoid in order to create a successful TRC.⁸⁷ Established by a presidential decree with the mandate to investigate the causes and the course of events of all the conflicts that took place in the territories of Former Yugoslavia the latter, was largely perceived by the public opinion as an orchestrated attempt of the international community to promote its interpretation of truth and project the Serbs as those responsible for the atrocities committed during the Bosnian War.⁸⁸ Consequently it was largely delegitimized from the very beginning. Scarce recourses, resignations of key members and lack of minorities representation further discredited the truth telling process and led to the final disband of the TRC in 2003 before the issue of a report.⁸⁹ Its Bosnian counterpart widely known as the “Srebrenitsa Commission” is the only worth mentioning initiative of truth telling in the region. Established by the National Assembly of the Republica Srpska under the pressure of OHR comprised of seven chambers (five of them appointed by RS authorities and two of them by OHR) it began its work in early 2004 and despite the initial delays by the end of the year it issued its final report.⁹⁰ In its conclusion it is recognised that on July 10–19, 1995, 7000 thousand Muslim Bosnians were “liquidated” and the perpetrators and others “undertook measures to cover up the crime” by moving bodies away from the killing site. Moreover, the Commission declared the discovery of 32 unknown locations of mass graves, four of which were “primary sites.”⁹¹ The above can be seen as an important first step from the part of the Bosnian Serb community to reckon with the past however, I. Rangelov, notes

⁸⁵ Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia vs. Yugoslavia) Application, 2 July 1999 available at www.icj-cij.org

⁸⁶ Zupan, *op. cit.*, pp. 331-332.

⁸⁷ IDEA handbook *op. cit.*, p. 27.

⁸⁸ Freedman, Mark, “Serbia and Montenegro: Selected Developments in Transitional Justice”, *Case Study Series*, International Center for Transitional Justice, (October 2004), available at http://ictj.org/downloads/ICTJ_Serbia.pdf

⁸⁹ Zupan, *op. cit.*, pp. 333-334.

⁹⁰ Freedman, Mark, “Bosnia Herzegovina: Selected Developments in Transitional Justice”, *Case Study Series*, International Center for Transitional Justice (October 2004), available at http://ictj.org/downloads/ICTJ_Bosnia.pdf

⁹¹ The original text from which the above was extracted is available at www.ohr.int



that: “many in the Bosnian-Croat camp have dismissed the Commission’s report as produced under international pressure, without genuine remorse...”⁹²

8. Local trials

Incorporating the element of local ownership by holding trials on local or national courts has also proven problematic. Scarce funding and other various practical impediments (such as the inability to reach evidence) form only the top of the iceberg. Beyond that lays a widespread denial of guilt along with the persistence of strong nationalist sentiments in the public opinion of the countries of Western Balkans which combined explain the reluctance of the political elites to try persons which are considered national heroes from a significant part of the electorate and thus to bear the political cost of such a decision.⁹³ In Croatia holding trials of Serbs in absentia has become the norm while Serbia and BiH have only conducted a very limited number of trials. As a result, national judiciaries have failed so far to prosecute the majority of the perpetrators and provide justice and compensation to the victims.⁹⁴ Moreover, the recent establishment of War Crimes Chambers both in Belgrade and Sarajevo to deal with war crimes at a national level should be understood more as the outcome of external pressures rather than a conscious choice made by the societies of the region.⁹⁵

Conclusion

Established in May 1993, by the UN Resolution no. 827, ICTY started its work in August 1994. According to its Statute the first ad hoc international Tribunal after Nuremberg and Tokyo had broad aims, ranging from “[bringing] to justice persons allegedly responsible for serious violations of international humanitarian law committed in the territory of former Yugoslavia since 1 January 1991” and “[rendering] justice to the victims”, to “[detering] further crimes” and “[contributing] to the restoration of peace by promoting reconciliation in the former Yugoslavia”⁹⁶ Yet, more than a decade since its establishment and despite the emphasis of EU conditionality on full cooperation with the Tribunal, inter-ethnic and cross-border relations in the area of the Western Balkans remain problematic. The main reason is the persistence of ethno-nationalistic sentiments; sentiments rooted in mutual grievances, competing interpretations of truth and on a protracted common feeling of injustice.

While international judges continue to try those accused for war crimes and human rights violations in the courtrooms of Hague the populations of the region those who have primarily suffered from the war remain in “safe distance” from the process of transitional justice. The end result of is alienation; alienation which is clearly illustrated in the profound inability of the political elites and the public opinion to recognize their responsibilities and show genuine commitment to the cause regional reconciliation.⁹⁷

⁹² Rangelov, *op. cit.*, p. 4.

⁹³ HLC Newsletter no.20, “*Transitional Justice: EU War Crimes Policy in the Western Balkans*” available at www.hlc.org

⁹⁴ Rangelov, *op. cit.*, p. 5.

⁹⁵ HLC Newsletter No.20, “*Transitional Justice: EU War Crimes Policy in the Western Balkans*” available at www.hlc.org

⁹⁶ www.un.org/icty

⁹⁷ Rangelov, *op. cit.*, p. 8.



Furthermore, ICTY seems to have failed so far to promote the ultimate goal of regional reconciliation for another reason. By prosecuting sole individuals as perpetrators of war crimes it fails to map and consequently to tackle with the roots causes that led to the escalation of ethnic conflict to mass violence. However useful it might be to individualize guilt in order to avoid the emergence dichotomist stereotypes of the type *we* against *them*, it is also important to take into account the wider image, the structural causes that led to the Balkan Wars of the nineties. Retributive justice mechanisms such as the ICTY are primarily concerned with facts and evidence therefore they are not suited by their very nature to contextualize criminal acts and provide a wider account.⁹⁸

ICTY has set an important international paradigm by holding accountable former state-leaders for their deeds and misdeeds thus declaring the intension of the international community to abide to principles of International Humanitarian Law. However, the EU by narrowing its war crimes conditionality policy to the confines of ICTY has failed to recognize that every transitional justice mechanism has its limitations and its deficiencies and consequently undermined its own declared goals. What needs to be done is a fundamental readjustment of the Union's conditionality agenda for the countries of the Western Balkans in order for the latter to incorporate previously marginalized aspects of transitional justice (such as truth telling mechanisms and compensations for the victims) and formulate a truly integrated war crimes policy for the region.

Annexes

Annex I

The crucial debate: the conflict managers against the "democratizers"	
Conflict Managers	Democratizers
Inclusive Approach	Exclusive Approach
The goal is reconciliation	The ultimate goal is justice
Pragmatic focus (cultural and normative diversity should be taken into consideration)	Normative focus (priority of universal norms and western legal principles)
Negotiation is acceptable and necessary	Justice cannot be negotiable
Focus on the process	Focus on the outcome
Local ownership of the process is prioritized	International actors should have a decisive role

⁹⁸ HLC Newsletter, no. 20, *op. cit.*



Annex II

RETRIBUTIVE AND RESTORATIVE JUSTICE POINTS OF DIFFERENCE	
RETRIBUTIVE JUSTICE	RESTORATIVE JUSTICE
Victims are of peripheral importance in the process	Victims are at the epicenter of the process
Focus on punishing the perpetrators	Focus on restoring shattered relations
The state represents the community	The community participates actively
The process is characterized by an adversarial relation between the two parties	Emphasis put on negotiation and dialogue in order to reach a compromise

Annex III

Highlighting the different underlying logic between restorative and retributive transitional justice mechanisms the case study of Rwanda		
	The Gacaca Courts	ICTR
GOAL	Justice as part of reconciliation	Justice to end impunity
SETTING	Inside Local Communities	Outside the country
JUDGES	Elected members of the community	Appointed by the international community
DUE PROCESS	Prioritizing truth-telling	Primacy of rules and procedures
ESTABLISHING GUILT	Confession; Community consensus	Based on evidence



Annex IV

From negative to positive peace through justice

Negative Peace	Transitional Justice	Positive Peace
Absence of direct violence	Restoration of the Rule of Law Trials Truth Commissions Reparations	Long-term Reconciliation



THE LIMITS OF EUROPEANIZATION ‘FROM WITHOUT’: IS THERE AN EU-DRIVEN DEMOCRATIZATION PROCESS IN SERBIA?¹

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Abstract:

The enlargement strategy became an influential tool in promoting the process of Europeanization of the CEES, by providing different mechanisms to the EU in order to influence the democratization outcomes of the new formed states. The process of “Europeanization from the outside” endows EU institutions with important power which attracts the states that are seeking democratic changes. As a method of “Europeanization from without”, the conditionality principle offered a great opportunity of spreading democratic values broader across the continent, whilst creating the opportunity to build a common European identity based on shared democratic values. The question in stake is where the limits of this driving force lie and what is the relation between process of Europeanization of an outside state and its path through democratization process? The improvement of the quality of democracy comprises something more than the simple precondition for accession to the EU.

Keywords: Europeanization; enlargement; democratization; transition; Serbia and Montenegro.

Resumen:

La estrategia de ampliación se convirtió en un instrumento influyente en la promoción del proceso de europeización de los países de Europa Central y Oriental (CEES en sus siglas en inglés), proveyendo diferentes mecanismos a la UE para poder influir en los resultados de la democratización en los estados recién formados. El proceso de “Europeización desde fuera” otorga a las instituciones de la UE con un poder significativo que atrae a los estados que están buscando cambios democráticos. Como método de “Europeización desde fuera”, el principio de condicionalidad ofrecía una gran oportunidad para extender los valores democráticos más ampliamente en el continente, mientras se crea la oportunidad de construir una identidad europea común basada en valores democráticos. La cuestión a debate es donde se encuentran los límites de esta fuerza motora y cuál es la relación entre el proceso de Europeización de un estado ajeno a la Unión y su curso a través del proceso de democratización. La mejora de la calidad de la democracia comprende algo más que una simple precondition para el acceso a la UE.

Palabras clave: Europeización; ampliación; democratización; transición; Serbia y Montenegro.

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Introduction

It has been noticed during the last decade that the process of europeanization had a far reaching impact not only on the member states but also on the 'outside of the Union' states that are seeking democratic changes within a broader, comprehensive and historically unique political system like the EU, capable of recomposing and reorganizing national sovereignty around a multilevel and multicentric system of governance. It is widely accepted that the attractiveness of EU membership works as a great leverage for transformation of those states that are opting for inclusion offering opportunity to the EU member states and institution to be one of very important driving forces for domestic polity and policy changes. But where the limits of this driving force lie? Or in other words, to what extent the actions and decisions of the EU concerning a third (potential member) state can create (more or less) positive incentives for transformation at the domestic level and in the particular EU's way?

This specific characteristic of the EU to be leverage -either passive or active³ - is derived from the EU's possibility to enlarge altogether with the strong desire of a third country to be included. It offers an opportunity of being a vehicle for democratization and political transformation in the countries that are trying to build and consolidate new, democratic norms and values in their domestic systems. Nevertheless, the efficacy of this transformative power of the EU is relying on the question whether there is a consistent, substantial and effective strategy for the transition of these new founded political systems to the contemporary democracy. Even if such a strategy exists, it remains a question whether the europeanization process can be considered amongst the most important driving forces of domestic democratization process. What kind of relation exists between the processes of europeanization and democratization and mainly to what extent the former influences the democratic behavior of the political system of an associated country.

Two different sets of research issues can be raised when we observe impact of the EU on democratization process of the third country through the perspective of Europeanization "from without". First set is determination of democratic norms and values defined and consolidated in the EU. Second is finding EU mechanisms used for general incorporation of these democratic values in new political orders of states that can be considered as potential future members of the Union. However, the aim and the scope of this paper is less broad than examining the overall process of europeanization 'from without' in terms of its utility over the democratization process of an outside EU country. It is more to turn the spotlight on the prospect of spreading common European democratic norms and values wider to the states that will some time in the future become members of the EU. More precisely, it is to present the process of europeanization 'from without' and its main parameters and mechanisms that provide an opportunity of an EU driven building of a democratic identity.

The paper is separated in two parts. The first part of the paper examines the European notion of its democratic identity and the whys and the wherefores of the EU involvement in the external promotion of these democratic values more widely to the European continent. In accordance to this, the conditionality mode of governance of 'beyond EU states' as the main method of imposing adaptation pressure on these states is further explained together with its specific mechanisms that the EU applies to the countries that could be future members of the Union. Furthermore, in the first part how the europeanization paradigm is applicable to the outside states -what I called europeanization 'from without'- will be examined. The second

³ For notion of the EU as leverage see Vachudova, Milada (2005): *Europe Undivided .Democracy Leverage and Integration after Communism*, Oxford, Oxford University Press.



part of the paper analyses the application of the EU enlargement strategy but also of the mechanisms of europeanization in the case of Serbia. The second part of the paper examines the EU involvement in the process of the reorganization of the common State Union of Serbia and Montenegro (SM) as a paradigm of the europeanization strategy. The paper concludes with an evaluation of the EU strategy on Serbia in relation to the prospect of the europeanization and democratization.

1. Europeanization ‘from without’: assumptions, presuppositions and compliance

1.1. European Union as a democratic promoter

The European Community's (EC) (external) promotion and (internal) protection of the democratic norms and values in a broader sense on the European continent come as a result of a twofold process. On the one hand, there was an outside catalyst –international systemic changes –reaction to external factors caused at first by the overthrow of Mediterranean authoritarian regimes and latter with the fall of communism in Central and Eastern Europe (CEE) and on the other hand an internal evolution that reinforced its development. Until that time “the mentions to the democracy as a fundamental basis of the EU have their grounding in what is considered the common constitutional tradition of the member States”⁴. Despite that EC did not make political and thus democratic conditionality the cornerstone of an enlargement strategy, prospect of inclusion of Greece and the Iberian countries into the EC brought democracy issues in the centre of the discourse. The Birkelbach Report (1962) was the crucial first step towards declaring democracy a necessary condition for membership. Actually the Report did not explicitly refer to democratic conditionality but to membership in the Council of Europe as a precondition to membership in the EC. It remained though an essential step to the development of democratic conditionality.

A turning point in establishing democratic conditionality was the Community's response to the Greek coup (1967), when the suspension of the Greek Association Process was decided with the limitation of the Association to its “current administration” (*gestion courante*)⁵. The interesting fact here is that the Athens Agreement did not provide any legal basis for responding to democratic threat, apparently lacking in democratic conditionality. However, although the process of association did not result in unambiguous democratic conditionality, democratic consolidation of three Mediterranean countries was the outcome of active membership in the EC. In other words, although democratic conditionality during the process of association of the Mediterranean states was reluctant and “illustrated various patterns and problems relating to DC [democratic conditionality]”⁶, integration of these three states today is considered to be the most successful in terms of offering a major opportunity to new

⁴ Burchil, Richard, (2003): “International Law on Democracy and the Constitutional Future of the EU: Contributions and Expectations”, *Queen's Papers on Europeanization*, No3, at <http://www.qub.ac.uk/schools/SchoolofPoliticsInternationalStudiesandPhilosophy/FileStore/EuropeanisationFiles/Fileupload.38411.en.pdf>

⁵ Charitos, Spyros (1981), *Σύνδεση της Ελλάδας με την ΕΟΚ*, Αθήνα. See also Verney, Susannah: “Political Conditionality and the Quality of Democracy: The Case of Greek Association and Accession to European Community”, in Haluk, Kabaalioglu; Dartan, Muzaffer M.; Akman, Sait and Nas, Cigdem (eds) (2005): *Europeanization of South-Eastern Europe: domestic Impacts of Accession Process*, Istanbul, Marmara University, European Community Institute, pp.79-80.

⁶ Pridham, Geoffrey (2005): *Designing Democracy, EU Enlargement and Regime Change in Post-Communist Europe*, London, Palgrave, pp. 34.



member states for stabilization and consolidation of their democracy. Despite various shortcomings⁷, it is widely acknowledged today that the inclusion of three Mediterranean states in the EC established positive internal mise-en-scène for domestic democratic stabilization.

However, the Mediterranean enlargement case was only an overture to global systemic changes that were then announced but took place almost two decades later (beginning of '90), when the EC had to deal with growing inclusion pressures that followed the fall of communism and a wider liberalization process in the continent. The newly founded situation created a major internal need for the stipulation of an enlargement strategy. Moreover, the changing direction and dimension of the European integration process created new demands concerning the enlargement strategy. The issue at stake was not only to manage the external inclusion pressures but also to protect and preserve the foundation values on which the European integration was based⁸.

The Maastricht Treaty (TEU) shifted the European integration paradigm from 'politics to polity' and from 'diplomacy to democracy' and the foundation of the EU political system were established, thus making Treaty-based strengthening of criteria imperative in order to govern the future enlargement process as the existing structures were insufficient to support both the internal evolution processes of the EU system and the external environmental changes. In the past, any "European" state was entitled to apply for a membership in Communities according to the Coal and Steel Community Treaty (and later European Economic Community and Euratom). Neither the European Single Act (1986) nor the TEU did they make new provisions for that, as "the Treaty instruments previously in force had prepared a solid base for the future enlargement regulation"⁹. It was only the Amsterdam ICG agenda that was stimulated by a growing awareness and sensitivity for democracy and basic values of the EU which was provided by the previously set of conditions for membership at Copenhagen European Summit (1993)¹⁰. Subsequently, the breaking point in extending Pax Europea was the Amsterdam Treaty text in which Art. 49 (considering enlargement criteria) was explicitly connected with Art. 6 of the TEU, so "any European state which respects the principles set out in Article 6(1) may apply to become a member of the Union". Art. 6 of the TEU lists those principles –liberty, democracy, respect for human rights and fundamental freedoms and the rule of law –which are considered to be common to all member states and are supposed to be protected by any new member.

During the '90 the EU has developed considerably more coherent view on its enlargement policy and practice as well as better crystallization of what the EU (western) democratic tradition was. Being that, the EU secured its values but at the same time more coherently became a catalyst for transformation of countries of fallen communism. Respect of protected democratic values immediately became first condition to satisfy in order to interact with the EU. The quality of democratic setting in a third country became fundamental priority.

⁷ *Ibid.*, pp.24-25.

⁸ Smith, Karen: "The Evolution and Application of EU Membership Conditionality", in Kremona, Marise (ed) (2004): *The Enlargement of the European Union*, Oxford, Oxford University Press, pp. 106-109.

⁹ Kochenov, Dimitry: "EU enlargement Law: History and Recent Developments: Treaty – Custom Concubinage", *European Integration online Papers (EIoP)*, vol. 9, n° 6, (2005) at <http://ssrn.com/abstract=704381>

¹⁰ de Witte, Bruno: "The Impact of Enlargement on the Constitution of the EU" in Kremona, Marise (ed) (2004): *The Enlargement of the European Union*, Oxford, Oxford University Press, pp.210, 228.



1.2. Decoding Political Conditionality as a method of the europeanization ‘from without’

In order to apply a coherent enlargement strategy to the CEES, member states at the Copenhagen European Council (1993) have set conditionality (political –stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities; economic –functioning market economy, as well as the capacity to cope with competitive pressure and market forces within the EU; and *acquis* –the ability to take on the obligations related to membership, including adherence to the aims of political, economic and monetary union) as a cornerstone of it introducing a new mode of governance of the CEES –the conditionality. Conditionality, as applied to the Copenhagen Criteria (CC), became instrumental in stimulating domestic changes in the target states as it obtains its dynamism from the aspiration of eligible countries to be included ‘in the club’. Nevertheless, the CC, despite aiming at the codification and clarification of the accession criteria, raised the new question of hierarchy of the criteria. At the time, it was not clear to the candidate countries precisely what requirements should they meet, and what exactly the EU demands were. It was the Amsterdam treaty that set the political thus the democratic criterion as the precondition for applying for membership and for the opening of the negotiation process. The ambiguity of the criteria was boosted further by a lack of clarity in these requirements. Even today, the exact context of the democracy requirements of the EU is pretty vague. The Agenda 2000, as agreed at the Berlin European Council (1999)¹¹ was to bridge this gap together with the preparation of the EU for the major project of enlargement. As Karen Smith summarized, according to the agenda 2000, a fully functioning democracy is indicated by¹²:

- 1) The fact that the constitution must guarantee democratic freedoms, such as political pluralism, the freedom of expression, and the freedom of religion,
- 2) Independent judicial and constitutional authorities,
- 3) Stability of democratic institutions permitting public authorities to function properly,
- 4) The holding of free and fair elections, the recognition of the role of opposition,
- 5) Respect for fundamental rights as expressed in the Council of Europe’s Convention for the Protection of Human Rights and Fundamental Freedoms (including acceptance of the protocol allowing citizens to take cases to the European Court of Human Rights), and
- 6) Respect for minorities, which includes adoption of the Council of Europe’s Framework Convention for the Protection of National Minorities, and Recommendation 1201 of the Council of Europe’s Parliamentary Assembly.

Additionally, the criterion of ‘good neighborliness’ has been set at the Helsinki European Council (1999), noting the willingness of a country to cooperate with its neighbors and resolve their disputes peacefully.

Furthermore, clarification of the country-specific and *ad hoc* development of criteria can be found in the Annual Reports submitted by European Commission, designed to support monitoring the progress of the process of the candidate countries.

¹¹ Presidency Conclusion, Berlin European Council, 24-25/03/1999.

¹² Smith, *op. cit.*, p.116.



Thereafter, conditionality became the most influential tool in the attempts for the convergence of democratic values of the states that are in close neighborliness with the EU and to which the prospect of inclusion is acknowledged.

1.3. The pattern of the Europeanization ‘from without’ . Basic assumptions

The aim of this considerably large list of membership requirements, concerning democracy in the applicant state, is, on the one hand, to protect the common values of the member states which could be endangered by an enlargement with no or less democratic states, but also, on the other hand, to set conditionality as a method of Europeanization of the states that are not members. Despite generally looseness of the concept of the term europeanization, it becomes important because it indicates the impact of the EU on domestic changes. The ‘Europeanization’ of an outside country emanates from the top- down approach according to which the EU as a political entity influences in a certain way the outcomes in the domestic sphere. One can borrow Radaelli’s definition to describe processes that are underway as soon as a country becomes eligible. According to him the Europeanization is a “process of constriction, diffusion and institutionalization of formal and informal rules, procedures, policy paradigms, styles, “ways of doing things” and shared beliefs and norms which are first defined and consolidated in the EU policy process and then incorporated in the logic of domestic (national and subnational) discourse, of political structures and of public policies”¹³.

Despite not being new practice, europeanization through conditionality in the cases of associated countries differs from the same pattern when the member states are the case. One can easily distinguish two different patterns of Europeanization of a member state. Both are outcomes of active participation in the integration process. It is an outcome of interactive participation that is developed between the EU and its member states¹⁴. An EU member state benefits (explicitly or implicitly) from the change that occurs due to Europeanization process so it voluntarily adopts it in accordance to its implicit cost/benefit calculation. Many times though, the pressure for adaptation to the needs of the European integration requires from the EU institutions implementation of the carrot and stick method thus conditionality, where cost/benefit analyses get explicit characteristics. It is possible to see conditionality only through the logic of ‘sticks and carrots’ and the effectiveness of conditionality only as the efficacy of ‘carrot and sticks’ methods either it has implicit or explicit implications. But what is important here is that the ‘carrot and stick’ pattern is the outcome of the participation of a state in the European integration. This pattern is combination of bottom-up with top-down interaction simply because a member state is in the same time norm maker and norm taker. When the europeanization is taking place in a candidate country, this condition does not exist.

Conditionality as a mode of governance of states that are outside of the EU, aiming at the europeanization of their domestic systems in order to adapt to the European system of governance and achieve unimpeded participation, is a quite different mode than the one of conditionality of member states. First of all, it evolves as a process in a very uncertain

¹³Radaelli, Claudio: “Europeanization of Public Policy”, in Featherstone, Kevin; Radaelli, Claudio. (eds) (2003): *The Politics of Europeanization*, Oxford, Oxford University Press, pp.10.

¹⁴ See for more, Featherstone, Kevin: “Introduction: In the Name of Europe” in Featherstone, Kevin and Radaelli, Claudio. (eds) (2003): *The Politics of Europeanization*, Oxford University Press, Oxford, p3-26. also Olsen, Johan: “Many Faces of Europeanization”, *Journal of Common Market Studies*, vol. 40, n° 5, (December 2002) pp. 921-952 and George, Stephen; Bache, Ian (2005), *Politics in the European Union*, Oxford, Oxford University Press.



environment. One can consider many examples of uncertainty of the enlargement processes, starting with the determination of ‘a European country’ (popular in Turkish case but also in Ukraine, Belarus and Moldova cases) and going further to defining the time of candidacy acceptance, or even to defining the time of the full integration of a country etc. Although the EU has developed its enlargement policy prominently, the overall process is relying not only to the unbiased fulfillment of conditions but also to the political decisions of the EU, increasing therefore considerably the level of uncertainty of an enlargement process. As uncertainty grows the dynamics of Europeanization ‘from without’ may weaken.

The uncertainty level is emphasized by another mode of governance of the outside countries –the asymmetry, which originates from the generic framework under which the enlargement takes place. The EU is the one that is the only ‘norm maker’ as much as the ‘outside’ country is opting for inclusion and not the opposite. The EU sets conditions, frameworks, timetables etc, while the third country only accepts them. This places the third country simply in the position of a ‘norm taker’. This ‘norm maker-taker’ mismatch relation between EU and an outside country offers a great positioning advantage to the EU, but can seriously endanger the perspective of EU’s influence improvement on domestic political systems as it can produce several negative conditions, such as (not exclusively): a) An outside country can see it as a reduction in its sovereignty (different from sovereignty issues of member states) so it is possible to react negatively, b) The enlargement intentions of the EU can lose their credibility due to misinterpretation of the imposed conditionality, and c) The imposed conditionality or strategy might not address the needs of a country.

These conditions, if applicable, affect the prospects of Europeanization ‘from without’ that can vary from the reduction in positive dynamic of the EU influence to the creation of a “reactive identity” that is broadening the gap in the “us-them” relationship where ‘them’ are opponent.

Conditionality and asymmetry are the most influential modes of the Europeanization ‘from without’ process that define the efficacy of the enlargement strategy aiming at adaptation of one state to the pressures of the EU in the direction of convergence, namely in terms of incorporating European democratic “formal and informal rules, procedures, policy paradigms, styles, “ways of doing things” and shared beliefs and norms”.

1.4. The Mechanisms of Europeanization

The Europeanization of an associate country is mainly conditionality-driven, but efficacy of the conditionality mode depends on the appropriate application of “carrot and sticks” methods and other means of exerting pressure on a state.

In the case of enlargement conditionality, the highest reward is the inclusion of a state in the EU, as the ultimate reward for compliance is full integration. According to Grabbe¹⁵, the most powerful mechanism of Europeanization of an eligible, associate or candidate state is the gate-keeping tool, where the EU allows, based on merit, access to the upper stages in the accession process. As Lippert, Umbach and Wessels noticed in the cases of CEES the influence of the EU on the system of governance was growing as the level of cooperation was

¹⁵ Grabbe, Heather, “Europeanization Goes East: Power and Uncertainty in the EU Accession Process”, in Featherstone, Kevin and Radaelli, Claudio.(eds) (2003): *The Politics of Europeanization*, Oxford, Oxford University Press, pp. 316-317.



shifting –starting from the minimalist impact during the 80’s and reaching its peak during the negotiation process of accession¹⁶.

Additionally, the EU developed different kinds of mechanism in order to reinforce compliance with the conditions. This mechanism can be listed (not exclusive) as:

1) The norm promotion, which is the criteria themselves that could be used as a “road map” for transformation,

2) The monitoring process that is used for clarification and differentiation of a country’s specific needs and, furthermore, as an opportunity for “public shaming” (in case of negative feedback) or of promotion of the membership application (when positive developments occur)¹⁷. At the domestic level Reports outcomes can foster domestic change offering either the excuse for the implementation of politically costly choices or the confirmative support for what is ‘already done’,

3) The interim incentives, such as financial aids, further liberalization of the EU market for the associate country, ‘upgrading’ relations (e.g. as in case of CEES from candidate country to associate partnership).

4) The practical and technical support through advising and twinning programmes with aims, such as capacity building, transferring of know-how, learning, establishing transnational networks etc.

All these tools can be implemented in positive terms, as a carrot, or otherwise, negatively if compliance is impeded, as a stick. Moreover, the compliance to EU rules relies on effectiveness of those mechanisms that should be enforced adequately in terms of proportionality (balance between “carrot and stick”) and appropriateness (addressing specific transitional needs of a country).

1.5. Compliance and non compliance

It may be useful to distinguish three phases of association process in order to test the importance and utility of different mechanisms applied in those different stages in order to enhance the prospect of rule compliance in a third country. Even though the importance of the mechanisms applied in total and in every stage is undoubted, I argue that some of those have stronger influence in a particular stage of cooperation than in other. Table 1 presents the congruence between different levels of cooperation and the importance of the imposed mechanism in every particular stage mainly in terms of appropriateness and proportionality.

At the eligibility level, the hypothesis is that the EU has acknowledged the eligibility status to an outside state, meaning that the country is eligible to apply for membership as soon as the conditions are fulfilled or, more specifically, it is eligible to apply and start negotiations when democratic (political) conditions are met. This refers to the oldest precondition of accession which stipulates that inclusion is preserved for “any European state”. I argue that

¹⁶ Lippert, Barbara; Umbach, Gaby; Wessels, Wolfgang. : “Europeanization of the CEE Executives: EU membership Negotiation as a Shaping Power, *Journal of European Public Policy*, vol. 8, n° 6, 2001, pp. 988-1012.

¹⁷ See Verney, *op.cit.*, p.72.

this level is highly politicized for one important reason. The context of the meaning “European state” is not explicitly defined, thus offering space for politically interference decisions. It is up to the EU institutions and member states to offer an eligibility status to a state, which relies on the implicit understanding of the adjective ‘European’. It is a political decision on eligibility that puts a country on the EU track and offers the prospect for greater EU pressure imposed on democratic transition. It is though relying on the political determination of where the EU’s boundaries lie.

Table 1

	Eligibility level	Partnership level	Associate/Candidate level
Major Essence of the stage	Highly politicized stage – political decisions play the most important role (convergence)	Conditionality Stage – conditionality plays the most important role as a country opts for inclusion	Technical Stage – if negotiation process smoothens the de-politicization of the process (irreversibility)
External Actor	Preconditions: Status of persuader Identity match	Preconditions: Sizable carrot Real stick	
	Consistency of the promise Gate keeping Monitoring process + norm promotion Soft conditionality should be used	Interim incentives Monitoring process + norm promotion Gate keeping Technical support	Practical and technical support in implementing <i>acquis</i> Gate keeping
Domestic Arena	Democratization process undergoing	Stabilising Democracy	Assimilation of Democratic Values – Consolidation of democracy

While undergoing this process, we can notice two strong preconditions for maximizing the outcome of the European engagement in the domestic democratization process: that is the status of persuader and the identity or –as noticed elsewhere –cultural match¹⁸. Status of

¹⁸ Kubicek, Paul (ed.) (2003): *The European Union and Democratization*, London, Routledge.



persuader implies what Emerson and Noutcheva called the ‘democracy gravity model’¹⁹, where the existence of a democracy, in reference to the world together with the reputation quality and the attractiveness of that democracy, create a positive environment in which the prospect for democratization of a country could be reinforced. Furthermore, identity match refers to the cultural but also to the historically designed values proximity with those of the EU. Combination of these two prerequisites could be, for instance, recognised in the “return to Europe” claim of the CEEC. Many of them had to remember or ‘to be reminded of’ historical moments when they were not only part of but also shared what today is called common European heritage. Even if the argument “return to Europe” in some cases is not plausible and powerful, the strong persuasive democratic image of the EU together with the gap created by the fall of previous regimes may be a sufficient driving-force for internationally-driven domestic changes. In the vague environment of this premature stage of accession process, the most important incentive the EU can implicitly offer is the consistency of its promises for future inclusion. Nevertheless the uncertainty usually prevails at this level more than in any other further stage. As the level of credibility of promises increase domestic support also increased, and the rule adoptions became more likely²⁰. In order to maximize eagerness for rule adoption the credibility of outside actor should be also linked with the domestic consensus and aspiration for inclusion. The eligibility status is offered by the EU to the states that have just passed critical juncture and started transition and are on democratization path. This is the point where those states are trying to solve Offe’s ‘simultaneity dilemma’²¹, where “every aspect of the state and society had to undergo far-reaching reform at the same time, all within a context of scarcity of resources (both political and economic)”²². Introducing specific conditionality at this moment by a influential external factor that rely on credible promise of inclusion can be value additional as it is the strong incentive for persistence on reform process. Furthermore concerning this stage, it is of paramount importance that the EU actions address adequately specific needs of the third country. Possible misfit between the EU and the third country’s priorities can have negative impact either on status of persuader or on will or ability of the country’s elite to proceed with reforms depicted by the EU.

The norm promotion and monitoring process at this early stage initiate the process of Europeanization as a first attempt to foster (where existing) or to create (where not) domestic democratic changes and transformations. Tough conditionality imposition at this level can prove to be less effective in cases where historical references to the democratic tradition of the state and its society are missing.

Nonetheless, if progress at this stage is acknowledged and the EU promise is realistic, then it is time to ‘upgrade’ the cooperation at Partnership level as an interim incentive where conditionality mode of ‘extended-beyond-EU-boundaries’ governance plays the most important role. At this level, domestically, the transition is well undergoing, the new political and democratic order is introduced and the state is in the phase of stabilising its democracy.

¹⁹ Emerson, Michael and Noutcheva, Gergana: “Europeanization as a Gravity Model of Democratization”, paper presented at the conference of the Center for Democracy, Development and the Rule of Law, “Promoting Democracy and the Rule of Law: EU and USA Strategies and Instruments”, (2004).

²⁰ For cost/benefit analyses see Schimmelfennig, Frank and Sedelmeier Ulrich, (2005): *The Europeanization of Central and Eastern Europe*, London, Cornell University Press, p.33.

where they noticed that “credibility [is] a necessary but not sufficient condition”)

²¹ Offe, Claus: “Capitalism by Democratic Design? Democratic Theory facing the Triple Transition in East Central Europe, *Social Research*, vol. 58, n° 4, (1991), pp. 865-81.

²² Vejvoda, Ivan: “Serbia after four years of transition”, *Chaillot Paper*, n° 70, (2004), Institute for Security Studies.



At this critical moment, the whole EU toolkit available for the straightening of the democratization process should be used simultaneously accompanied by the “carrot” of membership and implementation of real “sticks”. Concerning external actor activity, the precondition for this level to be effective is the evident prospect of accession but also the willingness to make use of a real stick. In order to fortify the undergoing domestic democratization process, the EU should have a consistent and coherent policy over the potential member state. If highly political decisions do not interfere in the process of conditionality (as it occasionally happened in the past –e.g. Bulgaria, Romania) the prospect for success at this stage is growing. It is important that such states should not recognise the willingness of the EU to offer a discount in conditionality implementation, guided by the political decisions, as this can offer them an opportunity for reluctance in the rule_adoption process.

The negotiation process is the last, but not the least, level before the accession takes place. It is indicated by the (at least phenomenal) irreversibility of the process. It can be assumed at this level that the process can not go backwards and the membership could be taken almost for granted. That is why, in terms of democratic promotion and in comparison to the previous levels, the impact of the EU on democratic governance of the country is less likely. However, it also presupposes that the process of democratization is completed and that countries at this stage are consolidating their democracy. In other words, at this specific level the “carrot” (membership) becomes considerably bigger and less uncertain making the application of the “stick” less dynamic.

There are several reasons why Serbian case is interesting. First of all and obviously, because it is a country to which the EU has acknowledged the status of eligible country, therefore the mechanisms available for adaptation pressures are applicable. Secondly, the case of Serbia is particularly interesting for its turbulent democratization but also for its europeanization process. The Serbian democratization process differentiates itself from the recent examples of democratic transitions of Central and Eastern European Countries (CEES) for at least two reasons: the first is that the Serbian transition to democracy needs something more than solving what Offe called ‘simultaneity dilemma’ of transition²³, as it was the case with CEES, but also supplementary to resolve its major problem of stateness namely defining its territory of sovereignty. Besides, Serbia has to go through a transition in terms of breaking with its recent past. Third and according to the previous, there are well founded doubts about the appropriateness of the EU strategy during the first six most difficult years of the transition. The main issues are if the EU should treat Serbia in the same way as the CEES as well as whether the political system of Serbia has reached yet the satisfactory level of maturity in order to comply smoothly with specific EU requirements.

2. European Strategy for Serbia – Narratives VS Reality

2.1. From Conflict Resolution to Integration project

During the Cold War era Yugoslavia was one of the communist countries the EU would prefer most for closer cooperation. However, within only 2 years from the communism fall in the Central and Eastern Europe the situation has changed. Dissolution of Yugoslavia grew from an ‘internal European-space problem’ to an ‘international catastrophe’ in only a few

²³ Offe, *op.cit.*



months. Early EU response to the crisis proved to be immature. It is a quite common belief today that EU interference at the beginning of the crisis was not that of mitigation²⁴. The Western Balkan area became the heart of violent conflicts and the country of Yugoslavia was disintegrating. As a consequence, the priority of the EU states on the Western Balkans was differentiated from that of CEES in the early '90's and was not considering any integration project but only crisis resolution and security issues. The former became the aim only of the late '90s EU - Western Balkan strategy. The main axes of the EU re-approaching the Western Balkan states after the turbulent decade of the '90s was to enforce security, good neighborliness and economic cooperation through the Balkan Regional Approach as agreed at the 1903rd Council Meeting General Affair 1996 as it was confirmed and conceptualized a year later²⁵. But, under Milosevic's nationalistic guidance of domestic and internal affairs and in the eve of the Kosovo crises, the relation between the EU and Serbia had frozen again.

After the international isolation of the state which was followed by Kosovo crisis and the NATO air strike over Serbia, a new opportunity for EU-Serbia re-approaching was born under the "Stability Pact for South Eastern Europe". The Stability Pact (SP) was actually a political initiative aiming at creating better cooperation between countries in the region, with the broader goal of the political and economic integration of the area in Europe and also the establishment of conditions for a lasting peace, security and stability in the region²⁶. Serbia was accepted to SP at 26.10.2000, only a few days after ousting Milosevic from power. The latter –critical juncture in the Serbian political life –was acknowledged by the European Council of the same year, where it was decided to offer eligibility status to Serbia and Montenegro (SM).

Although the post crisis period was structured mainly around SP, a more evident prospect of inclusion promise was incorporated in the Serbian strategy of the EU –starting with the invitation of Kostunica to the European Council in Biarritz soon after his inauguration as the new President of the state and continued with the offering of the eligibility status, the opening of negotiations for the Stabilization and Association Agreement (SAA) etc. The key assumption underlying those steps was that the process of genuine democratization had started in the country and that the strong political will to tackle things according to the legacy of the previous regime was undeniable²⁷. But this EU enthusiasm about prospects of democratization in Serbia led to the creation of a turbulent EU-Serbia relation soon after and proved to be immature at that time. One of the EU miscalculations was "the tendency to treat Serbia as just another Eastern European post-communist country in transition"²⁸

2.2. Applying Initial Conditionality to Serbia

²⁴ Folk, Richard (1995): "Neuspeh u Evropi: regionalna bezbednost posle hladnog rata", Beograd, Institut za Evropske Studije.

²⁵ PRES/96/33, General Affair Council 1996 and PRES/97/129 General Affair Council 1997.

²⁶ (see also Kameron Fraser and Kintis Andreas: "Southeastern Europe and the European Union", *Journal of Southeast European and Black Sea Studies*, 1/2, 2001, pp 94-122 and Bellou, Fotini: "Η Ευρωπαϊκή Ένωση στη Νοτιοανατολική Ευρώπη: Από τη Διαχείριση Κρίσεων στην Ενσωμάτωση" in Tsinisizelis, Michalis and Xenakis, Dimitris (ed) (2006), *Παγκόσμια Ευρώπη; Οι Διεθνείς Διαστάσεις της Ευρωπαϊκής Ένωσης*, Αθήνα: Εκδόσεις Ι. Σιδέρη, pp. 433-460.

²⁷ Rupnik, Jacques: "Europe's Challenges in the Balkans, A European Perspective", *Readings in European Security*, London, CEPS, International Institute for Security studies, vol. 3, (2003), pp. 79-80

²⁸ International Crisis Group (2004): "Serbia's U-Turn", *Europe Report*, n° 154 (26 march 2004).



The first time the EU developed the principle of conditionality as a relationship mode with FRY (later Serbia and Montenegro) was in April 1997 at the 2003rd Meeting General Affairs Council in Luxemburg. Different levels of cooperation were offered to the countries of the region (without Association Agreements) such as autonomous trade preferences, assistance through PHARE and contractual relations based on a different set of conditions. Every progress in cooperation was linked with meeting new conditions (gradual approach). This set of ‘added’ conditionality is still attached to the conditionality list Serbia should meet today together with the CC.

This first conditionality approach to Serbia was the attempt to implement “softer conditionality” (compared to enlargement conditionality). However, with the absence of sizable ‘carrots’ the efficacy of conditionality was diminished as “the ‘carrot’ was far too small to make a difference”²⁹. The first re-approach with the region after the violent dissolution of Yugoslavia (1990-1996) was not that of successful implementation of a ‘carrot’ and ‘sticks’ strategy³⁰. Despite the question of (in)sufficiency of strategy and implementation of available tools at the moment, the Serbian state did not pass the critical juncture of abandoning its authoritarian regime, so any strategy would prove ineffective at the moment. In other words, the Serbian political system was not at a sufficient level of maturity in terms of democratization process to be able to take advantage of the re-approach with the EU. Besides, the oppressing politics of Milosevic’s nationalistic and authoritarian government over the media and basic democratic freedoms was a complementary puzzle to that of the miscalculated choices of the EU in the crisis of the country, international isolation and open-ended problems of the Serbian stateness and state identity that composed the picture of the international community as an hostile community giving the opportunity to domestic actors to develop opposing discourse against it. Any effort for re-approach was doomed to failure as the international environment was presented as a hostile one, intending only to suppress the rights of the Serbian nation. The Kosovo crisis was only to confirm that notion.

The aftermath of the fall of Milosevic’s regime blew fresh air in the EU- Serbia relations. Followed by President Kostunica’s invitation to Biarritz, a month later, at the Feira EU Council, Serbia (together with the rest of the Stabilisation and Association Process (SAP) countries) gained the status of a potential candidate for EU membership, which was endorsed at the Zagreb EU-Western Balkan Summit, but the real turning point in the EU-Serbian relations was the Thessaloniki EU Council in June 2003, where the EU perspective of SAP countries was confirmed. Under the procedure of SAP the EU established an Enhanced Permanent Dialogue with Serbia a month after the Thessaloniki Summit, which was actually upgrading the already existing EU-FRY Consultative Task Forces. Initiation and institutionalization of a bilateral political dialogue between EU- SM at foreign ministers level is considered to be an important tool in re-approach, familiarization and socialization of both sides in order to encourage the process of the SM faster integration with the EU. These EU steps demonstrated a new approach in the region, indicating the shift from the conflict resolution policy to the implementation of a closer cooperation and integration process.

The initiation of this pre-integration process was followed by both the fortification of the conditionality and the implementation of all available pressure tools for adaptation. Subsequently, the Council decision (June 2004) on establishing a European Partnership for SM was the next important measure to enhance cooperation with Serbia and to employ

²⁹ Papadimitriou, Dimitris: “European Strategy in the Post-Communist Balkans”, *Journal of Southeast European and Black Sea Studies*, vol 1, n° 3, (2001), pp. 69-94.

³⁰ *Ibid.*, pp.78-80.



stronger conditionality in order to strengthen the democratization process in the country. One particular note here is that the European Partnership process came as an opportunity to overcome deceleration in EU-SM cooperation which was started in mid 2002 due to failure of status redefinition of the common state of Serbia and Montenegro. However, the Feasibility Report, which gave the green light to launching negotiations for a SAA, was adopted only in October 2005 but it was to be called off within the next few months (May 2006) as the country did not fulfil its commitment to fully cooperate with the ICTY. This political deadlock in the EU- Serbia's relations was to be partly overcome only in 2007.

According to the Commission Annual Reports for Serbia (the monitoring process started after the fall of Milosevic's regime and the First Report was published in 2002) one can envisage two different clusters of issues. The first one concerns internal political deadlocks that stilled the democratization process in the country and the second concerns mainly procedural bureaucratic problems. The latter is not in any case less important and is strongly linked with political problems.

As far as the political situation and the improvement of democratic setting are concerned, there are two stumbling blocks that actually led relations with the EU in turmoil. Firstly, it is the definition of coexistence between Serbia and Montenegro in a common state and secondly, the cooperation with International Criminal Tribunal for former Yugoslavia (ICTY). These two issues were of significant importance and were strongly linked with the identity problems of the Serbian stateness and statehood as reflected both in internal domestic affairs and in external relations with the international community.

2.3. Europeanization of Serbia-Montenegro relations –spill or split over?

As the new era in the EU- Serbian relation thrived and the first scrupulous EU pressure on the Serbian state emerged, the first serious impediment aroused to clash with satisfying the political criterion- the nature of the future Serbian –Montenegro coexistence in a common state. Both the Commission Reports for the country and the EU stance in the crisis demonstrate the importance of the issue of preserving the unity of those two states as a precondition for meeting the CC, or more, for sustaining peace in the wider region. The domestic democratic transformative power was seriously diminished by the deadlocks in the relations between Serbia and Montenegro. The first attempt of implementing political conditionality was supposed to work as a 'safety belt' for the preservation of the common state. The aim of maintaining the common state was relying upon the assumption that peace and stability of the region can be safeguarded only without a new reshaping of the borders, as well as without the creation of small and self-insufficient states.

The European mediating attitude during the negotiation on the new (con) federal constitutional setting of SM was to mandate High Representative Javier Solana to intercede in the agreement between Belgrade and Podgorica, which indicates what Teokarevic noted as activity "beyond conditionality"³¹. The Union was involved not only providing a framework but also as an actor³², meaning that the EU was not simply inflicting conditionality to the state but also taking an active role in the negotiation procedures. The direct mediation role of the

³¹ Teokarevic, Jovan: "EU Accession and the Serbian- Montenegrin Constitutional Charter", *Romanian Journal of Political Science*, vol. 3, n° 2, 2003, pp. 45-46.

³² Tocci, Natalia: "The EU Intervention in Ethno-political Conflicts: The Case of Cyprus and Serbia and Montenegro", *European Foreign Affairs Review* n° 9, (2004), p.562.



EU and linking the success of the negotiation with ‘prospect-of-membership’ conditionality made the conclusion of the Belgrade Agreement (2002) feasible. It is important to note here that despite multiplicity of clusters of problems concerning overall functioning of the State Union, the EU, one year later, adjusted its approach to the state implementing a ‘twin track’ approach as “the Serbian system and the Montenegrin system were totally different, and their harmonisation (was) inconceivable... (and) the union did not function at all”³³ in order to be able to publish a positive Feasibility Report for starting negotiations for the SAA. As Milica Delevic-Djilas noted “the EU remained attached to the concept of state Union of Serbia and Montenegro and wanted the SAA to be concluded with this overarching entity”³⁴.

Although the overall outcome of the attempt to maintain State Unity was not positive, as Montenegrins decided on the referendum for the independence of their state, it is a valuable attestation of the potential of the Europeanization ‘from without’ process. It also raises several issues on the appropriateness of EU strategies for the country. As largely acknowledged, the Belgrade Agreement was evidently possible due to EU mediation, and the conditionality mode which was used as a pressure for adaptation –meaning reforming the State Union –had functioned positively. Soon after the conclusion of the negotiations (but not earlier than functioning problems emerged) the EU advanced its relations with the State Union. Following the Thessalonica Summit promise, the Permanent Political Dialogue was upgraded and the European Partnership was introduced. Subsequently, the linkage of the gate keeping tool with the specific conditionality turned to be very powerful measures at that time as the EU managed with its specific position and tools to influence the outcome.

Nevertheless, the question only arose when it came to the point of compatibility of the EU imposed solutions with the domestic state of affairs and domestic preferences. In general, the compromise that led to the conclusion of the Belgrade Agreement was estimated by the two states (Serbia and Montenegro) as a climbing step closer to the launching of negotiations for the SAA. The Annual Report that followed the signing of the Agreement, however, did not justify these notions; on the contrary, it highlighted the problems that the two sides were going to face while attempting to cohabit in a common state³⁵. The EU assumption that an Agreement between the two parts was going to solve all the functional problems the State Union was facing, and that further ‘balkanization’ was going to be blocked was disproved. This solution did not exactly represent the preferences of the two sides. It just made room for different interpretations of the Agreement in terms of opening the prospect for closer cooperation with the EU³⁶.

The Serbian side estimated that the Agreement was going to bring the European perspective closer for the State Union while the Montenegrin side treated the Agreement as an opportunity for future independence that would foster the European path of the state. What actually happened was that the new constitutional order of the State Union (also called ‘Solania’ or ‘Frankenstein state’) with all its functioning problems became a serious impediment in transforming the state both at federal and at unit level, thus negatively affecting the fulfilment of CC and political conditionality. According to Samardzic the EU remarks on the serious dysfunctional problems of the State Union remained an ‘empty letter’

³³ Karpat, Can: “Montenegro’s Independence Depends on European Mathematics”, at <http://www.axisglobe.com/article.asp?article=803> (22/09/2008)

³⁴ Delevic-Djilas, Milica: “Comment: On the twin track highway to Europe”, Institute for War and Peace Reporting, December, 2003.

³⁵ COM 2003: Stabilization and Association Report, Serbia and Montenegro, *Commission Staff Working Paper*, 139.

³⁶ See for more: International Crisis Group, “Serbia’s U-Turn”, *op.cit.*



as far as the EU did not take full responsibility for its actions³⁷. Although the EU implemented a ‘twin track’ approach in order to overcome the problems of synchronizing the economic systems of the two states, little progress was indicated in the full compliance with political conditionality.

Although further ‘balkanization’ was not in any sense acceptable by the EU (in the case of SM), the separation of the two states was unavoidable after the Montenegro referendum in May 2006. The results of the EU-SM strategy during the first five years after the fall of Milosevic’s regime can have a twofold evaluation.

On the one hand, as regards the dynamic of the EU pressure imposed on SM, it can be considered productive although problematic, but the overall positive acceptance of the EU indicated solutions adopted by the two governments in order to achieve progress in the cooperation with the EU. It also demonstrates the implicit perspective of Europeanization ‘from without’ as well as how the early (if one can say preemptive) response of the EU had a strong impact on the domestic decisions to make an effort to maintain the State Union. Finally, the separation of the two states was a peaceful achievement and an outcome of a democratic process. Besides, although implicitly, the fact that Montenegro gained its independence in a peaceful and democratic way (in contrast to past examples of the dissolution of Yugoslavia) could be considered, at least partly, as the outcome of EU interference in the process together with a lesson-learning process for both SM and the EU.

On the other hand, the EU imposed solution was quite incompatible with the domestic preferences or at least with that of the one side. The interpretation of the EU mediation role, which was linked with strong conditionality on the issue, afflicted for one more time the status and image of the EU as an outside actor that was supposed to encourage and not to complicate the process of democratization of the country and thus reducing the value added democratization of the prospect of a EU-driven one. As the EU insisted on maintaining the State Union, the domestic democratization process of the State units was stalled and problems remained concealed for this long and important period and a huge amount of energy had been wasted on keeping the two parts together and on the attempt to maintain the democratic transformation at state level. The attempt to preserve the unity between Serbia and Montenegro forced the Serbian government to “devote considerable political capital to satisfying the EU, at a time when it should have been using its energies to dismantle the old regime structures... (giving) the old guard time to regroup”³⁸.

3. Evolving of a ‘reactive identity’

The outcome of the imposed conditionality (2000-2006) with its controversy (not only on the preserving State Union with SM but also the ICTY cooperation etc) entails the danger of shaping a ‘reactive identity’ of the Serbs that can seriously impede the prospects of the international value added dimension on the transition. The creation of a ‘reactive identity’ would be the outcome of the imposition of the inappropriate and disproportionate conditionality that is strongly linked with its asymmetry mode in which the relation between the EU and an outside state is developing. The conditionality paradigm on preservation of the

³⁷ Samardzic Slobodan (2004): *Jacanje drzave je uslov svih reformi*, Prizma, Centar za Demokratsko Liberalne Studije, p.18.

³⁸ International Crisis Group, “Serbia’s U-Turn”, *op. cit.*



State Union of Serbia and Montenegro impose strong reasons for reservation over not only the appropriateness but also the proportionality of the imposed mechanisms at the specific level of cooperation where Serbia sees its road to the EU only as a far future perspective. The central issue here is whether the EU with its strategy is addressing the real problems of the country and its people. Besides the wider acceptance of the EU association (and latter integration) goal by the governing elite and more widely by the society, Serbian people have associated conditionality only with a 'stick' and are "bitter at the West and see themselves as victims of past decades"³⁹. Important to note here is that the Serbian society has paid the biggest price of all internationally imposed measures during the 90's and thereafter. The deprivation of the living conditions and the ubiquitous increasing levels of the economic indicators of poverty result in human life and dignity deprivation coupled with strong (personal) isolation imposed by the international community (e.g. visa regime). At the same time the accumulation of wealth in the hands of old elites that continue to affect the economic and political conditions of the country called the people's attention from domestic issues with external implication to the 'ordinary' problems of everyday life, such as unemployment, economic standards etc. It is representative the fact that during the previous Presidential Elections (2004) the debate was dominated mostly by economical issues where the 'international' issues in relation to Montenegro, Kosovo and ICTY "did not play significant part in campaign rhetoric"⁴⁰. It looks more like that only the international community and subsequently the governing elite are seriously concerned with these issues.

Despite integration in the international community is widely accepted goal, it is still presented and accepted as the hostile and distrustful one. This makes the creation of society driven claims for democratic transformation, which are the outcome of socialization and identification with international political systems –like the EU –a difficult task.

In the process of the transformation or transition of a country the improvement of the quality of democracy comprises something more than the simple precondition for accession to the EU. Its convergence within a broader system of values must be substantial not only typical in order for a common and lawful society to be founded on the principles of freedoms, democracy and rule of law. The case of Serbia demonstrates that the relation between europeanization 'from without' and the democratization process could not be seen either as a linear or as a teleological one, but more as a dialectic with its own characteristics, discrepancies and mainly with its own results. However, this statement does not deflect the outstanding role that the EU plays in -and its influence on - outside political systems as the Serbian one is.

My overall conclusion is that the Serbian political system has not reached yet a level of sufficient maturity in order to distance itself from the past problems of democratic functioning and for that reason it demonstrates inconsistent moves in terms of a fully fledged democratic transition, and for the same reason, the prospect of europeanization 'from without' has its specific limits. However, neither the EU strategy applied on Serbia is fully fitted nor entirely proper concerning the specific characteristics of the Serbian democratic transition. In other words, the outside actors, like the EU with its mechanism is, are not capable of penetrating into the hard core of the Serbian political system that is reluctant to a fully fledged democratic transition.

³⁹ International Crisis Group, "Serbian Reforms Stalls Again" *Europe Report*, n°145 (17 July 2003).

⁴⁰ International Crisis Group, "Serbia's Changing Political Landscape" *Europe Briefing*, n°32 (22 July 2004).





EUROPEAN INTEGRATION & SOUTH EASTERN EUROPE: PROSPECTS & CHALLENGES FOR THE WESTERN BALKANS

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Abstract:

Recent enlargement of the EU beyond its traditional Western confines has made it a broad and heterogeneous institution. In the case of the Western Balkan states, the EU has an unprecedented opportunity to change the geopolitical context of Europe by offering them full membership. The policy of enlargement can serve as a tool whereby the Union is able to enhance its presence in the international arena and effectively promote its foreign policy. However, there have recently been signs of backtracking on the EU's part. The paper will present the case for full absorption of the Western Balkan region in the Union in the near future so that not only the Balkan states but also the EU itself may benefit from stability and prosperity in the post-Cold War era.

Keywords: Enlargement; European Union; Western Balkans.

Resumen:

La última ampliación de la UE más allá de sus confines occidentales la ha convertido en una institución extensa y heterogénea. En el caso de los Balcanes Occidentales, la UE tiene una oportunidad sin precedentes para cambiar el contexto geopolítico de Europa ofreciéndoles el estatus de miembros de pleno derecho. La política de ampliación puede servir como instrumento a través del cual la Unión Europea sea capaz de reforzar su presencia en el ámbito internacional y promover efectivamente su política internacional. Sin embargo, ha habido signos de retroceso por parte de la UE. Este artículo presenta los argumentos para una absorción de la región de los Balcanes Occidentales a corto plazo no sólo para que los estados balcánicos sino para que también la misma UE pueda beneficiarse de la estabilidad y prosperidad en la era de la Posguerra Fría.

Palabras Clave: *Ampliación; Unión Europea; Balcanes Occidentales.*

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Introduction

The ending of the Cold War and the vision of a common pursuit of prosperity under stable democratic governance have resulted in an accretion of the European Union with the inclusion of countries in the Baltic region as well as in Central and Eastern Europe. However, the Western Balkan region, although integrally bound with Europe, has generally been in the backyard of European concern, with attention being given to the region only in the event of some violent conflict or change. The area has always been characterized by low levels of development and strife both within and between countries. In cultural terms, the Ottoman legacy in the region means that a large part of the population follows the Islamic faith, and this is reflected in many walks of life of the people. In spite of the differences that set the traditional members of the EU apart from the Balkan countries, the present paper will argue that there is a fundamental case for their full integration within the European framework if Europe is to meet its foreign policy objectives in the most effective way.

The paper will first outline the context of association between the Western Balkan states and the European Union. It will look at the outstanding issues that should be kept in mind when pursuing the theme of integration of these states within the Union. The debate on enlargement will be discussed from the perspective both of the Balkan countries and of the current members of the EU. The progress made so far towards integration will then be considered, followed by the challenges that must be overcome if membership of the European Union is to take place. Finally, the paper will set out the arguments for granting full membership status to these countries at a clear date in the near future.

1. Background

A Coherent Policy Framework

The transition from command economies to market economies in South Eastern Europe has faced dramatic collapses in output in all the countries of the region and in the case of former Yugoslavia ethnic strife and disintegration brought additional burdens with negative implications for the region as a whole. Economic transition had to move in parallel with efforts to restore peace and political-social stability. A number of unrealistic and poorly coordinated international initiatives for the region proved fruitless.

The demoralizing blow to EU's image from Balkan involvement in the 1990s eventually drove home the need to act positively and assertively towards the region. The EU's initiation of European Accession Partnerships and the Stabilization and Association Process in the late 1990s affirmed serious commitment to the region and its determination to seek genuine reforms from potential candidates was accepted by both peoples and governments. This proved a catalyst for regional change.

In light of the above, in 1999, the EU initiated the Stabilization and Association Process (SAP) with the then five Western Balkan states (Albania, Bosnia–Herzegovina, Croatia, Serbia and Montenegro including Kosovo, and FYROM) as a step towards a long-term approach to the region. The European Union thereby, for the first time in history, held out to all the countries of the Western Balkans the “prospect of Europe”. The SAP was aimed at assisting countries in the region “to move closer to the European Union” by “introducing



European values, principles and standards in the region”². These include democracy, the rule of law, respect for human rights, protection of minorities and a market economy. The goal of the SAP is the conclusion of a Stabilization and Association Agreement (SAA), which binds the EU and the Western Balkan countries in a formal association over a transition period. The SAP involves exhaustive support and assistance through technical guidance for better governance, effective institutions, the process of democratization, protection of human rights, refugee welfare, economic development and the eradication of corruption and organized crime. In June 2003, at the Thessaloniki European Council, EU leaders made a firm declaration that “the future of the Western Balkans is within the European Union”. This summit emphasized the association with and potential membership of the Union for the Western Balkan countries.

The Union has a long-standing moral obligation to help the countries of the region and an interest in their political and economic stability. The EU Treaty, moreover, states that any European state fulfilling its basic principles may apply for membership. However, although the Western Balkan states have always been an integral part of Europe, they have never received their due attention and now appear as a gaping hole in the overall EU map with the accession of Bulgaria and Romania in January 2007. Croatia is the only state in this grouping that has a reasonable likelihood of gaining membership of the EU in the immediate future as it has displayed the kind of commitment and ability to pursue the agenda of reforms towards EU integration that the Central and East European (CEE) countries showed in the 1990s. However, its target date of accession has not been endorsed and, generally, the countries of the region have been given no more than a vague promise to join the European Union at some future date.

Overall, during the last decade, the policy of the EU towards the Western Balkans has improved drastically. The EU is viewing each country both as an integral part of the region, recognizing the common denominators of the problems that in some cases require collective solutions, without at the same time losing sight of country specificities. Hence a regional approach coexists with a tailor-made approach for each country. The major problems relate to striking a balance between these objectives and distributing funds accordingly considering the limited resources after the last EU enlargement.

Actually, with Eastern enlargement finally taking place, the accession prospects for the Western Balkans have become dim in the light of a number of factors. These include the fear that their inclusion in the Union would bring in protracted conflicts to the heart of Europe and what has been termed “enlargement fatigue”, where the capability of the EU to accommodate more members is being questioned. Nevertheless, besides opening formal negotiations with Croatia, the EU has set in a process of pre-accession for most of the Western Balkan states. FYROM has been accepted as a candidate for EU membership. The SAA with Albania has been signed, and SAA negotiations have been opened with Bosnia–Herzegovina, Serbia and Montenegro.

Observers are of the opinion that the recent enlargement of the EU to Central and Eastern Europe (CEE) has been a success³. It brought to a close a legacy of conflict in that region and gave to the nations the needed impetus for their political and economic modernization, thus bringing stability and security to a large part of Europe. In this way, the fundamental value of

² Calic, Marie-Janine (2005), “The Western Balkans on the Road towards European Integration” *Internationale Politikanalyse – Frieden und Sicherheit*, Friedrich Ebert Stiftung, p. 2.

³ Goldstein, Avery; Batt, Judy: “Balkans in Europe: Why, When and How?”, *Policy Brief*, Belgium, European Policy Centre (EPC) (2007).



European integration has been reaffirmed. There is, therefore, a compelling reason for pursuing the goal of Western Balkan integration in the Union if democratization, stability and prosperity are to be achieved in as large a part of Europe as possible without taking recourse to isolated foreign policy initiatives.

In its 2005 report “The Balkans in Europe’s Future”, the International Commission on the Balkans expressed the view that the target date for accession should be set at 2014-2015: symbolically, a century after war broke out in Sarajevo in the summer of 1914⁴. The European Council in December 2006 stated, however, that target dates for accession will not be set “until accession negotiations are close to completion”⁵.

2. The Issues

2.1. Political and Civil Instability

In spite of numerous efforts and achievements, the Western Balkan region still faces a number of pressing structural problems in the institutional, political and economic spheres: these include open status issues, constitutional uncertainty, the “weak state” syndrome, a poor business environment and high rates of unemployment and poverty. In its 2005 report, the International Commission on the Balkans believes that “the region is as close to failure as it is to success”.⁶

Even more than a decade after the ending of the Bosnian war, the task of building peace in the region is still not solidly established, with state-building largely unfinished and the presence of constitutional uncertainty. The national constitutions that were framed in the wake of the disintegration of Yugoslavia lack acceptance by both the ruling elite and the mass of the people. The uncertainty with regard to the future political framework of the region generates skepticism and nationalism vis-à-vis the reform process, accompanied by instability and violence. One of the challenging goals in the region remains, therefore, the establishment of stable and democratic government.

Democracy and the rule of law are making slow and uneven progress in the Western Balkans. According to the Freedom House Index, all countries have progressed with regard to electoral process, civil society, freedom of the media, good governance, anti-corruption and the rule of law⁷. The 2006 Democracy Score Chart of Freedom House shows that on a scale of 1 to 7 where 1 represents the highest level of democratic progress and 7 the lowest, the new EU members have scores between 1.7 and 2.3. By contrast, the countries of the Balkan region exhibit scores between 3.6 (Croatia and Serbia) and 5.4 (Kosovo)⁸. There is still absence of stability and transparency in government; a resurgent appeal to extremism and ultra-nationalism in some countries; weak protection for the rights of ethnic and minority groups; political and economic pressures on the media; low government receptivity to citizen participation; and pervasive corruption at all levels of society and government. Civil society is

⁴ International Commission on the Balkans : “The Balkans in Europe’s Future”, Sofia, Report (2005), p. 6

⁵ CEC (2006). “*Enlargement Strategy and Main Challenges 2006 – 2007*”, Communication from the Commission to the European Parliament and the Council, Brussels, Commission of the European Communities, COM(2006) 649 final, p. 23.

⁶ International Commission on the Balkans, *op. cit.*, p. 7.

⁷ Calic, “The Western Balkans...” *op. cit.* p. 7 ff.

⁸ Figures read from graph in Freedom House, 2006.



still very underdeveloped and highly dependent on external donor funding. Although the countries of the region are moving in the right direction, they are still very far from reaching the position of the Central and East European countries that recently joined the European Union.

With some of the instruments set in place for closer association between the EU and the Western Balkan states, some political institutions have been created through the establishment of new agencies, services, procedures and policies all over the region. However, it is largely the case that willingness to accept change is confined to a small and highly professional staff directly in touch with Brussels while the other sectors of administration show resistance to change, lack of administrative capacity and corruption.

On the basis of World Bank Governance Indicators (WBGI), it has been found that institutional development in the non-member states in the Black Sea and the Balkan regions is comparatively low than for other parts of Europe. The Balkan countries especially, still suffering from disintegration and violent conflicts of the recent past and just beginning their nation building, stand in urgent need of institutional development.⁹

2.2. Low Economic Development

On the economic side, GDP growth has been extremely sluggish in most of the region. The GDP levels obtaining before the onset of war in the region have still not been overtaken for the large part. War, sanctions and quick privatization have resulted in the collapse of industry in most of the Western Balkan countries, with resulting unemployment and poverty. In Croatia and Albania, economic growth has led to significant increase in employment, but the situation in the other countries remains a cause of concern. Unemployment and underemployment continue to affect a significant part of the population, and living standards are below the poverty line for large sections of the people. The informal sector plays a major role in the economy of these countries, accounting for more than one third of total income. This leads to increasing poverty and inequality in accessing opportunities and services.

⁹ Hammermann, Felix; Schweickert Rainer. *EU Enlargement and Institutional Development: How Far Away Are the EU's Balkan and Black Sea Neighbors? Kiel Working Paper*, Kiel, Kiel Institute for World Economics, n° 1261 (2005), passim.

**Table¹⁰: GDP and Population for the Western Balkan countries**

	Population (million)	GDP per head, US\$ (2006)	GDP growth forecast for 2007 (percent)
Albania	3.2	5,201	6.0
Bosnia– Herzegovina	3.8	7,844	5.0
Croatia	4.4	13,185	4.7
FYROM	2.0	7,268	4.0
Montenegro	0.7	n.a	6.0
Serbia	10.0	n.a	6.0

The accompanying table shows that Croatia is the outstanding economic performer in the region with a GDP per capita clearly exceeding those of any other country in the region. While growth rates of GDP have been 4–6% for the region in the recent past, growth forecasts for the current year are largely higher than what has prevailed. The economies of Albania, Montenegro and Serbia are likely to grow by as much as 6%. Inflation is moderate whereas FDI, though still relatively low, is on a rising trend (EBRD data). While this presents some cause for optimism about economic prospects in the region, the Western Balkans are still poor and backward in comparison with the rest of Europe and even the Central and Eastern European (CEEC) countries¹¹.

Recent experience has shown that the prospect of EU membership increases foreign investment because risks and transaction costs are reduced. It has been found that there is a clear positive correlation between FDI and European integration prospects, and a negative correlation between FDI and political instability¹². The latter is understandably considered by foreign investors to be one of the key impediments to starting a business. Private business in the Western Balkans has to reckon with a number of impediments that include absence of a competition framework, lack of financial access, poor quality standards, high taxes, and poor access to markets. Countries in the region face both petty corruption and state dominance in many areas of public life.

¹⁰ Source: European Bank for Reconstruction and Development (EBRD; www.ebrd.com)

¹¹ The EU has granted to the region some Autonomous Trade Measures (ATM), which have, however, had only a minor effect on increasing exports from the region on account of low production standards, legislative barriers, and inadequate certification capacity and control.

¹² Calic, “The Western Balkans...”, *op. cit.*, p. 8.



Even though it is the case that the Western Balkan countries are not so well placed for accession as the CEEC countries were in the pre-accession phase, it is undeniable that conditions in the latter have improved considerably compared with a decade ago. The prospect of renewed war is minimal. All the concerned states have officially expressed their desire to come closer to Europe, promote the market economy, and work towards regional as well as towards peaceful settlement of disputes. Moreover, there are unmistakable signs of economic stabilization and recovery all over the region. There is progress as regards institutional reform and market liberalization. Strong grounds exist for believing that the prospect of near EU membership can provide a strong incentive to countries to undertake reforms in a decisive fashion.

2.3. Incentives Due to EU Membership Prospects

There is empirical evidence from the experience of the six countries that joined the EU between 1973 and 1986, and of the CEECs, that candidate countries are able to attract significantly more foreign direct investment (FDI) than non-candidates¹³. The prospect of membership and the process of preparing for accession in themselves, attract more outward and inward investment because foreign investors anticipate completion of reforms once clear political prospects effectively guarantee their implementation. More investment allows improved economic performance, raises country credit ratings and promotes further FDI inflows. Unclear political prospects, combined with notorious institutional weaknesses, reduce the likelihood of economic growth. If EU accession prospects are made unambiguous, they can become the most important means of continuing the reform process and attracting FDI. Accession countries are more attractive as a production location because they guarantee access to the European market and protect investors against sudden and arbitrary shifts in trade and market policies.

The European prospect constitutes a powerful incentive for reform and conflict resolution in the Western Balkan region. Experience over the last few years underlines the fact that it has served as a stimulus towards promotion and enhancement of ongoing reforms; as an enabling structure for conflict resolution; and as a framework for better regional cooperation. In the backdrop of European integration prospects, all countries in the region have invested much effort in the reform process.

2.4. Shifts in Foreign Policy Priorities and Shrinking Aid

Such progress, however, runs the serious risk of being thwarted in light of new security concerns on the part of the international community and increasing pressure upon scarce resources. NATO has reduced its peacekeeping presence in the Balkans, foreign assistance has declined, and political attention has moved to blazing spots in the Islamic world. Financial assistance on the part of the international donor community has been on the decline over the years.

¹³ *Ibid.*, p. 10.



Both the member states of the EU as well as the European Commission are visible as representing the single largest donor in Southeast Europe, providing humanitarian aid and assistance for economic reconstruction. From 2007 onwards, the European Commission's financial assistance will be provided through the Instrument of Pre-Accession, replacing the Community Assistance for Reconstruction, Democratization and Stabilization (CARDS)¹⁴. The Instrument of Pre-Accession (IPA) has been created with the objective of preparing candidate countries better for the implementation of structural and rural development funds after accession. Nevertheless, it has not been made explicit how much the Western Balkans would be able to benefit from the various facilities of assistance. Although new members of the EU and candidates can expect higher financial appropriations under the (IPA), the Balkans stand the prospect of receiving comparatively less aid.

During the last decade in the Balkans, the EU has been involved in through crisis management, reconstruction, capacity-building, assistance in reforms and the membership perspective. These efforts have resulted in greater stability in the region and the consolidation of state structures¹⁵. The EU is acknowledged as a security provider in the region. Not only do EU member states supply the bulk of the peacekeeping troops in the Balkans but the EU has also engaged in security operations of its own¹⁶.

As is clear from a glimpse of the EU's unique position, the institution can harness support for a democratic and stable future through the goal of EU approximation and at the same time provide financial support towards this end. Nonetheless, it is quite apparent that there is a declining trend as regards donor expenditure (both grants and loans) in the Balkan countries¹⁷. A sharp reduction has been seen in grant assistance to the Balkan states apart from Croatia, although these states received exceptional support from the donor community in post-conflict reconstruction and recovery. There is additionally a shift to loans as the major source of assistance (from grants).

2.5. The Debate on Enlargement

The negative results in the 2005 referenda in France and the Netherlands on the EU constitution have been interpreted in some quarters—notably, among some European Commission officials and leaders of older EU member states—as an expression of lack of confidence among EU citizens in further enlargement of the EU. The term “enlargement fatigue” has since come into vogue. Even though critics of the constitution did not explicitly

¹⁴ Since 1991, the Union has provided more than EUR 6 billion in assistance to the Western Balkans through its various programs (not including bilateral aid from individual Member States) (Calic, “The Western Balkans...”, *op. cit.*). In the run up to the Thessaloniki EU summit in June 2003, the CARDS program was bolstered by an additional EUR 200 million. The CARDS program has been by far the most important source of financial and technical support for reconstruction and reform in the region.

¹⁵ Montanaro-Jankovski, Lucia (2007): “The Interconnection between the European Security and Defence Policy and the Balkans”, *Southeast European and Black Sea Studies*, vol. 7, n° 1 (March 2007), p. 155.

¹⁶ The EU Police Mission in Bosnia and Herzegovina (EUPM) was launched in January 2003, after the UN's International Police Task Force (IPTF) mission ended. The launching of Operation Concordia in FYROM in April 2003, the first ever EU military mission, and the launch of EUFOR Althea, the EU Force in Bosnia–Herzegovina in December 2004 as a UN Chapter VII mission, marked the beginning of a new phase in the development of the Union's crisis-response capability, aiming at an integrated civil-military peace-building approach that would support the long-term prospects of EU integration.

¹⁷ Between 2002 and 2005 international aid fell by one third (from EUR 149 to EUR 106 per capita).



oppose EU enlargement¹⁸, the no-vote has sparked debate on whether future enlargements (Turkey and the Western Balkans) would be acceptable. Much of the public opposition towards enlargement is caused by fears of immigration and low-cost competition from the new member states¹⁹. Public opinion in the older EU states often views further enlargement as being largely for the benefit of the aspirant countries. New interests and shifts of power within the enlarged Union may deepen existing skepticism about inclusion of any future new members.

The ideas of “junior partnership status” and “privileged partnership” have been put forward as an alternative to full membership for Turkey and the Western Balkan countries. The view that the EU should have a “pause” in enlargement until it has reached an agreement on institutional reform has now gained widespread support in the EU member states²⁰. There have been statements that the Union has no further absorption capacity or at least should enhance this capacity before the further inclusion of members²¹. At a EU–Balkans meeting in Salzburg in March 2006, the EU reiterated its usual pledge to keep its doors open but this time added a reference to the Union’s “absorption capacity” as a potential barrier to future accessions.

Although enlargement is by no means universally unpopular with EU citizens, support varies enormously from country to country, from 29% in Austria to 74% in Greece. With the notable exception of Greece, the ten member states where support for the process is highest are all newcomers. Conversely, the ten least enthusiastic ones are all “old” member states. Among other potential future members, only Albania’s accession is opposed by a majority of EU citizens (a clear majority in 12 member states). By contrast, the possible accession of FYROM, Bosnia–Herzegovina, Serbia and Montenegro only faces opposition in four or five EU member states, while Croatia’s accession is accepted by a majority in all but one country (Luxembourg)²².

On the other hand, there are clear signs of Euro-skepticism in the Western Balkans. A large section of the population has not forgotten how ineffectual the EU was in ending the wars of the 1990s and how it neglected to pay sufficient attention to the emerging crisis in Yugoslavia. Some people see the accession process as a continuation of the “statist” tendencies of state socialism. Besides, EU requirements are frequently invoked as a means of legitimizing difficult socio-economic reforms. The EU’s instruments, in particular those of the Stabilization and Association Process, appear bureaucratic and tedious, and do not seem to be in touch with people’s daily lives. Accession is still a distant prospect and many people believe that the SAP is being used arbitrarily and on the basis of double standards.

However, attitudes to Europe in the region are overwhelmingly positive: opinion polls show majorities with pro-European attitudes in Albania (72%), Kosovo (71%), Bosnia–Herzegovina (62%), FYROM (56%), Montenegro (54%), and Serbia (49%). Only small

¹⁸ Indeed, an opinion poll suggests that an almost absolute majority (49%) backs “further enlargement in future years” (Durrand; Missiroli, *op. cit.*)

¹⁹ Barysch, Katinka (2006): *Is Enlargement Doomed?*, Public Policy Research, Centre for European Reform, p. 85.

²⁰ UK House of Lords, 2006a.

²¹ In 2006 Commission President Jose Manuel Barroso stated: “There is no formal decision but...I think it would be unwise to bring in other member states apart from Bulgaria and Romania, which will be joining us soon, before we have sorted out the institutional question” (UK House of Lords, 2006b).

²² Durrand, Guillaume; Missiroli, Antonio (2006): *Absorption Capacity: Old Wine in New Bottles?*, Brussels, European Policy Centre Policy Brief.



minorities express explicit anti-EU attitudes: in Albania (2%), Kosovo (5%), Bosnia–Herzegovina (8%), FYROM (4%), Montenegro (5%), and Serbia (12%)²³.

3. Progress and Prospects of Western Balkan Membership in the EU

In terms of closer association between the EU and the Western Balkan states, significant progress has already been made in the area of regional cooperation. An Energy Community has been formed and a regional free trade agreement, the Central European Free Trade Agreement (CEFTA), was signed in December 2006. Through the Stability Pact for Southeast Europe, created in the aftermath of the Kosovo war in June 1999, participating states have undertaken a number of credible initiatives, including the liberalization of their trade regimes. Substantial progress has been made in settling refugee issues, fighting organized crime and corruption, improving the investment climate, creating a common energy market and developing regional infrastructure strategies. An important lesson from the implementation of the Stability Pact is that those initiatives were particularly successful in which the EU took a leading role and where the accession-related dimension of regional cooperation is clearly visible (for instance, in the areas of trade harmonization and a common energy market). The Stability Pact is about to be transferred fully into Western Balkan hands. The European Union is preparing to take over key responsibilities in Bosnia–Herzegovina as the Office of the High Representative is phased out and replaced by the EU Special Representative, who already oversees the military and police missions on the ground.

In its deliberations, the European Council has recognized that enlargement has been a success story for the European Union and Europe as a whole. “It has helped to overcome the division of Europe and contributed to peace and stability throughout the continent. It has inspired reforms and has consolidated common principles of liberty, democracy, respect for human rights and fundamental freedoms and the rule of law as well as the market economy. The wider internal market and economic cooperation have increased prosperity and competitiveness, enabling the enlarged Union to respond better to the challenges of globalization. Enlargement has also enhanced the EU's weight in the world and turned it a stronger international partner”²⁴. In this context, the European Council has reaffirmed that the future of the Western Balkans lies in the European Union. However, each country's progress towards the European Union depends on its individual efforts to comply with the Copenhagen criteria and the conditionality of the Stabilization and Association Process²⁵. A country's satisfactory track-record in implementing its obligations under a Stabilization and Association Agreement (SAA), including trade related provisions, is an essential element for the EU to consider any membership application. On its own part, the European Council has resolved to break the impasse over the Constitutional Treaty resulting from the failed referenda²⁶.

²³ Calic, “The Western Balkans...”, *op. cit.*, p. 11.

²⁴ CEU, 2007a: 2.

²⁵ SAP conditionality emerges from the Copenhagen criteria, set out in 1993, concerning democratic government and market economics. In addition, the EU asks for compliance with the conditions set out in the Regional Approach of 1997. These conditions remain a fundamental element of the SAP and are integrated into the Stabilization and Association Agreements. Furthermore, potential members must fully implement the *Acquis Communautaire* (the entire body of EU law) into national legislation, and adopt the goals of the political, economic, and monetary union. The EU's conditionality is more strictly applied today, with greater stress on implementation.

²⁶ CEU, 2007b: 1–2.



EU leaders have very recently (October 2007) reached an agreement at the Lisbon European Council on a new EU treaty. The Reform Treaty will replace the EU Constitutional Treaty, which was rejected in referenda in France and the Netherlands. Ireland will hold a referendum on the new treaty next year. The new treaty will reshape the European Union's institutions and, it is hoped, streamline decision-making. It is believed that with this new treaty, Europe has overcome an impasse that lasted for several years. How significantly this agreement among EU leaders on constitutional change will enhance the membership prospects of the Western Balkan countries, however, remains to be seen. The EU has supported and praised reform in individual Balkan states, but it has neither set nor endorsed target dates of accession for any of the countries. There is an urgent need to settle a number of unresolved issues with individual countries and keep up the momentum of ongoing reforms. The potential benefit of an enhanced EU role in the Western Balkan region as a whole remains quite high.

Albania

Albania lags most in combating organized crime and corruption, democratic institutions fall short particularly regarding minorities and the country is in need of judiciary and administrative reform while the economy remains informal to a great extent. The European Commission has endorsed Albania's contribution to stability in the region²⁷. EU relations with Albania advanced with the signature in 2006 of the Stabilization and Association Agreement. However, the Commission states that while the country has made some progress on democracy and the rule of law, more work is needed on other priorities that form a part of partnership with the EU.

Bosnia-Herzegovina

Bosnia-Herzegovina is further behind and most of the progress achieved has relied on foreign aid and international pressure. The country needs institutional strengthening to ensure the viability of the state, more efficient use of aid resources and a framework to boost private investment. The European Commission acknowledges that completion of the negotiations for a Stabilization and Association Agreement and its implementation will reinforce the country's European perspective²⁸. Nevertheless, the Commission believes that full co-operation with International Criminal Tribunal for the former Yugoslavia (ICTY) is a key part of the conditionality under which the country can draw closer to the EU. It warns that it would not conclude SAA talks unless the country made progress on reforming its police and co-operated with the UN War Crimes Tribunal.

Croatia

In 2006, Croatia continued to make progress in terms of the political, economic and *acquis* criteria and implementation of its Stabilization and Association Agreement. Croatia has set itself a target date for accession of 2009 (when the next round of elections will be held to the European Parliament and a new European Commission will come into office). The country is a special case not only in terms of its preparedness for EU membership but also because its accession encounters much less public opposition than that of other candidate countries. Statements that the EU should put a hold on further enlargements until it has reached a new institutional settlement, however, make Croatia's accession dependent upon the EU's ability to reform its institutions.

²⁷ CEC, 2006, p. 12.

²⁸ *Ibid.*, p. 12.



The Former Yugoslav Republic of Macedonia

In FYROM progress to sustain a unitary multiethnic state has been substantial despite lags in implementing democratic rule of law. However the overall reform process is still in its infancy particularly regarding public administration and improving the business climate. While FYROM has been accepted as a candidate for membership and the EU is of the opinion that the country has continued to make progress towards fulfilling the criteria for accession, the European Commission underlines that the progress slowed down in 2006²⁹. It acknowledges that the government still faces particular challenges in implementing reforms of the police and judiciary, fighting against corruption, and fully implementing on of the Stabilization and Association Agreement.

Montenegro

Following independence in 2006, Montenegro has begun negotiations on a separate Stabilization and Association Agreement (SAA), under new directives that were agreed upon with the EU. Although in the eyes of the European Commission the country has broadly addressed the key priorities of partnership, significant results still remain to be produced in a large number of areas³⁰.

Serbia

In Serbia, constant internal political disputes keep reform in limbo despite progress towards economic stability. The EU has said that it remains fully committed to Serbia's European perspective³¹. The European Council endorses the readiness of the Commission to resume negotiations on a Stabilization and Association Agreement with a new government in Belgrade provided it shows commitment and cooperates fully with the ICTY. The EU has expressed its willingness to consider concrete measures that would help Serbia to integrate into the family of European nations.

Serbia/Kosovo

In Kosovo precarious security conditions have hampered the return of displaced persons and the 2004 violence has reversed any small progress to date. Furthermore, the status of the province of Kosovo is still unresolved. The EU has expressed its willingness to play a significant role in the implementation of the status settlement³². It has decided to intensify the preparation for a future EU and international presence in Kosovo in coordination with other international actors.

4. New Challenges on the Horizon

4.1. The Current Situation

The legacy of the past that appears in the form of weak institutional frameworks at both political and economic levels has been complemented by new challenges that have mainly

²⁹ *Ibid.*, 11–12.

³⁰ *Ibid.*, 12–13.

³¹ CEU, 2007c: 13.

³² *Ibid.*



arisen from the transition process. Such a key new challenge that has particular significance for the EU is that of organized crime and corruption that has been overtaking in importance the issue of potentially renewed war conflicts as the latter, seem to have been contained at this stage. The threat that the Balkans could become for the EU something similar to what some Latin American countries are for the USA has gained ground. The fact that organized crime has been linked to the instigation of political and ethnic instability is an added important factor.

The rising involvement of Balkan organized crime with the European market for human trafficking, counterfeiting and contraband as well as heroin and more recently cocaine trade have been noted by various international crime monitoring organizations. The Schengen Agreement and easier cross-border operations have facilitated the presence of Balkan crime groups in most European Union countries and their links to European organized crime. The fear that some of these groups might be or have been establishing links with terrorist organizations has also been voiced. This has raised additional concern given the high incidence of arms smuggling, the fact that some Balkan territories constitute a transit route for illegal immigrants and the presence of Islamic populations in the region. Weak and corrupt institutions in the region are finding it difficult to enforce laws and deal with all these issues. The large underground economic activity that ranges between 30 to 50% of GDP combined with poverty form a ripe environment for illegal activities.

Hence one can argue that the Balkans have actually come to constitute a new type of security threat for the European Union. The European Union's emphasis on institution building and capacity to enforce legislation show a willingness to secure that reforms are not token but real. This is undoubtedly so for the issue of crime and corruption too. Whichever way, it seems ironic that the region seems to be blackmailing its way to the EU first through ethnic wars and now through organized crime. It is a case of that which has crippled you also offering the wheelchair.

In light of the above, Western Balkan accession presents the EU with a set of challenges that it has not previously confronted³³. The countries that joined the EU in 2004 were relatively homogenous and more stable nation-states that had a keen desire to "rejoin Europe". In the Western Balkans, the EU is dealing with fractious and more fragile countries. To help these countries along the path to greater stability and prosperity the EU must go beyond simply setting conditions and waiting for governments to fulfill them in their own time. The Select Committee of the House of Lords further states: "The EU must also devote real resources to the accession process, both in terms of expertise and money. Since the accession of these countries will take time, the EU needs to find ways of maintaining momentum for positive change. It should gradually integrate the candidates into various EU policy areas, and should include them in a customs union."

Each of the countries of the Western Balkans presents its own unique challenges that need to be overcome before the path to full membership is clear. While a proactive and rewarding approach should be followed by the EU for all these countries, it should be borne in mind that no two countries are alike in terms of history, tradition, institutions and culture. Individual differences need to be respected and taken into account in order to make the path of transition to accession and integration as smooth as possible.

³³ UK House of Lords, 2006b.



The European Commission is of the opinion that in the case of Croatia, the main challenges in 2007 will be to build on the progress made and to accelerate the pace of reforms, notably in the key areas of judicial and public administration reform, the fight against corruption and economic reform³⁴. Since Croatia is making good progress with its accession preparations, the EU should not discourage the country by making its eventual accession date dependent on an agreement on institutional reform among the existing EU member states³⁵. Even if EU member states have not agreed on institutional changes by the time Croatia is ready, the minimum changes required for Croatian membership would need to be included in Croatia's accession treaty. If Croatia is not able to join the Union when it has completed its accession talks, then the entire credibility of the EU accession progress will be at stake. Delays in Croatian accession would send a clear negative signal to the Western Balkans.

For FYROM, it is important that reform efforts be sustained in the period ahead on the basis of co-operation and political consensus. Overall, priority should be given to advancing the pace of reforms in key areas, if progress is to be made towards the goal of moving ahead in the accession process³⁶. With EU support, Albania is tackling the challenges of political, judicial and economic reform, as well as the fight against corruption and organized crime. These themes will remain priorities in the period ahead. In the case of Bosnia–Herzegovina, constitutional evolution is essential to build a more functional, sustainable and democratic state. The EU will need to address the question of its own future representation in the country following the withdrawal of the OHR³⁷.

By engaging with the EU, Montenegro has the opportunity to meet the challenges of state-building within the stable and secure setting of the pre-accession process. It will be important to sustain the pace of reforms and continue co-operation with ICTY, so that negotiations on an SAA can be concluded in the coming months. Montenegro has much to do to strengthen its institutions sufficiently to move forward. Priority needs to be given to judicial reform and to the fight against organized crime and corruption. Montenegro needs to upgrade its administrative capacity in view of SAA implementation³⁸.

A number of commentators have expressed the view that the Union should stop talking about “enlargement fatigue” and restate its commitment to Balkan EU membership³⁹. Balkan governments should stop seeing themselves as passive takers and push ahead with the required reforms on the sole ground of the benefits they would bring to the countries themselves⁴⁰. The present EU Enlargement Commissioner himself is of the view that the EU’s 2004 enlargement was a “success story” but action is needed to address public concerns about the process and ensure the Union has the institutional capacity to function effectively as it grows⁴¹. The Nice Treaty had provided institutional rules for up to 27 members, including

³⁴ CEC, 2006, p. 10.

³⁵ UK House of Lords, 2006b.

³⁶ CEC, 2006, p. 12.

³⁷ *Ibid.*, p. 12.

³⁸ *Ibid.*, p. 12-13.

³⁹ See e.g. Avery; Batt, *op. cit.*; Brown, Adèle; Attenborough, Michael (2007): “EU Enlargement: the Western Balkans”, *Research Paper 07/27*, London, International Affairs and Defence Section, House of Commons Library; Calic, “The Western Balkans...”, *op. cit.*; Chandler, D. (2003): “The European Union and Governance in the Balkans: An Unequal Partnership”, *European Balkan Observer*, vol. I, n° 2, pp. 5–9; European Stability Initiative (2002); Judah, T. (2006). “The EU Must Keep its Promise to the Western Balkans”, *Essays*, Centre for European Reform, London; PER (2005).

⁴⁰ EPC, 2007: 1 ff.

⁴¹ EPC, 2006.



Bulgaria and Romania, but a new institutional arrangement would be needed before the next phase of enlargement could begin. The public's views should be channeled into decision-making through democratically-elected bodies. Europe should not look at countries in the western Balkans as part of its backyard but as its future home territory⁴². If the Union delays integration of the Western Balkans into the EU, then not only do the possibilities of increased trans-border organized crime, migration flows and inter-ethnic tensions loom large, but the EU might one day even have to take responsibility for running these states as protectorates in the event of their collapse⁴³.

The issue of prestige and geopolitical clout for the EU is an important consideration particularly in proving its security capabilities in the Balkans over the US presence in the region. As usual this has been more visible in the case of French external policy. Finally the small size in terms of population and the economic openness of the region to international and especially EU trade are positive factors as membership will not entail unreasonable added costs for the Union. However, limited financial aid due to enlargement is likely and could cause delays in the integration process particularly regarding the upgrading of infrastructure.

The success of EU's policy will also depend on how high one places the bar. Too high and enthusiasm is lost, too low and genuine reform is reduced to tokenism. The SAP stops short of promising EU membership but at the same time it puts forward a pragmatic approach based on lists of achievable targets that are to be approached gradually and in sequence. The question is whether this is going to prove a race against time or whether sustainable progress will fulfill the targets before persisting constraints derail the effort leading to social apathy or even conflict. Currently the answer seems to be on the side of optimism.

4.2. Can It Really Happen?

It is clear that acceptance of any future enlargement will depend on the public's perceptions of how the EU works and on people's ability to identify themselves with the whole European project (issues of social legitimacy). This implies that no definition of the Union's absorption capacity—no matter how thorough and objective it aims to be—can or will be a decisive factor⁴⁴. It is necessary to transform the conditionality approach of the EU into a "positive conditionality", which would require the EU to offer a clear perspective regarding membership to the region and offer a partnership with its existing members⁴⁵. The view has also been expressed that if the Balkans cannot be integrated in accordance with the current practices, then these practices should change or new ones should be introduced to permit Europeanization at a post-accession stage⁴⁶.

It all boils down to the issue of objective reality as opposed to simple aspirations for membership. Can the Western Balkans really achieve the goal of integration? The countries of the region are still facing too many challenges and are clearly at an earlier stage requiring a preparation period to accumulate more domestic resources and build institutions and market

⁴² *Ibid.*

⁴³ UK House of Lords, 2006b.

⁴⁴ Durrand; Missiroli, *op. cit.*

⁴⁵ Anastasakis, Othon; Bechev, Dimitar: "EU Conditionality in South-East Europe: Bringing Commitment to the Process", *European Balkan Observer*, vol. 1, n° 2, (2003) 2 ff.

⁴⁶ Demetropoulou, Leeda: "Europe and the Balkans: Membership Aspiration, EU Involvement and Europeanization Capacity in South Eastern Europe", *Southeast European Politics*, vol. III, (November 2002) n° 2-3, pp. 103.



culture. The issue of reconstruction for Serbia and Montenegro, the diversions from reform due to recent ethnic problems in FYR-Macedonia, the reconstruction issues and weak institutional and economic build-up in Bosnia- Herzegovina and the lagging institutions and large unofficial economy in Albania are unlikely to allow for membership considerations before the next decade. However the experiences of the more advanced countries in the region point towards the conclusion that membership for the rest of the countries is more likely to be a matter of time.

For the EU itself, the history of European integration shows that widening and deepening of membership and institutions do not fundamentally stand in contradiction to each other. The link between reforming the institutions and preparing the Union to welcome new members is acknowledged even by those who see absorption capacity as a mere excuse for delaying or rejecting enlargement⁴⁷. However, the Union has not till date lived up to this challenge in a fitting manner. A “capability–expectations” gap has been identified in the working of the European Union, where the expectations with regard to the Union’s roles and functions are belied on account of lack of the necessary capabilities to meet these expectations. This argument has been taken further to assert that the EU fundamentally lacks the decision-making procedures that are capable of overcoming dissent, a factor that could account for the ambiguous nature of its foreign policy⁴⁸. Institutional reform of the EU itself should therefore be a concern almost as vital as reform in candidate or potentially candidate countries that is supposed to gear them towards accession. Successful enlargement of the EU cannot depend on only one side. It is necessarily based on a mutually sustaining and enriching partnership in which the necessary political will must translate into credible action on both sides.

4.3. Could Things Change at EU Level?

The arguments put forward above would probably hold true before the emergence of the strong NO vote to the EU constitution in France and the Netherlands coupled with the indication that a significant share of the NO vote had to do with opposition to the fast pace of recent EU enlargement. Enlargement has created a conflict between the complexity of the process and the disproportionately loose political framework at EU level to see this task through in an efficient manner. In other words, there is growing concern whether EU enlargement can proceed given the insufficient level of integration amongst existing members. Integration in the latter sense places also emphasis on its political, social and cultural aspects and not simply the economic.

The second related issue is the pre-existing democratic deficit in the decision making process in Brussels that has been the other major source of opposition to the EU constitution. The way this issue relates to the enlargement process stems from the implication that the latter would impose additional difficulties for the creation of a European society of citizens coupled with a space for a European public sector and finally a common European political culture that all together might be taken to constitute operational pre-requisites for the convergence of the complex socio-economic and political processes that are in store. Clearly the above considerations could result in a stricter attitude on behalf of the EU regarding the fulfillment of eligibility criteria for EU membership for the Western Balkans and also for Turkey. This

⁴⁷ Durrand; Missiroli, *op. cit.*

⁴⁸ Toje, Asle (2005): “Europe’s Consensus–Expectations Gap”, *Working Paper*, Project No 513416, European Commission, Sixth Framework Programme (2002–2006), *passim*.



highlights once again the growing importance of institutional factors including issues of democratic political culture and readiness to not simply transpose but also enforce such principles at national level.

The final implications for the Western Balkans will greatly depend on decisions taken at EU level regarding the future direction of the Union. These will depend on how the different approaches to European integration between member states will play out. The question is whether the globalization process, with its requirements for fast modernization and consequences for income redistribution, has rendered the overriding European goal for economic and monetary union insufficient by raising the risks for the EU being turned simply into a common market that could face disintegration risks from the contradictory forces of globalization in the future. If that is the case, then the broader aspects of political and social integration and the need to exert stronger global influence in the cultural and external policy arenas are likely to gain in significance.

Regarding potential new entrants a policy shift at EU level towards broader integration would certainly imply greater difficulties for the Balkans to be accepted as members but should that be achieved then membership would be more meaningful and EU support for economic and political integration more readily forthcoming. In the other case where the EU is seen more of a single market then membership could be easier to accomplish but the post-membership reality could prove harsher as the countries will have limited support from the Union. It is not the purpose here to speculate on the potential outcomes regarding the form that Euro-Federalism might finally take or the acceptance of a multi-speed EU that could place member states under different categories according to their level of economic and political evolution.

Finally, as it was earlier stressed, the role of public opinion in EU member countries should not be underestimated even though the EU project might have often, in the past, moved forward despite it. The referendums on 2005 relating to the EU constitution have shown that public opinion is skeptical of EU broader initiatives and that EU leaders will likely be more cautious when it comes to enlargement issues. As aforementioned, this applies particularly to the Western Balkans and Turkey.

Conclusion

At first appearance, arguments of a negative nature seem to present themselves for inclusion of the Western Balkans in the EU⁴⁹. These are largely based on a rooted image of these countries that regards them as beset by poverty, crime and conflict. However, although corruption is endemic across the region and 70 per cent of the drugs and illicit goods smuggled into Europe are trafficked through the Western Balkans, the international community itself is partly to blame for this situation⁵⁰. By giving priority to the holding of elections rather than the restoration of the rule of law after the Balkan wars, it created fertile ground for corruption and organized crime to flourish. The opponents of Balkan membership forget quite easily that the achievement of stability and prosperity in the Balkan countries that EU membership would bring, would in turn make for security, stability and prosperity in Europe as a whole, something in which the EU has a fundamental stake.

⁴⁹ Avery; Batt, *op. cit.*

⁵⁰ UK House of Lords, 2006b.



The argument for a status below full membership for countries such as those of the Western Balkans takes it for granted that the influence of external of political factors in internal political reform is very limited. It assumes that any positive trends already in place will continue if the governments of the Western Balkan countries keep on taking the right decisions. However, the history of European integration over the last 60 years has conclusively proven the decisive and continuing influence of external factors. Lucid political prospects and transfers of resources have helped in the impressive modernization of accession countries. It must not be forgotten that the prospect of future EU membership has already had a profound and beneficial transformative impact in the Western Balkan countries.

The prospect of EU membership has been and will continue to be the most effective means for ensuring stability and good-neighborly relations in the Western Balkans. It has worked as a mechanism to initiate and sustain reforms, and creates a strong framework for conflict resolution and regional cooperation. The prospect of enlargement is the most important foreign policy instrument by which the EU has promoted and spread internal and external security, democracy, reforms, economic development and prosperity in the former communist states of Southern, Central and Eastern Europe. As a result, it has helped to guarantee and consolidate the process of transition, and ensure that state-collapse and ethnic conflicts as in the case of former Yugoslavia are avoided.

If the EU is to continue play a crucial and instrumental role in shaping the ultimate post-cold war European order, then it must hold out a clear prospect of membership to the last region in Europe that remains to be embraced under a common banner of stability and prosperity. Through a dynamic and innovative policy of Balkan enlargement, the EU should fully exploit its anchoring capacity and soft magnetic power of attraction to help the Balkan states come back to Europe. The benefits of such a policy would be clearly visible for the EU itself as it would be able to increase its global actorness and expand its regional and international interests.



UNDERSTANDING THE CHALLENGE OF IDEOLOGICAL EXTREMISM

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Abstract:

Terrorism remains the main threat to the West not only from Muslim countries, but from Western homegrown Muslim communities too, turning Islamist Terrorism into an increasingly global phenomenon. Lethal combination of an ideological hub embodied in Al-Qaeda, spreading through new communication technologies like internet, a sophisticated and far-reaching network of media and phenomena, such as immigration in combination with regional nodes of terrorism, increase the offensive potential of terrorist groups. New regional centers in Africa, Asia or Western countries where homegrown communities have been influenced by Islamism, and new potential weapons add increased power projection to these movements. Of capital importance is the fact that most Muslim countries either lack the means to counter this threat or prefer to appease such groups and their breeding educational and training centers. This article assesses the mitigation strategies to counter terrorism, changing focus from target protection, to a strategic approach, combining hard and soft measures, increasing intelligence capabilities and, in particular, mitigating socioeconomic grievances that fuel appeal for extremist ideologies going beyond tactical approaches that only focus on military measures.

Keywords: Terrorism; Islamism; mitigation strategies; extremist ideologies.

Resumen:

El terrorismo sigue siendo la principal amenaza para Occidente, en proveniencia no sólo de los países musulmanes, sino también de las comunidades musulmanas de origen inmigrante, lo cual convierte al Terrorismo Islámico en un fenómeno global. La combinación letal entre un eje ideológico encarnado en Al-Qaeda, extendiéndose a través de las innovaciones tecnológicas de la comunicación como internet, una red de medios de comunicación sofisticada y de largo alcance y fenómenos como la inmigración en combinación con núcleos regionales de terrorismo, aumenta el potencial ofensivo de los grupos terroristas. Nuevos centros regionales en África, Asia y países occidentales donde sus comunidades musulmanas están bajo la influencia del islamismo y el potencial de nuevos armamentos añadiendo mayor proyección a los grupos terroristas son elementos que auguran un buen futuro al desarrollo de esta amenaza. El hecho de que la mayoría de los países musulmanes bien carezcan de los medios para oponerse a su amenaza o prefieran apaciguar a tales grupos y sus centros educativos y de entrenamiento revierte una importancia capital. Este artículo evalúa las estrategias de mitigación para oponerse al terrorismo, cambiando el énfasis desde la protección de objetivos a un enfoque estratégico, combinando medidas duras y suaves, mejorando los medios de inteligencia pero sobre todo mitigando los agravios socioeconómicos que alimentan la atracción hacia las ideologías extremistas más allá de las medidas meramente tácticas que sólo implican acciones militares.

Palabras clave: Terrorismo; Islamismo; estrategias de mitigación; ideologías extremistas.

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Introduction

In the spectrum of national security threats, terrorism and ideological extremism will pose the most dangerous threat in the foreseeable future. The world will witness politically motivated violence from politico-religious, ethno-nationalist, left and right wing, and single-issue groups. Politico-religious and ethno-nationalist groups will conduct about 80% of the attacks.

Driven by militant interpretation of Islam, the global jihadist ideology will present the most significant and enduring threat both to Muslim regimes and to Western societies. Al Qaeda, the spearhead of the Global Jihad Movement, will guide the ideological and operational agenda. With increased pace of globalization, Al Qaeda's philosophy and methodology will continue to spread. Its philosophy urging Muslims to fight their local governments [local jihad], the US, and its Allies [global jihad] is gaining acceptance. Its methodology of suicide to conduct mass fatality and casualty attacks is gathering momentum.

With Al Qaeda transforming from an operational to an ideological organization, the threat will de-centralize. Al Qaeda will remain a global organization providing ideology, strategy and structure, but the groups and individuals co-opted by Al Qaeda's philosophy and methodology will conduct the frontline fighting. By penetrating conflict zones, Al Qaeda will nurture groups and produce cells worldwide. The traditional lands of conflict - Palestine, Kashmir, Chechnya, and Mindanao - will be vital but Afghanistan, Iraq and Somalia in the heartlands of Asia, Middle East and Africa will produce the narrative, operatives, technologies and organizations threatening the world.

Iraq and Afghanistan will be the defining conflicts shaping the future global threat landscape. Iraq and Afghanistan, a lightning rod and a magnet for Muslim youth, will be the main crucibles of jihad. Unless Pakistan dismantles the robust jihadist infrastructure in its tribal land, the violence in Afghanistan is likely to surpass the violence in Iraq. The US invasion of Iraq increased the global threat of terrorism many folds. Worldwide Muslim suffering and resentment has translated into support and sympathy for jihadism and anger and hatred against the US. If the US-led coalition forces withdraw from Iraq in the coming year, they will be forced to return and stabilize Iraq within the next five years.

With youth spending more time on the Internet, the Global Jihad Movement will increasingly reach out to Muslims both territorial and migrant/diaspora. Propaganda on the net has self-radicalized Muslims catalyzing homegrown Jihadism, a phenomenon threatening the fabric of multicultural societies.

1. Background

After the end of the Cold War, the contours of threat changed. The threat of international conflict receded and the threat of internal conflicts advanced. Except Iran and to a lesser extent North Korea, no other government poses a threat to international security. At a global level, terrorism has emerged as the tier one national security threat. Despite sustained investment by the international community to reduce and manage the threat, terrorism remains the predominant challenge to the West. Both ideological extremism and its vicious by-product terrorism are becoming more wide spread. Extant and emerging ethno-nationalist and politico-religious groups especially of the Islamist variety are dominating the global threat landscape.



The single biggest threat stems from the Global Jihad Movement. Consisting of Al Qaeda, its operationally associated groups in Asia, Africa, Middle East, and the Caucuses, and the self radicalized homegrown cells, the Movement is resilient and the threat is enduring. In the coming years, the Global Jihad Movement will continue to challenge mainstream Islam and Muslims and secular states. Sustained propaganda is radicalizing both territorial and émigré Muslim communities. The territorial communities live in the Middle East, Sub Saharan Africa, Asia, the Balkans and in the Caucuses. The émigré -diaspora and migrant communities - live in North America, Europe, Australia, and New Zealand. More than the territorial Muslims, the émigré Muslims are susceptible to radicalization.

The nature of the threat has changed today. Although threat groups are puritanical in their ideologies, they are harnessing the forces of globalization. With globalization of communication, both terrorist and extremist groups are able to reach and communicate effectively to their potential support bases. What is different about the threat today than during the Cold War is the successful terrorist ideological penetration of their communities. As a result, terrorist groups enjoy support both from their territorial and migrant/diaspora communities to different degrees. At the extreme end is the terrorist control of territory and influence on the people: Hamas in Gaza, Fatah in the West Bank, Hezbollah in Lebanon, Tareek-e-Taliban in Tribal Pakistan, Afghan Taliban in Southeastern Afghanistan, Tamil Tigers in northeastern Sri Lanka, and the Kurdish Workers Party in northeastern Turkey. As a consequence, governments and societies are today suffering not only from traditional type of group terrorism but also from homegrown terrorism.

To reduce the threat, governments focused on the threat groups not the vulnerable communities providing the recruits and finance. Governments failed to take into account the need both to counter the terrorism of threat groups and counter the extremism in the communities. To win the fight, governments and their leaders will have to work closely with community organizations and their leaders. After al Qaeda's attacks on America's most iconic landmarks on September 11, 2001, the US-led coalition failed to take this calculus into account. As the threat has not been prudently managed, terrorism has emerged as the main threat to international security.

2. The Context

Today, the terrorist threat is from structured groups and self radicalized homegrown cells. About 90-95% of the threat groups originate in the global south of the Middle East, Asia and Africa. As such, the bulk of the attacks are staged in the global south largely against domestic targets.

As Western countries host large migrant and diaspora communities, terrorist and extremist groups have invested time and energy building state of the art support networks for recruiting, fund raising and procurement. Some of these networks have mutated to attack networks. The West suffers from spectacular attacks periodically from groups in the south and homegrown cells in the north.



Of the different terrorisms, the threat from the Global Jihad Movement, will present the most diverse and lethal threat. Focusing on both the far and the near enemy, the Global Jihad Movement has both a global and a local reach. The Global Jihad Movement will grow as the most formidable threat to international, regional and national security of states. While the Global Jihad Movement seeks to replace secular regimes in the Muslim World with Islamic states, the U.S. and their Allies will remain its principal target. For Al Qaeda, the US is “the head of the poisonous snake” protecting and shielding the “false Muslim rulers and the corrupt Muslim Regimes.” Attacking the US at home and abroad is central for Al Qaeda.

Due to decentralization of the threat, both the extremist ideology and terrorism will spread. Failure by the International Community either to operationally or ideologically neutralize the core, has created multiple operational centers in Asia, Africa and Middle East and ideological hubs in North America, Europe and in Australia.

3. Developments in the Next Five Years

(1) Decentralization of Threat: As the most hunted terrorist group, Al Qaeda will transform from an operational group to an ideological movement. Rather than conduct most of the attacks, Al Qaeda will remain in the background both providing the training and inspiring and instigating its associated groups influencing their targeting trajectory. Influenced by al Qaeda ideology and operational practice, the greater operational threat will stem from regional groups. The regional groups will conduct the bulk of the attacks, especially suicidal attacks. Al Qaeda’s subsidiary associated groups will emerge as the class of most operationally capable and active groups. Regional groups include Al Qaeda in Iraq (AQI), Al Qaeda in the Islamic Maghreb (AQIM), Al Qaeda in the Arabian Peninsula (AQAP), Tareek-e-Taliban Pakistan (TTP), Islamic Jihad Union (IJU), and Jemaah Islamiyah (JI). In place of Osama bin Laden’s Al Qaeda, with the transfer of ideology and practice, there will be many Al Qaedas.

(2) New Threat Configuration: Despite severe losses, Al Qaeda seeks centralized and decentralized control of the Global Jihad Movement. As the Zawahiri-Zarqawi exchange of letters demonstrated, Al Qaeda seeks to guide the Global Jihad Movement. Of its configuration of enemies, Al Qaeda has framed the US as the main enemy. With US Allied participation in Afghanistan and Iraqi campaign, Al Qaeda included Canada, Europe and Australia to its list of enemies. With the threat moving from center to the periphery, Europe will come under greater threat. The mutation of European support networks feeding Iraq into operational networks will lead to attacks on European soil. As Europe border’s the Middle East, the fall out from Iraq, will impact on European security. With the integration of threat groups from mainland and tribal Pakistan and Uighur groups (ETIM) from Xingjiang in Western China with Al Qaeda in tribal Pakistan, the threat to its immediate neighbors, India, Russia and China, will enhance.

(3) Dominance of Al Qaeda: As the proclaimed spearhead of the Global Jihad Movement, al Qaeda will continue to set the global agenda. After Abu Musab al Zarkawai was killed, Osama bin Laden’s Al Qaeda has replaced the leadership of Al Qaeda in Iraq with Abu Ayyub al Masri, a former EIJ and Al Qaeda member. Although the stated mandate of Al Qaeda in Iraq is to oust US led coalition forces, Al Qaeda in Iraq is fully controlled by Al Qaeda. Having created a forward operating base 1500 Km closer to the West, Al Qaeda will work with Abu Ayyub al Masri to develop Iraq as a staging pad to attack Europe and beyond. With the withdrawal of US led coalition forces from Iraq, the domestic Iraq support and



sympathy for local Iraqi insurgent groups will diminish. However, with support from overseas, especially from Saudi Arabia, the strength, size and influence, the power of the Global Jihad groups, such as Al Qaeda in Iraq and Jamiat Ansar Al Sunnah, will grow. The sights of the Global Jihad groups located in Iraq are not limited to Iraq. Al Qaeda leadership in tribal Pakistan will use the Global Jihad groups in Iraq notably Al Qaeda in Iraq to operate outside Iraq. Like in the erstwhile jihads, even Iraqi local insurgent groups that have tasted the jihad may join the Global Jihad groups and travel to new theatres. Over time the operational range of the multi-national Global Jihad groups will expand to strike its enemies in the Middle East, Europe and North America.

(4) Globalization of Threat: Globalization merges the North and the South, shrinking the world. Like Western culture, film, fashion, music, and dance, has great appeal in the east, politico-religious and ethnonationalist ideologies will penetrate the Western World. With migration, travel, and communication, extremist ideologies from the South will move even rapidly and infect the North. From the Middle East, the traditional epicenter of terrorism, virulent ideologies and violent practices will spread westward and eastward. Among vulnerable segments of the population, especially migrant and diaspora pockets, such virulent ideologies will create sympathy and support for aims and objectives of the terrorist and extremist groups. With greater interconnectivity, threats will migrate from conflict zones to the West. Indoctrination is followed by operational activity. With threat groups harnessing new media technologies, terrorism will become even more networked. Despite huge investments by the international community to contain the threat originating in conflict zones like Iraq and Afghanistan, multiple epicenters of international terrorism and extremism will be created. The terrorist threat will largely emanate from structured groups in conflict zones but, as long as conflicts in Muslim lands persist, threat formation at a global level will persist. With the westward and eastward spread of virulent ideology from the conflict zones of Muslim heartland, the demography, geography of terrorism will shift and the profile of the terrorist will change.

(5) Changing Profile: Conflict zones in the South like Iraq and Afghanistan will remain the main battlegrounds but their impact is galvanizing Muslims worldwide. Especially after the US invasion of Iraq in March 2003, terrorist and extremist groups have access to recruiting an ever-widening cross-section of Muslim communities and society. Since the beginning of the contemporary wave of terrorism in 1968, most threat groups, their ideologues, operatives, supporters and sympathizers originated in the Arab World. Only 10% of the Muslim population, Arabs influence the rest of the Muslim World. With the spread of ideology from the Arab heartland, more threat groups from Asia, Africa and the Caucuses will join the fight. In the next five years, Urdu, Pashtu, Bengali, Bahasa, and Malay speaking terrorists and extremists will join the fight. In addition to a shift in the demography and geography of terrorism, the socio-economic profile of the terrorist will also change. The terrorists will recruit from the rich, the poor, the educated and less educated. More intelligent, Western educated youth like Khalid Sheikh Mohamed or Dhiren Barot are increasingly joining and playing roles as sympathizers, supporters, facilitators, experts and leaders. Interested in developing technical capabilities in CBRN, aviation, or IT expertise and skills, terrorists will enlist technically competent, better-educated university graduates.

(6) Rise of Asian Terrorism: The geography and demography of terrorism will change. The Middle Eastern and Asian groups will dominate the international landscape of terrorism. With the developments in Afghanistan, Pakistan, Bangladesh and Indonesia, the specter of Asian terrorism will rise. Al Qaeda working together with TTP will provide training for both Muslims and Muslim groups on the Afghan Pakistan border. Global Jihad groups will co-opt



local and tribal groups creating safe havens and sanctuaries from Tribal Pakistan. By co-opting groups from both tribal and mainland Pakistan, Al Qaeda in Tribal Pakistan will provide the crucial ideology and training, and the fighting experience for threat groups worldwide. While Middle Eastern threat groups will continue to pose a threat, there will be a comparable threat stemming from Asian groups.

(7) Rise of African Terrorism: The threat by Asian groups will be followed by the rise of African Terrorism, a new actor on the scene. Threat groups from Sub Saharan Africa will emerge as an appreciable threat. Influenced by the Maghreb and Iraq, groups in the Sahel and both West and East Africa will pose a threat to their countries as well as to Europe and beyond. With the co-option of GSPC by Al Qaeda and its transformation into the Al Qaeda Organization of the Islamic Maghreb, the North African groups are posing an unprecedented threat. In every North Africa state, there are attacks – Libya, Tunisia, Algeria, and Morocco. Furthermore, all the North African groups are either operationally linked or influencing the groups in the Sahel. Likewise, using Somalia as a launching pad, Al Qaeda is influencing the threat groups both in the Horn of Africa and in East Africa. Over time, even Sub-Saharan Africa will not be immune to Jihadist propaganda and proselytizing. With the spread of ideology by Al Qaeda from the north and the east, existing jihad groups in Africa will become violent and new groups will form. The groups in conflict zones in Africa will recruit from outside the conflict zones. Moreover, African émigré communities especially those in Europe and Canada will become susceptible to Jihadist penetration.

(8) Rise of Homegrown Terrorism: Al Qaeda has invested in a propaganda campaign directed at ordinary Muslims creating nodes and cells globally. Driven by Al Qaeda's ideology that Islam is under attack and Muslims are being deliberately killed, the segment of the Muslims believing that the West is purposely targeting the faith and the faithful will grow. In return for "martyrdom," more Muslims will believe in the promise by jihadist ideologues to Muslim youth of entry to heaven, an audience with God, pardon for sins and vices, the company of 70 relatives, and 72 vivacious virgins. While structured groups will pose the most dominant and lethal threat, a more sinister and insidious threat will stem from these self radicalized homegrown cells. While Al Qaeda and its associated groups will still pose a threat, the Al Qaeda inspired home grown threat will grow. The horizontally organized homegrown cells will increase in lethality after coming into contact with the vertically organized threat groups notably Al Qaeda and its associates. While groups such as Al Qaeda and Al Qaeda in Iraq will seek to mount attacks in the West, a greater threat will stem from their supporters either born or brought up in the West.

(9) Convert Muslims: As much as cradle Muslims from territorial, migrant and diaspora communities pose an enduring global threat, convert Muslims are susceptible to an even greater threat. Jihadist ideologues often exploit the vulnerability of converts by calling them to prove their loyalty to their newfound faith. No longer living in their organic society, most converts tend to become even more radical. Devoid of culture and tradition, they tend to get carried away. For instance, Cain Deliosa, a Filipino convert, killed 120 crew and passengers by bombing Super Ferry 14, the world's worst maritime terrorist attack. An overseas foreign worker in Saudi Arabia, he joined the Rajah Solaiman Revolutionary Movement, a Balik Islam movement. With increased proselytizing and propaganda directed at communities in the West, there will be more conversions of blue-eyed blond westerners like John Walker Lindh. With more Muslims joining Al Qaeda and its associated groups, Jihad propaganda will increasingly be produced, summarized, subtitled or translated to English and European languages. Converts will contribute appreciably to the existing pool of Muslims radicalized in Europe, North America and Australia.



(10) Threat Migration: Like ideology, technology too will migrate and proliferate. The divide between occasional spectacular attacks in the West and the frequent smaller attacks in the Muslim World will even. With more associated groups in the Muslim World building expertise, their operating range will slowly and steadfastly extend to the West. On a global scale, the overall trend will be towards attacks with greater lethality. The technical capabilities of the threat groups will move towards greater sophistication using dual user technologies and other commercially available material with military application.

(11) Threat Escalation: Determined to escalate, over time, more groups will express an interest to use CBRN. The gap between terrorist intention and capability to use CBRN, a force multiplier, will narrow. Guns and bombs will constitute the mainstay, but more groups will acquire, develop, and use CBRN. Only a few countries in the world have developed a capability to effectively counter a CBRN threat. Attacks using such unconventional agents will create widespread fear and panic.

(12) Threat Diversification: While terrorists will continue to conduct land, sea and air attacks, they are likely to move into other media. Although terrorist preference will always be land attacks, the threat will spread ground up. With terrorist recruitment of scientists, engineers and other technical specialists, future terrorism will threaten information, communications, computers and even satellite systems. The attacks on information infrastructure will affect the safe and secure functioning of utilities infrastructure – gas, power, IT etc. The terrorist denial of service attacks against diplomatic missions by the LTTE and plans to take control of Becton Complex's Supervisory Control and Data Acquisition (SCADA) by global jihadist cell are indicative of evolving abilities and intentions.

4. Challenges to Governments and Leaders

Enhanced Threat to the Muslim World: Global Jihad and other radical and violent Islamist groups will pose a threat both to the Muslim World and to the Western World. As none of the threat groups are physically located in the Western countries, radical and violent Muslim groups will pose a much greater threat to the Muslim World. On a daily basis, both radical Islam and their operational groups will challenge the Muslim way of life, mainstream Islam, and secular Muslim regimes. Despite Islamist groups posing a common threat, there is no real partnership between the West and the moderate Muslims. There is a grave need to build a common platform and develop a common program between the West and moderate Muslims. The Middle East, particularly the Levant, will remain in turmoil. In the neighborhood of Iraq, a number of violent and radical Islamist groups unfriendly to the West will come to power in the next five years. The most likely locations are in the Levant spurring a domino effect in North Africa and in the Arabian Peninsula. Even today, if there are free and fair elections, Hamas will be in power in Gaza, Fatah in the West Bank, Hezbollah in Lebanon, and the Muslim Brotherhood in Egypt and in Jordan. Although they are non-global jihadist groups, they will permit or will be forced to accommodate the operation of global jihadist groups. For instance, Asbat ul Ansar and Fatah al Islam, both Al Qaeda associate groups, are operating in Lebanon. Similarly, Iran, another adversary of the US is sponsoring Shia and Sunni groups are establishing a robust presence in Iraq, Lebanon and the Palestinian territories. The threat within and the threat from these Muslim countries will escalate. The US obsession to democratize Muslim countries will lead to Islamic parties coming to power at least in the mid



term. In countries where Muslim populations are already politicized and radicalized democratization will contribute to further anti-Americanism.

Control or Dominate Territory: Threat groups control or dominate stretches of land in countries such as Somalia, Yemen, Philippines and Pakistan. In tribal Pakistan, one of the two epicenters of global terrorism, there are areas where the terrorists dominate and control territory. These areas have become no go zones for the Pakistani military even for their elite forces. In areas such as Mir Ali in North Waziristan, where multiple foreign terrorist groups have established their headquarters, they face no serious opposition. Large groups such as the constituents of Tareek-e-Taliban Pakistan that command several thousand fighters operate in strength. In other conflict zones groups such as the Moro Islamic Liberation Front in the Philippines, control land through peace agreements. Non-Muslim threat groups such as the LTTE and FARC too control vast stretches of land. They have their indoctrination centers, training camps, and quasi-government. With vested political and financial interests, these groups are unlikely to relinquish their control and domination of territory to governments easily. With limited public support, poor language skills, no robust CMO initiatives, and other operational inadequacies, government forces are either weak or incapable of enforcing government writ.

Resilient Propaganda Machines: Terrorist and extremist groups have established propaganda machines in the Muslim World breeding a new generation of jihadists. Terrorist ideology is spreading through the media. Unlike before, threat groups can reach a wider constituency generating greater sympathy and support. Realizing the importance of public support, terrorist and extremist groups seek to influence their ethnic and religious communities using dedicated newspapers, radio stations, TV broadcast, or websites. To shape public opinion, threat groups have established their own radio and television stations and penetrated even established mainstream media organs. Global Jihad groups established, owned and operated several platforms including TV and radio stations. The terrorist media fronts include www.alzawraa.tv by Al Qaeda, Al Manar by the Lebanese Hezbollah, Mediya by the PKK and Nidarshanam by the LTTE. Commercialization of communication technologies enabled threat groups to gain access and use modern media platforms. For example, of all countries, the LTTE used Israeli satellite providers to uplink broadcast their propaganda demonstrating both the lack of vigilance of governments and the private sector.

New Media Technologies: After the fall of Taliban in Afghanistan, Al Qaeda and associated groups have invested in the World Wide Web turning it into its principal propaganda machine. After the authorities in Saudi Arabia raided and confiscated the extremist propaganda used in the schools, mosques and the associations, the extremist ideologues uploaded their material on to the web. The new media technologies - especially the Internet, email, and websites - are an effective medium to reach out to the youth that are computer savvy. Today, most live in two worlds – real and virtual. With extremists and terrorists seeking to influence both the worlds, the threat in the West is primarily spreading through the Internet. Western educated Jihadists trained in the sciences, law, and international relations use the web to indoctrinate a new generation of leaders, members, supporters and sympathizers. Highly motivated, they can comfortable working with individuals and groups both in the west and east. Terrorists - but more the extremists - have shown enthusiasm to use other platforms such as Second Life, Warcraft etc. These innovative and powerful tools are used to communicate ideas, facilitate communication and energize believers spurring recruitment and fundraising.



Regulate Community Institutions: Keen to retain political support from Islamist parties, there is reluctance among Muslim governments to fight radicalism. They are unwilling to undertake unpopular decisions to clamp down on radical schools, Mosques and associations. These schools either call for or actively promote violence. For instance, Pondok Pesantaran Al Mukmeen, the Indonesian boarding school that produced more than 50% of the Bali bombers, is permitted to function. The Indonesia school and its satellites continue to mentor a new generation of jihadists in the world's most populous Muslim country. Likewise in Yemen, Lebanon, Pakistan and other countries, the political mainstream is under threat by the extremists. Leaders such as Musharraf were determined, but lacked widespread political and public support to dismantle threat groups. Many governments are politically incapable to take decisive and sustained action against various groups promoting hatred, division and violence.

Operation of Front, Cover, and Sympathetic Groups: As much as the threat is evident in developing world, a significant proportion of houses of worship, schools and associations located in the West too preach violence. Using community institutions, threat groups originating in the Global South have penetrated the migrant and diaspora communities and their community institutions in the West. To prevent the creation and strengthening of ethnic enclaves and ghettos for exploitation, it is necessary to promote religious and cultural inclusion. As migrant and diaspora communities are vulnerable to external extremist and terrorist influences, host governments must work closely with host societies to actively counter such influence and promote host values and norms. In many Western countries, threat groups exercise significant control over segments of their diaspora and migrants as well as their institutions. Operating through front, cover and sympathetic organizations, taking the face of human rights, humanitarian, welfare, political, educational, social, cultural and religious groups, they have politicized, radicalized, and militarized migrant and diaspora segments in the West. These émigré communities in turn act as bridgeheads for terrorist and extremist groups in the South to recruit, raise funds, procure supplies and operate globally. While Western security and intelligence services watch front, cover and sympathetic organizations either controlled or influenced by terrorist groups, governments lack legislation to disrupt and dismantle them. This includes several non-Muslim threat groups such as the LTTE, PKK, IRA, and the BKI. As these groups were able to exercise constituency pressure, some political parties and individual politicians even supported these groups in Canada, Europe, Australia and New Zealand.

5. Mitigating the Threat

Getting the Strategy Right: As demonstrated throughout human history, violent actors will always use terrorism and guerrilla warfare as a tool. As an extreme form of political expression, killing civilians and combatants has been used through the ages. The political, social and security environment will determine the nature, form, and scale of threat. Governmental and societal measures and counter measures will determine its resilience, adaptability and flexibility. For effective response, law enforcement, military and intelligence services should consider the terrorist group as its mentor, take the long view, and respond strategically. To manage extremism and reduce the violence, it central for government to closely shadow the threat groups. By protecting targets most governments believe that the threat can be reduced. By target protection, the threat is displaced not reduced. Terrorists will search for new targets. By investing in target protection, the threat will protract prolonging the defensive and offensive fight. The most practical strategy is to work on reducing intent. Unless governments review their current policies and develop a strategic approach to



combating the current threat, both the threat of violent extremism and operational terrorism will grow significantly in the immediate (1-2 years) and mid (5 years). If leaders recognize the real challenges and their governments develop a strategic approach, both the threat of terrorism and extremism can be contained in the long term (5-10 years).

Best Practice: Terrorism can be contained at a tactical level but it can only be defeated at a strategic level. As such, the strategy to reduce, manage and terminate the threat should be at both a micro and macro level. At the micro level, the military, law enforcement and intelligence services can reduce the threat through kinetic and lethal action. At the macro level, government can address the legitimate grievances and aspirations, and socio-economically and politically empower the affected community. To meet the challenge, governments should integrate their instruments of national power rather than emphasize on the military dimension. Most governments fight terrorism and insurgency using military force. While it may produce temporary results, it will not help to reduce the long term and strategic threat. It necessary to restructure military capabilities designed to fight conventional campaigns to fight both terrorism and insurgency. The most effective strategy is to integrate soft power with hard power. Instead of a military heavy response with temporary gains, western countries should seek to develop a full spectrum response.

Threat Appreciation: Since Al Qaeda attacked America's most iconic landmarks seven years ago, the West failed to reduce the terrorist and extremist threat. The failure stems from the inability of the US-led counter terrorism community to better appreciate terrorist intent or motivation. Understanding the three key components of the threat matrix – intent, operational capability and opportunity – is central. Western designed and developed approach is to target the operational capabilities not to reduce intent. When governments fail to reduce operational and conceptual infrastructures in parallel, there is a boomerang effect. That is if a government only attacks terrorist operational capabilities, the terrorist intent will grow. Overtime, terrorist groups will rebuild the operational infrastructures and attack when they are ready and opportunity presents. It is necessary to educate government that reducing threat is fighting both operational capabilities and intent. Only by protecting targets most governments believe that the threat can be reduced. By target protection, the threat is displaced not reduced. Terrorists will search for new targets. By investing in target protection, the threat will protract prolonging the defensive and offensive fight. While operational capabilities can be dismantled immediately, reducing intent takes time. The most practical strategy is to work on reducing intent or motivation.

Operational Effectiveness: The overwhelmingly kinetic approach has created an erroneous impression in the Muslim World that the West is against Muslims and Islam. A notable failure in GWOT has been the lack of focus on the threat groups and excessive use of hard power on the population. As a result of government overreaction, since 9-11 the threat has progressed and not diminished. For instance, Iraq was a distraction from the real campaign to neutralize the Al Qaeda leadership. Even in the US, the number of threat specialists that know Al Qaeda is small. With divided resources, the US failed either to stabilize Afghanistan or Iraq. After the disastrous US invasion of Iraq, the Muslim World in general perceives the term “counter terrorism” as “anti-Islam” or “anti-Muslim.” It is important to calibrate the use of force to ensure that public support is retained. There is no standard textbook to fight terrorism. Reviewing past successes and failures should help develop best practice. Maximizing successes and minimizing failures is key. As counter terrorism is an emerging discipline, it is necessary to identify gaps and loopholes in the existing systems and invest in new initiatives. Constantly, governments should explore new frontiers to combat the changing threat. Developing an effective strategy in a fluid



environment is complex. There has been a notable failure to kill or capture the Al Qaeda leadership in tribal Pakistan. With this exception, most weaknesses are in the non-kinetic/non-lethal realm.

Primacy of Intelligence: As the threat is dynamic, the response must be dynamic too. As threat groups learn, innovate, adept and strike back, governments must shadow the threat closely. To be effective in targeting, intelligence should be the spearhead of counter terrorism. To conduct effective operations, they must be intelligence driven or led. Governments must invest in building platforms to generate high-quality and high-grade intelligence. As terrorism becomes globalized and networked, the security and intelligence services must work closely with their sister and counterpart services. Due to lack of sound and timely intelligence, the US failed to dismantle the leadership structure of Al Qaeda in Afghanistan before September 11, 2001 and thereafter in tribal Pakistan. As intelligence is often partial, flawed and absent, it is necessary to orient both security and intelligence services and frontline law enforcement officers to detect tactical, operational and strategic indicators.

Paramount Importance of Ideology: As terrorism is a by-product of ideological extremism, the approach of tolerating ideological extremism and fighting operational terrorism has been a grave failure. Radicalization follows the spread of virulent ideology. Militarization follows heightened extremism. As the world becomes flat, there will be a geographic dispersion terrorist and extremist ideologies. Both from the West and the East, extremist and terrorist groups will co-opt more individuals, cells and groups. But, staying ahead of terrorism has not been the strength of Western counter terrorism approaches. By limiting the ability of terrorists to disseminate propaganda, the terrorist cycle - recruitment and fund raising - can be disrupted at an early stage. However, Western governments have focused on developing the tools to disrupt terrorism in a more advanced stage of surveillance, reconnaissance and the attack phases. By their nature, politically motivated terrorist groups are resilient to a pure military approach. Similarly, politically motivated ethnic and religious conflicts are intractable. As long as the ideology is intact, they will replenish their human losses and material wastage and continue the fight. Under pressure, they undergo a cycle of factionalization and merger until the appeal of their ideology is neutralized. Taking into account the ideational dimension, a full spectrum response is the most intelligent strategy to neutralize the threat. Western leaders lack an understanding of the nature of the ideological threat. Only by developing multiple platforms to counter the ideology can the international community break the global power of Al Qaeda. As they feed off each other, to be successful, the ideological campaign must be fought in the real and in the cyber worlds.

Regulate the Web: Today, the threat groups posted their propaganda or managed 5000-6000 websites. In contrast, the counter extremist and counter terrorist sites were less than 100. The interactive terrorist and extremist are very appealing to the youth but the counter threat websites are boring. Those individuals and groups posting messages on the web and service providers should be held accountable and responsible for their content. With the WWW becoming the principle means of terrorist and extremist communication, governments and private law firms should prosecute the content creators, providers, and facilitators of violence. Almost all these sites are located in the West, most notably in the US, where freedom expression is constitutionally guaranteed. The web has other features that make it attractive to the threat groups. For example, the web guarantees anonymity. As terrorists and extremists that post messages can use their nicknames, there is no accountability. As such, the Global Jihad groups and individuals extensively use the Internet. Some eight years after September 11, 2001, the Global Jihad Movement is still winning on the Internet. An effective global counter-ideological campaign to challenge propaganda in the cyber world is much needed.



Community Engagement: The bedrock of counter terrorism is community engagement. With the exception of dedicated police units such as the Muslim Contact Unit in the UK, the focus of the West has been to use law enforcement. The emphasis has been to arrest, charge, and prosecute terrorists but not to engage the community and prevent the spread of extremism. Under the influence of Al Qaeda, Jihad is becoming a way of life. The threat is stemming from within the Muslim community. As the threat is flexible, adaptive and resilient, the existing enforcement policies and practices implemented from the top have failed to tackle societal extremism. Rather than continue with the top down harsh response after 9-11, it is necessary for governments to develop a community-oriented bottom up response. Without Muslim public support, cooperation and collaboration, can Muslim societal extremism be isolated or marginalized? Instead of demonizing and isolating the community, engaging and giving ownership of security to the community and to its leaders had made a difference. Rather than to legislate, there is much to be gained by engagement. Today, most counter terrorism intelligence pre-empting attacks have come from Muslim communities that have been engaged rather than isolated. Western and non-Muslim majority government must build bridges and work with both the Muslim and the non-Muslim communities.

Muslim Leadership: The Muslims face a generational fight. But in the Muslim World, there is no Muslim Gandhi. Why have no telling Muslim voice convinced the Muslim masses that Osama bin Laden does not speak for the Muslims and Al Qaeda does not represent Islam. Many great Muslim leaders from Afghanistan to Pakistan and Iraq have been brutally murdered or threatened into silence. Leadership is central in any fight. However, Muslim leaders alone cannot confront the threat of extremism and terrorism. In such a time of crisis, Western nations and other non-Muslim majority governments should help the Muslim community in this hour. Unless the West and Muslim majority governments work with Muslim leaders to reform the existing educational systems, the Muslim community will continue to breed radicals and radicalism. By working in partnership, every community institution can be encouraged to propagate the message of peace. For instance, every school can be an effective vanguard against violence. Similarly, every mosque can sow the seeds of peace. Muslim secular and religious leaders can play a concerted role to condemn terrorism and other forms of violent actions. Unwillingness of governments to correct the ground reality in conflicts such as Palestine and Kashmir has prevented Muslim leaders from condemning violence to achieve their goals. Fear of retaliation and events such as the US invasion of Iraq, where millions of Muslims have suffered, it is a challenge for Muslim leaders to moderate their own communities. Terrorist seeks to legitimize their politically motivated attacks using religious. They can highlight key texts from the Koran such as “Do not be extreme in your religion.” By repeatedly stating that violence and extremism is not compatible with true Islamic practice and belief, they can promote moderation as a way of life.

Terrorism, an Unattractive Option: Terrorism works in the short term but not in the long term. Despite their ability to inflict large-scale violence, terrorists are unlikely to come to power. Except in Palestinian territories, no terrorist group has come to power. To make terrorism unattractive, one of the key strategies is to meet legitimate political demands. To deter transformation of political organizations into terrorist groups, recognize and work with political organizations. To isolate violent groups, create avenues and platforms for public to express themselves non violently. Educate the constituencies of threat groups that using violence especially terrorism as a tool will criminalize both the groups and their struggles. Case studies can convince the constituencies of threat groups that violence has not helped to achieve the political aims and objectives.



Stabilize Conflict Zones: Ethnic and religious conflicts will dominate the international security landscape. Conflict zones will be the crucibles for producing human suffering, virulent ideologies, internal displacement, refugee flows and terrorism. Operationally and ideologically infiltrated by Al Qaeda, Muslim conflict zones will be the primary producers of terrorists and extremists. The human suffering in the arenas of conflict - such as Iraq and Afghanistan – will continue to produce terrorists, terrorist supporters, and mobilize Muslims worldwide. As long as these conflicts are alive, there will always be a flow of recruits and finance to fight. Ideological extremism, a by-product of suffering will contribute to sympathizer and support base. Many of the conflicts that breed resentment, anger and hatred cannot be resolved in the short term. The conflicts such as Palestine, Chechnya, Kashmir, Somalia, Afghanistan and Iraq are intractable and will likely continue in the foreseeable future. Even after the fighting has stopped, such as Bosnia, the stabilization forces are compelled to maintain a robust presence.

Negotiate with Groups: A proven strategy to fight terrorism and insurgency is to divide the threat groups, negotiate and co-opt some groups, and pitch them against the uncompromising groups. In a period where communities are evolving into multi-cultural societies, the Jihadist call to fight for the establishment of Islamic states is not practical. However, there are some reasonable demands for religious, linguistic and cultural autonomy that can be accommodated; government cannot meet many of the utopian demands. In Southeast Asia, Jemaah Islamiyah is fighting to establish an Islamic state. Majilis Mujahidin Indonesia is calling for the institution of Shariah law. Both the Pakistan and Afghan Taliban is calling for the withdrawal of US-led coalition in Afghanistan. The Al Qaeda controlled Islamic State of Iraq is demanding the complete withdrawal of US-led coalition forces from Iraq. In the Middle East, the Palestinian Hamas is demanding the dismantling of the state of Israel. Through negotiation, addressing reasonable and legitimate demands can prevent political groups from becoming extremist and extremist groups from becoming terrorist.

Build a Norm and Ethic against Violence: The current thrust is to kill or capture operational terrorists. There is no real focus in preventing the next generation from falling victims to extremist ideology. The status quo must change. While seeking to invest in community counter ideology targeting the current generation, it is necessary to focus on the next generation. To build a norm and ethic against violence, it is necessary to focus on formal and informal education, initiatives to regulating the net, and building partnerships with Muslim community institutions. Within the Muslim World, especially in the Arab World, it is necessary to normalize moderation. Of the student body at the International Islamic University in Malaysia, the Arab students were the most radical. The traditional Middle Eastern worldview of the West was borne out of anger, humiliation and hatred of the Israeli-Palestine dispute. However, today, it is based on the exposure of Muslim publics to daily media coverage of events in Muslim conflict zones - from Afghanistan to Iraq. By comprehending the narratives and counter narratives of extremism, Muslims will abhor violence and seek peace. The fight must be waged wherever it can be fought with whoever is willing to work together without waiting for perfect conditions to emerge. The multi-pronged strategy is to counter the contemporary wave of extremism through the mass media, community institutions, and leaders. Conducting a point-by-point Koranic rebuttal of radical ideologies originating in the Arab World can restore the beauty of Islam as a religion of peace. The Koran is the best text to break the rationality of terrorist groups – their moral social and religious justification to kill, maim, injure. A global network of scholars, clerics and teachers can be created, nurtured and supported to counter the radical texts, doctrines and



mindsets developed in the Middle East with implications for the rest of the Muslim World. Muslims should seek moderation as a way of life.



SOUTH KOREAN GOVERNMENT UNDER THE FORMER CEO, PRESIDENT LEE MYUNG-BAK

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Abstract:

After a promising start with his landslide victory in December 2007, President Lee Myung-bak carried a mandate for sweeping economic reforms, but he had to overcome several important troubles. In August 2008 significant demonstrations took regarding American beef imports scheduled under the pending US-ROK Free Trade Agreement, his ambitious building projects, opposition to his privatizing agenda and somehow authoritarian style. His record in foreign policy is remarkable as it supposes a departure from his predecessor's priorities: reinforcing the alliance with the US, seeking to restore good relations with Japan, being more forthcoming in his energy security diplomacy towards Russia, upgrading his partnership with China and taking a firmer stance on North Korea. But still Lee Myung-bak has to succeed in the new challenge stemming from the global economic crisis and to restore the national economic health.

Palabras clave: President Lee Myung-bak; foreign policy; economic crisis; US.

Resumen:

Tras un prometedor inicio gracias a su arrolladora victoria en diciembre del 2007 y portando un mandato para llevar a cabo profundas reformas económicas, el presidente Lee Myung-bak se ha visto obligado a recuperar la confianza de su ciudadanía tras las duras críticas a numerosos aspectos de su política: la importación de carne vacuna bajo el Tratado de Libre Comercio EEUU-Corea del Sur pendiente de aprobación, sus ambiciosos proyectos de construcción, su agenda de privatizaciones y su estilo algo autoritario. Las características de su política exterior resultan interesantes por los contrastes con su predecesor: refuerzo de la alianza con los EEUU, mejora de las relaciones con Japón, mayor dinamismo en su diplomacia energética hacia Rusia, mayor envergadura a su relación con China y una postura más firme hacia Corea del Norte. Sin embargo Lee Myung-bak ha de superar el desafío que la crisis económica mundial le presenta y así poder restaurar la situación económica de su país.

Palabras clave: *Presidente Lee Myung-bak; política exterior; crisis económica; EEUU.*

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Less than a year, precisely 6 months after Lee Myung-bak took oath of his term on February 25 as the tenth president of the Republic of Korea pledged a "fresh start with a new resolution" on August 15th, 2008, nation's 60th anniversary. He recognized his unpopular government which has been in trouble for months by the huge civilian anti-government candle-lit rallies and general strikes lead by Korean Confederation of Trade Unions (KCTU).² The former CEO, who came to office with the largest margin of victory in a presidential election, has seen his support fell down below 20 percent.

The objective of this paper is to analyze the Lee's government in terms of its challenges in domestic political environment, the economy, relations in foreign affairs and the inter-Korean engagement.

President Lee, a member of the conservative Grand National Party, inaugurated his government changing from the progressive governments of ten years ruled by Kim Dae-jung and Roh Moo-hyun.

Given the fact that South Korea struggles with an uncertain economic future by the fast pace of globalization, energy crisis and the export competitiveness by rivals from China, and other nations in the process of development, Lee seemed to be the right person at the right time with his pro-business policies for Korean economic interests. The hope of the South Korean public was that Lee would revitalize South Korea's economy to meet the challenges of global competition.

Nevertheless, contrary to the land slid victory in general election last December, thousands of South Koreans started to protest in Seoul from the beginning of April against imports of American beef with fears of mad cow disease.³ In fact the massive protest was not just limited to the beef importation. It was rather the issue of initiation for broad protests against President Lee's leadership, discontented by key personnel appointments in his government, and his policies in general. Many student protesters were unhappy with Lee's authoritarian way of pushing through his reforms. They even called him "bulldozer", his nickname which he earned from the Hyundai Group while he was a CEO of the construction unit of the conglomerate.

In the face of this vast public discontent, President Lee was in dilemma before launching his several electoral campaign promises, the Grand Canal project, creation of a Silicon Valley,⁴ privatization and marketization of public services, education reform and taking appropriate measures to solve the incoming economic crisis.

Among the campaign proposals of Lee Myung-bak, the first priority was the construction of a cross country waterway linking from Seoul in the northwest corner of the country to the south-eastern port city of Busan. The objective of this project is to cut transport costs and boost consumption. However, this is the most controversial of his projects and opposed by the majority of the people. Lee's intention was to pursue this project as the symbolic work of his presidency as he successfully completed the massive urban renewal

² Choe, Sang-hun: "Fresh start with a new resolution", *New York Times*, 11 June 2008.

³ It was banned 5 years ago.

⁴ The project is to create Korean version of Silicon Valley in the central region of Chungcheong, linking it to Daedeok, the heart of Korea's applied sciences.



Cheonggyecheon stream public recreation space project in downtown Seoul while being a mayor of the city. However, there exists a huge risk in the canal project and could remain as a major failure for Lee as his predecessor, Roh Moo-hyun, suffered a similar experience with the capital relocation project which was blocked by the opposition and ultimately the Constitutional Court.⁵

After the beef issue and Grand Canal construction plan faced serious opposition from the public, President Lee had to set back and promised to be more attentive before the people's voice. Now Lee tries to restore public confidence and pledged for patience to his government and asked for national unity to overcome an economic crisis.

Since mid-August, the government has proposed a series of reforms measures as Lee was recovering from his criticism. His administration is downsizing the government and started selling state-owned companies to private sectors and to foreign investors. Also, for the education reform policy, he is working for a new policy measures to lessen the private tutoring expenses of most families which is a huge financial burden on households nationwide.⁶ According to Hyundai research Institute, the average monthly spending on private tutoring by South Korean households is around 646,000 won (around 700 dollars). All the previous governments made efforts to cut excessive private education, nevertheless the survey by the National Statistics Office showed that 77 percent of primary and secondary students still are attending various out-of-school classes.⁷ This figure is even slightly greater than the government's education budget.

One of the policy concerns, the property tax reform is on the process. The presentation of the new tax regulation implementation is already brought forward in October⁸ which is supposed to be introduced next year to reactivate property market and construction sectors. To counter for the worldwide impact of U.S. financial instability President Lee Myung-bak instructed government's intervention to set up steps first, putting infusion of cash into the banking system to control the devaluation of Korean won and called meetings of financial experts in an effort to battle a prolonged economic crisis.⁹ Also, Lee discussed ways to increase investments and create jobs with corporate leaders. He made a large-scale pardon of convicted important firms' leaders from illegal labour activities to provide them opportunities to improve the business environment and make efforts for investments.

Regarding the foreign relations, Lee's policy priorities are well describes in his MB doctrine which he presented during the election campaign. The doctrine has not changed much in principle which the policy advocates engagement with North Korea and strong South Korea-United States relations. It consists of seven-point: (1) Complete denuclearization and opening of North Korea. (2) Pragmatic diplomacy based on a national consensus and interest, not based on ideology. (3) Restoring the Korea-U.S. alliance based on the established friendship and the shared values of democracy and market economy for mutual interests. (4) Expansion of Asia diplomacy in partnership with other regional states to move toward the

⁵The opponents focus their reasons on those: firstly, canals were essential method as transportation during the 19th century however went into decline due to the development of railroads; secondly, at present, highways are used mostly in Korea to be met with the rapidly advancing industries.

⁶ "ROK president determined to reduce private education expense", *Xinhua*, 23 September 2008.

⁷ According to the estimation by Hyundai Research Institution, South Korea's extracurricular education market reached 33.5 trillion won (29.1 billion U.S. dollars) in 2006. It is 3.75 percent of the nation's gross domestic product.

⁸ "Political Fight Runs High Over Property Tax Reform", *Yonhap*, 23 September 2008.

⁹ Na, Jeong-ju: "President to Invest in Local Equity Funds", *Korea Times*, 17 September 2008.



opening of an Asian era. (5) Fortification of Korea's contribution to the global community as one of the industrialized countries (the world's 12th economy). (6) Energy diplomacy to join the group of most advanced economic nations. (7) Promotion of Korean cultural diplomacy based on the mutual opening and exchanges in the region and the world.¹⁰

As the way to demonstrate President Lee's promise to reconstruct Korea-U.S. relationship, Lee chose his first official overseas visit to the United States to meet President Bush in mid April, 2008 and discussed the substantive issues to strengthen the ROK-U.S. alliance in vision of the 21st Century. In the summit meeting they discussed issues such as to pass the Korea-U.S. FTA project in U.S Congress, to reach an agreement of the Korea's entry into the U.S. Visa Waiver Program within this year of 2008 and to help denuclearization of the North Korea and its economic revival. The new conservative government of Lee Myung-bak and Bush administration in Camp David summit on 18-19 of April strengthened its alliance and expanded the scope of cooperation between the two countries.¹¹ It was an important Lee's diplomatic goal achievement to reach an agreement for further development of mutual trust toward the renewed strong alliance partnership and their commitment to consolidate a basis for the future cooperation through issues of common interests in economic, commercial, social and cultural areas.

Lee's other important Korean foreign policy emphasis focused on keeping strong ties with each of the major powers surrounding the Korean peninsula: Japan, Russia, and China. Although Lee has prioritized good relations with the U.S., China, Japan and Russia also have fundamental importance as neighboring powers sharing mutual security and economic cooperation.

On his visit to Japan in April 20-21, President Lee Myung-bak, agreed to build future-oriented Korea-Japan relations and a mature partnership based on his pragmatic diplomacy and mutual trust and understanding.

During the summit, Lee and Fukuda agreed to resume bilateral shuttle diplomacy, in order to provide regular dialogue for the policy makers of the two neighbouring countries. The concerned issues were a free trade agreement and set up private consultative bodies on investment and economic cooperation. In addition, Lee and Fukuda exchanged shared opinion to enhance cooperation in dealing with the North Korean nuclear issue and the North's abduction of Japanese citizens as well as expand bilateral exchanges of youth. The 21st century's global issues, including the environment, climate change, clean energy and economic aid program for developing countries were also discussed.

China was cautious on Lee's approach to North Korea and his emphasis on strategic cooperation with the United States and Japan. Frankly speaking, China's positions have been more compatible with Roh Moo-hyun's conciliatory approach to the North, his desire for less dependence on the United States and his relative distance from Japan.¹²

Although, Lee put priority on Korea-U.S. partnership in his foreign policy, his administration has also well perceived the relationship with China as one of the most

¹⁰ Kim, Tong, "Lee Myung-bak's Foreign Policy", *KoreaTimes*, 2 December, 2007.

¹¹ Yu, Myung-hwan, Minister of Foreign Affairs and Trade, "Lee-Bush Summit Lays Groundwork for Solid Alliance", *KoreaTimes*, 28 September, 2008.

¹² Snyder, Scott, "Lee Myung-bak and the Future of Sino-South Korean Relations," *Policy Forum Online*, The Nautilus Institute for Security and Sustainable Development: Northeast Asia Peace and Security Project in NAPSNet@nautilus.org, 10 April, 2008, (Web: <http://www.nautilus.org>).



important foreign relationships to be taken care of.¹³ Thus, during his visit to China on May both sides agreed to upgrade their "comprehensive and cooperative partnership" to "strategic cooperative partnership". The leaders of both countries agreed to provide future working agenda for development of bilateral ties on such issues of international and regional factors and expand exchanges of the youth. Lee suggested to actively engaged and broaden mutually beneficial cooperation on investment, finance, communications, energy, environmental protection, science and technology. Lee and Hu also agreed to promote the process of China-ROK free trade area (FTA) for mutual benefits. Regarding the six-party talks Lee asked China to make joint efforts for denuclearization of the North Korea. Finally, both countries also agreed to work closely for the northeast Asia security in the field of strategic cooperation.

President Lee's visit to Russia followed by a series of visits to the United States, Japan and China since his inauguration. Issues high on the agenda of the Lee-Medvedev summit included Korean Peninsula nuclear issues and bilateral economic cooperation. Concerning the fact that Russia shares a 19 km border with North Korea and Russia has been a member of six-party talks on North Korea's nuclear issue the North's denuclearization was one of the highly concerned issue. On the issue of economics, as South Korea pursues energy diversification while Russia is in need of partners to invest capital to search for, develop, and extract energy reserves in Eastern Siberia and the Russian Far Eastern region both countries agreed to work closely.¹⁴

The significance of the above mentioned 4 summits with the head of States, the U.S., Japan, China and Russia initiated on April, focused on finalizing a basic framework for diplomacy with the four important powers implicated to ROK and laying down the groundwork to build a mature foreign relations as a middle power and to reactivate the weak economy during the first year of his administration.

Regarding the inter-Korean relations, although Lee supports continued inter-Korean engagement, the priority attached to North Korean issues seemed lowered considerably compared to his predecessors' administration that had put inter-Korean relations as a top policy priority. Lee, being not so supportive of the Sunshine Policy of Kim Dae-jung, already expressed his policy priority as to strengthen Korea-U.S alliance tie and to take more aggressive approach, "thorough and flexible," toward North Korea.¹⁵ North Korea's denuclearization as a precondition, Lee promised to provide a massive economic assistance development aid program.¹⁶ Based on this policy Lee's government cut in the budget for inter-Korean cooperation, and abolished the Ministry of Unification integrated in the ministry of foreign affairs and trade. Lee's criticism on North Korean human rights violation in public and his view on long term unification are few of the evidences¹⁷ which suggest that Lee does not include North Korean issue as his policy priority. In view of this new administration's

¹³ "China upgrade relations to strategic cooperative partnership", *Korea.net*, 27 May 2008 in http://www.korea.net/News/news/NewsView.asp?serial_no=20080528001&part=103&SearchDay=&source=.

¹⁴ Moscow separately proposed Seoul to join in trilateral projects, Moscow-Seoul-Pyongyang, for the Trans Siberian Railroad and Trans Korean Railroad link, with the South Korean investment.

¹⁵ "thorough" to the principle of intolerance to North Korea's nuclear program and "flexible" in response in the course of nuclear negotiation to implement the Sept. 19, 2007 statement of the six-party talks.

¹⁶ Klingner Bruce, "New South Korean President Brings Conservative Policy Change", *The Heritage Foundation*, (1 April, 2008). "Upon the completion of denuclearization, North Korea would receive an economic development aid. Lee's government would help North Korea receive financial aids through loans from the International Banks, the Inter-Korean Cooperation Fund of the South, direct investment from overseas, and support funds from Japan as the improvement of North Korea's relations with Japan."

¹⁷ "Lee to toughen stance on North Korea", *CNN Seoul*, *CNN.Com/Asia*, 20 December 2007 in <http://edition.cnn.com/2007/WORLD/asiapcf/12/19/skorea.election/index.html>



inter-Korean policy, and as North Korea was angry at Washington for not taking North Korea off from the terrorist states blacklist Pyongyang, it not only delayed in implementing denuclearization commitments but also North Korea renewed the threat restarting its nuclear plant in Yongbyon.¹⁸ Though finally, The United States on October 11, removed North Korea from its list of states that sponsor terrorism.¹⁹

The situation in North Korea is quite uncertain at this moment as Kim Jong-il is in poor health and the chain of command is opaque in view of who is controlling the regime in verge of economic collapse. President Lee's administration is cautious on the North Korea's every movements and Lee gave instructions to be prepared for the possible outcome.

With all the difficulties mentioned above and hard times due to the mass demonstrations since his inauguration, President Lee must have been set back his bulldozer style of policy. The Korean society is now waiting and expecting patiently what the Lee's administration can do after the hard lesson.

The most imminent plan should be restoring its shaky economic situation caused by the international financial crisis. As the first step, Lee announced his proposal in ASEM general meeting on October for the trilateral cooperation to deal with financial problem in Asia on the basis of the strong dollar reserve among China, ROK and Japan. When Lee, the former CEO entrepreneur succeeds on its national economic revival, the Korean people will give further credits on his other policy projects.

¹⁸ Sciolino, Elaine, "North Korea's nuclear demand is setback for Bush," *International Herald Tribune*, 23 September, 2008.

¹⁹ "U.S. takes North Korea off terror list," *CNN.com/Asia*, 11 October 2008 in <http://www.cnn.com/2008/WORLD/asiapcf/10/11/us.north.korea/>



DESAFÍOS EN EL SUR DE ASIA: ¿QUÉ ES SAARC? LOGROS Y LIMITACIONES

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Resumen:

En el año 1985 siete países de Asia del Sur, queriendo beneficiarse como otros del fenómeno del regionalismo, crearon una asociación regional para promover el bienestar y el crecimiento económico en sus países. Ahora, más de dos décadas después de su fundación, los avances han sido escasos en la mayoría de los terrenos y la cooperación económica no empieza a despegar. Sus pueblos no están visiblemente mejor que hace 23 años. La principal razón de este fracaso es la falta de confianza entre sus miembros.

Palabras clave: SAARC; asociación regional; India; Pakistán; hostilidad; fracaso; cooperación económica; SAPTA; SAFTA.

Title in English: “Challenges in South Asia: What is SAARC? Achievements and limitations.”

Abstract:

In 1985 seven countries from South Asia, seeking to benefit as most countries in the world from regionalism, built a regional partnership to promote welfare and economic growth in all their countries. Now, two decades from its foundation, progresses have been scarce in most fields and the economic cooperation has not yet taken off. Citizens are not clearly better off than 23 years ago. The main reason for this failure is the lack of confidence between its members.

Keywords: SAARC; regional partnership; India; Pakistan; hostility; failure; economic cooperation; SAPT; SAFTA.

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Introducción

Las siglas de esta asociación SAARC se derivan de su nombre en inglés, “South Asian Association for Regional Cooperation” - en traducción al castellano: “Asociación para la Cooperación Regional en Asia del Sur“. Esto es posible que no nos diga mucho, excepto que nos sitúa en qué parte del mundo trataremos de adentrarnos.

Sus siete miembros fundadores fueron: India, Pakistán, Bangladesh, Nepal, Bután, Sri Lanka y las Islas Maldivas y su origen se remonta al año 1985. La idea original de crear una asociación regional fue de Bangladesh. Una idea que fue bien recibida por los países pequeños en cuestión, pero que generó dudas entre los países grandes, India y Pakistán.

Actualmente sus miembros son ocho, ya que Afganistán es un miembro oficial desde el año 2007. Últimamente también han concedido estatus de observador a China, Japón, Corea del Sur, Irán, Estados Unidos y la Unión Europea. SAARC es la agrupación regional con mayor población en el mundo, 1.500.000 personas o el 22% de la población mundial.

1. “La unidad nos hará fuertes”

Una idea básica de fondo en una asociación regional de este estilo es participar en el creciente regionalismo, buscar y aprovechar sus ventajas. Las últimas décadas han visto un auge del regionalismo y algunas regiones han experimentado cierto éxito con sus proyectos. Estrechamente vinculada a este fenómeno del regionalismo se ha producido la proliferación de las asociaciones económicas que muchas veces construyen las bases del éxito.

Lógicamente los países de SAARC han querido buscar las ventajas de agruparse, buscando maneras de fortalecerse entre sí, mejorar su competitividad, aprender de otros, apoyarse mutuamente, hacer oír mejor su voz o aumentar su poder de negociación, todo con el fin de mejorar la vida de sus pueblos tanto a nivel de países individuales como de grupo.

Los objetivos principales de SAARC manifestados en su Carta Constitucional son la lucha por el bienestar dentro de la región, la aceleración del crecimiento económico, el desarrollo social y cultural, la ayuda mutua en diferentes aspectos y la mejora de las relaciones entre los propios miembros.²

La Carta Constitucional de SAARC es un manifiesto de los pueblos de Asia del Sur donde dicen pretender trabajar conjuntamente para solucionar sus problemas, basándose en la amistad, la confianza y el entendimiento, haciendo referencia a los lazos históricos y culturales comunes. Se adhiere a los principios de la Carta de las Naciones Unidas y a los principios de la no-alineación, con particular mención a los principios de igualdad soberana, integridad territorial, independencia nacional, no al uso de la fuerza, la no interferencia en asuntos internos de otros estados y la resolución pacífica de disputas. En la Carta recuerdan que la cooperación regional no puede sustituir a la cooperación bilateral o multilateral sino fortalecerla, pero también apunta que los contenciosos deberían ser excluidos de las deliberaciones.

² Carta Constitucional de SAARC (“SAARC Charter” en inglés) en <http://www.saarc-sec.org/main.php?id=10&t=4>



El grupo fundador permaneció sin cambios hasta el año 2007, cuando Afganistán se convirtió oficialmente en el octavo miembro. Parece carecer de sentido añadir un miembro muy débil a una agrupación no demasiado fuerte. Parte de la justificación estaba basada en el reconocimiento de la cultura y la historia común³. Pero por otro lado, también se puede imaginar que su inclusión es interesante para poder ejercer alguna influencia sobre un vecino inestable que servirá de ayuda en la lucha contra el terrorismo en la región.

Por esa razón India está surgiendo como uno de los principales donantes de ayuda a Afganistán, hecho que Pakistán mira con preocupación.⁴

El principal socio comercial de Afganistán históricamente era la URSS, pero después de su caída, Pakistán ha sido el socio más importante aunque sus relaciones comerciales siempre han sido volátiles.⁵

No es difícil ver razones económicas detrás de la entrada de Afganistán en SAARC. Dado el estado de su economía, por ahora poco podrán aportar ellos en ese terreno aunque si deberían ser capaces de beneficiarse si logran aumentar el comercio con sus vecinos. Pero, dados sus recursos naturales como gas natural, petróleo, carbón, cobre, mineral ferroso y piedras preciosas, el país tiene cierto atractivo.

2. Gestión y funcionamiento mejorable

Según la Carta Constitucional hay cuatro niveles de órganos. El órgano principal son las cumbres de los jefes de estado y según la Carta se celebrarán reuniones anuales, aunque en la práctica han sido menos frecuentes. El siguiente nivel de órganos es el Consejo de Ministros de Asuntos Exteriores. La función de este consejo es la creación de políticas, decisiones sobre nuevas áreas de cooperación y revisiones de los progresos. En principio se reúnen dos veces al año. El tercer nivel de órganos es el Comité Permanente de los Secretarios de Asuntos Exteriores. Se reúnen según las necesidades y sus responsabilidades son la supervisión y coordinación. El cuarto nivel son los Comités Técnicos que dan forma a los programas, preparan proyectos y son los responsables de su implementación. El Comité Permanente luego tiene poder para crear Comités de Acción para la implementación de ciertos proyectos que no necesariamente involucren a todos los miembros de SAARC, pero siempre al menos a dos de ellos. Las decisiones en todos los niveles son tomadas por unanimidad.

El Secretariado de SAARC ha sido ubicado en uno de los países pequeños, se encuentra en Katmandú, Nepal, lejos de los centros políticos y económicos. El puesto del Secretario General es rotatorio cada tres años no renovables, y se decide por orden alfabético de los nombres de los países miembros en inglés.⁶

La financiación de las actividades de la asociación es voluntaria, algo que puede verse como una gran debilidad a la hora de implementar proyectos. Es importante tener en cuenta

³ “Afghanistan to be new SAARC member”, *The Times of India*, 13 de noviembre de 2005 en <http://timesofindia.indiatimes.com/articleshow/1293872.cms>

⁴ Jayaram, P.: “India pledges \$617m in aid to Afghanistan”, *The Straits Times*, 5 de agosto de 2008 en <http://www.asianewsnet.net/news.php?id=603&sec=1>

⁵ “Afghanistan Country Profile 2008”, *Economist Intelligence Unit (EIU)* en <http://www.eiu.com>

⁶ “Memorandum of Understanding on the Establishment of the Secretariat” en <http://www.saarc-sec.org/main.php?id=150&t=3.2>



que la iniciativa de crear a SAARC y desarrollarlo parte de los estados. Por lo tanto, la sociedad civil no participó en el proceso al principio, aunque eso va cambiando según transcurren los años. Esto también quiere decir que no existe presión desde el sector económico para avanzar con la integración, porque las ventajas no saltan a la vista.

El trabajo de SAARC es apoyado por varios Centros Regionales que están dedicados a los asuntos que estiman de mayor interés común. Estos centros, actualmente nueve, están distribuidos por la región. Los campos a los que se dedican dichos centros son por ejemplo: agricultura, meteorología, tuberculosis, catástrofes, energía etc. Dos centros están actualmente bajo construcción: un centro cultural y otro forestal.

En los primeros años de funcionamiento de SAARC los principales acuerdos fueron la creación de una Reserva Alimenticia de Seguridad, la creación de los Centros Regionales, la lucha contra el terrorismo y la promoción del intercambio cultural. El tema económico prácticamente no fue tratado.

3. Unas relaciones marcadas por los problemas de vecindad y la falta de confianza

Como se mencionó anteriormente, la Carta Constitucional habla de Cumbres anuales entre los jefes de estado o si lo estiman necesario, celebradas con mayor frecuencia. En vista de esto es interesante saber que las cumbres no han sido anuales sino que en los últimos 23 años se han celebrado 15 cumbres, - contando la última recién celebrada en agosto de 2008.

Las primeras cumbres destacan por sus grandes declaraciones pero de contenido vacío, y aunque en las primeras declaraciones se puede apreciar cierta preocupación por los asuntos regionales, principalmente tratan de asuntos internacionales.⁷

Algunas cumbres destacan por la firma de acuerdos o convenios de relevancia. Por ejemplo en la 3ª cumbre en 1987 fue firmado el Convenio de supresión del terrorismo y el Acuerdo de la Reserva Alimenticia. En la 5ª cumbre en 1990 fue firmado el Convenio de “narcotráfico”. En la 6ª cumbre de 1991 firmaban la creación de un fondo de proyectos regionales. En la 7ª cumbre de 1993 firman el Acuerdo Marco de South Asia Preferential Trade Agreement (SAPTA). En la 12ª cumbre en 2004 firman el South Asia Free Trade Agreement (SAFTA). En la 13ª cumbre en 2005 firman el acuerdo para establecer el Consejo de Arbitraje de SAARC. En la 14ª cumbre en 2007 firman un acuerdo para establecer la Universidad de Asia del Sur y deciden poner énfasis en agua, energía, alimentos y medio ambiente. En la cumbre de 2007 también fue firmada una declaración conjunta sobre la admisión de Afganistán. La 15ª cumbre en 2008 destaca por los acuerdos firmados en el campo de la cooperación contra el terrorismo y la creación de un banco de alimentos.

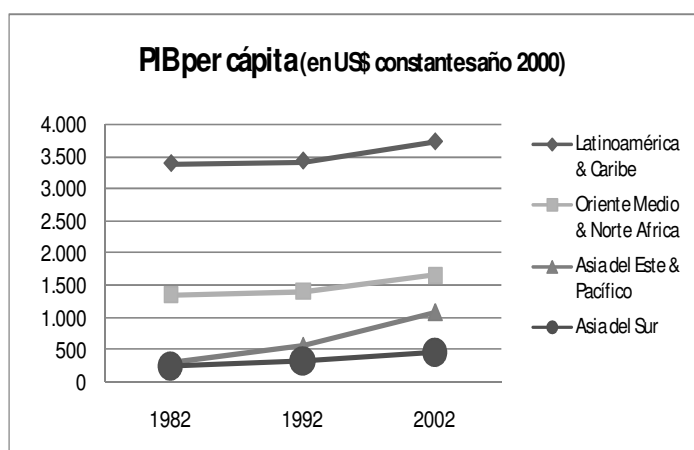
Los proyectos lanzados han promocionado intercambios de personas y por lo tanto incrementado el entendimiento mutuo, pero las críticas son numerosas. Una crítica que se hace es que no todos los acuerdos y convenios firmados alcanzan pleno vigor o ni siquiera se llegan a implementar. Un proyecto prestigioso era por ejemplo la creación de una Reserva Alimenticia del año 1987, pero este mecanismo nunca ha entrado en funcionamiento a pesar

⁷ Ver declaraciones de las cumbres en <http://www.saarc-sec.org/main.php?t=4>

de surgir emergencias alimenticias en la región.⁸ Los miembros han querido hacer otro intento en este terreno y en la última cumbre fue firmado un nuevo acuerdo para establecer un banco de alimentos como se menciona arriba.

Otra crítica básica es que más de dos décadas después de la fundación, el bienestar de la población no ha mejorado y sus miembros siguen perteneciendo al club de los países más pobres del mundo. En el siguiente gráfico⁹ se puede ver la evolución de uno de los indicadores que muestran que la región en cuestión todavía está por despegar, mientras por ejemplo sus vecinos en el Este sí han podido avanzar más.

Gráfico 1: PIB per cápita (en US \$ constantes del año 2000)



El éxito de una asociación regional depende mucho de la calidad de las relaciones entre sus miembros y del grado de confianza que exista, y ahí SAARC no es ninguna excepción. Desgraciadamente para este organismo algunos miembros no gozan de demasiadas buenas relaciones. Por ejemplo las relaciones entre India y Pakistán se pueden calificar de nefastas; la desconfianza mutua, muy visible desde la partición, parece total. Estos dos estados se han enfrentado en varias guerras, las más conocidas sobre el territorio de Cachemira. Desde hace cuatro años, estos dos países se encuentran en un proceso de paz. Los retos y las amenazas a este proceso son constantes y todavía queda mucho por hacer, aunque se pueden calificar de positivas las conversaciones celebradas al margen de la última cumbre de SAARC en agosto de 2008.

India tampoco tiene las mejores relaciones con sus vecinos en Bangladesh y Nepal, con los que mantiene conflictos fronterizos y acusaciones de insurgencia. Y además en el caso de Bangladesh, también existen disputas sobre derechos de agua.

Las relaciones entre Pakistán y Afganistán, aunque de apoyo en algunos temas, también se pueden calificar de tensas en otros ámbitos, especialmente en materia de terrorismo. Al mismo tiempo, Pakistán vigila con gran recelo la creciente cooperación entre India y

⁸ Ver "The SAARC Food Bank" en <http://www.saarc-sec.org/main.php?t=2.13.2>

⁹ AA.VV., (2006): "Asia-Pacific Human Development Report 2006: Trade on Human Terms", *United Nations Development Program (UNDP o PNUD en sus siglas en castellano)*, Colombo, Macmillan, table 1, p. 174.



Afganistán. También las relaciones entre Pakistán y Bangladesh no son las óptimas, porque como es sabido, antes de 1972 Bangladesh era parte de Pakistán y aún quedan heridas que nunca se han curado.

El problema principal de Sri Lanka no son las malas relaciones con sus vecinos sino su conflicto interno, ya que en los últimos 24 años se mantiene una guerra civil que lógicamente ha marcado el país de una manera muy negativa.

Además, varios países tienen problemas internos serios que influyen en las relaciones entre estos vecinos, como por ejemplo las sospechas de que en algunos sitios, terroristas que actúan en unos países reciban ayuda en países vecinos, con un ejemplo reciente en el que India acusa a un grupo dentro de Pakistán de haber participado en actos de terrorismo en India este último verano.

A eso también se añade que los países en cuestión tienen serios problemas domésticos y eso hace que sus líderes no tengan mucha disponibilidad para ocuparse de asuntos regionales.

De este relato, que sólo destaca los conflictos principales, se puede deducir que la asociación tiene un problema grave con la ausencia de buenas relaciones entre sus miembros claves y la gran desconfianza que existe.

4. Las diferencias y asimetrías dentro de SAARC

Uno de los primeros aspectos que destacan cuando uno analiza esta asociación regional son las asimetrías entre sus miembros. Un miembro muy, muy grande, como es India, tiene más del 75% de toda la población de la asociación o más de 1.100 millones de personas. Pakistán y Bangladesh están en su propia categoría con poblaciones parecidas, de algo más de 150 millones de personas cada uno. Luego están Afganistán, Nepal y Sri Lanka con poblaciones de 32, 27 y 19 millones respectivamente. Y al final las Islas Maldivas y Bután, cada uno con población de menos de un millón de personas.

La diferencia que estos países experimentan en los sistemas de gobierno también es muy grande. Por un lado tenemos a India, la democracia más poblada de la tierra, relativamente estable durante seis décadas aunque no exenta de problemas. Los otros países miembros han intentado acercarse al concepto de democracia pero con peores resultados. Históricamente en Pakistán, varios intentos de democracia han acabado con golpes de estado por parte de militares y nadie debería subestimar la importancia militar en este país actualmente. En Bangladesh han visto democracias volátiles con gobiernos nombrados provisionalmente. En Bután se vive una democracia impuesta con bases débiles por falta de experiencia y en Nepal este verano han derrocado la monarquía constitucional y actualmente viven en gran incertidumbre sobre su futuro político.

No menos variedad se puede ver observando los asuntos religiosos o lingüísticos. La religión hindú es mayoritaria en India y Nepal, mientras que en Pakistán, Bangladesh, Afganistán y Maldivas la mayoría de las personas profesan la religión musulmana. En Bután y Sri Lanka por el contrario prevalece el budismo. Los idiomas y los dialectos de los países miembros son innumerables y pueden causar problemas en el aspecto de entendimiento mutuo. El idioma oficial de la asociación es el inglés.



Las diferencias entre los estados miembros también se pueden apreciar en la geografía. Entre los extremos, desde Bangladesh con sus tierras más llanas, hasta Nepal, Bután, Pakistán o Afganistán con sus altas montañas hay grandes variedades, y por lo tanto diferentes enfoques económicos y agrícolas.

Aunque las diferencias son muy grandes, se puede apreciar cierta experiencia común en el pasado colonial y se puede ver cierta homogeneidad cultural, por ejemplo en la arquitectura, la pintura, la música y la danza. Al fin y al cabo hay más cosas en común dentro de la región, que entre la región y otros lugares.

Pero el principal elemento en común de los países miembros de SAARC es su estado de subdesarrollo: la pobreza, la desigualdad, la población masiva, la dependencia de la agricultura, la baja productividad y el alto desempleo. En la tabla que se muestra a continuación se puede ver el ranking de desarrollo humano según el Programa de las Naciones Unidas para el Desarrollo (PNUD), en el informe de 2007/08.¹⁰

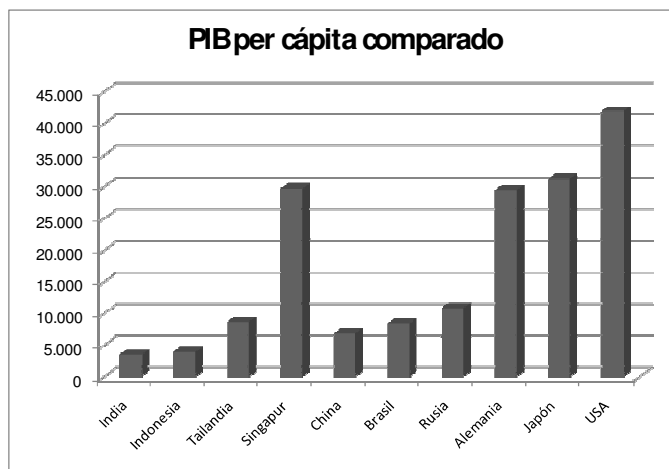
País	Ranking PNUD
Sri Lanka	99
Maldivas	100
India	128
Bután	133
Pakistán	136
Bangladesh	140
Nepal	142

Aprovechando la misma fuente y analizando el PIB per cápita, se puede ver la misma imagen lamentable. El país de SAARC que tiene el PIB per cápita más alto es Islas Maldivas con \$5.261, seguidas por Sri Lanka (\$ 4.595), la India (\$3.452), Pakistán (\$2.370), Bangladesh (\$2.052) y Nepal (\$1.550).

Si ponemos las cifras del PIB per cápita en otro contexto más amplio y lo comparamos con otros países del mundo, tanto en su región como fuera, se puede ver claramente lo retrasado de la posición de los países de SAARC. Por ejemplo, otros países del grupo BRIC (BRIC = Brasil, Rusia, India, China) tienen el doble o el triple del PIB de la India.

¹⁰ Human Development Report 2007/2008: "Fighting climate change: Human solidarity in a divided world", UNDP, tabla 1, p. 230. Clasificación para el año 2005 (Afganistán no se encuentra en la lista) en http://hdr.undp.org/en/media/HDR_20072008_EN_Complete.pdf

Gráfico 2: PIB per cápita comparado



Viendo el tamaño de las economías de SAARC, India representa prácticamente el 80%, seguido por Pakistán con el 11% y Bangladesh el 6%; es decir los tres países más grandes representan más del 95%. Está claro que el resto de los países tienen poco peso.

Por lo tanto, visto desde su estado de subdesarrollo, tienen mucho que ganar cooperando en el terreno económico. Pero hasta hoy eso no ha sido el caso y la cooperación económica todavía queda por despegar.

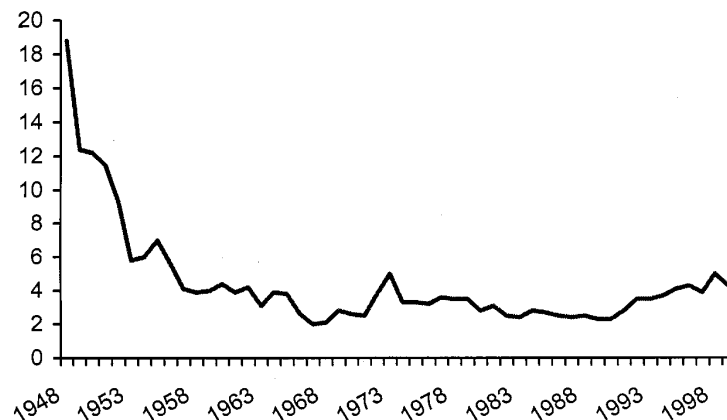
5. Cooperación económica y el exiguo comercio intra-regional

El comercio mundial ha evolucionado mucho en las últimas décadas. En los años 30 y 40, se podían calificar de proteccionistas los regímenes comerciales en los países desarrollados, mientras que en la misma época había pocas barreras en Asia del Sur. Pero lo contrario ocurre hacia finales de la década de los 40, cuando comienza una apertura en los países desarrollados. Al mismo tiempo los países de Asia del Sur miran hacia dentro, con todo tipo de regulaciones e industrialización para sustituir la importación.¹¹

Según el siguiente gráfico¹², que muestra la evolución del comercio intra-regional en Asia del Sur, hace 60 años el comercio intra-regional era aproximadamente cuatro veces mayor que actualmente. Aunque tradicionalmente los países en Asia del Sur proveían al Imperio antes que comerciar entre ellos, su comercio intra-regional llegaba a ser cerca del 20%. La verdad es que este porcentaje no es muy alto, comparado con los porcentajes de comercio intra-regional de algunas asociaciones regionales actuales como la Unión Europea (65%), TLCAN/NAFTA (55%) o ASEAN (25%). Pero en vista de estas comparaciones, queda todavía más evidente lo bajo que es el actual porcentaje del 5%.

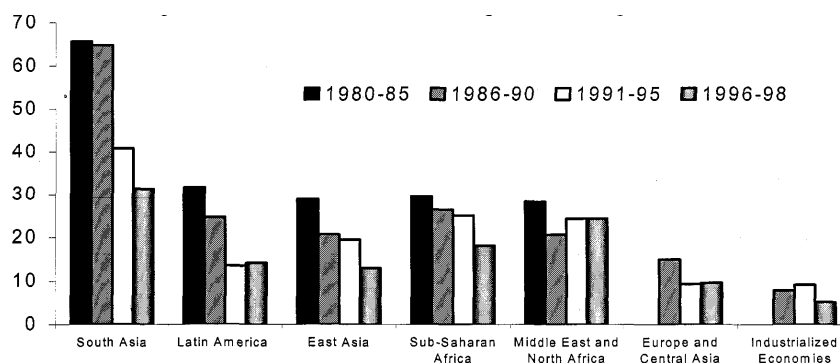
¹¹ Baysan, Tercan; Panagariya, Arvind & Pitigala, Nihal: "Preferential Trading in South Asia", *World Bank Policy Research, Working Paper 3813* (Enero 2006), p.2 en <http://ideas.repec.org/p/wbk/wbrwps/3813.html>

¹² *Ibid.*, p. 20

Gráfico 3: Evolución del comercio intra-regional de Asia del Sur, 1948-1999


Cabe mencionar que estas cifras de comercio intra-regional son las oficiales y tienen sus limitaciones ya que se supone que el comercio sumergido puede ser considerable en esta zona. Algunos textos sugieren que el comercio ilegal ha podido ser hasta cinco veces mayor que el comercio oficial entre India y Pakistán en los años 2002-2003. Las razones no solo se pueden encontrar en los aranceles altos sino también en las prohibiciones y cuotas.¹³

Como se puede apreciar en el siguiente gráfico¹⁴, los aranceles promedios en la región de Asia del Sur son muy altos comparados con los de otras regiones del mundo. Por lo tanto, parece que tienen mucho que ganar si logran adaptarse a la situación mundial, bajar estos aranceles y así no quedarse fuera de toda carrera.

Gráfico 4: Aranceles promedios por regiones


Cierta liberalización comercial comienza en los años 70 aunque es a comienzos de los 90 cuando se experimenta una aceleración del proceso (India, Pakistán, Bangladesh). El

¹³ Ewing-Chow, Michael; Islam, Rizwanul: "South Asian Free Trade Agreement and the Possibility of Regional Integration within the SAARC: A Historical, Legal and Economic Analysis", *Asian Journal of Comparative Law*, vol. 2, nº 1, Article 7, (2007) p. 7.

¹⁴ World Bank: Trade Policies in South Asia: An Overview, vol. II, September 2004, Report No. 29949, p. 2.



contexto de los cambios se puede por ejemplo buscar en la caída de la URSS y el auge de China.¹⁵ El comercio intra-regional apenas se ve afectado por estos cambios.

En las asociaciones económicas, la complementariedad es fundamental. Por lo tanto a continuación es interesante analizar la complementariedad de las economías de los miembros de SAARC. Estudiando el pasado podemos saber que en tiempos coloniales, no existía mucho comercio entre estos países, sino que eran principalmente proveedores del Imperio. Aunque hayan pasado desde entonces unas cuantas décadas y se haya producido una profunda evolución, la afirmación anterior en principio todavía se mantiene cierta. Hasta hace pocos años las economías de SAARC se parecían en muchos aspectos y por lo tanto tenían poca complementariedad. Aunque cada una tiene su especialidad, los productos y exportaciones se parecían mucho: tejidos, prendas, té y yute por mencionar algunos. En algunos países, productos como el arroz, las piedras preciosas y los metales eran y siguen siendo también muy importantes.¹⁶

Dado que su cesta de exportación era muy parecida, también se podía dar el caso de que compitiesen en sus principales mercados extranjeros como en el de los Estados Unidos o el de la Unión Europea.

Para el éxito del comercio regional, la complementariedad tiene que aumentar. Como se puede apreciar en la tabla siguiente, los países SAARC tienen poca presencia en la lista de sus socios comerciales de exportación más importantes, con la excepción de India en algunos casos.

Destinos principales de exportaciones (1)

	1		2		3		4		5		Otros
India	UE 25	(22%)	EE.UU.	(17%)	EÁU	(8%)	China	(7%)	Singapur	(5%)	(41%)
Pakistán	UE 25	(27%)	EE.UU.	(26%)	EÁU	(7%)	Afganistán	(6%)	Hong Kong	(4%)	(30%)
Bangladesh	UE 25	(56%)	EE.UU.	(26%)	Canadá	(4%)	Japón	(2%)	India	(1%)	(11%)
Sri Lanka	EE.UU.	(32%)	UE 25	(31%)	India	(9%)	Rusia	(3%)	EÁU	(2%)	(23%)
Afganistán (2)	India	(18%)	Pakistán	(17%)	EE.UU.	(12%)	UE 4	(6%)	Rusia	(3%)	(44%)
Maldivas	Tailandia	(26%)	UE 25	(25%)	Japón	(15%)	Sri Lanka	(13%)	Taiwan	(5%)	(16%)
Nepal	India	(52%)	EE.UU.	(29%)	UE 25	(10%)	China	(3%)	Bangladesh	(1%)	(5%)
Bután (2)	India	(77%)	Hong Kong	(15%)	Singapur	(3%)	-	-	-	-	(5%)

(1) Fuente OMC, (2) Fuente Economist Intelligence Unit

La relevancia y la importancia de India en esta parte del mundo son evidentes. Es la economía más grande y ha crecido mucho en los últimos años. India está emergiendo como un productor de primera línea en el sector farmacéutico, servicios de IT y servicios de ingeniería por mencionar algunos sólo. Según evolucionan las economías, las complementariedades pueden aumentar. Todos, especialmente India buscando mejorar su situación estratégica, tienen mucho que ganar si pueden aumentar el progreso a través de la cooperación económica y si consiguen unos avances reales.

¹⁵ Baysan *et al.*, p.2.

¹⁶ Información sobre composición de exportación principalmente de informes de EIU, "Country Profiles" de los ocho países, 2007 en <http://www.eiu.com>



Existen diferentes opiniones sobre la responsabilidad de India, pero muchos culpan al país más grande por no ser la locomotora y ayudar a la asociación a salir adelante. La falta de liderazgo por parte de India podría restarle credibilidad a la hora de establecer y mantener otras relaciones comerciales.¹⁷ Al mismo tiempo, es de interés indio combatir la creciente influencia de China en la región ya que recientemente la importación desde China a otros países de SAARC ha sobrepasado la importación desde India.¹⁸ Cabe mencionar que el principal rival de India en la región, Pakistán, es el principal aliado de China.

India se encuentra detrás de China en la carrera económica. Para acelerar el paso y acercarse a China tendrá que pasar por diferentes tipos de liberalización para mantener así buen crecimiento económico y aumentar sus exportaciones. Queda por ver si la política doméstica lo permitirá, pero si tienen éxito, el régimen económico de SAARC se beneficiará.

Parece que existe alguna voluntad política en India para aceptar responsabilidades asimétricas dentro de SAARC, especialmente hacia los países menos desarrollados, sin insistir en reciprocidad.¹⁹ India es el único miembro que puede hacerles avanzar, considerando su dominación económica y su potencial estratégico.

6. Empiezan los acuerdos de libre comercio... con poco éxito

Una suposición es que si SAARC tuviera éxito en la cooperación económica al estilo de la Unión Europea, aumentaría la probabilidad de éxito en la cooperación política, los países avanzarían más rápido en su desarrollo y a consecuencia de ello incrementarían la influencia de la región en el mundo.

Como antes se mencionó, en los primeros años del funcionamiento de SAARC, los asuntos económicos brillaron por su ausencia. Esto empezó a cambiar en el año 1993 con la firma del acuerdo SAPTA²⁰ (SAARC Preferential Trade Arrangement) y su consecuente entrada en vigor en 1995. Hasta su creación, no era visible una cooperación verdadera de comercio entre los países SAARC. Dicho acuerdo es el marco y la base institucional para la liberalización comercial, promoción del comercio mutuo y la cooperación económica de la región.

Para implementarlo se embarcaron en varias rondas de concesiones de aranceles. El comienzo de este proceso no fue muy prometedor, ya que acabó con pocas concesiones, muchas excepciones y a veces incumplimiento de lo firmado al final. Por lo tanto su éxito fue limitado.²¹

El siguiente paso en la cooperación económica se tomó con la firma de un tratado de libre comercio denominado SAFTA (SAARC Free Trade Area)²² que fue firmado en 2004 y está en vigor desde 2006. El acuerdo se centra en la eliminación de aranceles, levantando

¹⁷ Taneja, Nisha & Sawhney, Aparna: "Revitalising SAARC Trade: India's Role at 2007 Summit", *Economic and Political Weekly*, v. 32, nº 13, (31 de marzo de 2007), p. 1082.

¹⁸ *Ibid.*

¹⁹ Patil, Samir S.; Mazumdar, Aparajita; Kamala Kanta Dash : "SAARC: Towards greater connectivity", *Institute of Peace and Conflict Studies (IPCS), Conference Report*, (15-16 de enero de 2007), p.3 en <http://www.ipcs.org/ConferenceReport-SAARC.pdf>

²⁰ "SAARC Preferential Trade Arrangement" en <http://www.saarc-sec.org/main.php?id=44&t=2.1>

²¹ Ewing-Chow *et al.*, p. 5.

²² "SAARC Free Trade Area" en <http://www.saarc-sec.org/main.php?id=12&t=2.1>



restricciones a la importación y la eliminación de impedimentos estructurales en comercio regional. Esta dividido en dos partes según el estado de desarrollo de cada miembro: 1) los menos desarrollados que son Bangladesh, Bután, Nepal y Maldivas y 2) los más desarrollados que son India, Pakistán y Sri Lanka. La implementación tiene dos velocidades, exigiendo menos esfuerzo a los países menos desarrollados, tanto en reducción de aranceles como en tiempo de implementación. En la cumbre recién celebrada en agosto de 2008 firmaron el protocolo de admisión a SAFTA para Afganistán.²³

Al SAFTA tampoco se le puede calificar de exitoso, por lo menos hasta la fecha.²⁴ Entre sus problemas están los incumplimientos de ciertos países y las largas listas de productos excluidos. Los productos agrícolas en general están muy protegidos. El hecho de que sus tratados hasta ahora sólo incluyan productos pero no servicios, se puede considerar una falta considerable en una región de países emergiendo como exportadores de servicios comerciales. La pobre infraestructura en el territorio SAARC no ayuda al comercio regional. Por ejemplo, el coste de transacción entre los vecinos India y Bangladesh, es mayor que el coste entre India y el resto del mundo. El sistema de transporte se encuentra en un estado imperfecto; por ejemplo, un importador de tejidos indio tarda el mismo tiempo en recibir sus pedidos desde Pakistán que desde Europa. Existen restricciones específicas sobre la entrada de productos en los países, no siempre usando los puertos más prácticos y cercanos, y por lo tanto causando complicaciones y retrasos al comercio regional. La armonización de estándares, armonización de procedimientos de aduana, adopción de nomenclatura común y la mejora del sistema de comunicación, todo serviría de ayuda a la hora de mejorar la situación. Algunos de los impedimentos parecen tener arreglo fácil, pero mientras no haya voluntad política los avances serán modestos.

SAARC, según la lógica y también según su Carta, está destinada a fortalecer la cooperación bilateral y multilateral, pero en este ambiente lo que prevalece es la cooperación bilateral. Los tratados bilaterales de libre comercio restan importancia y protagonismo a SAFTA, el tratado multilateral de libre comercio de SAARC, ya que los acuerdos bilaterales que se están firmando son más liberales que los que se encuentran en el marco regional. Por ejemplo, el tratado de libre comercio entre India y Sri Lanka, que está en vigor desde el año 2000, funciona bien.²⁵ Actualmente hay negociaciones de diferentes tratados bilaterales.

Además de la desconfianza e incumplimiento de lo firmado, los países firmantes tienen baja motivación para avanzar en este campo ya que actualmente sus principales intereses comerciales están en otras regiones del mundo.

En general, en la reciente cumbre de SAARC de agosto 2008, en los asuntos económicos no se dieron pasos concretos para ayudar despegar a SAFTA.

7. ¿Qué hacer para que SAARC realmente sea útil para sus pueblos?

La imagen aquí pintada de SAARC puede verse algo gris por no decir negra. Sus logros y avances en los últimos 23 años se han quedado muy cortos y su futuro parece poco

²³ La declaración de la 15ª cumbre de SAARC en <http://www.saarc-sec.org/data/summit15/summit15declaration.htm>

²⁴ Ewing-Chow *et al.*, p. 11.

²⁵ Baysan *et al.*, p. 3.



prometedor. La razón principal la encontramos en la falta de confianza entre sus miembros, dada la hostilidad entre algunos países, principalmente India y Pakistán.

La cooperación económica empezó tarde en la vida de la asociación y los avances han sido escasos. El bienestar de su gente no ha mejorado visiblemente y sus miembros siguen perteneciendo al club de los países más pobres del mundo.

En tono pesimista se podría decir que el principal rol de SAARC ha sido servir como plataforma para dar oportunidades a sus líderes para reunirse, cosa que siempre no ha sido posible dado que algunos miembros se han encontrado en guerra. Pero dada la historia de la región, el hecho de que se hayan reunido igual no es intrascendente. Tampoco saltan a la vista mejores alternativas.

¿Cuáles son las claves para cambiar esta tendencia? ¿Qué hacer para que SAARC sirva para algo y realmente sea útil para sus pueblos? Es muy fácil recetar remedios para mejorar el funcionamiento de SAARC, incrementar sus éxitos y convertirlos en una asociación relevante para su propia región – pero otra cosa lógicamente es implementarlos.

Está claro que lo básico para el futuro de esta asociación regional es incrementar la confianza y el entendimiento mutuo. La asociación no empezará a despegar hasta que encuentren la manera de trabajar conjuntamente para solucionar sus problemas. En un mundo cada vez más interdependiente, lograrán mejor sus objetivos de paz, libertad, justicia social y prosperidad económica si fomentan el entendimiento mutuo, las buenas relaciones de vecindad y una cooperación significativa entre ellos – como elocuentemente dice su Carta.

Los conflictos bilaterales habrá que tratarlos y este foro parece buen sitio donde comenzar, no tienen mejores alternativas. Uno de los logros de otra asociación regional de Asia, ASEAN (Association of South East Asian Nations) es haber contenido las disputas entre sus miembros y no dejar que dichas disputas fueran obstáculos para su desarrollo y el de la Asociación. Cuando SAARC encuentre la base para combatir y disminuir la desconfianza, realmente es cuando la asociación despegará. Cualquier creación de medidas de confianza y medidas de asociación por lo tanto está estrechamente vinculada a la mejora de las relaciones bilaterales.

La suposición de que el éxito en la cooperación económica les ayudaría en la cooperación política, no tiene base. La cooperación económica tampoco puede proliferar en circunstancias de desconfianza. La cooperación económica puede ayudarles, en vista de la creciente complementariedad inducida por el desarrollo económico de la India. Indudablemente, si consiguen implementar las mejoras estimadas necesarias para el comercio, los países miembros se verían beneficiados. Y es fundamental que el país más grande, India, asuma sus responsabilidades y funcione como la locomotora de la Asociación. El coste de no cooperar puede ser muy alto.

Los países miembros de SAARC no han tenido una amenaza externa en común para servir como aglutinador, excepto quizá el terrorismo. Y sus mejores aliados fuera de la región a veces no coinciden en absoluto. Tampoco han visto sus intereses nacionales servidos en este organismo, y respecto al comercio, tienen otros muchos socios distribuidos por el mundo. Pero aunque vemos que las diferencias y las asimetrías entre los miembros son grandes, al fin y al cabo hay más cosas en común dentro de la región, que entre la región y otras zonas regionales.



La redefinición continua y la búsqueda constante de intereses comunes harán de ésta una asociación más vibrante. El fortalecimiento del secretariado y asimismo la creación de reglas más concretas a la hora de financiar proyectos serían ventajosos. La creación de instituciones de SAARC y el fortalecimiento de vínculos entre instituciones nacionales sería un gran avance, así como estrechar lazos con organismos internacionales.

Vivimos en tiempos de muchos cambios y de mucha incertidumbre. Actualmente estamos experimentando cierta polarización mundial y Asia genera mucha atracción. Eso, indudablemente trae oportunidades para los países de Asia del Sur. Tienen un largo camino por recorrer, y necesitan acelerar su paso si no quieren perder el tren.



SEGURIDAD EN LATINOAMÉRICA: UNA MIRADA CRÍTICA DESDE CHILE

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Resumen:

El Proceso de Consolidación del Estado (PCE) que puede definirse como el proceso en el cual un Estado se encuentra afianzando su institucionalidad y su estructura para poder generar un amplio consenso social, fuente de su poder, con la finalidad de poder llevar adelante sus objetivos más relevantes como un Estado-Nación, para satisfacer sus principales demandas en el desarrollo material y humano; bienestar; y seguridad de sus ciudadanos, es la pieza básica en el enfoque de este artículo, pues de su nivel de desarrollo se deriva la medida por la que los factores internos desestabilizadores pueden influir en la seguridad; un mayor nivel de PCE reduce dicho impacto. Sin embargo el diagnóstico del artículo es que a nivel regional el poder del estado según su PCE es demasiado débil como para controlar elementos internos como grupos narcotraficantes; el desafío por tanto de Latinoamérica es reforzar el aparato del estado para limitar el desafío a la seguridad que esta falta de control supone.

Palabras clave: PCE; instituciones; desarrollo; seguridad.

Title in English: “ Security in Latin America: a critical point of view from Chile ”

Abstract:

State's Consolidation Process (PCE in Spanish) can be defined as the process in which the State strengthens its structure and its institutions in order to generate a broad social consensus, with the goal of implementing its most relevant objectives as a State-Nation. The main point of this article is that the State has to satisfy the main demands for material and human development, welfare and security of its citizen. As from the level of development of PCE, it can be assessed how possible destabilizing internal factors can impact on security; a bigger level of PCE reduces such impact. Nevertheless the conclusions of this article emphasize that the level of PCE in the region is too weak as to ensure control of internal agents such as drug traffickers; the challenge therefore for Latin America is to reinforce the State's apparatus to limit the security threat that the existing lack of control implies.

Keywords: SCP; institutions; development; security.

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Introducción

Referirse a la seguridad en Latinoamérica, no es una tarea fácil, toda vez que la noción continúa siendo un término discutido, contencioso y en plena evolución, en función a las diversas asimetrías regionales, realidades geoestratégicas y respectivos “*procesos de consolidación de Estado*”, que al ser incipientes definen escenarios de seguridad caracterizados en mayor medida por amenazas internas que externas.

De allí que, el objetivo principal del presente artículo será abordar la respectiva conceptualización, principalmente desde la perspectiva del proceso de consolidación de Estado (PCE), para determinar el impacto que dicho proceso tiene en el escenario de seguridad nacional y regional. A modo de hipótesis me permito señalar que “*a menor grado de desarrollo del PCE, mayor impacto poseen los factores internos de un Estado en la configuración de sus respectivas nociones de seguridad; contrariamente, a mayor grado de desarrollo del PCE, los factores externos y transnacionales son los que en mayor medida definen la forma en que la seguridad de un Estado es percibida.*” Finalmente, intentaré definir una conceptualización – a modo de propuesta- para la región y los desafíos de seguridad del hemisferio que se ha de afrontar.

En consecuencia el orden de la presente presentación estará dado en primer término por la precisión de lo que entenderemos por PCE, para luego aplicar dicho concepto a los Estados de la región y visualizar si la hipótesis planteada tiene sentido. Para concluir se propondrá una forma de entender y visualizar la seguridad en Latinoamérica, junto a algunas consideraciones finales.

1. Proceso de Consolidación de Estado. (PCE).

Antes de definir lo que entenderemos por PCE se hace necesario, establecer la noción de Estado, útil para el presente trabajo. Por Estado moderno encontramos la definición de John A. Hall y John G. Ikenberry², quienes basándose en los clásicos ya señalados, lo definen como:

Un conjunto de instituciones, manejadas por el propio personal estatal, entre las que destaca muy particularmente la que se ocupa de los medios de violencia y coerción... Un conjunto de instituciones localizadas en un territorio geográficamente delimitado, atribuido generalmente a su sociedad... Y la instancia que monopoliza el establecimiento de reglas en el interior de su territorio, lo cual tiende a la creación de una cultura política común compartida por todos los ciudadanos.

Charles Tilly³, por su parte define al Estado moderno, en los siguientes términos:

Una organización que controla la población ocupando un territorio definido es un Estado en tanto (1) Se diferencia de otras organizaciones actuando en el mismo territorio; (2) es autónoma; (3) es centralizada; y (4) sus divisiones están normalmente coordinadas entre ellas.

² Hall, John; Ikenberry, John G. (1989): *The State*. Minneapolis. University of Minnesota Press, p. 1-2.

³ Charles, Tilly (1975): *The Formation of National States in Western Europe*. Princeton, New Jersey. Princeton University Press, p. 70.



Por otra parte, Oszlak⁴, en su artículo “La formación histórica del Estado en Latinoamérica,” define el Estado como:

Una relación social, un medio político a través del cual un sistema de dominación social es articulado... Su manifestación concreta es un grupo interdependiente de instituciones que forman el aparato en el cual el poder y recursos, de esa dominación política, se concentran.

Esta definición de Oszlak supone, por una parte, un conjunto de valores sobre los cuales se articula esta dominación social y por otra el conjunto de instituciones que le dan forma. Es decir, existe un elemento subjetivo que implica valores y sentimientos de pertenencia a una comunidad, que por lo general debiera formar una identidad colectiva. En otras palabras, una comunidad imaginada, a juicio de Anderson⁵. Por otra parte, existe un elemento objetivo, expresado en la formación de instituciones. Debemos suponer que la formación de un Estado involucra ambos procesos, sin que éstos necesariamente sean procesos simultáneos.

No obstante, Oszlak⁶ profundiza la definición citando una serie de atributos que el Estado debe poseer. Son los siguientes:

- Capacidad para externalizar su poder⁷.
- Capacidad para institucionalizar su autoridad⁸.
- Capacidad para diferenciar su control⁹.
- Capacidad para internalizar una identidad colectiva¹⁰.

En su texto, concluye que en el caso particular de Latinoamérica, la formación del Estado en sus inicios, se caracterizó por lo siguientes fenómenos¹¹:

⁴ Oscar, Oszlak (1981): “The Historical Formation of the State in Latin America: Some Theoretical and Methodological Guidelines for its Study”. *Latin American Research Review*. University of Texas, vol. 16, nº 2, p. 5.

⁵ Ver Anderson Benedict. *Imagined Communities: Reflections on the Origin and Spread of Nationalism*. London, New York. 1991. En esta obra, el autor destaca que la mera posibilidad de imaginar a la Nación sólo surgió en la historia cuando tres concepciones culturales perdieron su control axiomático sobre las mentes de los hombres. Dichos elementos son la lengua escrita, la creencia de que la sociedad estaba naturalmente organizada alrededor y bajo centros elevados y finalmente la concepción de la temporalidad. A lo anterior, se suma la afirmación que lo que hizo imaginables las comunidades nuevas era una interacción semifortuita pero explosiva, entre un sistema de producción y de relaciones productivas (capitalismo), una tecnología de las comunicaciones (la imprenta) y la fatalidad de la diversidad lingüística humana.

⁶ Oszlak, *op. cit.*, p. 7, cita a Philipe, Schmitter; Coatsworth, John H.; Przeworski, Joanne Fox (1977): *Historical Perspective on the State, Civil Society, and the Economy in Latin America*. Chicago, University of Chicago.

⁷ *Ibid.* Entendido como el reconocimiento a una entidad soberana, dentro de un sistema de relaciones interestatales, cuya integridad está garantizada por entidades similares ya en existencia.

⁸ *Ibid.* Implica la imposición de una estructura de poder capaz de ejercer un monopolio sobre los medios de coerción ya organizados.

⁹ *Ibid.* Considera la emergencia de instituciones públicas diferenciadas que son relativamente autónomas con respecto a la sociedad civil y deben poseer: una capacidad reconocida para extraer recursos de la sociedad, un cierto grado de profesionalización de sus funcionarios y una cierta medida de control centralizado sobre sus múltiples actividades.

¹⁰ *Ibid.*, p. 8. Consiste en la habilidad del Estado para generar símbolos que refuercen los sentimientos de pertenencia y cohesión social, componentes imaginarios de la nacionalidad que aseguran el apoyo ideológico al sistema de dominación.

¹¹ *Ibid.*, p. 17.



- La mayor parte de los movimientos de emancipación fueron municipales en su carácter, es decir limitado a las localidades en la cual las nuevas autoridades residían.
- El débil aparato estatal se formó con un pequeño número de instituciones jurídicas y administrativas, con una integración territorial limitada por las precarias comunicaciones internas.
- En suma, la existencia del Estado estuvo basada en sólo uno de los atributos mencionados anteriormente, el reconocimiento externo de su soberanía política.

Dicha caracterización, continúa siendo hoy en día el principal rasgo y desafío para muchos Estados de la región, distinguidos por una falta de soberanía efectiva en su territorio, es decir la acción del Estado no llega efectivamente a la totalidad de su espacio y ciudadanos. Las principales instituciones de un Estado continúan siendo débiles, caracterizadas por una seria ingobernabilidad, falta de mecanismos de control, rendición de cuentas y equilibrios de poder.

Finalmente, Oszlak aporta una propuesta mediante la cual la efectividad de un Estado y de su sistema de poder depende fundamentalmente de lo siguiente:

Grado de articulación entre el interés rural y el urbano, los cuales están relacionados con las condiciones existentes para la integración económica del territorio.

De esta forma, si aplicamos los conceptos anteriormente citados a los Estados de la región, podemos señalar que estos no han podido consolidar los atributos principales que definen a un Estado moderno.

Ahora bien, por proceso de consolidación de Estado entenderemos el nivel de desarrollo de un Estado respecto del funcionamiento efectivo de sus principales instituciones democráticas y del nivel de respaldo que dichas instituciones tienen en la ciudadanía. Por una parte, comprende la autoridad estatal para imponer normas a sus ciudadanos y, por otra, la clara conciencia de estos por acatarlas sintiéndose parte de una comunidad nacional agrupada en torno a un Estado.

En otras palabras, por “consolidación de un Estado” concebiremos el proceso en el cual un Estado se encuentra afianzando su institucionalidad y su estructura para poder generar un amplio consenso social, fuente de su poder, con la finalidad de poder llevar adelante sus objetivos más relevantes como un Estado-Nación, para satisfacer sus principales demandas en el desarrollo material y humano; bienestar; y seguridad de sus ciudadanos.

Consecuentemente, un Estado con un proceso de consolidación avanzado tendría en consecuencia un sistema estatal con pleno equilibrio de poderes, en que cada órgano estatal desarrolla sus funciones profesionales propias con pleno respaldo de su ciudadanía y en el cual las crisis internas y externas son abordadas en su direccionamiento y solución por la acción reguladora de las autoridades políticas, democráticamente electas¹². Como resultado de

¹² Francis Fukuyama distingue en la capacidad estatal dos actividades: “la amplitud de la acción estatal” de la “fortaleza” de dicha acción. Ello lo lleva a configurar cuatro cuadrantes de acuerdo al nivel de amplitud versus nivel de fortaleza. De esta forma, el mejor cuadrante de la capacidad estatal está representado por el de menor amplitud de la acción estatal, pero con un alto grado de fortaleza como la capacidad institucional. Se asume que lo ideal no es un Estado omnipotente ni dominando el conjunto de actividades, sino un Estado regulador, que beneficia y coordina la actividad de su sociedad. En general, Latinoamérica se caracteriza por poseer una vasta amplitud estatal con una baja fortaleza de sus instituciones. Ver : Francis, Fukuyama. “The Imperative of State



ello, el nivel de satisfacción de las demandas más urgentes de la sociedad, el desarrollo, bienestar y seguridad es alto.

2. Análisis del Proceso de Consolidación y los escenarios de seguridad locales.

Habiendo definido conceptualmente que entenderemos por proceso de consolidación de Estado, pasamos a revisar si la región se encuentra en un buen grado de desarrollo y consolidación del concepto. Importante es mencionar la inexistencia -a la fecha- de una metodología que pueda establecer el grado de desarrollo del “Proceso de Consolidación de Estado”. Uno de los principales factores a considerar es la falta de datos en las diversas variables, como el nivel de institucionalidad, la corrupción, voz y rendición de cuentas entre otros factores. Sin embargo, con la finalidad de aproximarnos a una estimación de dicho proceso utilizaremos los siguientes indicadores internacionales disponibles.

- Índice de desarrollo humano¹³. (IDH) “Programa de las Naciones Unidas para el Desarrollo”.
- Índice de libertad en el mundo¹⁴. “Freedom House”.
- Índice de gobernabilidad¹⁵. “Banco Mundial”.

Building”. *Journal of Democracy*. vol. 15, nº 2. (April 2004), pp. 17-31. Lo anterior fue ratificado por Francis Fukuyama en entrevista con el autor el 23 agosto 2007.

¹³ Este índice ha sido elaborado, desde 1990, por el Programa de las Naciones Unidas para el Desarrollo (PNUD). Su finalidad es medir y valorar la multidimensionalidad del desarrollo humano, basado en tres indicadores. Estos son la longevidad, medida en función de la esperanza de vida al nacer; el nivel educacional, medido en función de una combinación de la tasa de alfabetización de adultos y la tasa bruta de matrículas combinadas, primaria, secundaria y terciaria; junto al nivel de vida, medido por el PIB real per cápita en dólares. Su resultado se expresa en un valor entre 0 y 1, correspondiendo el 0 al menor grado de desarrollo y el 1 a la expresión más alta de desarrollo. Como consecuencia de esta categorización, los Estados se clasifican de acuerdo a las siguientes categorías: índice de desarrollo humano alto, medio o bajo.

¹⁴ Este informe elaborado por el instituto estadounidense “Freedom House”, establece el grado de libertad y democracia imperante en los diferentes Estados, del sistema internacional. La metodología a emplear considera dos tipos de variables: los derechos políticos (Political Rights PR) y las libertades civiles (Civil liberties CL). Se mueve de un rango de 1 a 7, siendo el 1 el rango de mayor libertad y el 7 la expresión de ausencia de libertad. La valoración da lugar al establecimiento de tres categorías o grupos de países, de acuerdo a lo siguiente: países libres, parcialmente libres y países no libres.

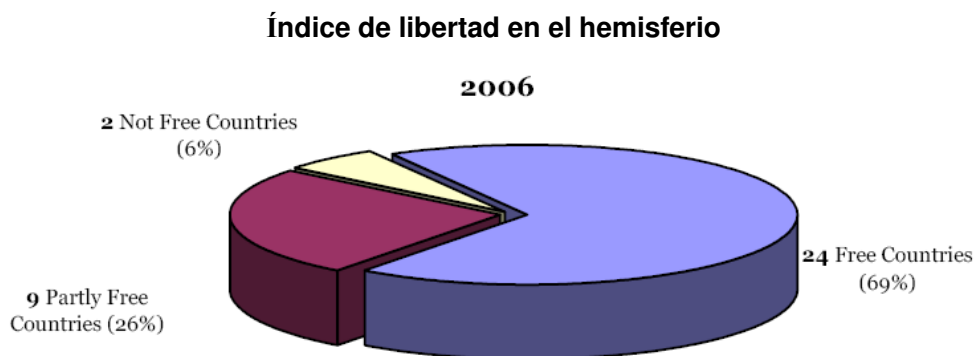
¹⁵ Este índice, elaborado por el Banco Mundial desde 1996, determina el grado de gobernabilidad de los Estados, mediante la valorización de seis variables. A la fecha abarca 213 países y territorios, desde 1996 a 2005. Las variables consideradas en la medición del nivel de gobernabilidad son las siguientes: Voz y rendición de cuentas (Voice and accountability); Estabilidad política y ausencia de violencia (Political Stability and Lack of Violence); Efectividad gubernamental (Government Effectiveness); Calidad regulatoria (Regulatory Quality); Estado de derecho (Rule of Law); Control de corrupción (Control of corruption). Las variables anteriormente mencionadas se miden en valores que oscilan entre 2,5 y + 2,5 puntos. Son extraídas de más de 31 bases de datos por más de 25 diferentes organizaciones internacionales. Esta información, está basada en informaciones y percepciones, junto al importante antecedente, de presentar un margen de error para cada medición. Ello hace que este índice, constituya un buen instrumento para la medición de la gobernabilidad.



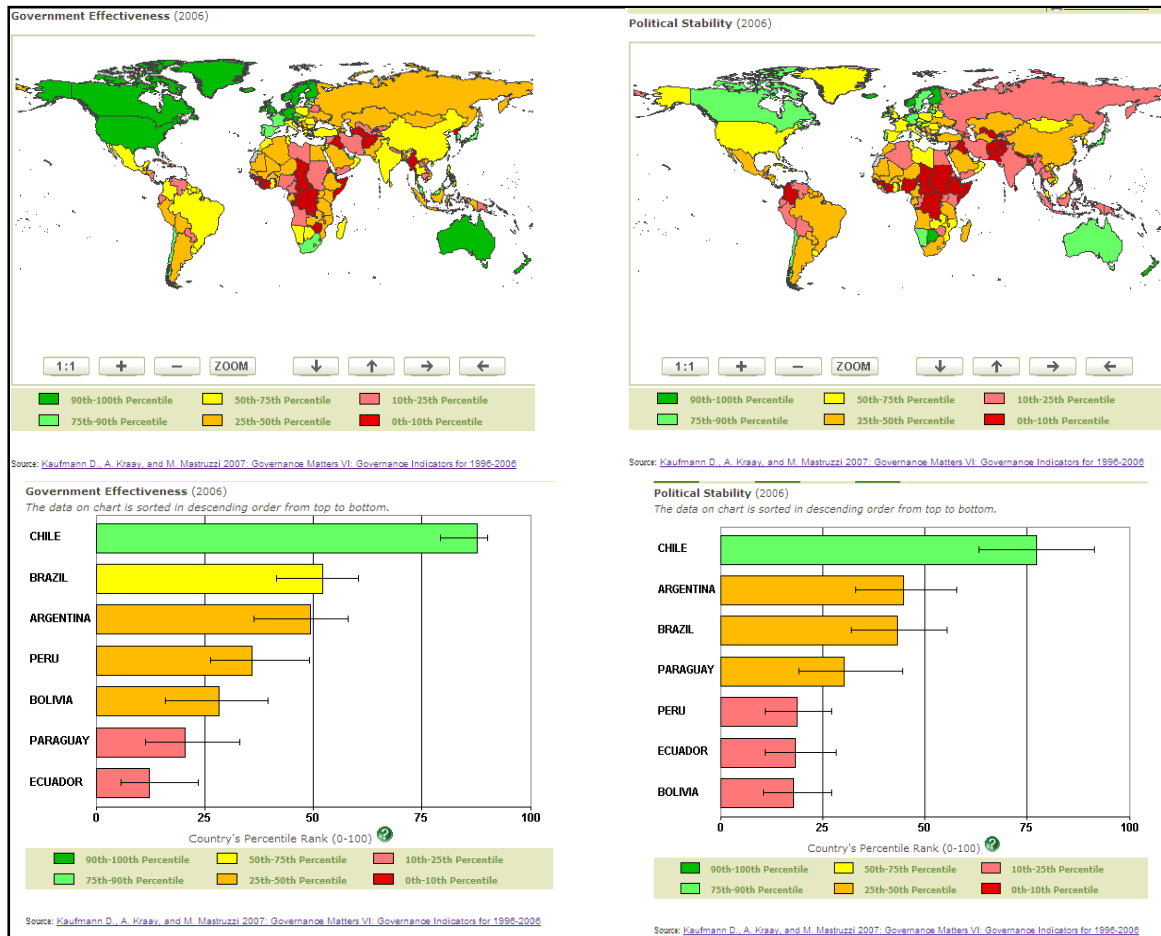
Si consideramos el Índice de Desarrollo Humano (IDH), este nos indica que la mayoría de los países de la región, se encuentra en la categoría de un IDH medio.

Los 10 IDH más altos				Los 10 IDH más bajos			
Posición	Cambio comparado a Dato de 2005 (publicado en 2007)	Pais	IDH en 2005 (publicado en 2007)	Posición	Cambio comparado a Dato de 2005 (publicado en 2007)	Pais	IDH en 2005 (publicado en 2007)
IDH Alto				IDH Medio			
1	= (0)	Canada	↑ 0.961	1	= (0)	Haiti	↑ 0.529
2	= (0)	Estados Unidos	↑ 0.951	2	= (0)	Guatemala	↑ 0.689
3	= (0)	Barbados	↑ 0.892	3	↓ (1)	Bolivia	↑ 0.695
4	= (0)	Argentina	↑ 0.869	4	↑ (1)	Honduras	↑ 0.700
5	= (0)	Chile	↑ 0.867	5	= (0)	Nicaragua	↑ 0.710
6	= (0)	Uruguay	↑ 0.852	6	↓ (2)	El Salvador	↑ 0.735
7	= (0)	Costa Rica	↑ 0.846	7	↑ (1)	Jamaica	↑ 0.736
8	↑ (2)	Bahamas	↑ 0.845	8	↑ (1)	Guyana	↑ 0.750
9	↓ (1)	Cuba	↑ 0.838	9	↓ (2)	Paraguay	↓ 0.755
10	↑ (1)	México	↑ 0.829	10	↓ (2)	San Vicente y las Granadinas	↑ 0.761

Por su parte el índice de libertad en el mundo establece la siguiente situación, para los estados del hemisferio:



Finalmente el índice de gobernabilidad, sólo para la efectividad gubernamental y la estabilidad política, nos presenta la siguiente situación para la región:



En síntesis, si revisamos los diversos indicadores internacionales encontraremos que la región no presenta índices que den cuenta de un buen grado de institucionalidad, gobernabilidad, ley y orden que permitan expresar que la región se encuentra en un buen nivel de su proceso de consolidación de Estado. De aquí que, entre otros fenómenos, se recurra al empleo de la fuerza militar para afrontar amenazas a la seguridad pública.

Por otra parte, los principales problemas de seguridad que enfrenta la región, y que se relacionan principalmente con altos niveles de criminalidad¹⁶ y narcotráfico, incapacidad de ejercer un efectivo control territorial, fronteras con alta porosidad en donde las organizaciones delictivas encuentran facilidades para su actividad, al ser contrastados con el nivel de institucionalidad y gobernabilidad adecuados para enfrentar los desafíos de seguridad, nos aparece una brecha de inseguridad que representa una gran vulnerabilidad de Latinoamérica para hacer frente a las actuales amenazas. En otras palabras, al ser incipiente el PCE, el escenario de seguridad de la región se puede caracterizar por una interacción en la cual tenemos al crimen organizado en sus diversas modalidades versus el Estado desorganizado,

¹⁶ Latinoamérica presenta los mayores índices de criminalidad a nivel mundial. La Organización Mundial de Salud ha estimado que 10 crímenes cada 100.000 hab., es una situación catalogada como de emergencia, pues bien, el promedio de criminalidad en la región, los últimos años, es de 27,5 crímenes cada 100.000 hab. Ver Richard, Narich. "Tradicional and Non traditional Security Issues in Latin America." Geneva, Geneva Centre for Security Policy, en www.ciaonet.org/wps/nar01. Griffiths, John. "Los Conflictos Armados No Convencionales en la Región y su Gestión Político-Estratégica: Actuales Desafíos para la Conducción Estratégica y el Escenario de Seguridad Actual", en Contreras, Arturo; Demarest Geoffrey; Gaete, José (2006): *Globalización, Fenómenos Transnacionales y Seguridad Hemisférica*. Santiago, Chile, IGM, pp. 313-337.



tratando de afianzar su proceso mientras al mismo tiempo debe tratar de neutralizar los principales retos de seguridad, que requieren de un Estado sólido y de una región consolidada, para articular medidas cooperativas ante retos de naturaleza transnacional.

3. Proposición de una nueva conceptualización de la seguridad.

Para efectuar el análisis y proposición de una nueva noción de seguridad¹⁷ en el contexto de un Estado moderno, asumiremos un conjunto de premisas básicas que validarán la propuesta.

Una primera premisa básica, presupone la existencia de un Estado moderno con un proceso de consolidación de Estado nacional maduro. Es decir un Estado con un buen nivel de gobernabilidad, institucionalidad, equilibrio de poderes, rendición de cuentas y unidad nacional. En síntesis, un Estado con un aceptable nivel de desarrollo, seguridad y bienestar. Lo anterior, en función de estimarse que la condición seguridad es el resultado de una empresa de carácter colectivo tanto de las principales instituciones como grupos sociales al interior del Estado.

En dicho contexto y para los objetivos del presente trabajo, tendremos en cuenta –como segunda premisa básica– que el Estado nacional, continúa siendo el principal actor del escenario internacional, reconociendo que hoy comparte muchas funciones y protagonismo con otros actores tales como las organizaciones internacionales, no gubernamentales, transnacionales, etc. Sin embargo, finalmente aún cuando el Estado–nacional ya no ejerza en forma absoluta la soberanía de su pueblo y territorio, sí es el órgano que la administra tanto en el plano interno como en el externo. Continúan siendo los Estados–nacionales los principales objetos y sujetos del Derecho Internacional. En otras palabras, las funciones de seguridad y defensa nacional encuentran en el Estado–nacional el principal vehículo para su expresión.

Una tercera premisa básica, es asumir que dentro de la totalidad de las funciones políticas de un Estado, la seguridad y el desarrollo son dos medios trascendentales –o dos necesidades vitales permanentes– para el logro del bien común. En otras palabras, la seguridad y el desarrollo son dos caras de una misma moneda denominada bienestar de la persona humana, objeto y sujeto del bien común, objetivo supremo de la función de un Estado, dirigida a quienes son la fuente de su soberanía, los ciudadanos del Estado-Nación.

Una cuarta premisa básica, es asumir que en el funcionamiento de un Estado–Nación existen fenómenos que afectarán el logro o la consecución de sus objetivos nacionales. De allí que debemos analizar dichos fenómenos de acuerdo con su naturaleza. Existirán entonces fenómenos de diversa naturaleza que impactarán el escenario de seguridad en su modalidad de amenaza y/o riesgo¹⁸. Algunos de ellos serán de naturaleza militar e impactarán al ámbito de la seguridad en lo general y en lo particular al de la defensa nacional. Otros sin embargo,

¹⁷ Se estima que la actual noción de seguridad hemisférica consensuada en México, el año 2003, que establece que la seguridad es un concepto multidimensional, afectado por factores, políticos, económicos, sociales, de salud y ambientales, es tan amplia que no favorece ni contribuye a la formulación de efectivas políticas que beneficien los respectivos ámbitos de la seguridad, el desarrollo y el bienestar de la población, en la permanente búsqueda del bien común general. Al contrario, se da el fenómeno que Buzan; Waever denominan, securitización de los fenómenos. Ver Barry Buzan; Ole, Waever; de Wilde, Jaap. (1998) *Security: A New Framework for Analysis*. Boulder, Colorado. Lynne Rienner Publication.

¹⁸ Cuando existe la capacidad de causar daño unido a la voluntad política de hacerlo hablaremos de amenaza, sin embargo, cuando sólo el fenómeno posea sólo la capacidad, o bien sólo la voluntad política se denominará riesgo.



serán de naturaleza no militar afectando el ámbito del desarrollo o el bienestar general e individual. De allí que sea necesario clasificarlos convenientemente con el objeto de definir a que función del Estado afectan. Lo anterior se estima trascendental para la efectiva formulación de políticas de gobierno.

Una quinta premisa básica está relacionada con que el actual sistema internacional no se encuentra a la fecha preparado o en condiciones de soslayar la constatación o pervivencia de las rivalidades, auge, caída o desequilibrio entre los Estados, una de las preocupaciones fundamentales de la seguridad, como causas de conflicto armado, en el actual orden internacional.

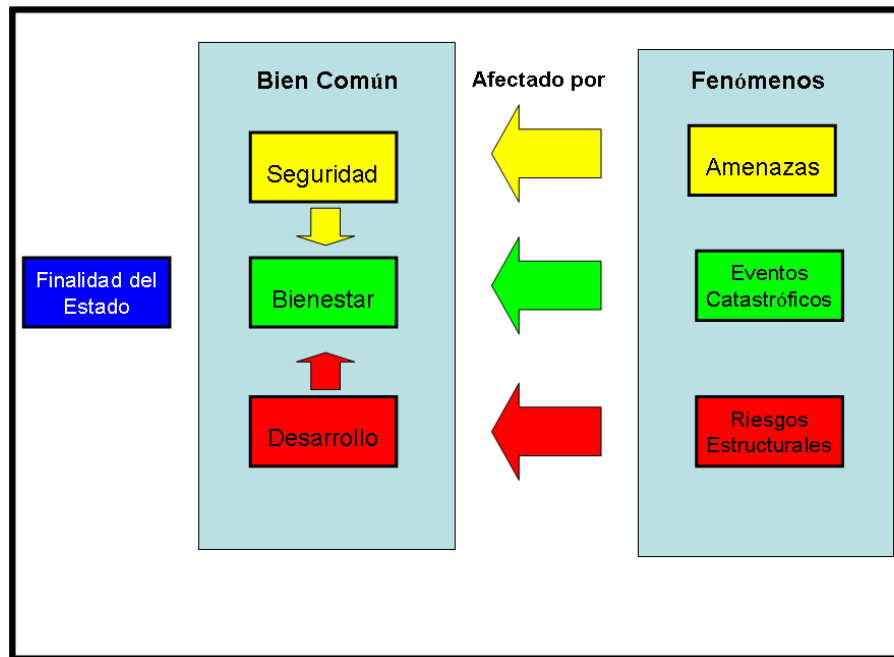
Consecuentemente se propone la siguiente clasificación¹⁹:

- Amenazas de naturaleza militar: Considerar dentro de esta clasificación a todos aquellos fenómenos de naturaleza militar que afecten los intereses de un Estado. En otras palabras, todas las acciones posibles de expresarse en un conflicto armado, entre dos Estados. Lo anterior, lamentablemente, aún constituye una posibilidad en el actual escenario de seguridad latinoamericano.
- Amenazas de naturaleza no militar: Considerar principalmente a todos los fenómenos de naturaleza violenta y a veces de carácter transnacional, desencadenados con una intencionalidad definida, para producir daño físico a la persona humana. Involucra complementariamente también a todos los delitos tipificados tanto en la legislación interna de un país, como en la legislación internacional. Se encuentran dentro de esta clasificación, entre otros fenómenos, el terrorismo, tráfico de drogas, organizaciones criminales, tráfico de armas de destrucción masiva, etc.
- Riesgos estructurales: Son aquellos fenómenos que afectan el logro de condiciones materiales y de bienestar de la persona humana, sin que necesariamente y directamente involucren un riesgo a la seguridad física de la persona humana. Se encuentran dentro de esta clasificación, entre otros factores: la pobreza, inestabilidad económica, desigualdad económica, corrupción, etc. Los riesgos, muchas veces, crean las condiciones necesarias para posibilitar y favorecer la eclosión de amenazas de naturaleza no militar. De allí que, muchas veces la pobreza, exclusión, desigualdad económica y corrupción establezcan las condiciones necesarias para el surgimiento de organizaciones delictivas o criminales. Sin embargo, sí es importante destacar que los riesgos estructurales *per se* no constituyen una amenaza a la seguridad, sino que son un factor que debe preocupar principalmente a las políticas de desarrollo de un Estado–Nación.
- Eventos catastróficos: En esta clasificación consideraremos dos tipos de eventos. Los primeros, generados principalmente por la acción de la naturaleza, difíciles de predecir, y con resultado de pérdida de vidas humanas, denominados eventos catastróficos naturales. En este tipo de eventos se consideran los desastres naturales, como terremotos, tsunamis, explosiones volcánicas, etc. El segundo tipo, son aquellos eventos catastróficos generados por la acción del hombre y que provocan pérdidas de vidas humanas, denominados eventos catastróficos humanos. En esta clasificación encontramos, entre otros fenómenos, a toda epidemia transmitida por el hombre y que

¹⁹ Ver John S., Griffiths (2008): *Evolución de las nociones de seguridad y defensa nacional en el continente americano: Análisis de los casos de los EE.UU. de A., Perú y Chile*. Tesis Doctoral. Universidad de Santiago de Chile.

resulta en la pérdida de vidas humanas tales como el SIDA, y todo tipo de enfermedad infecto contagiosa. O bien, desastres catastróficos provocados por la acción humana, que involucren el riesgo de vidas como explosiones químicas, derrame de sustancias peligrosas, propagación de radioactividad, etc.

Se adjunta cuadro explicativo con explicación de los fenómenos y el ámbito que cada uno de ellos afecta:



Cuadro fenómenos y ámbito afectado

En consecuencia, los diferentes fenómenos aún cuando estén íntimamente relacionados, poseen una naturaleza distinta que debe ser tomada en cuenta al momento de disponer el empleo de los medios estatales para su neutralización o superación. En dicho contexto, la seguridad en tanto condición y función política del Estado, aborda el conjunto de las amenazas de naturaleza militar y no militar que puedan afectar a dicho Estado, en tanto éstas sean en esencia violentas²⁰ por su naturaleza, exista una intencionalidad humana detrás de su accionar e implique la pérdida de vidas humanas. Es decir, cuando se exprese la trilogía; *violencia, intencionalidad y fatalidad* con alguna finalidad política.

La defensa nacional por su parte, en tanto función político–estratégica y estratégica, parte indisoluble de la función seguridad, se encarga de enfrentar las amenazas de naturaleza militar y de generar a través de la participación en Operaciones de Paz, estabilidad y paz internacional. Existe entre ambos conceptos una relación de subordinación, interdependencia

²⁰ Violencia definida, de acuerdo a John Keane, como “*el acto de ejercer fuerza física en contra de otra persona, especialmente cuando da como resultado la muerte o el daño físico*”. De allí que se sostenga que ella se expresa por razones de intencionalidad humana. En consecuencia, la violencia comprende, en este estudio y propuesta, las manifestaciones de violencia política y violencia individual. Ver Keane, John (1996): *Reflections on Violence*. Londres. Editorial Verso, p. 66. No se comparte la propuesta de Johan Galtung sobre “violencia estructural” por considerarse que ello es factor de desarrollo y no de seguridad. Ver Johan, Galtung (1975): *Peace: Research, Education, Action*. Copenhague. Ejlers Forlag.



y complementariedad. Si el género es la seguridad, la especie es la defensa. De este modo, entre la seguridad y la defensa nacional no sólo existe una diferencia, de acuerdo al nivel de conducción en que se sitúan, sino que también están orientadas a abordar amenazas de naturaleza y amplitud diversa.

La seguridad es una condición que permite lograr el normal funcionamiento de las actividades de un Estado respecto de sus principales misiones, dentro de las cuales se encuentra el desarrollo nacional y el bienestar de la persona humana, para asegurar el logro del bien común nacional. Dicha condición se refiere a todo fenómeno violento, con una intencionalidad definida, provocado por amenazas de naturaleza militar y no militar que afecten el normal desenvolvimiento de las actividades de un Estado, a través del riesgo o daño físico a la integridad personal de la población. La seguridad tiene un ámbito objetivo, dado por todos los medios humanos y materiales a disposición de un Estado, para lograr óptimos niveles de seguridad, ya que nunca podrá ser absoluta. Pero al mismo tiempo posee un ámbito subjetivo, que está dado por la percepción de la condición de seguridad, por parte de los ciudadanos integrantes de un Estado.

En consecuencia, el referente de la seguridad es el Estado y a través de este la persona, para evitar que la violencia armada afecte a la población en cualquiera de sus dimensiones. Se hace presente que el referente es el Estado, ya que es este organismo el encargado de brindar el bien seguridad en su dimensión interna y externa. Centrar el referente en la persona humana conlleva el riesgo de confundir la noción de seguridad con los derechos humanos e individuales de todo ciudadano. Más aún cuando el tema de la seguridad humana, como concepto teórico, aún se encuentra tratando de ser definida y connotada en su significado y alcances.²¹ En otras palabras la comunidad académica aún no tiene una definición precisa del significado, alcances y connotación del término seguridad humana. Ello no significa reconocer que existen diversas aproximaciones, pero estamos lejos de lograr un claro entendimiento de esta noción.

Por otra parte, para brindar el bien seguridad aún es prioritario que algún tipo de organización política lo centralice, coordine y lo haga efectivo. De allí que, a juicio de este autor es desde la perspectiva del Estado que la seguridad, tanto en su dimensión objetiva como subjetiva, puede como condición ser proyectada a toda la comunidad incluyendo las demandas de la seguridad humana, para de esta forma ser más efectivos a la hora de afrontar los desafíos de seguridad del presente siglo. Más aún, en el actual escenario de seguridad internacional los verdaderos suministradores de la seguridad siguen siendo los Estados, ya sea a través de su propio accionar o bien a través de acuerdos bilaterales y multilaterales, o bien a través de su actuación en el contexto de las diferentes organizaciones internacionales. Ello no significa que no se reconozca el papel de otros actores, como las organizaciones no gubernamentales, pero se estima que estos actores internacionales, por importantes que sean, tienen un papel más complementario cuando se las compara con las capacidades del Estado y su actividad internacional.

Al proponer como referente de la seguridad al Estado y a través de éste a la persona humana, nos situamos en un plano más intermedio en función de las principales propuestas existentes en la actualidad. Por una parte, las más conservadoras que asumen que sólo es el Estado y, por otra, las más liberales que se centran exclusivamente en la persona humana.

²¹ Ver Paris, Roland. "Human Security: Paradigm Shift or Hot Air?" *International Security*. vol. 26. n° 2. 2001. Pág. 87-102. Ewan, Pauline: "Deepening the Human Security Debate: Beyond the Politics of Conceptual Clarification", *Politics*, Oxford University Press, vol. 27, n° 3, (August 2007) pp. 182-189.



4. Consideraciones finales.

Se estima que en el actual escenario de seguridad regional, el principal desafío lo constituye la debilidad del aparato estatal para afrontar los fenómenos desatados por las fuerzas de la globalización, que principalmente se relacionan con las organizaciones criminales, de narcotráfico, terrorismo etc. A ello se suma las dificultades del Estado para asegurar una “soberanía efectiva” en su territorio. Se debe considerar que precisamente los grupos criminales aprovecharán cada debilidad para ocupar áreas o zonas geográficas en donde el Estado no tenga presencia.

Se estima que existe una clara relación entre el respectivo PCE de un determinado país y la forma en que utiliza los medios puestos a disposición del Estado, para lidiar con fenómenos ligados al ámbito de la seguridad. En otras palabras, mientras más débil e incipiente es el PCE, mayores preocupaciones internas produce, en las cuales se recurre normalmente a misiones amplias para las Fuerzas Armadas. Es posible entender dicho fenómeno, pero el verdadero desafío está en crear y fortalecer la institucionalidad, robusteciendo de paso el respectivo PCE.

Se estima que es esencial distinguir los fenómenos de acuerdo a su naturaleza, encuadrando a las amenazas violentas, intencionales y que provocan mortalidad en el ámbito de la seguridad. De esta forma el concepto se amplía y se profundiza en su significado. Más importante aún nos permite distinguir y orientar la formulación de políticas hacia la seguridad, desarrollo y bienestar de la comunidad nacional, sin militarizar o privilegiar el uso de la fuerza en aquellas en que el énfasis de su neutralización no está dada en acciones violentas, sino en factores sociales, económicos, catastróficos etc. Lo anterior nos permitirá una mejor comprensión de los desafíos de seguridad que enfrentan nuestros Estados de la región mientras se esfuerzan por fortalecer su PCE y al mismo tiempo deben lidiar con las nuevas fuerzas desatadas por el fenómeno de la globalización.

En síntesis, el verdadero desafío de seguridad en Latinoamérica está dado por fortalecer la capacidad del Estado, para lidiar con la eclosión de nuevas amenazas que ponen a prueba dicha fortaleza. En otras palabras, mejorar el proceso de consolidación de Estado, se transforma en un imperativo, para privilegiar el desarrollo y consolidación de las principales instituciones que deben hacer frente al delito, tanto en su fase de prevención como de represión. En ese contexto, se debe prever una estrategia que integre los diversos ámbitos de un Estado en un proceso Inter.-agencial efectivo, para que exista sinergia entre ellos. Desde la perspectiva de la seguridad interesa fortalecer la interacción y coordinación de todos los organismos responsables de ella, entre otros, definir dónde la seguridad y la defensa se superponen, para redefinir misiones que hagan más efectiva la acción estatal de brindar seguridad a sus ciudadanos.



EL CONSEJO DE DEFENSA SUDAMERICANO: ¿INSTRUMENTO DE INTEGRACIÓN REGIONAL O MECANISMO PARA LA HEGEMONÍA DEL BRASIL?

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Resumen:

El presente artículo expone la iniciativa brasileña de creación de un Consejo de Defensa Sudamericano, que vendría a completar el sistema de seguridad hemisférica de la región en un proceso de profundización de la integración sudamericana, analizándose si la propuesta cumplirá las necesidades de defensa exterior a través de una seguridad cooperativa o sólo servirá para fortalecer a Brasil como país con pretensiones hegemónicas en la región. También se trata si la noción de seguridad para la región debería enfocarse más en los conflictos intra-estatales y no tanto en supuestas amenazas exteriores.

Palabras clave: Seguridad hemisférica; hegemonía regional; integración sudamericana.

Title in English: “*The South American Defence Council: An instrument for the regional integration or a mechanism for the Brazilian hegemony?*”

Abstract:

The present paper try to set out the Brazilian initiative of creating a South American Defence Council, that would complete the hemispheric security system of the region in a process of deepening of the South American integration, analysing if the Brazilian proposal would comply with the necessities of the foreign defence through a cooperative security or only would serve to strengthen Brazil as a country with hegemonic desires in the region. Also deals with, if the security notion for the region would have to be focused more in the intra state conflicts and not so much in hypothetical foreign threats.

Keywords: Hemispheric security; regional hegemony; South American integration.

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Introducción

Sesenta años después de la entrada en vigor del Tratado Interamericano de Asistencia Recíproca (TIAR), Brasil ha propuesto crear un Consejo de Defensa Sudamericano (en adelante CDS). Fue en la Cumbre extraordinaria de la Unión de Naciones Sudamericanas (UNASUR) que tuvo lugar en Brasilia el pasado 23 de mayo. En dicha Cumbre se aprobó el texto del Tratado constitutivo de la UNASUR, que es una iniciativa más amplia que el MERCOSUR y supone un segundo paso en el fomento de la integración en el subcontinente;² y se sometió a consideración la propuesta brasileña sobre la formación del CDS cuya aprobación quedó finalmente en suspenso. En la susodicha reunión de mandatarios sudamericanos se acordó, a instancia de Chile, que ostenta en estos momentos la Presidencia "pro tempore" de la UNASUR, dar un plazo de 90 días para el análisis de la propuesta brasileña. En dicho tiempo un grupo de trabajo compuesto por "un consejo de sabios" revisará la propuesta, recogerá las dudas y las sugerencias de los diferentes países y presentará luego una propuesta definitiva. La iniciativa brasileña deberá ser discutida por todas las naciones antes de que pueda ser aceptada de forma consensuada. Aunque en los recientes diálogos mantenidos por los dirigentes sudamericanos se logró el acuerdo de la definición del CDS como un mecanismo de diálogo político y cooperación en materias de defensa, bajo el principio de preservar a Suramérica como una zona de paz, base para la estabilidad democrática y el desarrollo económico y social de los pueblos de la región.

1. Antecedentes.

La Segunda Guerra Mundial pese a sus devastadoras consecuencias, tuvo sin embargo, paradójicamente, la virtud de convencer a los Estados americanos de que unilateralmente no podrían ya más en el futuro salvaguardar su integridad territorial, obligándoles así a establecer los fundamentos básicos para los procedimientos hemisféricos de seguridad colectiva. De esta manera, el 30 de marzo de 1942 quedó establecida la Junta Interamericana de Defensa (JID) como una organización de naturaleza militar para el asesoramiento de la OEA.³ La JID se constituirá así como un organismo especializado de la OEA en asuntos de defensa y asesoramiento técnico-militar.⁴ Según el Estatuto que rige hoy la JID, la tareas definitivas del organismo son las de prestar a la OEA y a sus Estados Miembros servicios de asesoramiento técnico, consultivo y educativo sobre temas relacionados con asuntos militares y de defensa en el hemisferio para contribuir al cumplimiento de la Carta de la OEA; alcanzando la JID su plena vinculación jurídica con la OEA en el año 2006.⁵ La JID, creada ya en 1942, fue concebida como un organismo militar interamericano con el fin de estudiar, recomendar y planear medidas para la defensa colectiva del hemisferio durante la IIGM. La misión de la JID, originariamente provisional, se prolongó terminada la guerra y después de la creación de la OEA en 1948, cuando se consideró que existían otras amenazas desde el exterior del hemisferio que podían dar lugar a una agresión contra sus Estados. Terminada la Guerra Fría se resolvió que a la JID se le podía requerir el asesoramiento y la prestación de servicios consultivos de carácter técnico-militar. Más tarde se le atribuyó la misión de actuar como

² John de Sousa, Sarah-Lea: "Brasil, India y Sudáfrica, potencias para un nuevo orden", *Política Exterior*, nº 121, (enero/febrero 2008), p. 173.

³ Merida Galindo, Luis Alberto (1997): "Papel de la Junta Interamericana de Defensa en el contexto interamericano para el siglo XXI", Washington, Colegio Interamericano de Defensa, pp. 3 y 4.

⁴ Patiño Mayer, Hernán (1993): "El futuro de la Junta Interamericana de Defensa", *FASOC*, vol. IX, nº 2, p. 1.

⁵ Del Castillo Pantoja, Guillermo: "La Junta Interamericana de Defensa y su nueva relación con la Organización de Estados Americanos", *Military Review*, (mayo-junio 2007), p. 26.



órgano de planeamiento y preparación para la defensa del continente americano y desempeñar las funciones consultivas que le competan para contribuir a la seguridad del continente. Actualmente la JID, ya totalmente integrada jurídicamente en la OEA, se concibe como un foro internacional integrado por representantes militares que colaboran para identificar soluciones a los retos comunes de defensa y seguridad que surgen en el hemisferio.⁶

Ya entre 1947 y 1948, las Américas definieron la arquitectura para la preservación de la paz y la seguridad en el hemisferio occidental. Se firmó en septiembre de 1947 el Tratado Interamericano de Asistencia Recíproca (TIAR) dando origen al concepto de asistencia militar mutua ante amenazas externas a la seguridad continental. El Tratado conviene en su artículo 3.1 que “un ataque armado por parte de cualquier Estado contra un Estado americano, será considerado como un ataque contra todos los Estados americanos y, en consecuencia, cada uno de dichos Estados Partes se comprometen a ayudar a hacer frente al ataque, en ejercicio del derecho inmanente de legítima defensa individual o colectiva que reconoce el artículo 51 de la Carta de las Naciones Unidas”.⁷ El TIAR define un conjunto de medidas de respuesta colectiva a una agresión que no implica un ataque armado y a una agresión directa en perfecta armonía con las medidas que establecen los capítulos VI y VII de la Carta de las Naciones Unidas.⁸ Su constitución no solamente refleja un tratado de seguridad colectiva, sino que también constituye un mecanismo de resolución de disputas y, a la vez, corresponde a una alianza político-estrategia.⁹ El TIAR es el primer pacto de seguridad de la posguerra para organizar la defensa colectiva de varios países contra una amenaza común; en efecto, el “Tratado de Río” inspira a los legisladores del Tratado del Atlántico Norte (OTAN). Los países latinoamericanos por lo general alegan que el TIAR más que satisfacer las necesidades comunitarias, ha atendido básicamente a los intereses de Washington durante la Guerra Fría. El TIAR efectivamente se utilizó principalmente como instrumento formal de defensa para “contener” el avance del comunismo en las Américas, más que como mecanismo de disuasión frente a agresiones externas. El TIAR finalmente perderá importancia estratégica a partir de la década de los setenta y la mayoría de los Estados han preferido guardarlo en la caja fuerte por mucho tiempo hasta los trágicos hechos del 11-S en los EEUU.¹⁰ Hay una tendencia al debilitamiento muy acentuada en el sistema interamericano de defensa. El tratado interamericano (TIAR) firmado hace ya más de sesenta años, es un acuerdo de ayuda mutua ante amenazas extra-regionales que carece de utilidad práctica y que nunca ha sido utilizado. Después de la guerra de las Malvinas, estaba prácticamente obsoleto, sin posibilidades de reconocimiento ni legitimidad.¹¹ Por esta razón, México anunció en 2002 su salida del TIAR. En 2003 se realizó en México la Conferencia especial de seguridad hemisférica; siendo el principal logro de la reunión el haber podido consensuar un concepto multidimensional de seguridad que incluyera las nuevas amenazas (narcotráfico, crimen organizado, corrupción, terrorismo, desastres naturales y ecológicos, etc.). Sin embargo no se llegó a modificar el TIAR ni tampoco se llegó a definir una nueva arquitectura del sistema interamericano de

⁶ Radseck, Michael: “El sistema interamericano de seguridad: ¿quo vadis? Posiciones del Cono Sur a la luz de la Conferencia Especial sobre Seguridad Hemisférica”, “paper” para el segundo Congreso Latinoamericano de Ciencia Política: “Desafíos de la Gobernanza Democrática en América Latina”, Asociación Latinoamericana de Ciencia Política (ALACIP), Ciudad de México, (2004), p. 22.

⁷ Protocolo de reformas al Tratado Interamericano de Asistencia Recíproca (TIAR) en http://www.oas.org/XXXVGA/espanol/doc_referencia/Tratado_AsistenciaReciproca_Protocolo.pdf

⁸ Deustua Alejandro: “Las alternativas al TIAR y la seguridad cooperativa a nivel hemisférico”, *Presentación en la Academia Diplomática de Perú*, (octubre de 2003), p. 7., en <http://www.contexto.org>

⁹ Rojas Aravena, Francisco: “Factores de cambio en el sistema hemisférico de seguridad”, *FASOC*, vol. 17, nº 3, (julio-septiembre de 2002), p. 11.

¹⁰ Eastman, Jorge M.: “Apuntes para un análisis de la seguridad hemisférica”, pp. 2 y 4.

¹¹ Rojas Aravena, *op. cit.*, p. 12.



defensa, lo cual sigue siendo una tarea pendiente.¹² En cambio, se concuerda en asignar al TIAR plena vigencia en lo relativo a las agresiones externas, aún cuando éste pueda estar perdiendo relevancia con la aparición de las nuevas amenazas.¹³

Otro antecedente que ha de abordarse es el de la Conferencia de Ministros de Defensa de las Américas (CMDA) y las reuniones de los Altos mandos. En 1994, los EEUU mantuvieron las expectativas de que los países latinoamericanos se adhirieran a un concepto de seguridad cooperativa. Así es como se creó en 1995 la CMDA, un foro cuyo principal objetivo es la de expandir medidas de confianza mutua y recortar el margen de maniobra de las políticas de defensa nacionales. En los encuentros posteriores prevaleció la cooperación hemisférica en materia de lucha contra el terrorismo, narcotráfico y tráfico ilícito de armas.¹⁴

Como conclusión a los antecedentes diremos que la Comisión de Seguridad Hemisférica que opera en el seno de la OEA es el único foro continental existente en materia de seguridad y defensa. Ante el escaso nivel de cooperación hemisférica, la coordinación sub-regional en este ámbito entre los Ministros de Defensa latinoamericanos ha experimentado un auge sin precedentes. Es en este nuevo marco y el consecuente vacío de poder, que Brasil lanzó la propuesta de crear un órgano común sudamericano de defensa.¹⁵

2. Contexto y escenario político sudamericano.

América del sur, al igual que el conjunto de América latina, era considerada tradicionalmente una zona de paz; sin embargo en los últimos meses se ha visto cómo en la zona andina se ha desarrollado un potencial foco de conflicto bélico.¹⁶ El Presidente brasileño lanzó la propuesta de la creación del CDS el 4 de marzo de 2008, en plena crisis diplomática entre Colombia y Ecuador. De lo que se deduce que ha hecho falta un conflicto bilateral ecuato-colombiano para despertar la urgencia política de proponer un nuevo marco de seguridad y defensa estratégica en la región sudamericana; el contencioso pues ha reforzado la necesidad de crear un órgano común de defensa y seguridad en América del sur. Por lo tanto, la reciente crisis entre Ecuador, Colombia y Venezuela mostró lo frágil que es el equilibrio en las relaciones internacionales en la región y lo débil que es la pretendida integración entre las naciones sudamericanas.¹⁷ Las relaciones políticas y diplomáticas entre Venezuela y Colombia bajo los gobiernos de Chávez y Uribe han oscilado entre periodos de entendimiento pragmático y tensión aguda. La última crisis diplomática andina ha puesto a la región al borde del conflicto armado y podría haber causado graves consecuencias para el todo el hemisferio debido a la potencialidad de la crisis para extenderse fuera del área andina donde se originó.¹⁸ Y a este incremento de la conflictividad militar hay que añadir además, debido al alza de los precios del petróleo, un aumento en el gasto en defensa en muchos países de la región; lo que nos ha

¹² Gratius, Susanne: “¿Hacia una OTAN sudamericana? Brasil y un Consejo de Defensa Sudamericano”, *FRIDE, Comentario*, (abril de 2008), p. 2.

¹³ Radseck, *op. cit.*, p. 34.

¹⁴ *Ibid.*, p 30.

¹⁵ Gratius, *op. cit.*, p. 2 in fine.

¹⁶ Malamud, Carlos: “Potenciales focos de conflicto bélico en América del sur (Introducción)”, *Real Instituto Elcano, ARI* n. 27 (2008), p. 1.

¹⁷ Lúcio Fernandes, Ridauto: “Colombia, Ecuador y Venezuela: enseñanzas estratégicas de la crisis fronteriza”, *Real Instituto Elcano, ARI* n. 66, (2008), p. 1.

¹⁸ Romero, María Teresa: “The fragile, back-and-forth relations between Venezuela and Colombia”, *Real Instituto Elcano, ARI* n. 40, (2008), p. 1.



llevado a preguntarnos si estamos frente a un proceso de rearme y una eventual carrera armamentística o sólo se trata de la renovación de unos equipos obsoletos.¹⁹

Planteado así el contexto en el que surge la propuesta de creación del CDS, hemos de afirmar que el proceso de integración en América latina está en crisis aunque, según Carlos Malamud, la dinámica no es de una fragmentación acelerada. Las líneas maestras del proceso de agudización de los conflictos se podrían definir en torno a tres ejes: 1) la indefinición del proceso de integración sudamericano acompañada de turbulencias dentro de los sistemas de integración sub-regionales actualmente existentes; 2) un aumento de la conflictividad bilateral, agravada debido a que ni la confluencia político-ideológica, ni la energía, ni las finanzas se han convertido en motores de la integración regional y 3) el surgimiento de zonas de conflicto bélico en Bolivia y entre Colombia-Ecuador-Venezuela.²⁰

Ahondando en el escenario político y de seguridad en América Latina, apuntaremos los tres fenómenos que se dan en la región: el de fragmentación, intervención y conflicto; fenómenos que aparecen en un escenario político latinoamericano que está lejos de ser prometedor debido a los conflictos bilaterales y al antagonismo ideológico que reina en la zona. La fragmentación obedece a las aspiraciones de hegemonía regional del nuevo actor que es la Venezuela del presidente Chávez, financiado por las rentas petrolíferas. Chávez ha dividido la región en dos ejes: el eje “Monroe” y el Bolivariano y el criterio para categorizar cada país se basa en razones ideológicas, en un resurgimiento de la guerra fría; siendo el factor clave para encuadrar a cada país el de si han firmado o no Tratados de libre comercio (TLCs) con los EEUU. Siendo este el escenario, los principios que rigen ya no son más el de “no intervención” que era parte fundamental del sistema jurídico latinoamericano, incorporado en el artículo 2.7 de la carta de la ONU y ratificado en la resolución 2625. Este principio, aunque se violó durante la Guerra Fría, se consolidó como la piedra de toque de las relaciones de la región; una región cuyo escenario político ha cambiado drásticamente así como la actitud de los países hacia el principio de “no intervención”, creándose así un contexto de creciente ignorancia e incumplimiento de este principio, lo cual llevaría a una potencialidad de conflictos y que deja a América Latina sin una certeza jurídica. Y la consecuencia natural de la fragmentación y la intervención es el conflicto.²¹

Siendo pues este es el escenario de seguridad en la región, intentaremos aproximarnos a la actual noción de seguridad hemisférica. Ésta noción fue consensuada en la Conferencia Especial sobre Seguridad Hemisférica, auspiciada por la OEA y celebrada en México en 2003; la misma establece que la seguridad es un concepto multidimensional, afectado por factores políticos, económicos, sociales, sanitarios y medioambientales. Es tan amplia que no favorece ni contribuye a la formulación de efectivas políticas que beneficien los respectivos ámbitos de seguridad, el desarrollo y el bienestar de la población; al contrario, se da el fenómeno que Buzan y Waever denominan “securitización de los fenómenos” con un planteamiento subjetivo.²² En la Declaración sobre seguridad en las Américas, emanada de la conferencia, se consagró una extensión del concepto de seguridad. El enfoque elegido es “multidimensional” y la percepción de las amenazas a la seguridad del Hemisferio es compartida: más allá de las amenazas denominadas tradicionales (como los conflictos

¹⁹ Malamud, Carlos y García Encina Carlota: “Rearme o renovación del equipo militar en América Latina?”, *Real Instituto Elcano*, DT n. 31, (2006), p. 1.

²⁰ Malamud, Carlos: “Potenciales focos de conflicto bélico en América del sur...”. *op. cit.*, p. 2.

²¹ Abreu, Sergio: “The South American Defence Council Initiative”, *Análisis* n.º 01/08, *Consejo Uruguayo para las Relaciones Internacionales (CURI)*, (2008), pp. 2-3.

²² Spielman, John E. Griffiths: “Seguridad en Latinoamérica: una mirada crítica desde Chile”, *CESIM*, (2008), pp. 6-7.



interestatales o un ataque extra-continental, que aunque lejos de haber desaparecido por completo, han perdido relevancia en el continente) y nuevas (como el terrorismo, los tráfico ilícitos y el crimen organizado) se constatan “preocupaciones y otros desafíos a la seguridad hemisférica”; tales como la trata de personas, los delitos cibernéticos, el deterioro medioambiental, el SIDA y la pobreza extrema.²³

La seguridad en Latinoamérica es un concepto discutido, debido a las diversas asimetrías regionales, las realidades geoestratégicas y los respectivos procesos de consolidación del Estado (PCE) que al ser incipientes definen escenarios de seguridad caracterizados en mayor medida por amenazas internas que externas; entendiéndose por (PCE) el nivel de desarrollo de un Estado respecto del funcionamiento efectivo de sus principales instituciones democráticas y del nivel de respaldo que dichas instituciones tienen en la ciudadanía.²⁴ El concepto de seguridad nacional, propio del realismo político clásico, busca proteger exclusivamente el territorio estatal y la soberanía de una comunidad política, y en el cual el uso de la fuerza se justifica para proteger al Estado, que es el responsable de mantener el orden, la paz y la integridad territorial. En cambio, el concepto de seguridad humana busca proteger al individuo y asegurar la paz y el desarrollo, enfatizando el requisito de la democracia: esto es, aquel sistema político donde existen unas reglas de procedimiento (elecciones) y de incorporación (tolerancia, y derechos y libertades públicas).²⁵

Consagrar una concepción de la seguridad donde no se distinguen claramente entre los problemas de seguridad externa y aquellos que tienen relación con la seguridad pública interior, y sin diseñar un sistema multidimensional de respuesta, corre el riesgo de que continúe un enfoque unidimensional de tipo militar empleando soluciones militares para todos los problemas de seguridad.²⁶

Hablar pues de un sistema interamericano de seguridad es una “concesión idiomática”.²⁷ No existe ningún documento ni tratado que formalmente establezca dicho sistema. Lo que existe en la práctica son una serie de instrumentos y órganos, de adhesión diversa y vinculación discutible y que no operan de manera sistemática, articulada y confluyente.²⁸

3. Propuestas sobre el Consejo de Defensa sudamericano: Especial incidencia en la iniciativa brasileña.

Dos han sido las propuestas presentadas sobre la creación de un Consejo de Defensa Sudamericano, una apadrinada por Venezuela y otra, la más importante, por Brasil, que es la que será objeto de estudio en nuestro trabajo. Ha habido pues, intentos separados tanto de Brasilia como de Caracas de avanzar en materia de seguridad y defensa sudamericana, ambos países han querido convertir a las políticas de defensa en motor de la integración regional.

²³ Radseck, *op. cit.*, pp. 1 y 33.

²⁴ Spielman, *op. cit.*, pp. 1 y 3.

²⁵ Eastman, Jorge M, *op. cit.*, pp. 5 y 6.

²⁶ Varas, Augusto: “Cooperative Hemispheric Security after the Cold War”, en Olga Pellicer (ed.) (1998): “Regional Mechanisms and International Security in Latin America”, New York, U.N University Press, p. 12.

²⁷ Cardona, Diego: “De la seguridad en las Américas a la seguridad hemisférica”, en Wolf Grabendorff (ed.) (2003): La seguridad regional en las Américas. Enfoques críticos y conceptos alternativos, Fescal, Bogotá, Fondo Editorial Cerec, p. 213.

²⁸ Radseck, *op. cit.*, p. 3.



Primero fue Hugo Chávez, quien en 2003 propuso crear la Organización del Atlántico Sur, (OTAS), una especie de OTAN del sur, pero entonces la iniciativa no prosperó; y ahora, cinco años después Chávez y Lula quieren promover conjuntamente el Consejo de Defensa Sudamericano. Con este motivo, el ministro de defensa brasileño presentó algunos planes para avanzar en el diseño de políticas militares conjuntas en la totalidad de América del Sur.²⁹ El contenido de las políticas regionales de defensa de ambos países es claramente diferente y en algunos aspectos hasta contradictorio. Mientras que la retórica anti-imperialista y el marcar distancias con respecto a EEUU es la principal motivación de Venezuela para crear un órgano de defensa sudamericano, la inclusión de Brasil en el Consejo de Seguridad de Naciones Unidas sigue siendo el principal objetivo del Gobierno del Presidente Lula.³⁰

La propuesta de Venezuela, coincidiendo únicamente en esto con la iniciativa brasileña, limita el ámbito espacial de la Organización Internacional al sudamericano, excluyendo a México, Centroamérica y el Caribe. Chávez propone crear, como ya se apuntó antes, una especie de OTAN sudamericana, hablando de fuerzas armadas conjuntas y de amenazas externas e internas, y cuya conducta llevaría irremisiblemente al conflicto bélico. Se comprende el sentido de esta propuesta cuando se analiza que las actuaciones hacia el exterior de Venezuela se vinculan siempre con la intervención en los asuntos domésticos de sus vecinos, cuyas Fuerzas Armadas se desarrollan en una estrategia de confrontación y cuyas diferencias con los EEUU son de naturaleza ideológica, viéndolo a éste como un país enemigo, lo que desemboca en que su carrera de armamento se haya encaminado a un fortalecimiento de sus Fuerzas Armadas como parte de su proyecto militar de guerra.³¹

Después ha venido la propuesta de Brasil de crear el CDS, una propuesta que, como ya dijimos, se vio beneficiada por la acción diplomática brasileña que desactivó la crisis entre Colombia y Ecuador. El Presidente brasileño Lula da Silva en un discurso pronunciado durante la Reunión extraordinaria de Jefes de Estado y de Gobierno de la Unión Sudamericana de Naciones el 23 de mayo del presente año en Brasilia habló de que “es tiempo de profundizar en nuestra identidad sudamericana también en el ámbito de la defensa (...) y tenemos que articular una visión de defensa en la región fundada en los valores comunes y principios del respeto a la soberanía y la libre determinación; la integridad territorial de los Estados y la no intervención en los asuntos internos”. Terminaba su intervención abogando por que su Ministro de defensa llevase a cabo una serie de consultas con todos los países sudamericanos sobre el establecimiento de un Consejo de Defensa Sudamericano y proponiendo celebrar en Brasil en el segundo semestre del presente año una reunión que permitiera detallar el funcionamiento y los objetivos del Consejo.³²

Es así como el señor Nelson Jobim, Ministro brasileño de defensa anunció por sorpresa en Washington la propuesta de crear el CDS, anuncio que no fue acompañado, eso sí, de un lenguaje muy concreto. Fue ya en Declaraciones públicas posteriores donde especificó que el nuevo Consejo se crearía en el seno de la UNASUR, de lo que se deduce que sus miembros deberán ser los mismos, es decir los Estados sudamericanos; aunque el Tratado de la UNASUR, como rezan sus artículos 19 y 20, no excluye su ampliación al resto de América

²⁹ Malamud, “Potenciales focos de conflicto bélico en América del sur...”. *op. cit.*, p. 5.

³⁰ Gratius, *op. cit.*, p. 5.

³¹ Abreu, *op. cit.*, pp. 3-4.

³² Discurso del Presidente de Brasil Luiz Inácio Lula da Silva durante la Reunión Extraordinaria de Jefes de Estado y de Gobierno de la Unión de Naciones Sudamericanas, en <http://www.comunidadandina.org/prensa/discursos/lula23-5-08.htm>



Latina.³³ Los objetivos de este CDS serían los de centralizar la fabricación y comercio de armas en la región; coordinar las estrategias defensivas de los diferentes países; así como establecer mecanismos de consulta que ayudarían a prevenir conflictos y resolverlos tan pronto como ocurriesen. La idea brasileña forma parte de un proyecto cooperativo que se cimienta en la visión de la unidad sudamericana, ya que la acción exterior de Brasil no es intervencionista y sus fuerzas armadas se han desarrollado con una estrategia geopolítica; y aunque Brasil mantiene una cierta competencia con los EEUU, esta se basa en un nacionalismo industrial y comercial que no hace que se opongan ambos en el área multilateral o regional. El hecho de que tenga con EEUU unas diferencias de naturaleza geopolítica y comercial hace que se perciban como “adversarios”; por otra parte, la carrera armamentística de Brasil es un componente de un proyecto de desarrollo industrial.³⁴

Ahondando en el aspecto causal, analizaremos las razones de la propuesta brasileña. Básicamente se pueden reconducir a tres motivos:

1) El primero tiene que ver con su política exterior, ya que Brasil es un país que se percibe actualmente como una de las economías emergentes más importantes. En este contexto, la aspiración brasileña de convertirse en un actor político y económico global es obvia y comprensible, ello explica sus pretensiones de lograr un puesto permanente en el Consejo de Seguridad de las Naciones Unidas y tener un papel clave en las negociaciones de la Ronda de Doha de la OMC. Para la consecución de su estrategia, Brasil debe asumir un papel de liderazgo regional con la aprobación de Venezuela y EEUU; por eso la exclusión de México y EEUU del CDS es una buena señal para Venezuela, pero asimismo el apoyo estadounidense a la iniciativa brasileña del CDS se debe a que Brasil es vista como el líder regional que puede defender sus intereses mejor que Venezuela.

2) La segunda razón está relacionada con la visión estratégica militar de Brasil que se desarrolla sobre dos prioridades: la parte meridional del Atlántico y la Amazonía. Brasil necesita combatir la amenaza que supone el tráfico de drogas y el crimen organizado, y tiene además que situarse adecuadamente, dada la presencia de las bases e instalaciones estadounidenses en Paraguay y Ecuador y ante el conflicto interno boliviano. La doctrina Jobim establece que Brasil debe concentrarse en el desarrollo de unas Fuerzas Armadas basadas en la capacidad nacional a través de su reorganización y la tecnología punta. La consecuencia de ello es que el presupuesto brasileño para el año 2008 ha incrementado en un 50% los gastos en defensa.

3) La tercera de ellas es el desarrollo de su industria armamentística, este desarrollo de las industrias bélicas locales, que deriva de la anteriormente mencionada doctrina Jobim, conducirá al país a la exportación de armamento al mercado regional y a los demás mercados externos. De hecho, Brasil es ya el principal suministrador de armas de Sudamérica y podría incluso ganar terreno a costa de los fabricantes estadounidenses si los países de la región pudieran llevar a cabo su unificación en asuntos defensivos. Por lo tanto el CDS podría posibilitar que los países sudamericanos dejasen de depender de suministradores de armas extranjeros. La propuesta de crear el CDS aplica consecuentemente el viejo modelo de la sustitución de importaciones al sector de la industria del armamento; de alguna manera repite el sueño brasileño y de MERCOSUR de crear una reserva de mercado en la región para toda su producción industrial.

³³ Tratado Constitutivo de la Unión de Naciones Sudamericanas, en <http://www.integracionsur.com/sudamerica/TratadoUnasurBrasil08.pdf>

³⁴ Abreu, *op. cit.*, p 4.



Recapitulando, la creación del CDS jugaría un importante papel en la proyección de liderazgo de Brasil y se vincula a la formación de unos mecanismos de consulta para prevenir conflictos; la creación de un escudo de defensa militar; el desarrollo de una industria militar y la reorganización de las Fuerzas Armadas, donde la capacidad nacional se base en la tecnología punta y en una industria de defensa, que son sus factores más importantes.³⁵

La propuesta del CDS de Brasil es un ejemplo de su liderazgo ambivalente que oscila entre su proyecto global (o su interés nacional) y su proyecto sudamericano (o interés colectivo). Es por esta ambigüedad entre un liderazgo colectivo sudamericano y un liderazgo individual global que sus países vecinos vean con cierto recelo cualquier propuesta regional que formule Brasil.³⁶ Según Rafael Moreno, no es una anécdota que el Presidente brasileño mencionara conjuntamente en su discurso del pasado mes de marzo la aspiración de Brasil de sentarse en el Consejo de seguridad de las Naciones Unidas como miembro permanente y la propuesta de creación del CDS. Ya que los brasileños saben que gran parte del éxito de su proyecto global de ganar prestigio e influencia mundial está ligado a la consolidación de su papel como potencia regional imprescindible. Ello requiere colocarse como árbitro o incluso “facilitador” de los ejes geoestratégicos que comunican la región; por eso al coincidir el conflicto ecuato-colombiano con la recientemente estrenada estrategia de relanzar el perfil internacional de Brasil, se ha podido verificar que el susodicho conflicto ha sido mediatizado por el país brasileño en beneficio de sus propios intereses nacionales. Desde entonces, su Ministro de defensa, Nelson Jobim, se ha embarcado en una apretadísima agenda diplomática que le ha llevado en dos meses y medio a recorrer todas las capitales del sub-continente y a entrevistarse con todos sus colegas y muchos Presidentes con la meta de obtener el máximo consenso sobre el CDS.³⁷

El Ministro de defensa Jobim ha ofrecido hasta ahora pocos detalles sobre cómo estará estructurado y sobre el funcionamiento del nuevo CDS, prueba de ello es que no se presentó ninguna propuesta escrita durante la Reunión en la que se constituyó la UNASUR. Se pueden espigar determinadas características a partir de lo declarado en público por el Ministro en diversas Ruedas de prensa, entre ellas cabe destacar que: a) “no será una alianza militar clásica o un ejército sudamericano contra nadie”, sino, “un colegio o un foro en el marco de la UNASUR que servirá para discutir (...) la integración”; b) “será una organización de seguridad y defensa que permitirá identificar problemas comunes y continentales” para buscar soluciones e “incrementar y fomentar la confianza, la transparencia y la integración en cuestiones de defensa”; c) ayudará en operaciones de paz en América latina, intercambiará personal de diferentes Fuerzas Armadas para formación militar y emprenderá operaciones humanitarias cuando los países lo soliciten y aprueben; d) servirá como foro para “mejorar infraestructuras y fortalecer las industrias de defensa” de la región por lo que contribuirá a privilegiar el desarrollo tecnológico para la adquisición de armamentos y equipos de última generación; y por último e) trabajará a través de tres grandes directrices regionales: la Amazonía, la región andina y la cuenca del Río de la Plata, y una conexión estratégica con el Caribe al asegurarse la participación de Guyana y Surinam.

³⁵ *Ibid.*, pp. 4-5.

³⁶ Gratius, *op. cit.*, p. 3.

³⁷ Moreno Izquierdo, Rafael: “El Consejo de Defensa Sudamericano: reflexiones e implicaciones”, Memorando OPEX, n.º 92, (2008), p. 2.



De todo esto se puede concluir que el CDS no se parecerá en nada a la Alianza Atlántica o a la PESD en el seno de la UE, ya que no existe en el CDS ni el famoso “artículo 5” ni una cláusula de seguridad mutua pues, para ello, se requiere una confluencia de intereses y políticas, aún prematura en el caso de los países sudamericanos. También se puede inferir que, al menos por el momento, el CDS no tendrá ninguna capacidad operativa y no se pretende constituir ningún tipo de sistema de mando y control conjunto como el que tienen la OTAN o la UE. El CDS consistirá, por lo tanto, en un foro eminentemente político con la única diferencia frente a otros que ya tiene la región de que se sentarán Ministros de defensa junto a diplomáticos y en el que se tratará fundamentalmente una agenda enfocada a la seguridad y defensa. Abrirá sin embargo la puerta a, utilizando la jerga comunitaria, “la cooperaciones reforzadas” entre los miembros que estén dispuestos a avanzar más rápidamente en alguna de las dimensiones o en relación con acciones concretas.³⁸

En resumen, el CDS concebido por Brasil no supone una alianza militar convencional sino un foro para promover el diálogo entre los Ministros de defensa sudamericanos, creando un mecanismo de integración que permita discutir las realidades y necesidades defensivas de los países de América del sur; reducir los conflictos y desconfianzas; y sentar las bases para la futura formulación de una política común en esta área.³⁹

La Presidenta chilena Michelle Bachelet expuso su punto de vista en Brasilia a los Jefes de Estado y de Gobierno de la UNASUR el 23 de mayo señalando que “cabría la posibilidad de que se propusiese la creación de un grupo de trabajo en la UNASUR para estudiar todos los planteamientos existentes y elaborar aquella propuesta que pueda ser aceptable para todos los países”.⁴⁰ El Ministro de Defensa de Chile encabezó el pasado 26 de agosto el cierre del panel de expertos de la UNASUR, que se reunió en Santiago de Chile para afinar el documento que propone la creación del CDS; el Ministro informó también que el documento acordado será presentado a los Jefes de Estado y de Gobierno en la próxima cumbre de la UNASUR, que se efectuará los próximos días 21 y 22 de octubre, en la localidad chilena de Viña del Mar.⁴¹

Este grupo de expertos debería consensuar un documento, a caballo entre una Carta fundacional y unos Estatutos, que sea posteriormente refrendado por los Jefes de Estado y de Gobierno de la UNASUR. Está claro que el futuro CDS será un organismo subsidiario de la UNASUR, pero con su propia estructura e independencia de actuación bajo la dirección política del Consejo de Jefes de Estado y de Gobierno de la Organización.⁴²

³⁸ *Ibid.*, p. 3.

³⁹ Visca, Paola, “El lanzamiento de UNASUR en el tablero del poder”, *Cumbre Sudamericana de Brasilia 2008, Integración Sur-CLAES*, en <http://www.integracionsur.com/sudamerica/ViscaUnasurBrasliaAnalisis.htm>

⁴⁰ Declaración de la Presidenta chilena Michelle Bachelet a los Jefes de Estado y de Gobierno: “La capacidad de beneficiar a nuestros pueblos dependerá del compromiso y la real voluntad de sus gobiernos”, en <http://www.comunidadandina.org/prensa/articulos/bachelet23-5-08.htm>

⁴¹ Nota de prensa del departamento de comunicaciones y prensa del Ministerio de defensa nacional de la República de Chile, en <http://www.defensa.cl/noticia.php?id=215>

⁴² El profesor Moreno recomienda también que el grupo de expertos proponga la creación dentro del CDS de un órgano superior de decisión en el que participasen conjuntamente los Ministros de Defensa y Asuntos Exteriores de los países miembros y otro de naturaleza militar en el que se pueda sentar personal castrense. En cuanto a su sistema de toma de decisión, éste será por consenso sin que existan decisiones obligatorias. Se aconseja también que el equipo que se encargue de la redacción del estatuto fundacional del CDS proponga crear algún tipo de burocracia que cuente con al menos tres tipos de comités o equipos de trabajo: uno para tratar políticas de defensa; otro relacionado con la cooperación militar; y un último más especializado que propugne el desarrollo conjunto de programas industriales de defensa. Se sugiere además que sería oportuno aprovechar las incipientes cooperaciones bilaterales de centros de adiestramiento militar en la región, como la chileno-argentina, para



4. Reacciones externas y críticas a la iniciativa brasileña.

Las reacciones de los demás países extranjeros a la iniciativa brasileña han basculado entre el recelo y el beneplácito. Por parte de los países que han dado su visto bueno a la propuesta habría que destacar a los EEUU; Brasil se aseguró, durante la visita de la Secretaria de Estado Condoleezza Rice a Brasil y un posterior viaje del Ministro Nelson Jobim a Washington, el beneplácito de los EEUU. La propuesta también fue negociada con sus socios más cercanos como Argentina y Chile y respaldada asimismo por Venezuela durante la reunión del Presidente Chávez con su homólogo Lula da Silva de marzo del presente año 2008.⁴³ Aunque también se puede interpretar, matizadamente, que la Administración de Bush ha dado su aprobación al nacimiento del CDS a regañadientes, hasta el extremo de que su creación coincidirá prácticamente con la reactivación de la IV Flota, con la excusa de vigilar los buques, aviones y submarinos que naveguen por el Caribe y las aguas de Centro y Sudamérica. El Pentágono insiste en que su misión es “combatir el terrorismo” y las “actividades ilícitas” como el narcotráfico, pero también se puede ver en esta decisión un intento de disuasión.⁴⁴ En cualquier caso, las señales emitidas por los EEUU respecto a la política sudamericana de Brasil son contradictorias: Si bien es cierto que la Casa Blanca mira con buenos ojos los esfuerzos de el país brasileño para jugar un rol estabilizador en la región, también es clara la resistencia a que se mueva con plena libertad en algunos campos sensibles de cooperación, especialmente en relación con Venezuela.⁴⁵

Con respecto a la reacción chilena a la propuesta brasileña, hay que apuntar que el Secretario de Estado de defensa de Chile recordó, refiriéndose al CDS, que en “América del Sur no tenemos ninguna institución de esta naturaleza, no hay órganos que reúnan a los ministros de Defensa”, razón por la cual, destacó el representante chileno, “la decisión de conformar el Consejo de Defensa Sudamericano es un paso notable en la dirección de crear una institución que nos permita establecer un órgano de coordinación, de intercambio de opiniones y experiencias”. Del mismo modo, el Ministro chileno de defensa, explicó que el CDS permitirá consolidar a Sudamérica como una zona de paz y construir una identidad conjunta en materia de defensa, así como fortalecer el diálogo y el consenso regional. Además, dijo, “deberá ser una instancia permanente de la UNASUR, un órgano de consulta que siga los principios y propósitos de la carta de Naciones Unidas, de la Organización de Estados Americanos y de los jefes de Estado y de Gobierno del organismo regional”. Según expresó el titular de Defensa chileno: “queremos que este Consejo de Defensa se monte sobre nuestro proceso de integración, de acercamiento, de entendimiento, de creaciones de confianza mutua, para poder generar un ambiente de integración en la región más amplio, y que pueda ser una base para tener una América Latina más fuerte y mucho más unida”. Del mismo modo, explicó que los desarrollos futuros que tenga el Consejo se basarán en los principios de flexibilidad y gradualismo.⁴⁶

En relación a la respuesta Argentina a la iniciativa de Brasil, hay que decir que el CDS cuenta con el apoyo del gobierno argentino. El país Austral ha formado parte de un creciente proceso de creación de mecanismos de diálogo multilateral en temas de defensa y seguridad

incluirlos en un plan anual de ejercicios y maniobras en las que participen el mayor número de países posibles. (Moreno Izquierdo, *op. cit.*, p. 4.

⁴³ Gratius, *op. cit.*, p. 5.

⁴⁴ Moreno Izquierdo, *op. cit.*, p. 5.

⁴⁵ Hirst, Mónica: “Los desafíos de la política sudamericana de Brasil”, *Nueva Sociedad*, n.º 205, (2006), p. 135.

⁴⁶ Nota de prensa del departamento de comunicaciones y prensa del Ministerio de defensa..., *op. cit.*



en la región; unos mecanismos, que según la Ministra de defensa argentina: “son en sí mismos verdaderas medidas de cooperación que permiten forjar relaciones más estrechas entre los Ministerios de Defensa y entre las Fuerzas Armadas, generando de esta manera un mayor clima de confianza en materia de defensa y seguridad regional”.⁴⁷

Con respecto a la reacción del Ecuador, hay que señalar que el Presidente ecuatoriano Rafael Correa, declaró que el CDS fuese creado por los países interesados en el mismo y que los no interesados analicen después si quieren sumarse o no, añadiendo que “la integración no puede ir a la velocidad del más lento, sino a la velocidad de los que quieren la integración, (...) tenemos que iniciar el proceso con los que estamos apasionados por la integración y poner en marcha todas las iniciativas, a las que los demás se irán sumando después”.⁴⁸

Pero la lista de los países renuentes con el CDS es mayor que la de los países dóciles. A pesar de las declaraciones públicas de los mandatarios sudamericanos, las discrepancias entre ellos en la Cumbre de Brasilia fueron lo suficientemente significativas como para que fueran incapaces de llegar a compromisos concretos sobre la constitución del CDS más allá de darse más tiempo.⁴⁹

La iniciativa brasileña del CDS propuesta en la Cumbre de Brasilia no logró el necesario consenso para aprobar su constitución por no contar, entre otros, con la aquiescencia del Presidente colombiano Uribe.⁵⁰ Los reparos de Colombia provienen de su complicada situación política interna y de la posición de alineamiento de su Gobierno con los EEUU. El Presidente Uribe sostuvo que la OEA es el organismo pertinente en temas de seguridad regional y el propio Gobierno colombiano en un comunicado leído en Brasilia justificó su negativa a la propuesta de creación del CDS “dadas las amenazas del terrorismo y las derivaciones conocidas”. Sin embargo, después de la reunión, accedió a que un grupo de expertos continúe con el estudio de la propuesta y dijo no estar en desacuerdo con la iniciativa.⁵¹ En todo caso, la decisión del Presidente colombiano de “desligarse” del proceso por razones internas fue un factor más psicológico que político y en cierta manera poco entendible. La explicación oficial de Uribe, que razonó su postura por “las dificultades que tenemos con nuestros vecinos”, haría que el CDS fuese muy difícil de administrar o de operar, y parece ser más una excusa que un planteamiento político innegociable.⁵²

El propio Presidente brasileño Lula da Silva ha declarado posteriormente que está confiado en que Uribe pueda cambiar de opinión durante el plazo de 90 días que los Jefes de Estado y de Gobierno se han dado para concretar sobre el papel las directrices del nuevo organismo. Ante estos problemas, los Jefes de Estado y de Gobierno de la UNASUR optaron por la decisión de no cerrar el proceso de conversaciones y constituir el grupo de expertos anteriormente ya mencionado, que durante esos 90 días preparará un informe detallado sobre estos temas. Es evidente que durante este plazo se solaparán, asimismo, gestiones al máximo nivel para intentar lograr que Colombia se sume a la organización. Su ausencia claramente no

⁴⁷ Comunicación del discurso de la Ministra de defensa argentina en la VIII conferencia de Ministros de defensa de las Américas, en: http://www.mindef.gov.ar/discursos_discurso_garre.asp?Id=772

⁴⁸ Comunicado de prensa de la Agencia EFE: “Presidentes de UNASUR crean grupo de trabajo para definir Consejo de Defensa”, en: <http://www.comunidadandina.org/prensa/articulos/efe23-5-08b.htm>

⁴⁹ Moreno Izquierdo, Rafael, *op. cit.*, p. 3.

⁵⁰ Peña, Felix: “¿En qué se diferenciaría UNASUR de un MERCOSUR ampliado? Un debate que se torna cada vez más conveniente”, junio de 2008, véase en la página web: <http://www.comunidadandina.org/prensa/articulos/felixpena6-08.htm>

El texto completo está disponible en www.felixpena.com.ar

⁵¹ Visca, *op. cit.*

⁵² Moreno Izquierdo, *op. cit.*, p. 3.



impediría su constitución, pero es evidente que debilitaría su credibilidad y reduciría las posibilidades de cooperación.⁵³

Tampoco hay que olvidar las reticencias hacia el nuevo organismo por parte de Uruguay, que ha dejado claro que es necesaria una mayor reflexión sobre el posible alcance, competencias y organización del Consejo. Quizás las reticencias uruguayas al CDS también tengan que ver con las definiciones sobre el papel y la organización de las Fuerzas Armadas, un tema que está pendiente de definición en la ley de defensa, que sigue en estudio por parte de su Parlamento nacional. Así pues, el gobierno uruguayo enfoca con cautela la iniciativa brasileña de crear un Consejo de Defensa Sudamericano para coordinar políticas en esa área, tal vez por que aún recuerda el bloqueo de puentes por el conflicto con las papeleras que sufrió Uruguay por parte de Argentina ante la pasividad brasileña. En todo caso, la prescindencia de Brasil en el caso de las papeleras no explica la cautela y el recelo del gobierno uruguayo ante la propuesta de instalar un organismo de consulta y coordinación de políticas de defensa, que los detractores describen como una OTAN sudamericana para llegar a la formación de un ejército supranacional en el contexto de una carrera armamentista. Las razones habrá que buscarlas en otro terreno, por cuanto las prevenciones uruguayas más notorias ante la propuesta lanzada por Brasil tienen más bien que ver con la eventual formación de un ejército sudamericano, tal como en su momento había propuesto Venezuela.⁵⁴

Para el país rioplatense, cuya reacción preliminar hacia el CDS ha sido favorable, cada Estado debe evaluar la propuesta según sus propios principios y visiones estratégicas. Analizada la iniciativa desde la realidad geopolítica uruguaya cabe preguntarse en primer lugar si existe una identidad sudamericana; cuáles son sus características distintivas y si éstas se basan en un componente meramente geográfico o si son tal vez étnicas, culturales o ideológicas. No se encuentran argumentos sólidos que justifiquen la exclusión de México y Centroamérica de una estrategia de seguridad y defensa colectiva, a “sensu contrario”, se cree que es necesario cooperar y coordinarse con éste área en las susodichas cuestiones. Se entiende que la exclusión se debe a la rivalidad entre Brasil y México, pero ya que la iniciativa del CDS se hace para toda Sudamérica, debería esta misma propuesta justificarse en intereses regionales y no sobre las aspiraciones de liderazgo de uno de sus Estados miembros. Además se cuestiona si esta identidad sudamericana es permanente o coyuntural y contingente; preguntándose si nace de lo que les une o de aquello que les separa y advirtiendo que puede ocurrir que una vez que se identifique el objetivo, aparezcan las divergencias entre los socios. También existen cuestiones aún no aclaradas: como por ejemplo las asimetrías existentes entre los países; el cómo se hará frente a la financiación de las Fuerzas Armadas; cómo se salvaguardarán los derechos de los países pequeños frente a las prioridades de los grandes; o si tiene sentido que Uruguay apoye una propuesta que redundará exclusivamente en el desarrollo de las Fuerzas Armadas y la industria militar de unos pocos países.⁵⁵

El Uruguay alega la existencia de mecanismos para la cooperación política, económica y militar suficientes a nivel regional y hemisférico totalmente operativos, y critica que podrían solaparse con el CDS incrementándose así innecesariamente la burocracia internacional. El país rioplatense cree necesario observar el CDS con visión continental, más allá de los intereses o circunstancias nacionales; debiéndose evaluar la propuesta a la luz de los intereses generales de seguridad que nace de la suma de los intereses nacionales. Así, los países

⁵³ *Ibid.*, p. 4.

⁵⁴ Véase en la página web: <http://uruguayescribe.com/2008/05/27/el-consejo-sudamericano-de-defensa/>

⁵⁵ Abreu, *op. cit.*, p 5.



pequeños deberían apoyar un sistema colectivo amplio de defensa que garantice su seguridad, absteniéndose de formar parte de grupos pequeños; y no siendo por tanto necesarias más instituciones en Sudamérica para incrementar la solidaridad, al haber ya demasiada burocracia y muy poca voluntad política; por lo que debe evaluarse la propuesta del CDS sin tener en cuenta las opiniones externas, valorando sólo las prioridades regionales generales y los propios intereses nacionales.⁵⁶

Se afirma también que no está nada claro cuál es el concepto de seguridad y defensa colectiva que guiará la acción del CDS, ya que asignando a otros países el rol de “enemigos”, (ya sea real o imaginariamente), no es suficiente para definir una política nacional o continental; pero sobre todo porque la actual fragmentación política en Sudamérica hace muy difícil definir un concepto colectivo de seguridad y defensa compartido por todos los Estados. Y no habiendo tal concepto colectivo de seguridad y defensa, sería pretencioso creer que se puede crear una agenda compartida en estas materias entre un reducido número de socios que tienen diferentes capacidades bélicas. Siendo esto así, los objetivos, instrumentos e hipótesis serían definidos por algunos, los más poderosos, en vez de por todos.

El país uruguayo apela a la necesidad de crear un nuevo mecanismo para la seguridad continental, siendo importante constituir instituciones que no sean un club cerrado de países selectos donde sólo prevalezcan los intereses de algunos, sino que deben tenerse en cuenta las visiones y prioridades políticas en seguridad y defensa de todos los países de América Latina.⁵⁷ En caso contrario, el CDS podría correr el riesgo de ser dominado por Brasil, ante el tamaño y la superioridad militar de este país, aunque Brasil se haya convertido desde el final de su dictadura castrense en una potencia benigna y cooperativa que, pese a su superioridad en materia de seguridad, es consciente de que no es ni pretende ser una potencia militar.⁵⁸

La gran incógnita es la de definir el campo de actuación del CDS, es decir, qué se entiende por seguridad y defensa; y más allá de respetar los intereses nacionales, los países sudamericanos deberían avanzar en la asunción de los nuevos conceptos de seguridad ampliada que entiende ésta no sólo como encuadrada dentro de las fronteras nacionales sino a nivel mundial y global, o la idea de seguridad humana.⁵⁹

Podría recomendarse que sería más práctico y moderno fijar las misiones y operaciones del CDS no por capacidades sino por efectos, mediante: a) el establecimiento de un mecanismo de consultas entre los Ministros de defensa permanente y periódico para incrementar la transparencia en las políticas de defensa, los programas de modernización de capacidades y el adiestramiento conjunto/combinado de fuerzas; b) la coordinación de los sistemas operativos para el despliegue “ad hoc” de agrupaciones sub-regionales destinadas a operaciones de paz autorizadas por las Naciones Unidas y otros organismos internacionales o regionales, así como con motivo de crisis humanas o catástrofes naturales; c) el establecimiento de mecanismos cívico-militares para dar respuestas a amenazas y riesgos a la seguridad sub-regional como es el narcotráfico, el contrabando y el terrorismo internacional; y d) la creación de agencias o grupos de trabajo para el diseño, financiación y desarrollo de programas de defensa conjuntos, optimizando las capacidades nacionales y favoreciendo la

⁵⁶ *Ibid.*, p. 6.

⁵⁷ *Ibid.*, p. 7.

⁵⁸ Gratius, *op. cit.*, p. 4.

⁵⁹ Moreno Izquierdo, *op. cit.*, p. 4.



obtención de “know-how” que asegure el desarrollo de las industrias de defensa locales, al menos en aquellos nichos o sectores donde su nivel tecnológico lo permita.⁶⁰

Se ha llegado a afirmar que la fragmentación, la carrera de armamentos y los puntos de vista binarios que enfocan sólo a aquel contra el que tenemos que luchar, en vez de la búsqueda de una paz colectiva y unas estrategias en desarrollo, son algunos de los múltiples factores que no podemos controlar y que se esconden detrás de la propuesta de creación de un CDS; por tanto, asaltan grandes dudas sobre la habilidad del Consejo de Defensa Sudamericano para administrar la seguridad en la región. Lo cual hace, que se sea partidario de que Sudamérica, en vez de crear más burocracia internacional basada en imaginarios conflictos extra-continenciales:

a) se enfoque en la resolución de los problemas bilaterales que persisten entre los países, por cuanto los conflictos fronterizos y el nacionalismo representan una amenaza más peligrosa a la paz y seguridad que cualquier otra amenaza externa, y estos problemas no se resolverán creando instituciones internacionales que no se apoyen en unos auténticos intereses colectivos;

b) se siga una estrategia no orientada hacia la guerra, basada en la facilitación del diálogo y la mutua reducción de los presupuestos nacionales en defensa, la prevención de conflictos y la coordinación militar orientada al combate de las auténticas amenazas a la paz y seguridad, como el terrorismo y el narcotráfico.

Aduciéndose además, que no es necesaria una nueva institución de defensa y seguridad colectiva, mas se argumenta, que si se crearan nuevas instituciones y mecanismos:

a) no se deberían poner en competición con las Fuerzas Armadas de Latinoamérica enmascarando una carrera armamentística con el disfraz de la cooperación;

b) deberían ser instituciones lo más amplias posibles y que incluyeran a México y a Centroamérica;

c) atender las asimetrías regionales, dando a los países pequeños que no participan en la carrera armamentística regional, suficientes garantías de que sus prioridades y puntos de vista serán tomados en consideración;

d) garantizar a nivel nacional la subordinación de los militares a las autoridades civiles, como principio democrático; y

e) respetar totalmente los principios de soberanía y “no intervención” en las relaciones interregionales. Debido a que el carácter global de los asuntos de seguridad nos hace a todos responsables de la paz y seguridad internacional, todos los Estados, tanto los grandes como los pequeños, están obligados a presentar propuestas alternativas, siendo este el único camino para construir un interés colectivo superior que nos permita solucionar el peligroso problema de la fragmentación en América Latina.⁶¹

⁶⁰ *Ibid.*, p. 5.

⁶¹ Abreu, *op. cit.*, p 7.



No obstante, el CDS es una iniciativa que, siempre y cuando mantenga su carácter comprensivo, abierto y cooperativo, podría traer beneficios, como contribuir a garantizar una mayor seguridad multidisciplinar y alentar una verdadera modernización de las Fuerzas armadas sudamericanas. Además, una organización sub-regional profesional y moderna que incentive la profesionalización de los estamentos militares de la región contribuirá decisivamente a una mejora de su reinserción en la sociedad y al incremento de su prestigio y reconocimiento. Ello redundaría en la “seguridad democrática” de la región, es decir, en el sometimiento de las fuerzas de seguridad al control civil y a los gobiernos elegidos democráticamente. La consolidación de estructuras de seguridad, particularmente si tienen como objetivos la prevención de conflictos inter-estatales y gestión de crisis internas, facilitaría la estabilidad y fortalecimiento de la democracia en Sudamérica.⁶²

La idea del CDS sigue claramente la línea de sub-regionalizar la cooperación militar, y teniendo en cuenta la actual situación de la región y las lagunas existentes, se ha indicado que un órgano como el CDS podría cumplir con varios objetivos y funciones, algunas de ellas no fáciles de desarrollar, tales como:

a) llenar un espacio en materia de defensa latinoamericana, puesto que no se ha creado ninguna organización regional ni tampoco es un área de cooperación efectiva;

b) servir de plataforma y legitimación colectiva para la aspiración de Brasil de convertirse en miembro permanente del Consejo de Seguridad de las Naciones Unidas;

c) crear un sistema de defensa sudamericano y, en el futuro, una especie de “OTAN” sub-regional con una estructura y capacidad militar propia. Cuestión complicada ante la ausencia de un actor estatal amenazante;

d) prevenir conflictos en la región a través de medidas de confianza y fortaleciendo el papel de la mediación en las crisis;

e) promover la cooperación en equipamientos y armas, y ampliar el mercado regional para la industria bélica de Brasil que es un importante exportador de material militar. Asunto complejo dada la preeminencia que adquiriría Brasil;

f) mejorar la seguridad de fronteras entre los doce Estados Miembros, sobre todo en la región de la Amazonía, un espacio tan difícil de controlar;

g) luchar conjuntamente contra amenazas regionales como el narcotráfico, el crimen organizado, el tráfico de armas, y los desastres naturales y fomentar el intercambio de información militar;

h) realizar ejercicios militares conjuntos y coordinar actividades en el seno de misiones regionales (OEA) o internacionales (ONU) de paz;

i) redefinir paulatinamente la influencia militar de los EEUU y sus bases en Sudamérica sin desafiar abiertamente su hegemonía.⁶³ Cuestión de alta complicación dados los alineamientos existentes.

⁶² Moreno Izquierdo, *op. cit.*, pp. 5-6.

⁶³ Gratius, *op. cit.*, p 3.



Ante la falta de recursos y las amenazas de seguridad comunes, Brasil apuesta por un sistema colectivo de defensa. De hecho, una fuerza militar sudamericana en su conjunto sería, en número de tropas, equivalente a la de Rusia y algo menor que la de EEUU, mientras que su presupuesto sumado sería parecido al de potencias como Alemania o Japón.⁶⁴ En esta óptica, un CDS podría ser el primer paso hacia una “OTAN” sudamericana y, mucho más adelante, una Fuerza Armada Sudamericana. Aunque todavía queda por recorrer un largo camino hacia un sistema Sudamericano de defensa, la propuesta de Brasil está estrechamente vinculada a los avances de integración Sudamericanos desde que los doce países celebraron, en 2000 en Brasilia, su primera cumbre. Muestra de ello son la UNASUR, la iniciativa de infraestructuras IIRSA y dentro de este marco, los dos polos norte y sur del proyecto: la Comunidad Andina y el MERCOSUR. Y un órgano de defensa, como es el CDS, formaría parte también de este esquema de integración regional de Sudamérica.⁶⁵

Los principales obstáculos al que se enfrenta sin embargo el futuro CDS son: por un lado, su instrumentalización para los fines nacionales de Brasil y, por el otro, las diferentes visiones de Brasil y Venezuela, como países más significados, sin excluir a otros como Chile o Argentina, en materia de seguridad y defensa. Ante las divergencias entre ambos, es dudoso que el CDS, de haber existido, hubiese podido presentar una propuesta consensuada para resolver el conflicto entre Colombia y Ecuador.

Estas diferencias entre Brasil y Venezuela ensombrecen las perspectivas de crear un CDS, no como una institución más en el entramado de instituciones de integración, sino como un órgano eficaz y práctico para prevenir y resolver conflictos en la región y promover la cooperación interestatal en esta materia. Esta vez, la creación de un órgano común de defensa depende de la habilidad de Brasil de ganar adeptos para su propuesta y evitar la impresión de que sólo lo quiere utilizar para su propia proyección global.

Los desafíos de seguridad a los que se enfrenta Sudamérica son de orden interno y de difícil solución nacional: las guerrillas, al igual que el narcotráfico o el crimen organizado son problemas compartidos que requieren una estrecha cooperación interestatal y, preferentemente, un marco multilateral de actuación. El CDS, podría ser un primer paso para consolidar la región como una zona de paz y concederle un mayor protagonismo internacional y su creación fortalecería el incipiente sistema sudamericano, aunque sin duda, debilitaría aún más el sistema hemisférico; por lo que esta iniciativa de avanzar en un sistema Sudamericano de defensa en torno a Brasil es otra señal más para una creciente división de intereses entre el espacio Sudamericano y el resto de la región hemisférica americana.⁶⁶

Conclusiones finales.

La propuesta brasileña de crear un Consejo de defensa sudamericano dice responder al objetivo de crear un sistema de seguridad hemisférica en Sudamérica, aunque ambivalentemente también se relaciona el CDS con las aspiraciones hegemónicas de Brasil en la región.

Por una parte se constituiría un foro político que trataría de los asuntos de defensa, con las ventajas que ello traería para la consecución de una seguridad cooperativa basada en las

⁶⁴ Fuentes: European Defense Agency, CIA World Factbook, SIPRI Yearbooks.

⁶⁵ Gratius, *op. cit.*, p 4.

⁶⁶ *Ibid.*, pp. 5-6.



medidas de confianza entre los países; pero por otra parte, también se podrían poner las bases para la creación de un ejército supranacional que se encargaría de combatir las nuevas amenazas a la seguridad, tales como el terrorismo, los tráficos ilícitos y la delincuencia organizada, produciéndose así una injerencia de las Fuerzas Armadas en un ámbito que siempre fue objeto de lucha por parte de las fuerzas de seguridad interior (policía y judicatura), con lo que las nociones de “defensa” y “seguridad” se confundirían. Dicho ejército supranacional actuaría teóricamente de forma coordinada a través de las cooperaciones reforzadas en materia de defensa; sin embargo, ello podría también llegar a generar tensiones entre los participantes, por no resignarse los Estados a ceder en el principio de no-intervención. La iniciativa brasileña conllevaría además la creación de un mercado común del armamento, en el que Brasil saldría beneficiado como gran exportador de armamento a toda la región.

Es por ello, que se debería o no estar de acuerdo con la propuesta brasileña sólo en el supuesto de que esta iniciativa sirva para mejorar el sistema de seguridad en el área. Para ello se deberían analizar las necesidades de seguridad de la zona, cotejándolas luego con las carencias, que, según Brasil, tiene la región, unas carencias que, supuestamente, se verían superadas por el nuevo Consejo de Defensa Sudamericano.

La propuesta brasileña del CDS sólo incide en las amenazas a la seguridad de naturaleza militar que supongan una agresión a la soberanía e integridad territorial del Estado, pero no tendría ninguna potencialidad frente al resto de amenazas no militares, los riesgos estructurales y los eventos catastróficos que conforman la actual noción de seguridad hemisférica: un concepto multidimensional afectado por factores políticos, económicos, sociales, sanitarios y medioambientales.

Sería conveniente preguntarnos por la virtualidad de la iniciativa brasileña del CDS, toda vez que dicha propuesta está pensada para hacer frente a posibles amenazas externas a la seguridad y no tanto para las internas (conflictos intra-estatales), que son justamente las que motivan los problemas de seguridad en América Latina, fruto del escaso grado de desarrollo de los procesos de consolidación del Estado (PCE) en una zona, como la latinoamericana, con grandes asimetrías entre los Estados que la conforman.

Aún no se ha establecido un marco conceptual común en torno a la seguridad, lo que afecta a las posibilidades de construir y concretar un sistema de reglas vinculantes en las materias de defensa y seguridad internacionales e incide en la definición de los bienes públicos que deben ser promovidos y protegidos en este campo.

El concepto de seguridad hemisférica en Latinoamérica presenta un carácter discutido en su grado de aceptación y multidimensional en sus elementos conformadores, por lo que hace muy difícil el proponer una noción que sea sencilla y pacífica a la vez. La seguridad hemisférica en Latinoamérica es por el contrario poliédrica y polémica, lo que origina que no sea tan fácil conciliar posiciones a la hora de establecer un sistema de seguridad regional como el que supone la iniciativa brasileña del CDS.

Debido a la heterogeneidad y a las asimetrías en el poder económico y militar en el continente, aparece como oportuno y conveniente el desarrollo de acuerdos sub-regionales de seguridad, más acordes con las diversas preocupaciones y amenazas de grupos de países unidos por tradiciones y realidades físicas.



EL AFRICOM: QUÉ LUGAR OCUPA ÁFRICA EN EL DISPOSITIVO MILITAR AMERICANO

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Resumen:

El nuevo interés americano por África y la reciente importancia geoestratégica del continente plantean cuestiones fundamentales desde el punto de vista militar y estratégico para los Estados Unidos. Tras años de largo debate y procesos de discusión en el seno del Departamento de Defensa y en los círculos académicos y militares, se decidió la creación de un nuevo mando, el AFRICOM, cuya área de responsabilidad la constituiría todo el continente africano y aguas circundantes, con la excepción de Egipto, que queda bajo el CENTCOM. El establecimiento del AFRICOM es más que la reorganización administrativa del Unified Command Plan; es la muestra de la creciente importancia geopolítica de África para los intereses americanos. Sin embargo, la resistencia africana al AFRICOM y al establecimiento del Cuartel General del mando en África ha sido grande, mostrando los países su rechazo a la presencia de cientos de militares en su territorio. La práctica totalidad de los Estados africanos considera el establecimiento del AFRICOM como una estrategia encubierta para proseguir con la agenda americana de la Guerra contra el Terror, así como una forma de asegurarse el acceso a los recursos naturales del continente.

Palabras clave: AFRICOM; África; EEUU; seguridad; estrategia; geopolítica; percepción.

Title in English: "The African Command: Its place in Africa and in the American military structure"

Abstract:

Renewed American interest for Africa and the recent geostrategic revaluation of the continent carry along fundamental changes from military and strategic point of view for the United States. After years of protracted debate and several processes of assessment within the State Department and academic and military circles, it was decided to set up a new command, AFRICOM, whose area of responsibility would encompass the whole African continent and adjoining sea-area, with the exception of Egypt, who would remain under the control of CENTCOM. The setting up of AFRICOM goes in its meaning beyond the administrative reorganization of the Unified Command Plan; it is a prove of the growing geopolitical importance of Africa for the American interests. Nevertheless, African reluctance to accept the establishment of AFRICOM in any of their own countries has been huge, as they refused the presence of hundreds of their soldiers within their territory. Most of the African states consider the establishment of AFRICOM as a hidden strategy to put into practice the American agenda of Global War against Terrorism and at the same time secure the access to natural resources of the continent.

Keywords: AFRICOM; Africa; US; security; strategy; geopolitics; perception.

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Introducción

El nuevo interés americano por África y la reciente importancia geoestratégica del continente plantean cuestiones fundamentales desde el punto de vista militar y estratégico para los Estados Unidos².

El 6 de febrero de 2007, la Administración Bush anunció su intención de crear un nuevo Mando de Combate (Combattant Command), el “Mando Africano” (African Command), en el marco del Plan de Mandos Unificado o UCP: Unified Command Plan, para promover los objetivos de seguridad nacional de EEUU en África y las aguas circundantes. La presencia e implicación militar de EEUU en el continente se ha encontrado tradicionalmente dividida entre tres mandos diferentes: el Mando Europeo (EUCOM), el Mando Central (CENTCOM) y el Mando del Pacífico (PACOM). Estos tres mandos tenían bajo su área de responsabilidad una parte diferente del continente africano, lo cual ha impedido la coordinación de las medidas y actividades que afectaren a los países bajo la cobertura de mandos diferentes, así como la visión del continente en su conjunto y de forma comprensiva. África nunca fue prioritaria para los Mandos, que otorgaban más importancia a las otras zonas bajo su responsabilidad, quedando África en posición secundaria. Además esta división en tres altera el principio de unidad de mando y aumenta la descoordinación, sobre todo en las grietas que quedan entre los mandos. Por ejemplo, en el caso de una hipotética intervención estadounidense en el conflicto de Darfur, en Sudán, el Mando Central sería responsable de Sudán, mientras Chad quedaría en la zona de responsabilidad del EUCOM. La región de Darfur, en el oeste del país, quedaría a horcajadas entre los dos mandos. Con el establecimiento del Mando Africano, se eliminan estas incoherencias y se puede plantear una postura militar y diplomática más efectiva.

De esta forma, tras años de largo debate y procesos de discusión en el seno del Departamento de Defensa y en los círculos académicos y militares, se decidió la creación de un nuevo mando, el AFRICOM, cuya área de responsabilidad la constituiría todo el continente africano y aguas circundantes, con la excepción de Egipto, que queda bajo el CENTCOM. Este nuevo mando, todavía en situación de menor de edad bajo el Mando Europeo, se convertirá en independiente y operativo en octubre de 2008. Con la responsabilidad de todo el continente africano, y bajo el mando de un general de cuatro estrellas. El mando contará con un personal aproximado de 400-700 miembros y su Cuartel General se situará provisionalmente en Stuttgart, Alemania, con la intención de establecerse posteriormente en territorio africano, lo cual no parece muy plausible en el futuro inmediato debido a las reticencias y percepciones negativas de los Estados africanos, a pesar de las consultas tanto a los países como en el seno de las organizaciones regionales africanas.

El establecimiento del AFRICOM es más que la reorganización administrativa del Unified Command Plan. Es la muestra de la creciente importancia geopolítica de África para los intereses americanos. El histórico desinterés hacia el continente ha sido la causa del escaso desarrollo en el seno del Departamento de Defensa de estudios estratégicos africanos y sus correspondientes expertos. Hasta 1999 no se fundó un instituto para el estudio de la política estratégica de EEUU hacia África, el Africa Center for Strategic Studies, uno de los cinco centros regionales del Departamento de Defensa, situado en la National Defense University en Fort McNair, Washington DC.

² De ahora en adelante EEUU.



Los intereses estratégicos americanos en África son múltiples y de diversa índole. Por un lado, el papel de África en la Global War on Terror (GWOT). El interés y énfasis actual de las políticas de seguridad de EEUU se centra en las medidas anti y contraterroristas, considerando que la existencia de Estados débiles que no son capaces de mantener la seguridad en el interior ni el control de sus fronteras puede llevar a la creación de espacios ingobernados que sirvan de base logística para los grupos terroristas. En este sentido, África contiene la mayoría de los Estados frágiles del planeta, pasando a ocupar un papel central en la Guerra contra el Terrorismo³. El establecimiento del AFRICOM le otorga la responsabilidad de las iniciativas al respecto que ya están en funcionamiento, como la Combined Joint Task Force para el Cuerno de Africa (CJTF-HOA), responsabilidad del Mando Central y la Trans Saharan Counterterrorism Initiative(TSCTI) dependiente del EUCOM.

Por otro lado, es evidente el interés y la dependencia americanos de los recursos naturales africanos, fundamentalmente los energéticos, vitales para garantizar la seguridad energética de EEUU. A medida que la demanda mundial de fuentes energéticas aumenta y crece la inestabilidad en la región de Oriente Medio, se manifiesta la dependencia estadounidense de la capacidad africana de producción de petróleo. Por tanto AFRICOM se plantea también como un elemento para lograr la estabilidad en la región del Delta del Níger (Nigeria es el principal exportador africano de petróleo a EEUU) y el Golfo de Guinea.⁴

En este sentido, la expansión de la influencia de China en África también se plantea como un desafío para EEUU. China es el segundo mayor consumidor de energía del mundo y busca nuevos mercados que explorar y explotar. La creciente presencia de China en África, estableciendo alianzas estratégicas, sin tener en cuenta las políticas internas de los países, sino con ánimo comercial y bajo el principio de no interferencia le convierten en un competidor estratégico para los intereses energéticos de EEUU en el continente.

Otros aspectos que justifican el establecimiento del Mando Africano son la presencia de conflictos armados y crisis humanitarias⁵. Los ejércitos africanos y las organizaciones regionales como la UA y ECOWAS no poseen los medios suficientes para conducir operaciones de mantenimiento de la paz que garanticen una situación de seguridad y estabilidad. El AFRICOM pretende instruir a los militares africanos para dotarles de una autonomía y autosuficiencia en la conducción de estas operaciones. Ofrecerá asistencia técnica a las iniciativas en marcha (Global Peace Operations Initiative, Africa Contingency Operations Training Assistance) para fortalecer el sector de seguridad.

³ “These groups take advantage of vast "ungoverned" spaces to attack their host governments and advance their anti-moderate, anti-Western agendas” en Statement of General Bantz J. Craddock, USA Commander, United States European Command before the House Armed Services Committee, 15 march 2007, en http://www.eucom.mil/english/command/posture/HASC%20-20Craddock_Testimony031507.pdf

⁴ “West Africa now supplies over 16 percent of U.S. hydrocarbons and by 2015 it is estimated that it will supply more than 25 percent. In the next 10 years the Gulf of Guinea will provide the bulk of U.S. imports of sweet crude oil.” *Ibid.*

⁵ Como leemos en Statement of General Bantz J. Craddock, USA Commander, United States European Command before the House Armed Services Committee, 15 march 2007, en http://www.eucom.mil/english/command/posture/HASC%20-%20Craddock_Testimony031507.pdf “Much of Central Africa and East Africa have been mired in armed conflicts that have defied the international community’s capacity for crisis response and management since the mid to late 1990s. Numerous wars have been fought there, causing massive human suffering as well as political and economic stagnation”.



También el control de la expansión de enfermedades infecciosas, como el SIDA, principal causa de mortalidad en África, y que afecta en porcentajes alarmantes a algunas de las fuerzas de seguridad africanas, poniendo en duda su capacidad de despliegue en caso de necesidad⁶. El AFRICOM podría acoger parte del Programa de Prevención del SIDA del Departamento de Defensa, llevado a cabo por el Mando Europeo para prevenir la propagación de la enfermedad entre los ejércitos africanos.

Por último, el crimen organizado transnacional es también uno de los intereses de EEUU, especialmente el tráfico de drogas en África Occidental, el tráfico de personas y de inmigrantes, los actos de piratería, etc., teniendo en cuenta que la corrupción y la complicidad de algunos gobiernos exacerban el problema de los tráfico ilícitos.

El equipo de planificación para la creación del AFRICOM (Implementation Planning Team) ha identificado los problemas del continente como asuntos que no conciernen principalmente los aspectos militares, sino que deben involucrar otras agencias y departamentos gubernamentales que se impliquen en el desarrollo, la salud, educación, democracia y buen gobierno, crecimiento económico, etc. No se trata de una visión tradicional de la seguridad, sino de analizar la situación del continente en el siglo XXI, explorando los desafíos y amenazas desde una óptica multidimensional.

Los intereses americanos en África son de considerable importancia y sitúan al continente en una posición central en cuanto a los asuntos de seguridad y estrategia. África ha dejado de ser un continente periférico en la visión estadounidense, y así se refleja en los documentos oficiales. En el futuro, quizá los principales desafíos a la seguridad americana provengan de África y se conviertan en la máxima prioridad de las Administraciones venideras. En este marco contextual se sitúa la creación y establecimiento del nuevo mando unificado, el AFRICOM, cuya misión será promover los objetivos americanos trabajando con los Estados y Organizaciones africanos para reforzar la situación de seguridad en el continente. Al menos esa es la misión declarada del nuevo mando, pero los países africanos no parecen estar de acuerdo con la visión estadounidense y consideran que bajo esa promoción de seguridad en África se esconden otros objetivos e intereses que no les benefician a ellos, sino que los instrumentalizan en la política exterior norteamericana.

1. Evolución Histórica

Si nos remontamos a los primeros signos de interés de Estados Unidos por África encontramos que, después de la visita del vicepresidente Nixon a Ghana en 1957 durante la fiesta de la independencia, se llevó a cabo la creación del Bureau de Asuntos Africanos⁷ en el seno del Departamento de Estado, en 1958, siendo John Satterhwaite el primer subsecretario de Estado de Asuntos Africanos.

⁶ “The human costs aside, the AIDS epidemic has a direct negative impact on the region’s stability and security. Security forces are being decimated as key personnel are lost, the ability to conduct operations is reduced, and nations are hard pressed to field and deploy healthy soldiers for participation in peacekeeping operations.” Statement of General Bantz J. Craddock, USA Commander, United States European Command before the House Armed Services Committee, 15 march 2007, en http://www.eucom.mil/english/command/posture/HASC%20-%20Craddock_Testimony031507.pdf

⁷ Bureau of African Affairs, en <http://www.state.gov/p/af/> y otros enlaces relacionados pueden verse en <http://www.state.gov/p/af/links/>



Hasta la década de los años noventa, el Departamento de Estado fue el centro de decisión en materia de política africana, siendo la política americana durante la Guerra Fría un intento de evitar que África se implicara en el enfrentamiento ideológico de los dos bloques dominantes.⁸

Con el fin de la Guerra Fría, Washington se planteó una reevaluación de su política africana. Los nuevos objetivos consistirán entonces en el apoyo y consolidación de la democracia en África, el acabar con las crisis y conflictos en el continente, el desarrollo económico, la lucha contra las pandemias y contra la destrucción del entorno medioambiental y por otro lado se extiende también al continente negro la lucha contra el terrorismo. En el discurso del Secretario de Estado Warren Christopher, en octubre de 1996, en el Instituto Sudafricano de Asuntos Internacionales leemos: “Today, all the nations of Africa have a chance to realize the potential that exists in their human and natural resources. This was impossible when Africa was divided by Cold War cleavages and superpower rivalries. It was impossible when most African nations stagnated under single party rule, pursuing economic policies that were based upon ideology, not experience. It was impossible when South Africa stood in opposition to its neighbors, unable to exercise moral or political leadership.”⁹

Podemos explicar este nuevo interés estadounidense con una serie de argumentos y razones.

En primer lugar, la relevancia de la presencia de la comunidad negra americana (aproximadamente 30 millones de personas), cuyos representantes al Congreso se habían organizado bajo la forma del Congressional Black Caucus¹⁰, que en 1987 logró la creación del Development fund for Africa.¹¹

En segundo lugar, la importancia del voto de los países africanos en la ONU, donde representaban un tercio de los miembros presentes en organizaciones multilaterales.

En tercer lugar, la presencia de materias primas necesarias para la economía americana, en particular el petróleo, cuya importación es fundamental para la seguridad energética de EEUU.

Finalmente, la crisis somalí de 1992-1993 precipitó la reorientación y reevaluación en profundidad de la política estadounidense respecto al continente africano.

A raíz de estos cambios, y para reorganizar la acción americana, se elaboró en junio de 1992 el documento: “National Security Review 30: American Policy Toward Africa in the

⁸ Política enunciada por el Secretario de Estado Cyrus Vance en 1977.

⁹ Address by Secretary of State Warren Christopher at the South African Institute of International Affairs, University of Witwatersrand, Johannesburg, South Africa, October 12, 1996, en <http://dosfan.lib.uic.edu/ERC/briefing/dossec/1996/9610/961012dossec4.html>

¹⁰ Fundado en 1971, pueden verse más datos históricos en <http://www.house.gov/kilpatrick/cbc/>

¹¹ Con el objetivo de ayudar “the poor majority of men and women in sub-Saharan Africa to participate in a process of long-term development through economic growth that is equitable, participatory, environmentally sustainable, and self-reliant.”, véase la cita e información ampliada en “Free Market Fundamentalism or Partnership for Development”, en http://www.fpi.org/papers/africa/development_body.html



1990s” (NSR30), publicado el 3 de enero de 1993¹² con la siguiente finalidad: “to figure out how to improve relations with African countries and how to define and pursue our interests in Africa”.

Algunos de los aspectos relevantes y objetivos americanos en el ámbito de la seguridad que define la NSR30 son los siguientes:

- “A continued active U.S role in conflict resolution, including possible border adjustments, and the creation of indigenous peacemaking and peacekeeping mechanisms” para lo cual EEUU necesitaría “Access to selected African air and naval facilities, air space, and sea lanes for U.S. military contingency operations in the Middle East and Southwest Asia”
- “African acceptance of basic human rights, worker rights, good governance, the rule of law and democratic political pluralism”, para lo que sería necesario “Downsizing African militaries to smaller, more economical force structures with rational missions, and to make them more responsive to democratic values”
- También “Elimination of narcotics trafficking, prevention of the spread of terrorist activities to Africa, and the containment of the influence of nations and ideologies inimical to our interests. Effective efforts to confront issues of environmental degradation, human health, including AIDS, population growth, refugees and women's status. Support for U.S. positions bilaterally and in international fora.”
- Así como “Sustained development and reduced reliance on external aid through market-based economic reforms. U.S. access to markets, investment opportunities and resources.”

La importancia creciente de África en la lucha contra el terrorismo y la presencia de fuentes de conflicto e inestabilidad, unidos a la importancia del continente en cuanto a materias primas hicieron que a partir del nuevo milenio se empezara a hablar de una mayor implicación americana en el continente. En virtud de esta mayor importancia, el Pentágono comenzó a pensar en el establecimiento de un nuevo Mando de Combate (Combattant Command), el “Mando Africano”(African Command), en el marco del Plan de Mandos Unificado o UCP: Unified Command Plan.

El UCP fue creado en 1946, tras la Segunda Guerra Mundial, para dividir el mundo en mandos militares que permitieran luchar contra un conflicto global en el caso de que la tensión de la Guerra Fría lo hiciera necesario. No hizo falta, no se dio tal conflicto global, la URSS se disolvió, pero el UCP ha continuado, “modificándose progresivamente (las modificaciones más recientes se realizaron en 1998 y 1999, y tras los ataques del 11 de septiembre de 2001¹³), adaptándose a los cambios en el sistema internacional y a las necesidades estratégicas norteamericanas, aprovechando en última instancia la capacidad tecnológica y organizativa junto con la de proyección de fuerza de EEUU”.¹⁴ A pesar de que

¹² El texto original está disponible en <http://bushlibrary.tamu.edu/research/pdfs/nsr/nsr30.pdf> y un resumen del estudio previo, con los aspectos fundamentales y las recomendaciones al respecto puede leerse en <http://allafrica.com/stories/200101080520.html> Para la política de EEUU respecto al Norte de África véase NSR 23-US Policy Toward the Maghreb.

¹³ Aprobado en abril de 2002, el nuevo Unified Command Plan se hizo efectivo el 1 Octubre de 2002.

¹⁴ Véase García Cantalapiedra, David: “La creación del AFRICOM y los objetivos de la política de EEUU hacia África: gobernanza, contraterrorismo, contrainsurgencia y seguridad energética”, *Real Instituto Elcano*, ARI N°



las circunstancias y amenazas de la Guerra Fría han desaparecido, EEUU se enfrenta en el siglo XXI a nuevas amenazas que requieren de un UCP modificado, preparado para los desafíos del futuro, capaz de afrontar la guerra global al terror y otros asuntos de seguridad nacional, incluyendo la posibilidad de luchar en guerras calientes.

El antecedente del UCP, el “Outline Command Plan”, se creó en función de las lecciones aprendidas durante la Segunda Guerra Mundial, por el Comité de los Jefes del Estado Mayor¹⁵, como primer intento para asegurar en la posguerra la unidad de las fuerzas armadas durante las operaciones de combate. Las distintas versiones de dicho plan es lo que se denominó “Unified Command Plan”, en cuyo marco se organizan y reparten las fuerzas armadas estadounidense entre diferentes mandos, se asignan las misiones y las funciones de los diferentes mandos, se establece la estructura de fuerzas de que se disponen en tiempos de paz y se define su zona de responsabilidad geográfica¹⁶. El Plan, que deriva del documento de estrategia nacional “National Military Strategy of the USA” define la estructura de mando militar estadounidense, que abarca tanto las autoridades políticas (National Command Authority) como los Comandantes en Jefe (CinC) de los diferentes mandos operacionales (Combattant Commands). Los Comandantes en Jefe dependen directamente del presidente, vía el Secretario de Defensa, para la ejecución de las misiones. El UCP emana del Ejecutivo y es firmado por el Presidente en tanto que comandante en jefe, a proposición del Secretario de Defensa asesorado por el Comité de los Jefes de Estado Mayor, responsables de poner en práctica las decisiones contenidas en el Plan.¹⁷

1.1. Mandos geográficos y funcionales

Entre los nueve Mandos distinguimos dos categorías, los mandos geográficos (5 mandos con responsabilidades regionales: Norteamérica, Sudamérica, Europa, Oriente Medio y Asia) y los funcionales (4 mandos para las operaciones especiales, transporte de fuerzas, entrenamiento conjunto, experimentación...), que apoyan el esfuerzo de los mandos geográficos operacionales en la ejecución de las misiones. Veámoslos brevemente:¹⁸

Entre los que distinguimos como funcionales están:

- U.S. Joint Forces Command (Norfolk, Virginia)¹⁹, encargado de cuatro misiones fundamentales: el desarrollo de los conceptos militares junto a otros mandos y

53/2007 (10/05/2007), en

http://www.realinstitutoelcano.org/wps/portal/rielcano/contenido?WCM_GLOBAL_CONTEXT=/Elcano_es/Zonas_es/ARI+53-2007

¹⁵ Véase Joint Chiefs of Staff, en <http://www.jcs.mil/>

¹⁶ El UCP ha focalizado su acción en la planificación de operaciones militares estrictamente, separándose de las tareas de no combate y prestando poca atención a la cooperación con otros departamentos o organizaciones son gubernamentales.

¹⁷ Como leemos en Boyer, Yves: « Le regain d'intérêt américain pour l'Afrique: quelles conséquences militaires et stratégiques ? », *Fondation pour la Recherche Stratégique*, (8 décembre 2006), en <http://www.frstrategie.org/barreCompetences/strategieAmericaine/20061208.pdf>. El Congreso puede influir indirectamente en el UCP. En función de la ley que organiza el funcionamiento de la Administración de EEUU (Title 10, US Code, 161), el documento relativo al UCP se revisa cada dos años a iniciativa del Comité de los Jefes de Estado Mayor.

¹⁸ Información detallada de cada mando se puede encontrar en

<http://www.defenselink.mil/specials/unifiedcommand/>

¹⁹ <http://www.jfcom.mil/index.htm>



servicios, y su experimentación²⁰, el entrenamiento conjunto del personal militar, el desarrollo de capacidades conjuntas para hacer frente a los retos de interoperatividad y la provisión de fuerzas convencionales a los mandos regionales.

- U.S. Special Operations Command (MacDill Air Force Base, Florida), cuya misión principal sería “ to provide fully capable Special Operations Forces to defend the United States and its interests. Plan and synchronize operations against terrorist networks”²¹. Es decir que provee de fuerzas para operaciones especiales a los mandos regionales para un amplio rango de misiones, desde acciones directas hasta operaciones psicológicas y asuntos civiles o lucha contra el terrorismo. No obstante, SOCOM puede también desarrollar actividades independientemente a los mandos de combate, bajo la dirección del Presidente y el Secretario de Defensa. SOCOM tiene incluso algunas funciones de defensa interna, contando con una fuerza de respuesta nacional para reaccionar ante circunstancias especiales, tales como las Olimpiadas.
- U.S. Transportation Command (Scott Air Force Base, Illinois)²², responsable de crear y aplicar soluciones globales de transporte, despliegue y distribución a los otros mandos y el apoyo logístico requerido por el Presidente, el Secretario de Defensa y a los jefes de misión.
- U.S. Strategic Command (Offutt Air Force Base, Nebraska), responsable de la integración de las operaciones de defensa antimisil, apoyo espacial y alerta temprana (alerta a los otros mandos) ante lanzamiento de misiles, operaciones de información y protección de los sistemas informáticos.

Entre los mandos geográficos o regionales hay que citar²³:



²⁰ El UCP identifica este mando como el principal responsable para la transformación de las fuerzas armadas americanas, mediante el desarrollo de capacidades que se puedan adaptar a las nuevas circunstancias y a situaciones inesperadas. El responsable máximo de este mando es también el responsable del mando de transformación de la Alianza Atlántica (Allied Command Transformation).

²¹ <http://www.socom.mil/>

²² <http://www.transcom.mil/>

²³ Imagen tomada del Departamento de Defensa, en <http://www.defenselink.mil/specials/unifiedcommand/>



- U.S. Northern Command (Peterson Air Force Base, Colorado). El Mando del Norte fue establecido el 1 de octubre de 2002, tras los acontecimientos del 11 de septiembre de 2001, con el fin de organizar la defensa interior de EEUU y de los territorios adyacentes. Además de los esfuerzos de “homeland defense”, también coordina el apoyo de defensa necesario para las autoridades civiles, asegurando así la defensa, protección y libertad de EEUU, su pueblo y sus intereses. El área de responsabilidad incluye los elementos de tierra, mar y aire de la parte continental de EEUU, Alaska, Canadá, Méjico y las aguas circundantes hasta aproximadamente 500 millas náuticas. Incluye también el Golfo de Méjico y los Estrechos de Florida.²⁴ Este mando constituye la consolidación bajo un único mando unificado de diferentes misiones existentes y llevadas a cabo por otras organizaciones del Departamento de Defensa²⁵, lo cual le dota de unidad de mando, característica fundamental para el buen desempeño de las misiones.
- U.S. Pacific Command (Honolulu, Hawaii)²⁶. Establecido como mando unificado el 1 de enero de 1947, es el más antiguo y el más amplio de todos los mandos.



El actual USPACOM incluye áreas originalmente asignadas a otros dos mandos unificados. Las responsabilidades del Far East Command fueron asumidas el 1 de Julio de 1957. El mismo día asumió algunas responsabilidades del Alaskan Command y componentes y fuerzas fueron establecidos en Hawai. El área de responsabilidad fue extendida

²⁴ Véase <http://www.northcom.mil/About/index.html>

²⁵ La propuesta de crear un mando para los asuntos de seguridad interior fue en tiempos anteriores rechazada, en parte porque los militares eran reacios a llevar a cabo misiones que requiriesen la cooperación de otras agencias federales. Léase al respecto W. Spencer Johnson, “New Challenges for the Unified Command Plan”, *Joint Force Quarterly*(summer 2002), p.63, citado en Carafano, James Jay: “Missions, Responsibilities, and Geography: Rethinking How the Pentagon Commands the World”, *Backgrounder*, The Heritage Foundation, nº 1792 (August 26, 2004), en http://www.heritage.org/Research/NationalSecurity/upload/68250_1.pdf

²⁶ Véase imagen e información ampliada en <http://www.pacom.mil/about/about.shtml>



sucesivamente, cubriendo en la actualidad casi la mitad de la superficie del planeta, un área aproximada de 100 millones de millas cuadradas²⁷, desde la costa occidental de EEUU hasta la costa Este de África (Madagascar y las islas de la periferia del este del continente africano) y desde el Ártico al Antártico; el área de responsabilidad cubre 39 Estados independientes en las fronteras geográficas del mando del Pacífico.²⁸

- U.S. Southern Command (Miami, Florida). Fue creado en junio de 1963, apropiándose de las atribuciones de las estructuras preexistentes, y es responsable de las operaciones militares de EEUU principalmente en América Central y del Sur, más que en la zona del Caribe.²⁹ El área de responsabilidad del mando incluye 32 Estados (19 en Centro y Suramérica y 13 en el Caribe), y 14 territorios americanos y europeos, cubriendo un total 15.6 millones de millas cuadradas (aproximadamente 23.2 millones de km²). La región representa un sexto de las tierras mundiales asignadas a los mandos regionales, e incluye la masa continental de América Latina al sur de Méjico, las aguas adyacentes de América Central y del Sur; el Mar del Caribe, con sus islas y territorios europeos, el Golfo de Méjico y una parte del Océano Atlántico.³⁰

²⁷ Es decir, del orden de 169 millones de Km. cuadrados.

²⁸ Véanse los países en <http://www.pacom.mil/about/aor.shtml>

²⁹ Los orígenes del SOUTHCOM se remontan a principios del siglo XX, cuando en 1903 los marines de EEUU llegaron a Panamá para proteger las vías ferroviarias que conectan los Océanos Atlántico y Pacífico en el estrecho de Panamá. En 1904, el Coronel William C. Gorgas fue enviado a la Zona del Canal para combatir la fiebre amarilla y la malaria. Con la llegada en 1907 del Teniente Coronel George W Goethals como ingeniero jefe de la Isthmian Canal Commission la construcción del Canal cambió de ser un proyecto civil a uno militar (época de Roosevelt). En 1911, las primeras tropas del Ejército de EEUU (10º Regimiento de Infantería) llegaron a Camp E. S. Otis, en el lado del Pacífico del istmo, con la responsabilidad de defender el Canal. En 1914, el Batallón de Marina dejó el estrecho para participar en operaciones contra Pancho Villa en México. En agosto de 1914, el Canal de Panamá se abrió al comercio internacional. En 1914 se establecieron las primeras fortificaciones a cada lado del Canal (Atlántico y Pacífico) con fuerzas móviles de infantería y artillería a cada extremo. Después, en 1915, un mando consolidado quedó como Cuartel General de las tropas de EEUU de la Zona del Canal de Panamá. Aunque el Cuartel General se estableció en primer lugar en el edificio de la Isthmian Canal Commission en la ciudad de Ancon, fue trasladado en 1916 al puesto militar de Quarry Heights. En julio de 1917, el Departamento del Canal de Panamá se activó como mando geográfico del Ejército de EEUU y constituyó el Cuartel General Principal de la región hasta la activación del Mando de Defensa del Caribe en Febrero de 1941. El nuevo mando asumió la responsabilidad de las fuerzas aéreas y navales en el área de operaciones. La fuerza militar en el área aumentó gradualmente, de forma que en enero de 1943 había un personal de 68,000 hombres defendiendo el Canal de Panamá. Tras el fin de la IIGM las fuerzas se redujeron, pasando a ser en el periodo de 1946 a 1974 una fuerza oscilante entre 6.600 y 20.300. Desde 1975 hasta 1994 se estiman 10.000 hombres. En diciembre de 1946(época Truman), el Mando del Caribe pasó a formar parte de la recién estrenada estrategia de mandos geográficos, bajo el principio de mandos unificados que ya hemos visto. El mando fue designado en noviembre de 1947 y se tornó en operativo en marzo de 1948, desactivando el viejo Mando de Defensa del Caribe. En 1963, reflejando la realidad del mando, responsable de las operaciones en Centro y Suramérica, y no tanto del Caribe, se rediseñó como el United States Southern Command.

Véase <http://www.southcom.mil/AppsSC/pages/history.php>

³⁰ <http://www.southcom.mil/AppsSC/pages/aoi.php>



- U.S. Central Command (MacDill Air Force Base, Florida). Establecido en enero de 1983, el USCENTCOM cubre el área “central” del globo que se sitúa entre los Mandos Europeo y Pacífico.³¹ El área de responsabilidad se extiende a 27 países: Afganistán, Bahrein, Djibouti, Egipto, Etiopía, Eritrea, Irán, Irak, Jordania, Kazajstán, Kenia, Kuwait, Kirguizistán, Líbano, Omán, Pakistán, Qatar, Arabia Saudí, Seychelles, Somalia, Sudán, Siria, Tayikistán, Turkmenistán, EAU, Uzbekistán, Yemen.³² Actualmente podemos ver que 7 países africanos se encuentran bajo su responsabilidad, desde Kenia hasta Egipto.

³¹ Los orígenes del CENTCOM se sitúan en la época de la Crisis de los rehenes en Irán y la Invasión Soviética de Afganistán, muestras de la necesidad de reforzar los intereses americanos en la región. El Presidente Jimmy Carter estableció en marzo de 1980 la Rapid Deployment Joint Task Force (RDJTF) y el Presidente Ronald Reagan fortaleció la medida transformando la RDJTF en un mando unificado permanente durante un periodo de 2 años. Al independizar la RDJTF del Readiness Command se dio el paso definitivo para la activación en 1983 del USCENTCOM. Véase <http://www.centcom.mil/en/about-centcom/our-history/>

³² <http://www.centcom.mil/en/countries/aor/>



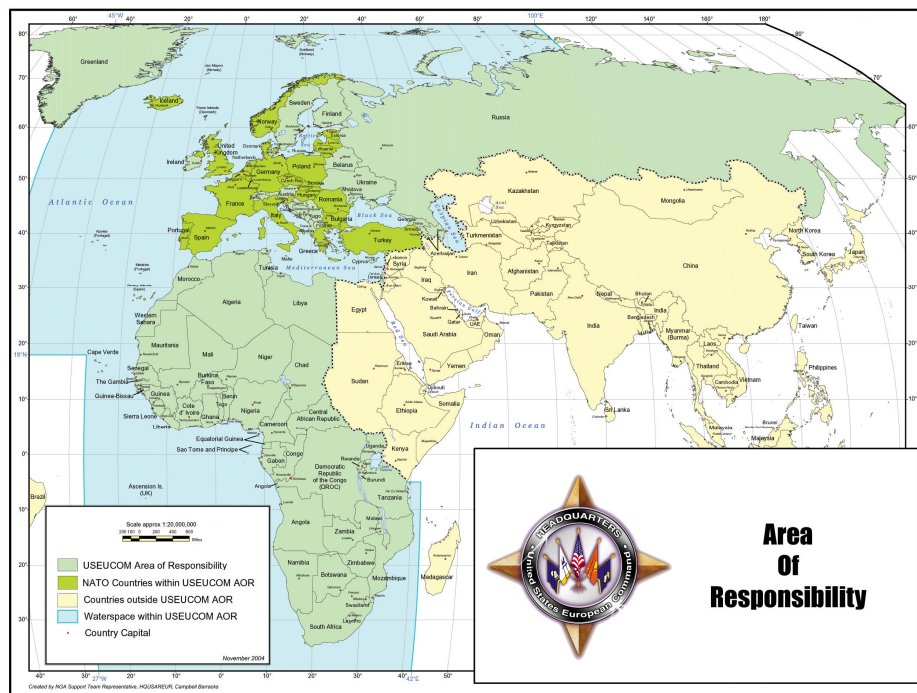
Los ataques terroristas del 11 de septiembre de 2001, llevaron al Presidente George W. Bush a declarar la Guerra contra el Terror, la cual incluye la guerra contra el terrorismo internacional. El USCENTCOM lanzó entonces la Operación Enduring Freedom para expulsar a los Talibanes del Gobierno de Afganistán y es también el supervisor de la Operación Iraqi Freedom.

A estas iniciativas debemos añadir algunas respecto a África. Desde octubre de 2002, USCENTCOM ha llevado a cabo operaciones en la zona del Cuerno de África para ayudar a las naciones de acogida a combatir el terrorismo, establecer un entorno seguro y conseguir la estabilidad regional. Estas operaciones tomaron la forma inicial de asistencia humanitaria, gestión postconflicto y diversos programas de acción civil. Se estableció la Combined Joint Task Force para el Cuerno de África (CJTF-HOA) destinada a controlar la zona del Cuerno de África a partir de bases y puntos de apoyo, siendo el más importante el de Camp Lemonnier, en Djibouti, donde se encuentran más de un millar de Marines americanos así como el Cuartel General de la CJTF-HOA.³³ En Kenia, los EEUU tienen acceso al puerto de Mombasa y a los aeródromos de Nanyuki y Embakasi, cerca de Nairobi.

³³ En julio de 2006 se llegó a un Acuerdo para el alquiler de las instalaciones utilizadas por los americanos en Djibouti, durante un periodo de 5 años.



- U.S. European Command (Stuttgart-Vaihingen, Alemania). Creado oficialmente el 1 de agosto de 1952, es heredero de las estructuras de mando americanas establecidas en Europa durante la IIGM y la subsiguiente evolución en el marco de la Guerra Fría³⁴. Su zona de responsabilidad cubre más de 21 millones de millas² e incluye más de 90 países y territorios. Las estadísticas³⁵ hablan del 35% de la masa continental terrestre (aproximadamente 50 millones km²), 220.000 Km. de costa (60% de las líneas costeras del planeta), 70 millones de km² de agua (el 20% de las aguas totales) y 1.4 billones de habitantes (23% de la población mundial). El territorio cubre Europa de Oeste a Este, hasta Siberia y hacia el Sur cubre 42 países africanos, sin incluir los países africanos de la zona bajo responsabilidad del CENTCOM.



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Al incluir bajo su zona de responsabilidad a los países³⁷ de Argelia, Angola, Benin, Botswana, Burkina Faso, Burundi, Camerún, Cabo Verde, República Centro-Africana, Chad, Congo, Costa de Marfil, RD del Congo, Guinea Ecuatorial, Gabón, Gambia, Ghana, Guinea, Guinea-Bissau, Lesotho, Liberia, Libia, Malawi, Malí, Mauritania, Marruecos, Mozambique, Namibia, Níger, Nigeria, Rwanda, Santo Tome y Príncipe, Senegal, Sierra Leona, Sudáfrica, Swaziland, Tanzania, Togo, Túnez, Uganda, Zambia, Zimbabwe; el EUCOM, que dispone en su cuartel general de una célula encargada de los asuntos africanos, acompaña las iniciativas americanas cuyo interés se centra en las cuestiones de seguridad y defensa de África y que veremos a continuación.(ACRI, ACOTA, TSCTI, etc.)

³⁴ En <http://www.eucom.mil/english/Command/history.asp> se puede encontrar una breve, pero completa síntesis de la evolución histórica que llevó al establecimiento del USEUCOM, analizando el papel de las estructuras presentes anteriormente y su evolución.

³⁵ <http://www.eucom.mil/english/AOR/main.asp>, datos disponibles de 10 Marzo 05.

³⁶ Fuente: http://www.eucom.mil/english/AOR/eucom_aor_color_HR.jpg

³⁷ <http://www.eucom.mil/english/AOR/Africa/main.asp>



Para concluir este apartado no podemos dejar de mencionar las opiniones de algunos analistas que consideran el UCP como una reliquia de la Guerra Fría. La división del mundo en 5 mandos con responsabilidades regionales y 4 mandos funcionales se muestra como ineficaz e incoherente en la actualidad. Las responsabilidades se encuentran fragmentadas y falta coordinación. Como expone Carafano, el actual Plan carece de una estructura lógica y eficaz para atajar las nuevas amenazas a la seguridad nacional y en materia de guerra contra el terrorismo³⁸. Era necesaria una reevaluación de las misiones y responsabilidades, reestructurando los mandos de forma que presentasen una mayor coordinación, así como un mayor compromiso con los distintos socios y vecinos y el desarrollo de nuevas capacidades para llevar a cabo operaciones post-conflicto y otro tipo de operaciones que puedan abordar los nuevos desafíos a la seguridad (Estados canallas, acceso de los grupos terroristas a armas de destrucción masiva, crimen transnacional, enfermedades infecciosas, riesgos medioambientales...) Dentro de las críticas más comunes se encuentra la que enfatiza la necesidad de prestar más atención a África y la posibilidad de crear un mando unificado para el continente, el cual abarque todo el continente, en lugar de estar dividido entre el EUCOM, el PACOM y el CENTCOM. Este mando, establecido en febrero de 2007, recibe el nombre de AFRICOM.

2. Iniciativas para la seguridad africana bajo el Mando Europeo USEUCOM

Como vimos anteriormente, los primeros signos de interés de EEUU hacia el continente africano se remontan a los años 50. Posteriormente, el interés ha ido variando y acrecentándose o inhibiéndose, dependiendo de algunos factores³⁹ tanto de política interna como internacional. Ahora veremos algunas iniciativas relativamente recientes estadounidenses orientadas al continente negro respecto a aspectos de seguridad y defensa, iniciativas que precedieron al establecimiento del Mando Africano.

2.1. African Crisis Response Initiative (ACRI)

La iniciativa Africa Crisis Response Initiative (ACRI, 1997) fue ideada durante la Administración Clinton, por el Departamento de Estado y manejada por el Departamento de Defensa. El objetivo de ACRI es fortalecer la capacidad de una selección de ejércitos africanos, para así aumentar su capacidad de gestionar operaciones humanitarias y de peacekeeping en el continente.

En un principio la iniciativa se llamó African Crisis Response Force (ACRF) y perseguía el establecimiento de una fuerza africana entrenada y equipada por EEUU, que fuera responsable de gestionar las operaciones de paz en África. No obstante, como se dijo en la sesión del Congreso de julio de 2001⁴⁰, la iniciativa no fue bien recibida por los Estados africanos: "As we may remember, it was initially called the Africa Crisis Response Force, ACRF; and that title did not go over too well, and so the "force" was changed to "initiative."

³⁸ A pesar de la creación del NORTHCOM todos los mandos conservan responsabilidades de lucha contra el terrorismo.

³⁹ Véase el apartado "evolución histórica" en este artículo.

⁴⁰ Léase el documento en http://commdocs.house.gov/committees/intlrel/hfa73778.000/hfa73778_0f.htm



but the goal remains the same”; era un proyecto que nacía del interés de EEUU, no era una idea africana y no tenía en cuenta el papel de las organizaciones internacionales y regionales.

En consecuencia el énfasis continúa siendo el entrenamiento de tropas (el objetivo a largo plazo es el entrenamiento de un personal de 12.000 hombres) bajo una doctrina común de mantenimiento de la paz, con el suministro americano de equipamiento de carácter interoperativo, lo cual capacite a las unidades el trabajo conjunto eficaz. Las modificaciones respecto a ACRF consiste en el despliegue de las fuerzas entrenadas bajo decisión soberana del socio ACRI, en respuesta a una petición procedente de una entidad política internacional como Naciones Unidas, la Unión Africana u organizaciones subregionales como la Economic Community of West African States (ECOWAS) y la Southern African Development Community (SADQ). También pueden desplegarse las tropas como parte de una fuerza más amplia multinacional de mantenimiento de la paz. ACRI pretende el entrenamiento conjunto de fuerzas africanas para desarrollar su capacidad de responder a situaciones de emergencia, pero no establece una fuerza permanente, sino que los peacekeepers de los países africanos firmantes permanecen en sus países, preparados para un rápido despliegue en zonas de crisis cuando sea necesario.

ACRI ha contribuido a la resolución de conflictos en Africa, donde 7 países socios han decidido soberanamente desplegar peacekeepers en operaciones internacionales.⁴¹ En el periodo desde 1997 hasta 2001, ACRI desarrollo labores iniciales de entrenamiento en Senegal, Uganda, Malawi, Malí, Ghana, Costa de Marfil y Benin. También se previó entrenamiento inicial para Kenia en octubre de 2000.

2.2. African Contingency Operations Training and Assistance (ACOTA)

Bajo la Administración Bush, la African Crisis Response Initiative se transformó en un nuevo programa llamado African Contingency Operations Training and Assistance, que consiste en el entrenamiento de entrenadores militares y en el equipamiento de militares nacionales africanos para llevar a cabo operaciones de paz y asistencia humanitaria. El objetivo que persigue el programa es el desarrollo de las capacidades de los militares en áreas como Derechos Humanos, interacción con la sociedad civil, Derecho Internacional, habilidades militares y operaciones de pequeñas unidades. El programa African Contingency Operations Training and Assistance ha conseguido cifras crecientes en el apoyo a militares africanos que después han participado en actividades por la paz y de peacekeeping en el continente.

El programa está financiado por la cuenta de operaciones de peacekeeping del Departamento de Estado y es parte de la iniciativa del Departamento de Estado llamada Global Peace Operations Initiative (GPOI)⁴². GPOI es un programa de 5 años, multilateral, con contribuciones de EEUU de 660 millones USD⁴³ para el período 2005-2009. Su objetivo

⁴¹ Por ejemplo un batallón ACRI de Malí se desplegó en Sierra Leona como parte de una fuerza de mantenimiento de la paz de ECOWAS, donde también participaron soldados de Ghana. Tropas ACRI de de Benin también se desplegaron como parte de otra operación aprobada por ECOWAS en Guinea-Bissau y soldados senegaleses se comprometieron en una misión de UN en la República Centroafricana. Véase <http://www.globalsecurity.org/military/agency/dod/acri.htm>

⁴² Serafino, Nina M. : “The Global Peace Operations Initiative: Background and Issues for Congress”, *CRS Report for Congress*, (16 febrero 2005), en <http://www.globalsecurity.org/military/library/report/crs/r132773.pdf>

⁴³ United States Dollars; utilizaremos el acrónimo para abreviar.



principal es el entrenamiento y equipamiento de 75.000 tropas militares, la mayoría africanas, para operaciones de mantenimiento de la paz en 2010.⁴⁴

GPOI ha promovido también el desarrollo de un sistema de transporte internacional y apoyo logístico para los peacekeepers, y estimula el intercambio de información para mejorar la coordinación del entrenamiento en las operaciones de paz y ejercicios militares en Africa. En junio de 2004, los líderes del G8 manifestaron su apoyo a los objetivos de la iniciativa.

La GPOI ha incorporado los programas existentes previamente respecto al desarrollo de las capacidades mencionadas. Desde 1997 hasta 2005, EEUU gastó 121 millones USD en el programa que precedió a la GPOI: African Crisis Response Initiative (ACRI) de la Administración Clinton y su sucesor en la Administración Bush el programa African Crisis Operations Training (ACOTA). A través de ACRI/ACOTA, EEUU entrenó un total de 16.000 tropas, y actualmente entrena otras 1.000, procedentes de 9 países africanos (Benin, Botswana, Etiopía, Ghana, Kenya, Malawi, Malí, Mozambique y Senegal.)⁴⁵

En el período 1998-2005 se dedicaron otros 33 millones USD para la formación de formadores, entrenando a 31 militares extranjeros a través del programa Enhanced International Peacekeeping Capabilities (EIPC).

En síntesis podemos decir que ACRI ha proporcionado entrenamiento en las habilidades tradicionales de peacekeeping, cuando existe un alto el juego o un acuerdo de paz. El programa ACOTA, iniciado en 2002, buscó solucionar algunas de las limitaciones de ACRI, entrenando tropas africanas para participar en operaciones de paz en entornos más hostiles (entrenamiento en operaciones de peace enforcement), incluyendo protección de las tropas, operaciones de infantería ligera y tácticas de unidades pequeñas. También, como vimos anteriormente, se enfatizaron los aspectos de formación de instructores y la participación y consulta de las organizaciones africanas.

Por fin, en 2004, el Presidente Bush, ante la Asamblea General de UN propuso la creación de una organización militar africana que sería utilizada por los africanos para ayudar a los africanos. Así surgió la GPOI., “because we believe in human dignity, the world must have more effective means to stabilize regions in turmoil, and to halt religious violence and ethnic cleansing. We must create permanent capabilities to respond to future crises. The United States and Italy have proposed a Global Peace Operations Initiative. G-8 countries will train 75,000 peacekeepers, initially from Africa, so they can conduct operations on that continent and elsewhere. The countries of the G-8 will help this peacekeeping force with deployment and logistical needs.”⁴⁶

El objetivo final consiste en fortalecer las capacidades africanas y canalizar los recursos internacionales para que el continente africano pueda ser autosuficiente en la resolución de sus propios problemas. A través de las organizaciones regionales ECOWAS y UA actuar en

⁴⁴ GPOI ha entrenado también un centro de gendarmes en Vicenza, Italia, entre otras medidas fuera del continente africano.

⁴⁵ Debe puntualizarse que los entrenamientos iniciales en Etiopía cesaron hasta la resolución del conflicto con Eritrea. Y el entrenamiento con Uganda y Costa de Marfil quedaron también en pausa debido al conflicto den la RD Congo al Golpe en el caso de Costa de Marfil. Véase <http://www.globalsecurity.org/military/agency/dod/acri.htm>

⁴⁶ “Bush Speaks of Shared Values at U.N.,” 21 Sep 2004; en <http://www.foxnews.com/story/0,2933,132976,00.html>, citado en Cale, Paul P. (Lieutenant Colonel): “African Command. The Newest Combatant Command”, *U.S. Army War College*, USAWC Strategy Research Project.



las crisis regionales de forma autónoma, aunque apoyadas por la Comunidad Internacional a la vista de las deficiencias económicas, logísticas y también políticas.

2.3. Trans-Sahara Counter Terrorism Initiative (TSCD)

En el marco de la Global War on Terror, Africa supone para EEUU un desafío y un espacio a tener en consideración de forma prioritaria, de ahí que la estabilidad en el continente se haya convertido en un objetivo clave de las estrategias del mando EUCOM. Los países africanos están avanzando en la consecución de un regionalismo todavía débil para luchar por su desarrollo económico y conseguir avances en los aspectos de seguridad y defensa entre otros. Los esfuerzos de EEUU son múltiples y pretenden asistir a los socios africanos en la construcción de capacidades regionales.

La región Trans-Sahariana incluye 10 países africanos y magrebíes, y constituye un área de especial interés para EEUU por su congénita vulnerabilidad debido a las vastas extensiones desérticas y a la porosidad de las fronteras. En el Sahel se han identificado multitud de tráfico ilícitos históricamente, y en la actualidad existen evidencias de la presencia de terroristas y grupos extremistas, lo cual supone una amenaza a la estabilidad de la región y la seguridad internacional.

En consecuencia, la Trans-Sahara Counterterrorism Initiative (TSCTI) es una iniciativa que propone ayudar a los gobiernos de la región en el control de su territorio y la lucha contra las actividades ilegales que prevengan el asentamiento y utilización de territorio desértico por los grupos terroristas.

El comienzo oficial de TSCTI se fecha en junio de 2005, con el Ejercicio Flintlock 2005. Las fuerzas americanas entrenaron en tácticas militares a diversas fuerzas de países del Sahel o limítrofes, para fortalecer la seguridad regional⁴⁷. El entrenamiento se llevó a cabo en Argelia, Senegal, Mauritania, Malí, Níger y Chad; los participantes practicaron distintas habilidades como operaciones aéreas, tácticas de unidades pequeñas, operaciones de seguridad, puntería, capacidades médicas, Derechos Humanos, etc.⁴⁸

La Trans Saharan Initiative retoma, extendiéndose a otros países, los programas en el marco de la Pan Sahel Initiative, lanzada tras los ataques terroristas del 11 de septiembre de 2001 e iniciada oficialmente en noviembre de 2002.

La Pan Sahel Initiative (PSI), financiada por el Departamento de Estado para Malí, Mauritania, Níger y Chad diseñó un plan de fortalecimiento de las fronteras de la región para evitar el tráfico de armas, drogas y la movilidad de terroristas transnacionales⁴⁹, así como fortalecer la cooperación regional y la estabilidad. Las Fuerzas Armadas Especiales, asignadas al Mando de Operaciones Especiales del Mando Europeo, entrenaron en Malí y Mauritania

⁴⁷ Los países europeos y de la OTAN también participaron, directamente o como consejeros. Véase Flintlock 2005, en <http://www.globalsecurity.org/military/ops/flintlock.htm>

⁴⁸ Flintlock 2005, *Ibid.*

⁴⁹ Debe tenerse en cuenta que la presencia de vastas extensiones territoriales desérticas han proporcionado paraísos seguros y escondites a los terroristas y criminales, que pueden mover recursos que apoyen sus operaciones sin ser detectados. Otros factores como la guerra, la pobreza, enfermedades, corrupción, educación... pueden crear una atmósfera de desesperación en la que cala hondo el mensaje extremista, sobre todo entre las generaciones jóvenes. Así pues hay que acabar con las causas raíces que son las que fomentan las condiciones en la base de las amenazas que más preocupan a EEUU en la región.



unidades militares en movilidad, comunicaciones, tácticas terrestres. Los Marines entrenaron a las compañías de Chad y Níger.

A través de esta iniciativa, EEUU conseguía dos de sus intereses de seguridad nacional en Africa: la lucha contra el terrorismo y el fortalecimiento de la seguridad y estabilidad regionales.

Los aspectos clave de la Pan Sahel Initiative⁵⁰ consistían en fomentar la cooperación y coordinación regionales; contrarrestar las unidades terroristas operativas en la región y reforzar el interés del EUCOM en la región; era una forma de hacer una declaración política americana utilizando las Fuerzas de forma activa, una especie de toma de contacto y apertura gradual, llevando a cabo ejercicios periódicos, con el objetivo de ampliar el programa. A pesar de sus logros, la Pan Sahel Initiative se vio coartada desde su nacimiento por una insuficiente financiación y una aproximación limitada a la situación, pero sentó las bases para la Trans Saharan Counterterrorism Initiative.

La TSCTI se planteó como la continuación de la Pan Sahel Initiative (PSI) comenzada en 2002, establecida en 2003 y finalizada en 2004 para los cuatro Estados: Malí, Mauritania, Níger y Chad; y se extendió el interés a 10 Estados, los de la PSI y otros 6: Marruecos, Argelia, Túnez, Senegal, Ghana y Nigeria⁵¹. El presupuesto también se vio aumentado de forma relevante, pasando de los 8 millones USD de la PSI a una cantidad de 100 millones USD anuales durante un periodo de 5 años.

A diferencia de la PSI, la Trans Saharan Counterterrorism Initiative introduce un enfoque más comprehensivo de seguridad regional. Aunque el Departamento de Defensa continua centrándose en las operaciones militares y expandirá su interés desde el entrenamiento de compañías de la PSI al nivel de batallón; sin embargo otras agencias del Gobierno de EEUU participan también de forma activa en el programa⁵²: US Agency for International Development (USAID) llevará a cabo iniciativas educativas; el Departamento de Estado tareas de seguridad de aeropuertos; el Departamento del Tesoro controles monetarios. En consecuencia, mediante este enfoque multidisciplinar a la región, EEUU estimulará a los países participantes a pensar de forma regional sobre sus mutuos intereses de seguridad.

El enfoque principal de la iniciativa es la construcción de capacidades autónomas africanas y facilitar la cooperación entre los gobiernos de la región que son parte de la TSCTI en la lucha contra el extremismo religioso en la región del Sahel. Así pues, se colaborará en el fortalecimiento de capacidades regionales contraterroristas y se reforzará la institucionalización de la cooperación entre las fuerzas de seguridad regionales, fomentando el intercambio de información y la planificación operativa conjunta.

Como en la PSI, se buscará el compromiso de las naciones participantes y se ayudará en la protección de fronteras y detección de terroristas, proveyendo de entrenamiento y equipamiento.

La coordinación de TSCTI depende del EUCOM, junto a los US Country Teams para asegurar que los esfuerzos americanos en la GWOT son complementarios con las condiciones particulares de cada país en la región. La TSCTI sostiene los esfuerzos e intereses nacionales de seguridad en la Global War on Terror mediante el fortalecimiento de la seguridad regional

⁵⁰ <http://www.globalsecurity.org/military/ops/pan-sahel.htm>

⁵¹ Se prevé la entrada de Libia si las relaciones mejoran.

⁵² Véase TSCTI, en <http://www.globalsecurity.org/military/ops/tscti.htm>



africana y la promoción de la autosuficiencia del continente, además de preparar a las naciones participantes en la mejor protección de sus fronteras, lo cual disminuye el flujo de armas, drogas y personas en la región. De esta forma se enfatiza la prevención sobre la reacción y al fomentar las habilidades africanas dentro de sus fronteras, EEUU intenta prevenir el devenir de la región hacia un paraíso en el que los terroristas se entrenen y planifiquen sus operaciones con impunidad.

El componente militar del programa TSCTI es la Operation Enduring Freedom – Trans Sahara (OEF-TS). Bajo responsabilidad del Mando Europeo EUCOM la operación OEF-TS desarrolla una serie de ejercicios y entrenamientos militar a militar, con los contingentes africanos, destinados a fortalecer las capacidades de los Gobiernos regionales para controlar mejor los espacios y territorios remotos del Sahel.

EUCOM estableció la Joint Task Force AZTEC SILENCE bajo el Mando de la Sexta Flota de EEUU en diciembre de 2003 para luchar contra el terrorismo transnacional en los espacios no gobernados del Norte de África y para establecer alianzas más estrechas con los gobiernos correspondientes. Como apoyo a la iniciativa, activos de la Marina americana con base en Sigonella, Sicilia, llevaron a cabo tareas de inteligencia, vigilancia y reconocimiento con vistas a recolectar y compartir la información con los países socios y sus ejércitos; como también los activos nacionales aportaron sus servicios de inteligencia.

Para concluir, debemos destacar que la implicación militar del EUCOM en África ha involucrado tan solo a países del Norte del continente, y además no han existido relaciones con los países africanos que caen bajo la responsabilidad del CENTCOM, los cuales comparten los mismos problemas que los Estados participantes en la TSCTI; ni conexiones con el CJTF-HOA, que se encarga de las operaciones contraterroristas y de contrainsurgencia en el Cuerno de África.

3. Iniciativas militares bajo el Mando Central USCENTCOM

Los programas contraterroristas centrados en asistencia y apoyo militar que se encuentran bajo el Mando Central y se desarrollan en África Oriental (ya vimos que la Trans-Sahara Counter-Terrorism Initiative (TSCTI), Joint Task Force AZTEK SILENCE y otros dependen del EUCOM) son la East African Counter-Terrorism Initiative (EACTI), establecida en 2003 y la Combined Joint Task Force, Horn of Africa (CJTF-HOA) que combina tareas de seguridad para combatir el terrorismo con programas humanitarios destinados a reducir las condiciones de pobreza y desesperación que pueden ser el terreno de fermentación de grupos terroristas, además de “win hearts and minds in support of the War on Terror”.

En el África Oriental, la EACTI y CJTF-HOA constituyen la base de los programas contraterroristas americanos. Los objetivos principales de la política contraterrorista en el Este de África son diferentes según los países: la contención en Somalia, el contraterrorismo y la promoción de la paz y estabilidad en Sudán y la creación de asociaciones de seguridad con Kenia y Etiopía.⁵³ Aumentar la seguridad fronteriza, la mejor vigilancia del tráfico costero y de las aduanas, así como la seguridad de los puertos marítimos podrían reducir la capacidad

⁵³ Piombo, Jessica R.: “Terrorism and U.S. Counter-Terrorism Programs in Africa: An Overview”, *Strategic Insights*, Vol. VI, Iss. 1 (January 2007), en <http://www.ccc.nps.navy.mil/si/2007/Jan/piomboJan07.asp#references>



de organizaciones terroristas para operar y desplazarse en la región, en particular en Sudán y Somalia.

3.1. Combined Joint Task Force – Horn of Africa (CJTF-HOA)

La Combined Joint Task Force – Horn of Africa (CJTF-HOA) se estableció en 2002⁵⁴ en Camp Lemonier (en los antiguos cuarteles de la Legión Extranjera Francesa) en Djibouti⁵⁵, el punto central del Departamento de Defensa en la región, para supervisar las operaciones en apoyo de la Guerra Global contra el Terrorismo en la región del Cuerno de África. El personal ronda 250 y las tropas asignadas 1.200-1.800⁵⁶, aunque pueden aumentarse en caso de necesidad, tras la petición al CENTCOM.

Las misiones consisten en: Prevención de conflictos, promoción de cooperación regional y protección de los intereses de EEUU y luchar contra el extremismo. Las prioridades se centran en el desarrollo de alianzas y relaciones, ayudar en la construcción de capacidades regionales de seguridad y promover sinergias, coordinación y sincronización de los esfuerzos⁵⁷.

La misión de CJTF-HOA se centra en la detección, la interrupción, y en última instancia la derrota de grupos transnacionales terroristas que operan en la región, evitando la existencia de refugios seguros para los terroristas, así como el apoyo externo y la ayuda material para sus actividades. Además, CJTF-HOA intenta evitar, con la ayuda de las naciones africanas, la emergencia del terrorismo transnacional en la región a través de operaciones cívico-militares y el apoyo a las actividades de las agencias internacionales y ONG, que trabajan para reforzar la estabilidad a largo plazo de la región. Para esta operación, el espacio definido por EEUU incluye el espacio aéreo total y las zonas terrestres de Kenia, Somalia, Sudán, Eritrea, Djibouti y Etiopía en África, y Yemen sobre la Península árabe⁵⁸.

La potencial efectividad de CJTF-HOA se basa en su composición, que incluye personal internacional de países socios y estadounidense: Soldados, Marines, Marineros, Aviadores y personal civil⁵⁹; de esta forma conduce misiones civiles (perforación de pozos, asistencia médica, rehabilitación de escuelas y clínicas, etc.⁶⁰) y militares (instrucción militar, incluyendo entrenamiento en materia contraterrorista)

⁵⁴ Los primeros elementos, de la Segunda División de la Marina embarcaron a bordo del USS Mount Whitney y llegaron a Djibouti a mitad de noviembre de 2002. Todas las fuerzas y equipamiento se transfirieron a fecha de mayo de 2003. Más información puede encontrarse en Combined Joint Task Force Horn of Africa, en <http://www.globalsecurity.org/military/agency/dod/cjtf-hoa.htm>

⁵⁵ Djibouti ha permitido la construcción de instalaciones militares americanas y la presencia de miles de tropas para la Guerra contra el Terrorismo. La duración de las operaciones en la región depende del resultado y del cumplimiento de las misiones, sin fijar un periodo concreto de tiempo.

⁵⁶ Piombo, Jessica R.: “Terrorism and U.S. Counter-Terrorism Programs in Africa: An Overview”, *Strategic Insights*, Vol. VI, Iss. 1 (January 2007), en <http://www.ccc.nps.navy.mil/si/2007/Jan/piomboJan07.asp#references>

⁵⁷ Combined Joint Task Force Horn of Africa, en <http://www.hoa.centcom.mil/>

⁵⁸ Combined Joint Task Force Horn of Africa, en <http://www.globalsecurity.org/military/agency/dod/cjtf-hoa.htm>

⁵⁹ Véase la página oficial Combined Joint Task Force Horn of Africa, en <http://www.hoa.centcom.mil/>

⁶⁰ Desde septiembre de 2003 hasta marzo de 2005, CJTF-HOA rehabilitó 33 escuelas, 8 clínicas y 5 hospitales, perforó 11 pozos y realizó 40 operaciones médicas y veterinarias. *Ibid.*



3.2. East Africa Counterterrorism Initiative (EACTI)

Establecida en junio de 2003 como un programa del Departamento de Estado, la Iniciativa de Contraterrorismo del África Oriental (EACTI), financiada con 100 millones USD, proporciona a Estados claves en el Cuerno de África entrenamiento militar para reforzar la seguridad costera, fronteriza, de aduanas, así como aeroportuaria y portuaria. Además, la Iniciativa planea la instrucción de funcionarios legales en África Oriental e incluye también la asistencia para los esfuerzos regionales contra la financiación de los terroristas y el entrenamiento policial, así como un programa de educación para contrarrestar la influencia extremista.⁶¹

La East Africa Counterterrorism Initiative (EACTI) ha dedicado parte de sus recursos al desarrollo de capacidades policiales y judiciales contraterroristas en los países de África Oriental: Kenia, Uganda, Tanzania, Djibouti, Eritrea, y Etiopía. La EACTI también proporciona el entrenamiento y equipos para unidades de contraterrorismo especiales, así como educación para los decisores y para los legisladores a quienes compete la legislación sobre la financiación terrorista y el lavado de dinero. EACTI también incluye un componente de diplomacia pública.⁶²

Otros programas incluyen⁶³:

- La ayuda del Interagency Terrorist Finance Working Group (TFWG), que trabaja con algunos Gobiernos de África Oriental para desarrollar medidas que eviten el lavado de dinero que financia grupos terroristas en sus naciones.
- El Programa del Departamento de Estado Terrorist Interdiction Program (TIP), que ha estado funcionando en aeropuertos escogidos de Kenia, Tanzania, y Etiopía; posteriormente también en Djibouti y Uganda.
- Otros programas de desarrollo de capacidades policiales para la policía nacional de Tanzania, Uganda, y Etiopía.

Aunque no expresamente enfocados en contraterrorismo, estos programas introducen el aprendizaje de las habilidades y técnicas esenciales para construir la capacidad de las fuerzas policiales de África Oriental, que sean capaces de investigar todo tipo de crímenes, incluyendo los incidentes terroristas.

⁶¹ Véase Piombo, Jessica R.: "Terrorism and U.S. Counter-Terrorism Programs in Africa: An Overview", *Strategic Insights*, Vol. VI, Iss. 1 (January 2007), en <http://www.ccc.nps.navy.mil/si/2007/Jan/piomboJan07.asp#references>

⁶² Véase Office of the Coordinator for Counterterrorism: "Patterns of Global Terrorism-2003", 29 de abril de 2004, *Departamento de Estado*, en http://www.globalsecurity.org/security/library/report/2004/pgt_2003/pgt_2003_31578pf.htm

⁶³ Puede ampliarse información en Pope, William: "East Africa Counterterrorism Initiative Conference. Opening remarks", *Departamento de Estado*, (21 de abril de 2004), en <http://www.state.gov/s/ct/rls/rm/2004/31731.htm>



Para concluir, debemos hacer notar que las iniciativas y los esfuerzos han permanecido dispersos entre los diferentes mandos, y desde hace ya algunos años muchas voces se alzaron para pedir el establecimiento de un mando específico para el continente africano en su totalidad.

4. Ventajas y necesidades para el establecimiento de un Mando Regional Africano. La perspectiva estadounidense

En el Unified Command Plan la mayor parte del continente africano se encuentra bajo la responsabilidad del Mando Europeo, excepto Egipto, Sudán, Etiopía, Eritrea, Djibouti, Somalia y Kenia, los cuales se sitúan en el área del CENTCOM, y Madagascar, en la zona cubierta por el Mando del Pacífico. Esta división de África entre tres Mandos o Combattant Commanders dificulta en gran medida la consecución de los objetivos americanos en el continente, como los establecidos en algunos documentos estratégicos y militares, como la Joint Vision 2020⁶⁴, publicada en junio de 2000, que toma como base y amplía la anterior Joint Vision 2010 para servir de guía en la transformación continua de las Fuerzas Armadas Americanas.

El documento señala que: “The overall goal of the transformation described in this document is the creation of a force that is dominant across the full spectrum of military operations – persuasive in peace, decisive in war, preeminent in any form of conflict.”

Full-spectrum dominance significa la capacidad de las Fuerzas Armadas de EEUU de actuar unilateralmente o en combinación con aliados, para derrotar a cualquier adversario y controlar cualquier situación en todo el espectro de operaciones militares.⁶⁵

Y continúa otorgando importancia a la coordinación con agencias gubernamentales y organizaciones internacionales: “The joint force of 2020 must be prepared to “win” across the full range of military operations in any part of the world, to operate with multinational forces, and to coordinate military operations, as necessary, with government agencies and international organizations.”

Así como la importancia cada vez mayor de las operaciones de mantenimiento e imposición de la paz: “The ultimate goal of our military force is to accomplish the objectives directed by the National Command Authorities... The full range of operations includes maintaining a posture of strategic deterrence. It includes theater engagement and presence activities. It includes conflict involving employment of strategic forces and weapons of mass destruction, major theater wars, regional conflicts, and smaller-scale contingencies. It also includes those ambiguous situations residing between peace and war, such as peacekeeping and peace enforcement operations, as well as noncombat humanitarian relief operations and support to domestic authorities.”

⁶⁴ Shelton, Henry H.: Joint Vision 2020, *US Joint Chiefs of Staff*, 2000, en <http://www.dtic.mil/jointvision/jvpub2.htm>

⁶⁵ Léase Garamone, Jim: “Joint Vision 2020 Emphasizes Full-spectrum Dominance”, *American Forces Press Service*, Washington, 2 Junio 2000, en <http://www.defenselink.mil/news/newsarticle.aspx?id=45289>



No obstante, estos objetivos son difíciles de conseguir en África mientras el continente permanezca dividido entre 3 Mandos, además de la histórica desidia de EEUU de actuar en África, cuyas crisis no parecen prioritarias hasta que se llega a situaciones críticas de gran envergadura.

Sin embargo parece que la situación está cambiando y EEUU está decidido a jugar un papel mayor en un continente problemático. Las continuas guerras civiles, las dictaduras y tiranías, las hambrunas, enfermedades infecciosas y la creciente amenaza del terrorismo internacional en el Este de África deben ser asuntos cada vez más importantes para la agenda internacional.

Parece un buen momento para reconsiderar cómo se debe responder a los desafíos que plantea la seguridad africana, visto el mayor interés de EEUU por la región, con el objetivo de controlar la presencia del terrorismo global en los países africanos. Aunque la pobreza y la inestabilidad de por sí no generan terroristas, muchos países africanos con una sociedad civil débil y un sistema legal y judicial ineficaces, pueden ser vulnerables a la penetración y acogida de grupos terroristas, facilitando su expansión y base logística. De hecho, el terrorismo internacional tiene uno de sus puntos de apoyo en África, y se habla de la expansión de Al Qaeda en algunos países del continente como Kenia, Tanzania y Somalia.

A pesar del creciente miedo a la proliferación del terrorismo en África, el Pentágono no ha cambiado hasta fecha reciente su enfoque. La estructura de mandos regionales se ha mantenido intacta, con responsabilidades en operaciones contraterroristas en todos los continentes excepto en África. Los Mandos Europeo y Central se han dividido las áreas de interés en África y su implicación ha sido bastante desigual y escasa.

Los analistas comenzaron hace unos años a alzar su voz pidiendo una mayor implicación de la Administración en el continente, pero no una presencia masiva de tropas americanas en África, sino el establecimiento de una fuerza propiamente africana y liderada por africanos. EEUU debía prestar más interés en África, y se comenzó a hablar del establecimiento de un Mando Africano, con los objetivos⁶⁶ siguientes:

- Prestar asistencia a los ejércitos africanos para que sean capaces de resolver sus propios problemas, reduciendo las potenciales intervenciones americanas.
- Reforzar la capacidad de las organizaciones regionales de responder a los desafíos actuales.
- Incrementar los esfuerzos de las políticas antiterroristas y facilitar información regional y evaluaciones continuas de planificación e inteligencia.
- Aumentar el éxito de una intervención americana en el caso último en el que tuviera que intervenir.

Algunos documentos del nuevo milenio muestran el interés e importancia estratégica que el continente africano ha asumido para EEUU, así como las potenciales amenazas provenientes de África.

⁶⁶ Puede ampliarse información sobre el debate y las propuestas en Carafano, James Jay and Gardiner, Nile: "U.S. Military Assistance for Africa: A Better Solution", *Backgrounder*, The Heritage Foundation, nº 1697 (October 15, 2003), en http://www.heritage.org/Research/Africa/upload/50807_1.pdf



Así leemos en el Quadrennial Defense Review Report⁶⁷ de septiembre 2001: “Increasing challenges and threats emanating from the territories of weak and failing states. The absence of capable or responsible governments in many countries in wide areas of Asia, Africa, and the Western Hemisphere creates a fertile ground for non-state actors engaging in drug trafficking, terrorism, and other activities that spread across borders.

In several regions, the inability of some states to govern their societies, safeguard their military armaments, and prevent their territories from serving as sanctuary to terrorists and criminal organizations can also pose a threat to stability and place demands on U.S. forces.”

En la Estrategia de Seguridad Nacional de 2002⁶⁸, leemos respecto a África: “The United States will deliver greater development assistance through the New Millennium Challenge Account to nations that govern justly, invest in their people, and encourage economic freedom. We will also continue to lead the world in efforts to reduce the terrible toll of HIV/AIDS and other infectious diseases”

El Millennium Challenge Account (MCA) es una iniciativa propuesta en marzo de 2002 por el Presidente George W. Bush, para comenzar en 2004, con el objetivo de aumentar la ayuda (5 mil millones de USD anuales, lo cual constituye un aumento del 50% respecto al presupuesto de 10 mil millones anuales de ayuda para el año fiscal 2002 y el doble de cantidad para objetivos desarrollistas)⁶⁹ a ciertos países con bajos ingresos y fomentar el buen gobierno: “ruling justly, investing in their people, and encouraging economic freedom”.

El MCA se declara orientado únicamente a objetivos de crecimiento económico y desarrollo, y no otros objetivos de política exterior. El grupo de países seleccionado tiene bajos ingresos y políticas de desarrollo que fomentan la efectividad de los fondos de ayuda. Se pretende disminuir los costes burocráticos y administrativos de otros programas de ayuda y con ese fin se estableció la Millennium Challenge Corporation (MCC), para administrar el programa. El programa incluía la profundización de las relaciones comerciales con África, a través del Africa Growth and Opportunity Act (AGOA), creada en 2000. Sin embargo, como dice el profesor Cantalapiedra, únicamente el 3% de sus importaciones totales provienen de África, siendo el 81% productos energéticos. La inversión directa en África Subsahariana fue de 15.400 millones USD en 2005 (el 1% de su inversión total), lo que permite a los Estados productores crecer en 2007 un 9,1%, mientras los no productores sólo un 4,5%, debido a los problemas estructurales.⁷⁰

La Estrategia de Seguridad Nacional de 2002 pone asimismo énfasis en la GWOT: “The United States of America is fighting a war against terrorists of global reach. The enemy is not a single political regime or person or religion or ideology. The enemy is terrorism-premeditated, politically motivated violence perpetrated against innocents.... Thousands of

⁶⁷ El texto completo del Secretario de Defensa Donald Rumsfeld, 30 septiembre 2001, en <http://www.defenselink.mil/pubs/pdfs/qdr2001.pdf>

⁶⁸ El texto completo puede leerse en <http://www.whitehouse.gov/nsc/nss.pdf>

⁶⁹ Radelet, Steve: “Will the Millennium Challenge Account Be Different?”, *The Washington Quarterly* (Spring 2003), pp. 171–187, en http://www.twq.com/03spring/docs/03spring_radelet.pdf

⁷⁰ García Cantalapiedra, David: “La creación del AFRICOM y los objetivos de la política de EEUU hacia África: gobernanza, contraterrorismo, contrainsurgencia y seguridad energética”, *Real Instituto Elcano*, ARI nº 53/2007 (10/05/2007), en http://www.realinstitutoelcano.org/wps/portal/rielcano/contenido?WCM_GLOBAL_CONTEXT=/Elcano_es/Zonas_es/ARI+53-2007



trained terrorists remain at large with cells in North America, South America, Europe, Africa, the Middle East, and across Asia. Our priority will be first to disrupt and destroy terrorist organizations of global reach and attack their leadership; command, control, and communications; material support; and finances. This will have a disabling effect upon the terrorists' ability to plan and operate.

Los analistas militares consideraban que para luchar contra los terroristas en África se necesitaba una mayor coordinación, ya que la división del continente entre tres mandos dificulta los esfuerzos y la coherencia de las acciones. Además Washington necesita bases y puestos en el continente. El establecimiento de un Mando Africano proporciona estas bases estadounidenses y refleja la importancia estratégica de África, facilitando a su vez las labores diplomáticas.

En la Estrategia Militar Nacional de 2004⁷¹ podemos leer: "Increasing the capabilities of partners and their willingness to cooperate in operations that ensure regional security requires an integrated, global view of our long-term strategy and enhancements to our overseas military posture. Combatant commanders, employing a mix of forward stationed, rotational and temporarily deployed capabilities tailored to perform specific missions, improve our ability to act within and across borders, strengthen the role of partners and expand joint and multinational capabilities"

En consecuencia, el establecimiento del AFRICOM permitiría la existencia de un mando que trabajaría de forma unificada y coordinada en África, en los asuntos militares y políticos del continente; con una presencia estable que asegure a los aliados y disuada a los elementos amenazantes.

Podemos considerar que los objetivos oficiales de la política de EEUU hacia África son fundamentalmente la lucha anti y contraterrorista, así como la búsqueda de buen gobierno y estabilidad. No obstante no constituyen el único foco de interés ni los únicos problemas relacionados con la seguridad de EEUU. Otros no menos importantes serían:

- Los recursos naturales y minerales del continente, que revisten una importancia estratégica para Occidente, y cuya influencia probablemente aumentará en el siglo XXI. Debe tenerse en cuenta que EEUU pretende importar el 25% de su petróleo de África Occidental para el año 2015. Es por ende el objetivo prioritario a largo plazo en la política exterior de EEUU en África. En este sentido, la expansión de la influencia de China en África también se plantea como un desafío para EEUU. China es el segundo mayor consumidor de energía del mundo, y busca nuevos mercados que explorar y explotar. La creciente presencia de China en África, estableciendo alianzas estratégicas, sin tener en cuenta las políticas internas de los países, sino con ánimo comercial y bajo los principios de soberanía nacional y no interferencia⁷² la constituyen en un competidor estratégico para los intereses energéticos de EEUU en el continente

⁷¹ El texto completo disponible en <http://www.defenselink.mil/news/Mar2005/d20050318nms.pdf>

⁷² Véanse los resultados negativos de la política China en Sudán, respecto al conflicto de Darfur, en Alaminos, María Ángeles: "El conflicto de Darfur: un reto para la credibilidad de la Unión Africana", *UNISCI Discussion Papers*, nº 16 (enero 2008), en <http://www.ucm.es/info/unisci/revistas/UNISCI%20DP%2016%20-%20Alaminos.pdf>



- La sobrepoblación africana, cuyo crecimiento exponencial puede llegar a 1.3 mil millones en 2025⁷³:

Año	Población (millones)
2000	820 959
2005	922 011
2010	1. 032 013
2015	1. 149 117
2020	1. 270 528
2025	1. 393 871

- La pobreza, enfermedades infecciosas, falta de gobierno, corrupción, rivalidades étnicas y tribales, la presencia masiva de armas ligeras y pequeñas; crisis, conflictos y guerras civiles. Aunque estos factores por sí solos no son la causa de la proliferación de armas de destrucción masiva y de terroristas, la falta de una sociedad civil fuerte, así como de sistemas legales y judiciales eficaces favorecen la penetración de grupos terroristas y su establecimiento, creando bases en dichos Estados.

Para concluir, debemos resaltar que, a pesar del amplio espectro de amenazas provenientes de África, EEUU no se decidió hasta 2007 a anunciar la creación de un nuevo mando para el continente: el AFRICOM (otra opción que se pensó fue el establecimiento de un mando subregional dependiente del CENTCOM)⁷⁴ Hasta entonces ha permanecido la vieja estructura de mandos, heredera del legado colonial y de la Guerra Fría, durante la cual los asuntos africanos estaban subordinados a los intereses europeos. El EUCOM, PACOM y el CENTCOM han permanecido activos e implicados en el continente, obteniéndose algunos resultados, pero sin una aproximación global y comprehensiva. EEUU debe fomentar tanto la capacidad de la región para responder a situaciones de crisis como la organización de su implicación militar en África.

Si la lucha contra el terrorismo podría justificar por sí sola la puesta en marcha del AFRICOM, los otros factores que hemos visto refuerzan dicha opción. Entre ellos, los intereses energéticos estadounidenses se sitúan en primera línea, ante la presencia cada vez mayor de China en el continente.

⁷³ Fuente: Population Division of the Department of Economic and Social Affairs of the United Nations Secretariat, *World Population Prospects: The 2006 Revision and World Urbanization Prospects: The 2005 Revision*, en <http://esa.un.org/unpp>

⁷⁴ Véase al respecto: Carafano, James Jay and Gardiner, Nile: "U.S. Military Assistance for Africa: A Better Solution", *Backgrounder*, The Heritage Foundation, nº 1697(October 15, 2003), en http://www.heritage.org/Research/Africa/upload/50807_1.pdf



5. La creación del AFRICOM

5.1. El proceso creativo. Descripción

El 6 de Febrero de 2007 el Presidente Bush y el Secretario de Defensa Robert Gates anunciaron la creación de un nuevo Mando de Combate para África (AFRICOM)⁷⁵, para acentuar el interés y la atención en el continente, repartida de forma insuficiente entre tres mandos separados (PACOM, EUCOM, CENTCOM) con responsabilidades parciales en la región y centrados en otras áreas bajo su responsabilidad. El nuevo mando pretende suplir las carencias⁷⁶ en la aproximación a las cuestiones de seguridad y defensa de África, la cooperación estratégica, la búsqueda de aliados regionales y el apoyo al desarrollo de misiones tanto no militares como militares, enfatizándose las primeras. El mando quedó establecido el 1 de octubre de 2008 y será plenamente operativo en 2009. Se supera así un largo período durante el cual África ha sido ignorada de la estructura de mandos regionales o geográficos⁷⁷. La decisión de establecer un mando independiente para África refuerza la importancia de África para el Pentágono y capacita a las fuerzas armadas estadounidenses para un mayor control y vigilancia del continente.

El Presidente Bush enfatizó en su declaración ante la Casa Blanca: “This new command will strengthen our security cooperation with Africa and create new opportunities to bolster the capabilities of our partners in Africa... Africa Command will enhance our efforts to bring peace and security to the people of Africa and promote our common goals of development, health, education, democracy, and economic growth in Africa.”

Sin embargo, aparte de los objetivos de asistencia humanitaria y prevención de conflictos, los objetivos principales del Mando se enmarcan claramente en la GWOT y quiere dotar a EEUU de una capacidad de respuesta e intervención en África en el caso de que los intereses estadounidenses se encuentren amenazados.

La estrategia fundamental consiste en apoyar militarmente a los Estados africanos, fomentar sus capacidades y el desarrollo de sus ejércitos para que puedan afrontar las crisis del continente; y no la presencia masiva de fuerzas de combate americanas que en la actualidad son necesarias en otros frentes. EEUU puede proveer del entrenamiento y equipos necesarios para el desarrollo de capacidades militares africanas, así como de la asistencia técnica y teórica, educando y aconsejando a los militares africanos.

El Africa Command capacita al Departamento de Defensa de una mejor aproximación al continente y una racionalización de sus recursos para apoyar las iniciativas estadounidenses existentes en la región, afrontar las amenazas y fortalecer las alianzas y organizaciones

⁷⁵ La decisión era la culminación de un proceso de 10 años de debate y discusión en el seno del Departamento de Defensa y otros foros, en relación con la mayor importancia estratégica del continente, así como el reconocimiento del impacto de la situación de seguridad en el continente, no sólo para la población africana sino también para EEUU y la Comunidad Internacional.

⁷⁶ Se busca una política coherente, bajo un único mando, en lugar de políticas múltiples derivadas de la existencia de diferentes mandos con distintas prioridades y responsabilidades, lo cual crea deficiencias en los programas y operaciones.

⁷⁷ África Subsahariana se incluyó en 1983 y constituyó siempre un componente de menor atención que las otras áreas de responsabilidad.



regionales como la Unión Africana, ECOWAS, SADC, que en la actualidad carecen de las capacidades necesarias para responder a las amenazas, pero no de la voluntad para ello.⁷⁸

Por otro lado, África constituye una fuente vital de recursos energéticos y minerales para EEUU y también es una región en la cual existen Estados frágiles que ofrecen un campo de germinación para el establecimiento de grupos delictivos y terroristas.

El Mando Africano se presenta como un mando con características particulares, dada la relación entre los aspectos y asuntos de seguridad, desarrollo, diplomacia y prosperidad en África. Se pretende establecer una estructura integrada, que incluya e implique al Departamento de Estado, la Agencia de Desarrollo Internacional (USAID), y otras agencias gubernamentales implicadas en África. También se busca la incorporación de naciones aliadas y organizaciones humanitarias, procedentes tanto de África como de otros continentes, para trabajar con el personal de EEUU en los objetivos comunes, bajo visiones y perspectivas compartidas.⁷⁹

Ante la reticencia de algunos países africanos⁸⁰ y la sospecha o temor de la presencia de un número importante de tropas y bases, así como la pretensión de liderar los asuntos de seguridad africanos en la actualidad o en el futuro, EEUU se ha apresurado a negarlo y a explicar que la misión del Africa Command es la coordinación de las medidas que capacitarán a los Gobiernos y Organizaciones Regionales africanas para poder responder a los desafíos a la seguridad cuando sea necesario. El Africa Command se basará en las actividades e iniciativas Africa-EEUU ya en funcionamiento, y fomentará la mejor coordinación del Departamento de Defensa y otras agencias gubernamentales para que su efectividad sea mayor.

Al respecto el Teniente General del Ejército Walter Sharp, director del Estado Mayor, dijo en una comparecencia ante la prensa: “AFRICOM will have a strong emphasis on building the capacity of African nations through training and equipping African militaries, conducting training and medical missions on the continent, and supporting regional organizations like the African Union”⁸¹

A pesar del mencionado énfasis, no debemos olvidar que el AFRICOM será también responsable de las acciones militares que sean necesarias en África; aunque las misiones no cinéticas serán importantes y destacadas, las responsabilidades militares no son la última

⁷⁸ Las organizaciones regionales no poseen las capacidades suficientes en cuanto a tropas, personal de apoyo, interoperatividad, entrenamiento, equipos, logística y otros requisitos para llevar a cabo intervenciones de peacekeeping u otro tipo de intervenciones militares. Esto se ha podido observar en el conflicto de Darfur. La Unión Africana, con todas sus buenas intenciones y grado de implicación, no ha establecido una misión efectiva que cesara las atrocidades. La misión AMIS de la Unión Africana pidió ayuda a la Comunidad Internacional vistas sus limitaciones, pero fue el único actor implicado militarmente en el terreno durante varios años. Véase al respecto Alaminos, María Ángeles: “El conflicto de Darfur: un reto para la credibilidad de la Unión Africana”, *UNISCI Discussion Papers*, nº 16 (enero 2008), en <http://www.ucm.es/info/unisci/revistas/UNISCI%20DP%2016%20-%20Alaminos.pdf>

⁷⁹ La filosofía del AFRICOM se explica de forma concisa en <http://www.africom.mil/AboutAFRICOM.asp>

⁸⁰ Sería muy interesante para el lector consultar Coren Moehler, Devra: “African Opinion on U.S. Policies, Values and People”, *Joint Hearing before the Subcommittee on International Organizations, Human Rights, and Oversight; Subcommittee on Africa and Global Health Committee on Foreign Affairs; U.S. House of Representatives*, 28 de marzo de 2007, en <http://foreignaffairs.house.gov/dayevent.asp?date=3/28/2007>. Transcripción en <http://foreignaffairs.house.gov/110/34482.pdf>

⁸¹ Sgt Wood, Sara: “Africa Command Geared Toward Stability”, *American Forces Press Service*, 7 de febrero de 2007, en <http://www.africom.mil/getArticle.asp?art=1482>.



prioridad del AFRICOM, ya que como su propio nombre indica, no deja de ser un mando de combate (combatant command).

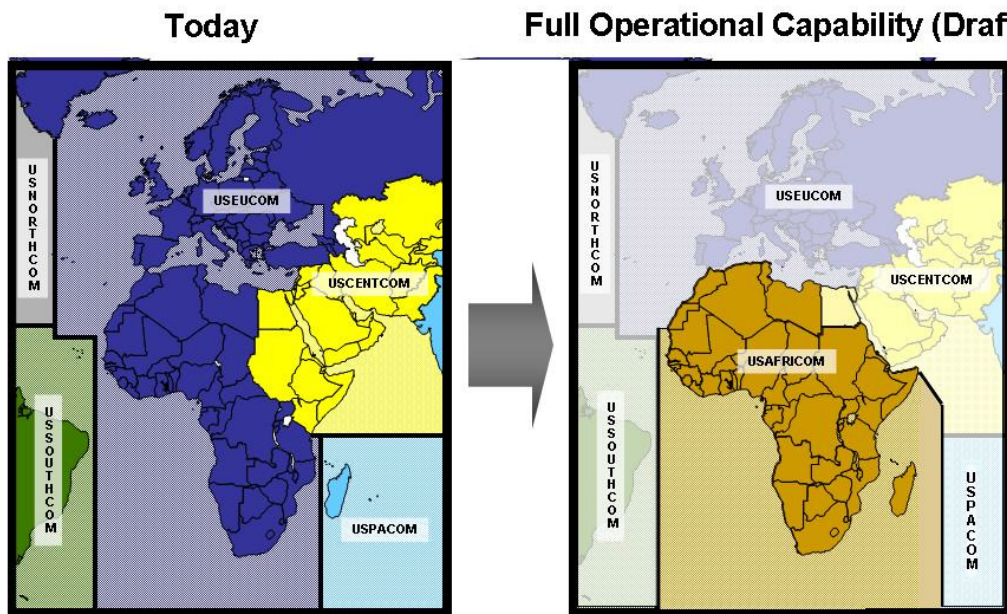
El Cuartel General del AFRICOM se situará de manera transitoria en Kelley Barracks, en Stuttgart, Alemania, que acoge también los Cuarteles Generales del USEUCOM; sin embargo el Departamento de Defensa pretende situarlo en algún país africano.⁸² Además, el mando es heredero de la presencia militar americana existente en algunas naciones africanas, como Camp Lemonier en Djibouti, así como oficinas de enlace y administrativas situadas en las Embajadas y misiones diplomáticas como apoyo y coordinación de los programas del Departamento de Defensa y de la diplomacia estadounidense. Cualquier otra presencia en el continente se llevará a cabo tras consultas diplomáticas y acuerdos con los potenciales Estados de acogida.

El área de responsabilidad del Africa Command consistirá en 52 de los 53 Estados africanos y todas las islas adyacentes; Egipto quedará bajo la cobertura del Mando Central, aunque se está deliberando sobre ello con el Gobierno egipcio.⁸³

De esta forma, si analizamos la evolución del UCP, el AFRICOM adquiere la responsabilidad de los territorios africanos antes bajo el Mando Europeo, Pacífico y Central, exceptuando a Egipto que permanece en el CENTCOM.⁸⁴



Draft Area of Responsibility



Draft Pre-decisional Working Papers, not subject to FOIA Requirements

⁸² Crawley, Vince: "U.S. Creating New Africa Command to Coordinate Military Efforts", *USINFO*, 6 febrero 2007, en <http://www.africom.mil/getArticle.asp?art=1484>

⁸³ Véase Ryan Henry y Lt. General Walter L. Sharp: "Changes to the Unified Command Plan to Create an Africa Command", *Pentagono*, 7 febrero 2007, en <http://www.africom.mil/getArticle.asp?art=1548>

⁸⁴ Fuente: United States Department of Defense, DoD News Briefing, 7 February 2007, en <http://www.defenselink.mil/news/BriefingSlide.aspx?BriefingSlideID=295>



Se puede decir que, a diferencia de los tradicionales Mandos Unificados, el Mando de África parte de un enfoque de prevención de conflictos. El Mando Africano tiene la intención de trabajar con los Estados y organizaciones africanas para ayudar a construir la seguridad regional y la capacidad de respuesta a crisis, en apoyo de los esfuerzos del Gobierno estadounidense en África. Durante 2008, el Mando Africano asumirá gradualmente el control administrativo de los programas existentes del Departamento de Defensa, actualmente administrados por el Mando Central, el Mando Europeo y el Mando del Pacífico.

África está creciendo en cuanto a su importancia militar, estratégica y económica en los asuntos globales. Sin embargo, muchos Estados del continente africano siguen dependiendo de la Comunidad Internacional para la ayuda en los asuntos de seguridad. Desde la perspectiva estadounidense⁸⁵, tiene sentido estratégico ayudar a construir la capacidad de los socios africanos y las organizaciones, como la Africa Standby Force, para liderar el establecimiento de un entorno seguro. Esta seguridad puede sentar las bases para una mayor estabilidad política y crecimiento económico.

EEUU ha consultado con los Gobiernos Africanos y la Unión Africana el establecimiento del mando, y planea continuar el diálogo y trabajar de forma más estrecha tanto con ellos como con la Comunidad Internacional. No se quiere que el establecimiento del mando sea percibido como una medida amenazadora de los Estados africanos y su soberanía, sino como una reorganización administrativa de las ya existentes relaciones militares entre EEUU y los Estados africanos y sus organizaciones.

El establecimiento del mando como independiente está previsto para el 1 de octubre de 2008. En octubre de 2007, el Africa Command se creó como un submando, subordinado al Mando Europeo (EUCOM ha coordinado las relaciones militares de EEUU con la mayoría de los países africanos, como ya vimos) y con el Cuartel General junto al de éste, en Stuttgart, aunque “We believe AFRICOM will be more effective if some members of the staff are physically living and working on the continent, where they can meet face-to-face with their counterparts in African governments and nongovernmental organizations”⁸⁶.

La Capacidad Operativa Inicial del AFRICOM o Initial Operating Capability (IOC) señala el cambio en la estructura de los mandos regionales y se espera que progresivamente el mando supervise los programas y actividades que el ejército de EEUU lleva a cabo en África. Así como todos los otros mandos regionales, en octubre de 2008, AFRICOM pasa a depender del Secretario de Defensa y se encarga de las relaciones militares de EEUU con los 53 Estados africanos, exceptuando a Egipto.

5.2. Las percepciones africanas. Críticas y oposición al AFRICOM.

La resistencia africana al AFRICOM y al establecimiento del Cuartel General del mando en África ha sido grande, mostrando los países su rechazo a la presencia de cientos de militares en su territorio, sobre todo después de la invasión americana de Irak en 2003 y del apoyo americano a la invasión etíope de Somalia en 2006/07. Los líderes africanos mostraron su descontento por no ser consultados acerca de la iniciativa americana antes del anuncio oficial en febrero de 2007 y la percepción negativa del AFRICOM se reflejó en los titulares de

⁸⁵ Véase “Why is the Department of Defense creating the command?”, en <http://www.africom.mil/africomFAQs.asp>

⁸⁶ Véase la presencia del AFRICOM en el continente africano en <http://www.africom.mil/africomFAQs.asp>



prensa a lo largo del año 2007: “Stop AFRICOM;” “New U.S. Command Will Militarise Ties with Africa;” “Wrong for Liberia, Disastrous for Africa;” “Why U.S.’s AFRICOM Will Hurt Africa;” “AFRICOM—the Invasion of Africa?” “Southern Africa says ‘No’ to U.S. Military Bases In Region;” y “We’re Misunderstood, Says U.S.”⁸⁷

El asunto del AFRICOM se llevó a la Cumbre de la Unión Africana en Addis Abeba, en enero de 2008, donde los Estados africanos reafirmaron su resistencia.

Las potencias regionales, Nigeria y Sudáfrica, han rechazado el establecimiento del AFRICOM en su territorio y han advertido a sus vecinos de no dar el permiso a EEUU para hacerlo en el suyo. Marruecos, Argelia y Libia también han rechazado las peticiones estadounidenses de basar el Mando Africano en dichos Estados.

Los Estados Miembros de las organizaciones regionales africanas tampoco han accedido. Ni los 14 países de la Southern African Development Community (SADC) ni los 16 miembros de ECOWAS se han puesto de acuerdo para ello.

El Ministro de Defensa sudafricano Mosiuoa Lekota ha sintetizado el sentimiento de muchas naciones africanas diciendo: “If there was to be an influx of armed forces into one or other of the African countries, that might affect the relations between the sister countries and not encourage an atmosphere and a sense of security”. Y advierte a los EEUU que sería mejor “not to come and make a presence and create uncertainty here”⁸⁸. Así como a los países africanos: “I would imagine that any country that wants to go against the decision of the Africa Union would consider what the implications might be - where other sister countries may refuse to cooperate with it in other areas other than that particular area.”

Entre otras razones que justifican las sospechas y el rechazo de los Estados africanos, analistas como Sean Mc Fate identifican las siguientes:

- Por un lado, AFRICOM ha sido identificado por los países africanos con el Mando Central, que está llevando a cabo las intervenciones en Irak y Afganistán
- Por otro lado, el interés voraz americano en los recursos energéticos africanos, percibido por los países de forma negativa
- Además, el pasado colonial de África hace desconfiar a los países de las iniciativas en el continente.
- También se percibe un fracaso en la articulación del mensaje americano y la explicación sobre las tareas y funcionamiento del AFRICOM, a pesar de las consultas

⁸⁷ Editorial, “Stop AFRICOM,” *Leadership* (Abuja), 28 September 2007; Salim Lone, “New U.S. Command Will Militarise Ties with Africa,” *Daily Nation*, 9 February 2007; Ezekiel Pajibo and Emira Woods, “AFRICOM: Wrong for Liberia, Disastrous for Africa,” *Foreign Policy in Focus*, 26 July 2007; Michele Ruiters, “Why U.S.’s AFRICOM Will Hurt Africa,” *Business Day* (Johannesburg), 14 February 2007; Obi Nwakanma, “AFRICOM—the Invasion of Africa?,” *Vanguard* (Lagos), 18 November 2007; Isdore Guvamombe, “Southern Africa says ‘No’ to U.S. Military Bases In Region,” *The Guardian*, 26 September 2007; Oyedele Abuja, “We’re Misunderstood, Says U.S.,” *This Day* (Lagos), 30 November 2007. Cita tomada de McFate, Sean: “U.S. Africa Command: A New Strategic Paradigm?,” *Military Review*, (January-February 2008), en <http://usacac.leavenworth.army.mil/CAC/milreview/English/JanFeb08/McFateEngJanFeb08.pdf>

⁸⁸ Shaun Benton, “Africa opposed to U.S. command base,” *BuaNews*, 29 August 2007, en <http://allafrica.com/stories/200708290848.html> y citado en *Ibid*.



y diálogo con los Estados africanos y las organizaciones regionales. Los líderes no saben exactamente qué es el Mando Africano y cómo afectará al continente.

Algunas personalidades africanas como el General ruandés Frank Rusagara⁸⁹ creen que para que el AFRICOM pueda contribuir a la seguridad africana, debe adaptar nuevos conceptos en materia de seguridad y estrategia, como la seguridad humana. Los oficiales americanos deben explicar el funcionamiento del mando a los expertos africanos y el liderazgo no puede recaer únicamente en los oficiales del Departamento de defensa de EEUU sino implicar a oficiales africanos; y reforzar las capacidades africanas respecto a operaciones de mantenimiento de la paz.⁹⁰

No obstante, y a pesar del amplio consenso entre los Estados africanos respecto al rechazo del establecimiento de fuerzas extranjeras en el continente, bajo la forma del nuevo African Command de EEUU, existen excepciones. Por ejemplo, Liberia, apenas salida de una guerra civil de 14 años, ve la medida como positiva para la seguridad africana. En palabras del Ministro de Defensa Brownie Samukai, el AFRICOM podría “build partnerships, lead to the convergence of strategic interest, prevent conflict, and conduct operations other than war.”

Samukai ve la iniciativa potencialmente positiva, al ayudar a la profesionalización de los ejércitos africanos y fortalecer las capacidades de peacekeeping. Sin obviar la existencia de intereses americanos en el continente, se trata en su opinión de encontrar sinergias en los intereses EEUU-África. Afirma que “ECOWAS stands to benefit most in terms of cooperation, interest and intervention, if necessary.”⁹¹ Así pues, Liberia no sólo ha prestado su apoyo al AFRICOM, sino que también se ha ofrecido a albergar el cuartel que los demás países rechazan.

No obstante, la práctica totalidad de los Estados africanos considera el establecimiento del AFRICOM como una estrategia encubierta para proseguir con la agenda americana de la Guerra contra el Terror, así como una forma de asegurarse el acceso a los recursos naturales del continente. Los africanos consideran que el AFRICOM no pretende ayudar y promover el bienestar africano, sino salvaguardar los intereses americanos.

Como dice Wafulo Okumu, analista keniano en el South Africa’s Institute for Security Studies, los africanos no confían en el AFRICOM porque es una fuerza militar, y muchos africanos no confían ni en sus propios ejércitos, que en ocasiones han utilizado las armas contra su propio pueblo.⁹²

El Vicealmirante Robert T. Moeller, que asumió en agosto de 2007 la responsabilidad de la subdirección de las operaciones militares del Mando Africano, defendió en una reciente

⁸⁹ Antiguo Secretario General del Ministerio de Defensa de Ruanda y policymaker para el desarrollo militar de Ruanda.

⁹⁰ General Frank Rusagara, Rwanda Defence Forces, 1 December 2007. Entrevista a cargo de Mc Fate, Sean; tomada de “U.S. Africa Command: A New Strategic Paradigm?”, *Military Review*, (January-February 2008), en <http://usacac.leavenworth.army.mil/CAC/milreview/English/JanFeb08/McFateEngJanFeb08.pdf>

⁹¹ Brownie Samukai, Liberian Minister of Defense, 30 November 2007. Entrevista a cargo de Mc Fate, Sean; tomada de “U.S. Africa Command: A New Strategic Paradigm?”, *Military Review*, (January-February 2008), en <http://usacac.leavenworth.army.mil/CAC/milreview/English/JanFeb08/McFateEngJanFeb08.pdf>

⁹² Pitman, Todd, “Africans wary on new US command for continent”, *Africanpress*, October 2, 2008, en <http://africanpress.wordpress.com/2008/10/02/africans-wary-on-new-us-command-for-continent/>



entrevista en Brookings Institution⁹³ la misión y objetivos del Mando. Según Moeller, no se tiene la intención de desplegar miles de tropas en el continente, ni establecer bases por todo el territorio africano, sino de colaborar con los socios africanos en asuntos particulares, actividades de entrenamiento, etc. Tras lo cual las fuerzas llevadas al continente, lo abandonarían. Así pues, el énfasis en el establecimiento del AFRICOM sería simplemente: “an internal reorganization within Defense such that we can be much more responsive to our African partners than has been the case in the past given three organizations or three commands”

En el mismo sentido el General William Ward, el militar de raza negra de más alto rango de las Fuerzas Armadas estadounidenses y primer Jefe del AFRICOM, insistió en Madrid⁹⁴ en que “no vamos a militarizar el continente, no vamos a crear bases”; y prosiguió diciendo que las actividades militares de EEUU en África no cambiarían con la creación del nuevo mando, sino la forma de llevarlas a cabo y la reorganización de los hasta ahora tres mandos con competencias sobre África.

Sin embargo, pese a estas justificaciones, la resistencia africana ha sido tal que los oficiales americanos abandonaron la idea inicial de instalar el Cuartel General en el continente africano. Así pues, el Cuartel General del AFRICOM estableció su base en Stuttgart, junto al Mando Europeo.

Los africanos no confían en las declaraciones americanas y sospechan de las intenciones de EEUU, para utilizarlos en la Guerra contra el Terror (ante las amenazas provenientes de santuarios o paraísos para militantes radicales y terroristas, aprovechando la debilidad de algunos Estados frágiles) y asegurar el suministro de recursos energéticos (no debemos olvidar que EEUU obtiene mayor cantidad de crudo del Golfo de Guinea que del Golfo Pérsico⁹⁵).

Moeller admitió que la lucha anti y contraterrorista es una prioridad, pero no la única, y que “a secure and stable Africa is very, very much in US strategic interests”. Los oficiales del AFRICOM centran el interés en el enfoque coherente y coordinado hacia África y en la creciente importancia para EEUU de crear una situación de seguridad y estabilidad. No obstante, tanto los Gobiernos africanos como diversas organizaciones no gubernamentales y personalidades relevantes, siguen mostrando su oposición al establecimiento del Mando. En primer lugar consideran que las misiones del Mando Africano no son claras ni se han explicado de forma transparente a las contrapartes africanas. Por otro lado, a las sospechas de una posible invasión de militares americanos en el continente, se une la susceptibilidad respecto a los recursos naturales, en un momento en el que también, dejando de lado a Rusia, China, la India, la República de Corea y Japón han desembarcado o están desembarcando en el continente para garantizar su seguridad energética.

⁹³ Vice Admiral Robert T. Moeller, U.S. Africa Command, “AFRICOM: The Road Ahead for United States Africa Command”, *The Brookings Institution*, May 27, 2008, en http://www.brookings.edu/~media/Files/events/2008/0527_africom/0527_africom.pdf

⁹⁴ Cembrero, Ignacio, “No militarizaremos el continente”, *El País.com*, Madrid, 11 de junio 2008, en http://www.elpais.com/articulo/internacional/militarizaremos/continente/elpepuint/20080611elpepiint_3/Tes

⁹⁵ África Occidental proporciona un 15% del petróleo que EEUU importa cada año, y se estima que esta cifra crecerá hasta el 25% en 7 años. Así pues, es normal la existencia de argumentos contrarios al Mando Africano, considerando que EEUU sólo quiere explotar los recursos minerales y petrolíferos del continente. Véase Alandete, David, “El Pentágono desembarca en África”, *El País.com*, 11 junio 2008, en http://www.elpais.com/articulo/internacional/Pentagono/desembarca/Africa/elpepuint/20080611elpepiint_1/Tes



Aunque los oficiales responsables del Mando insisten en que la principal responsabilidad consiste en trabajar con los socios africanos para ayudarles a construir su propia capacidad de defensa y fomentar la seguridad en el continente, mediante el entrenamiento de ejércitos y peacekeepers para las misiones de mantenimiento de la paz, la oposición al AFRICOM no cree en estas buenas intenciones y considera la presencia militar estadounidense en África como un factor de desestabilización.

El nuevo mando será responsable de las funciones militares en el continente, pero también coordinará en cierta forma al resto de las agencias gubernamentales que trabajan en África. Se trata, en palabras del Secretario de Defensa Robert M. Gates, de un ejemplo de la evolución de la estrategia del Pentágono, forjando “asociaciones cívico-militares”, en las que el Departamento de Defensa trabaja y apoya al Departamento de Estado y a la Agencia de Desarrollo Internacional, así como a otras organizaciones y agencias humanitarias de los países receptores.⁹⁶

Moeller, en la ya citada entrevista, afirma que “to be able to support other U.S. government agencies, we wanted an organization that brought aboard the command subject matter experts from our other U.S. government agency partners such that their expertise would help us harmonize collectively our activities across the continent... So we established early on in the planning stage the idea that we’d have a military deputy, like other unified commands, but also a civilian deputy, in that capacity today is Ambassador Mary Yates”.

A este respecto algunas organizaciones y grupos como Africa Action, Africa Faith and Justice Network, Foreign Policy in Focus, Hip Hop Caucus, Institute for Policy Studies y TransAfrica Forum se han unido bajo la iniciativa llamada “Resist AFRICOM”⁹⁷ y han organizado una campaña contra lo que consideran una perversión de la política exterior americana en África y la militarización de la ayuda humanitaria.

Las organizaciones civiles independientes consideran que la aproximación cívico-militar del AFRICOM al continente no constituye una mejor opción para atajar las necesidades de desarrollo del continente, y se trata sólo de un maquillaje del Mando para difuminar las verdaderas funciones del mismo, el control de las células fundamentalistas en el continente y la garantía de recursos naturales.

Las cifras confirman estas hipótesis. Por un lado, el Gobierno pretende que el AFRICOM cuente en 2009 con 1300 empleados, de los cuales sólo 13 por el momento no pertenecen al Departamento de Defensa. Por otro lado, el presupuesto para el año 2009 fue reducido en un tercio del original por el Congreso, 225 millones USD.

En consecuencia, muchas voces siguen alzándose contra lo que consideran la militarización de la política exterior americana, política establecida por el Departamento de Defensa, sin tener en cuenta criterios desarrollistas sino militares, centrados en la Guerra al Terror.

⁹⁶ Shanker, Tom, “U.S. command for Africa established”, *Internacional Herald Tribune*, October 4, 2008, en <http://www.iht.com/articles/2008/10/04/africa/05command.php>

⁹⁷ Véase la página oficial en http://salsa.democracyinaction.org/o/1552/t/5734/content.jsp?content_KEY=3861



Aunque desde las posiciones oficiales⁹⁸ se continúa defendiendo que la política exterior estadounidense no adolece de una creciente militarización, sino que los esfuerzos estadounidenses en el exterior se guían por premisas diplomáticas y desarrollistas, ni los Gobiernos africanos ni las organizaciones no gubernamentales ni otras voces independientes dan por creíbles estas declaraciones. Perciben que el interés de EEUU parece centrarse en los espacios ingobernados y en los Estados frágiles o fallidos, en los que las ideologías extremistas pueden prender más fácilmente y pueden constituir una amenaza para la seguridad americana. El nuevo interés en África y la creación del AFRICOM, según ellos, debería centrarse en el entrenamiento de peacekeepers y en la ayuda a los Estados africanos para que sean autónomos y capaces de responder a posibles conflictos y prevenirlos. Pero, en palabras de Kenneth H. Bacon, presidente de Refugees Internacional, los militares deberían centrarse y limitarse a sus funciones militares y dejar a los diplomáticos y a los expertos en desarrollo dirigir otros aspectos de la política de EEUU en África.⁹⁹

Aunque los oficiales del Mando Africano rechazan las acusaciones de militarización de la política exterior de EEUU y defienden el desarrollo de esfuerzos conjuntos entre las agencias gubernamentales, un informe de Refugees Internacional¹⁰⁰ muestra el desequilibrio de 17 a 1 en los gastos del Departamento de Defensa y de las agencias civiles. El porcentaje de la Ayuda Oficial al Desarrollo que controla el Pentágono ha subido en los últimos 10 años desde un 3.5% hasta casi un 22%. Sin embargo, el porcentaje controlado por la US Agency for International Development (USAID) ha disminuido de un 65% hasta un 40%. Y el ejército americano consta de un millón y medio de empleados activos uniformados, mientras que el Departamento de Estado tiene unos 6.500 trabajadores y la agencia USAID 2.021.¹⁰¹

En cualquiera de sus tareas, el Pentágono tiene más personal y más dinero que cualquier otra organización gubernamental. Y también más poder. Como dice el General Ward¹⁰² “if we can bring a capability that can be an assist to one of our interagency partners, then I think we ought to do that but I draw a distinction between leading that effort and supporting that effort. We don't create policy. This is not the job of a unified command. We implement those aspects of policy that have military implications. And we support others.”

Conclusiones

Gran parte de la población estadounidense considera a África como una región inestable, insegura, pobre, ingobernada, lo cual es cierto para algunas partes del continente, pero es una imagen que no se corresponde con la creciente importancia que supone el continente para EEUU, tanto en el plano político y de seguridad como en la esfera económica.

⁹⁸ Véanse las declaraciones del Secretario de Defensa Robert M. Gates en Kruzell, John J.; “U.S. Defense Secretary Warns Against “Militarization of Foreign Policy”, *American Forces Press Service*, Jul 17, 2008, en <http://www.africom.mil/getArticle.asp?art=1915>

⁹⁹ Véase Shanker, Tom, “U.S. command for Africa established”, *International Herald Tribune*, October 4, 2008, en <http://www.iht.com/articles/2008/10/04/africa/05command.php>

¹⁰⁰ Refugees International, “AFRICOM Launch Marks Increased U.S. Military Role in Africa”, *Refugees International*, September 29, 2008, en <http://www.refugeesinternational.org/content/article/detail/10853>

¹⁰¹ Para mayor información véase Refugees International, “U.S. Civil Military Imbalance for Global Engagement: Lessons from the Operational Level in Africa”, *Refugees International*, July 17, 2008, en <http://www.refugeesinternational.org/content/issue/detail/10761>

¹⁰² Véase Shanker, Tom, “U.S. command for Africa established”, *International Herald Tribune*, October 4, 2008, en <http://www.iht.com/articles/2008/10/04/africa/05command.php>



Los intereses estadounidenses en África van desde aspectos tradicionales humanitarios y de desarrollo hasta los desafíos recientes consecuencia de la globalización y de las oportunidades que encuentran los terroristas en los espacios desgobernados de los Estados débiles.

Aunque existen organizaciones regionales como ECOWAS o la Unión Africana que intentan fomentar el desarrollo económico y las capacidades necesarias para garantizar la situación de seguridad en el continente, los medios de los que disponen son escasos y enormemente insuficientes para tareas tan amplias y fundamentales. La Comunidad Internacional no les ha prestado el apoyo necesario ni ha conseguido que el continente avance hacia un futuro pacífico.

Si la creación del nuevo Mando Africano responde a la amplia panoplia de intereses globales y regionales de EEUU, la pregunta que debemos hacernos es si el AFRICOM responde a los intereses africanos, y cómo puede ayudar a África en los aspectos de seguridad.

En nuestra opinión, el mando parece contemplar la seguridad desde ópticas no sólo militares, sino desde paradigmas que enlazan la seguridad y el desarrollo; se trata de garantizar la situación de seguridad a corto y a largo plazo. Así pues, el Mando quiere establecerse en íntima conexión con otras agencias y organizaciones civiles y trabajar en coordinación con ellas para conseguir resultados plausibles, reales y duraderos.

La seguridad es una precondition para el desarrollo de los Estados africanos, los cuales están en muchos casos sumidos en violentos conflictos intraestatales cuyas raíces profundas se encuentran en el subdesarrollo, la desigualdad, en la falta de la distribución de la riqueza de los países. Seguridad y desarrollo están íntimamente unidos.

Las operaciones que debe realizar el AFRICOM serán entonces operaciones no prioritariamente de combate, sino operaciones dirigidas a la prevención de conflictos, no a la resolución de los mismos una vez han estallado. En la evolución de las operaciones de mantenimiento de la paz se puede ver que es fundamental crear una cultura de prevención, utilizando sistemas de alerta temprana e indicadores que nos permitan intervenir antes de que las tensiones se conviertan en crisis. La fuerza por sí sola no basta para crear situaciones de seguridad, sino que es fundamental actuar antes y también después de las crisis, con tareas de estabilización que permitan la reconstrucción.

Para llevar a cabo este tipo de operaciones cívico-militares, el AFRICOM deberá supervisar distintas misiones tanto de seguridad como desarrollistas. La coordinación del mando militar con otras agencias gubernamentales y organizaciones civiles no parece fácil, especialmente si pensamos en el funcionamiento clásico de los mandos de combate, pero es un desafío para lograr integrarse en un nuevo paradigma de seguridad que responda a los desafíos actuales que presenta el continente africano. Evidentemente no se tiene que llegar a una situación de militarizar la ayuda al desarrollo ni de crear un mando sin funciones militares, sino de conseguir establecer una estrategia comprensiva en el continente, adaptándose progresivamente a las necesidades que se identifiquen.

Por otro lado, el AFRICOM debería actuar siempre tras la consulta, el diálogo y el acuerdo con los socios africanos, y no de forma unilateral, si quiere ver legitimada su



intervención, y en estrecha relación con las organizaciones no gubernamentales y la Comunidad Internacional.

Los retos a los que se enfrentará el AFRICOM no son fáciles, y algunos analistas consideran que lograr la estabilidad y la seguridad en África es una tarea imposible. Tampoco es fácil lograr la coordinación cívico-militar ni adaptarse a nuevos paradigmas de seguridad que se enlacen con el desarrollo.

Sin embargo, lo más difícil es romper con la percepción de que el nuevo mando no responde más a los intereses americanos que a los africanos y que los aspectos de seguridad y defensa priman sobre los aspectos de desarrollo. Las recientes críticas indicando que los militares deberían centrarse y limitarse a sus funciones militares y dejar a los diplomáticos y a los expertos en desarrollo dirigir otros aspectos de la política de EEUU en África abonan esta percepción. Olvidan no obstante la importancia que en el campo militar estadounidense y en la propia OTAN se otorga ya a las operaciones basadas en efectos. Esto supone un cambio muy sustancial que parece no conocerse suficientemente por las organizaciones no gubernamentales. Es un campo donde se deberá trabajar y explicar dentro de la sociedad civil.

Es pronto para predecir si el nuevo mando conseguirá desarrollar sus objetivos de forma satisfactoria, atrayendo el interés de sus socios africanos e internacionales, o si constituirá una mera reorganización administrativa en el seno del Departamento de Defensa y el establecimiento de un mando militar igual que sus homólogos establecidos bajo premisas de la Guerra Fría.

Lo que sí podemos decir es que a día de hoy prácticamente ningún país africano está de acuerdo con la presencia del Mando Africano en su continente; la práctica totalidad de los Estados africanos considera el establecimiento del AFRICOM como una estrategia encubierta para proseguir con la agenda americana de la Guerra contra el Terror, así como una forma de asegurarse el acceso a los recursos naturales del continente.



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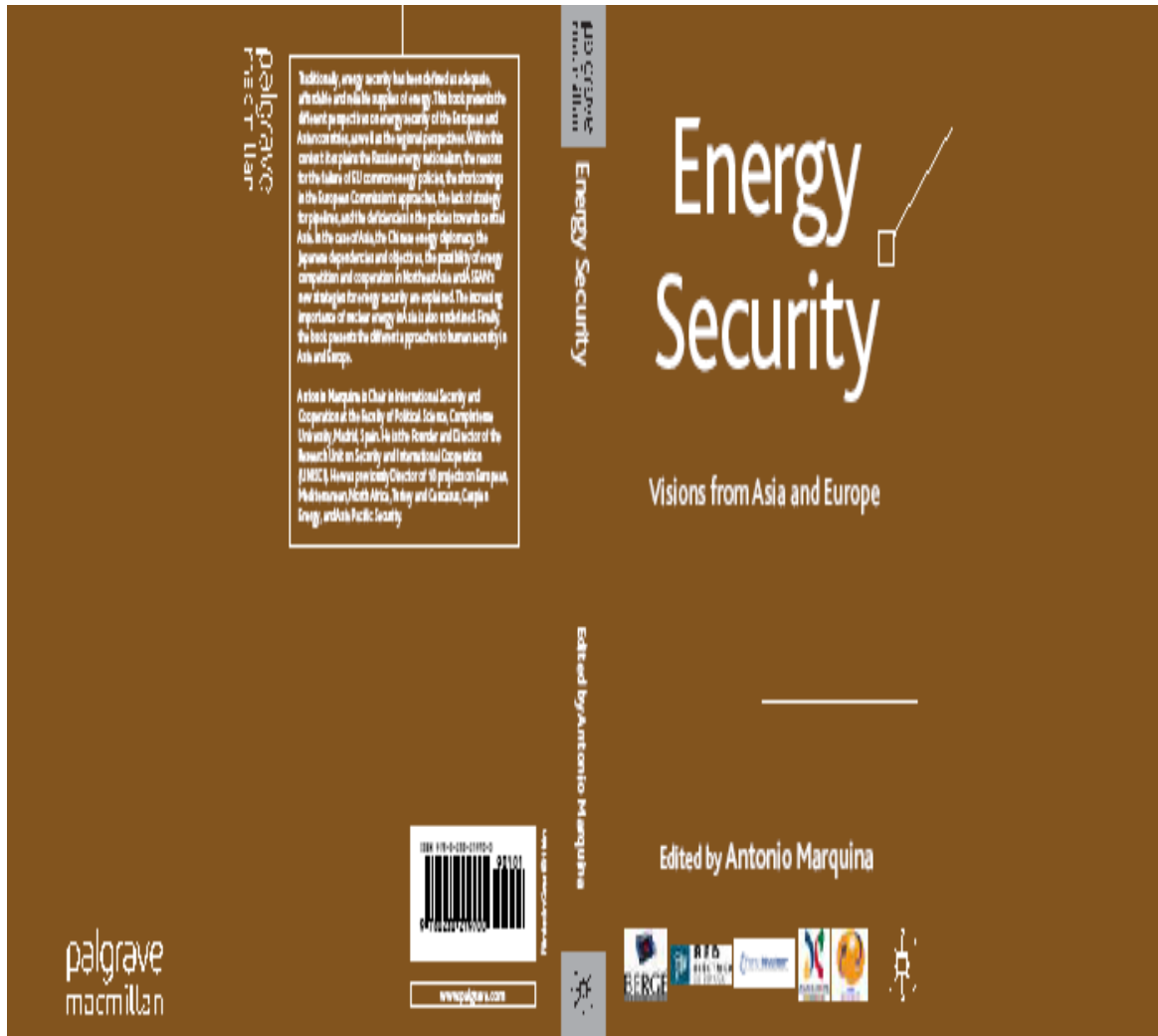
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Flujos migratorios subsaharianos hacia Canarias-Madrid



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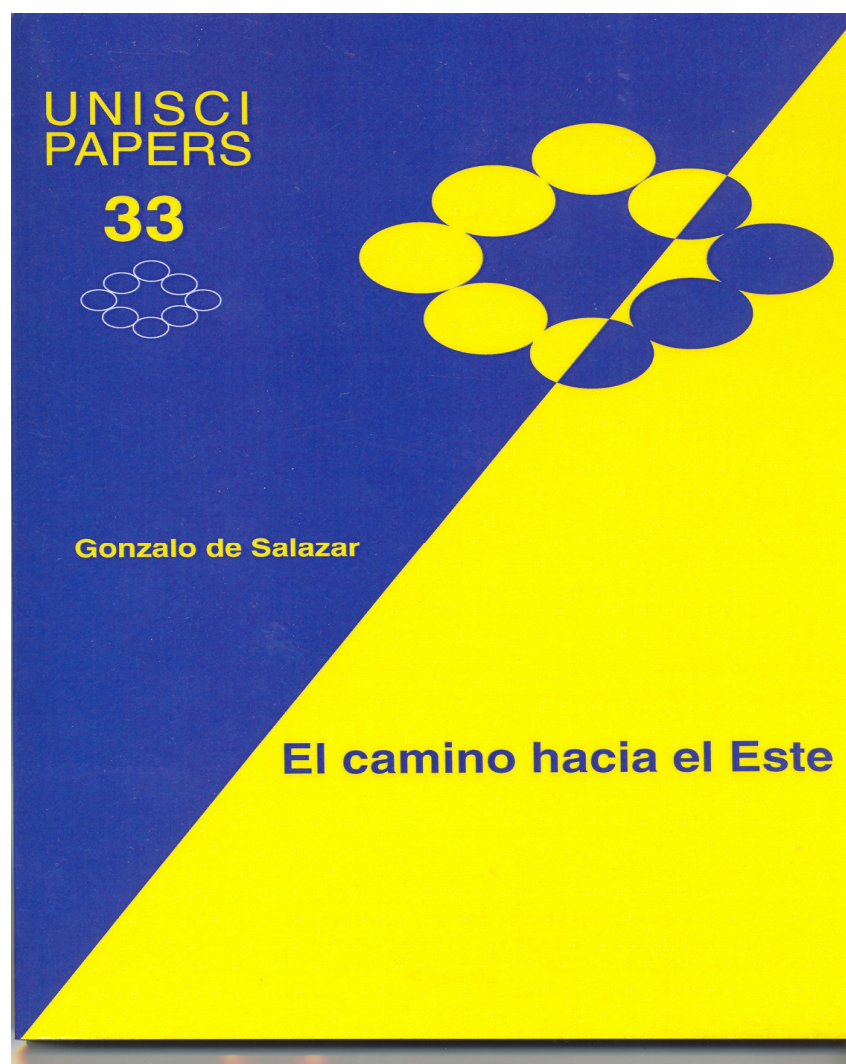
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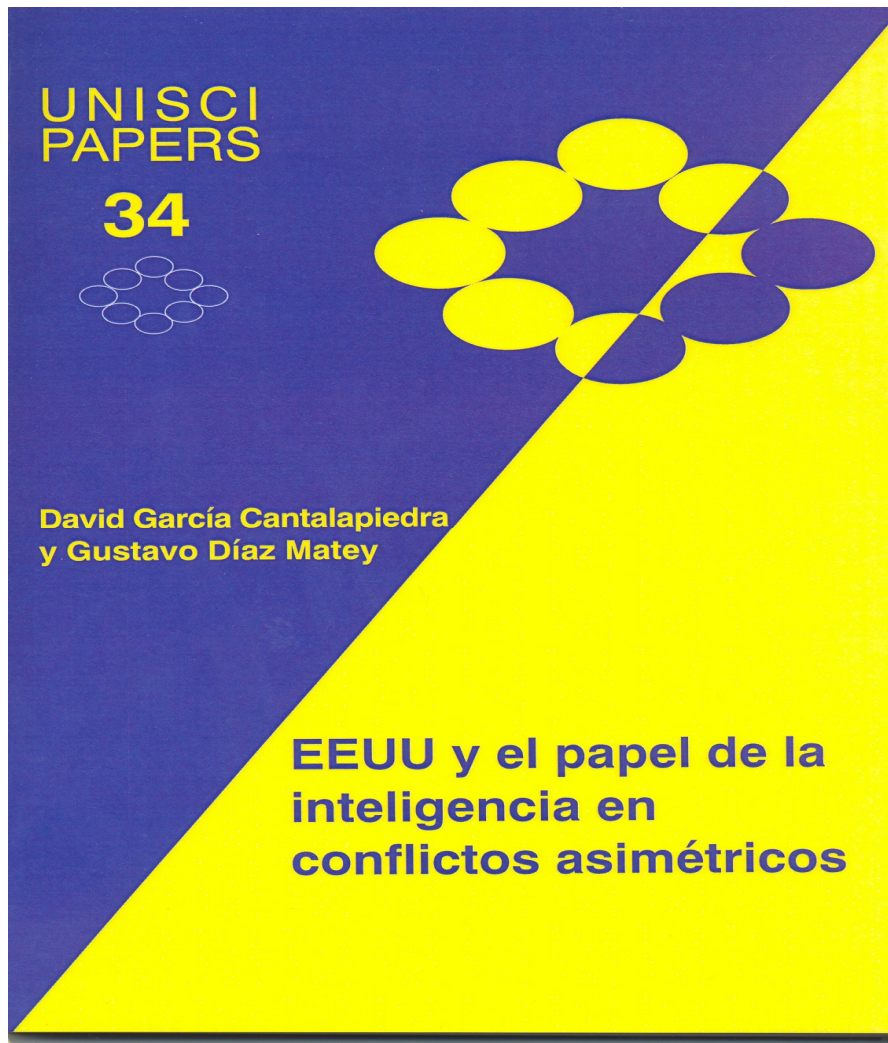
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CRÍTICA DE LIBROS:

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ISBN: 9780415368216. 129 pp.

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Este es un libro de muy notable actualidad y que nos presenta una de las caras menos aireadas de Georgia, el alto grado de corrupción existente y el papel del crimen organizado en este Estado y, con ello, los serios problemas a superar para su homologación con el mundo occidental. El libro tiene una garantía de seriedad al estar la investigación de alguna manera apoyada por el Centro de Estudios sobre el Crimen Transnacional y la Corrupción.

El libro está dividido en seis capítulos centrados en la corrupción, el contrabando, el crimen organizado, la reforma de las fuerzas policiales y culmina con un capítulo sobre la Revolución de la Rosa y sus intentos poco fructuosos de controlar la corrupción. El libro, además, incluye una bibliografía que podría haber sido algo más extensa.

El libro desde su capítulo introductorio nos presenta un panorama bastante desolador de este Estado. No se han llevado a cabo reformas profundas en el sistema político y de gobierno y las reformas de Saakahsvili no han sido efectivas.

Tampoco las guerras internas y los problemas separatistas han ayudado en la transformación de Georgia y su conversión en un Estado de derecho. Los tráfico ilícitos de todo tipo, las privatizaciones para enriquecer a los gobernantes en colusión con las mafias, el fracaso estrepitoso de Sheverdnadze en este campo, la ausencia de control o controles efectivos, una burocracia corrupta e ineficiente, el deterioro del sistema educativo, de las

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infraestructuras y de los bienes públicos que ha de administrar y proporcionar un Estado son una realidad endémica en Georgia.

Los intentos de Saakashvili de controlar y poner coto a esta situación no han sido satisfactorios. Muchas formas de corrupción de anteriores períodos todavía perduran y la colusión entre mafias y mundo político se ha trasladado en buena parte del Gobierno al Parlamento.

Tampoco la ayuda exterior sale bien parada en el libro

El resultado es devastador para este Estado. Los nombramientos para la administración de los bienes públicos se hacen por clientelismo, no por competencia de los candidatos y por su cualificación. Aunque en los gobiernos del presidente Saakashvili los puestos ministeriales hayan sido ocupados por personas educadas en Occidente, esto no ha constituido una garantía para el avance en las reformas. Lo que uno hace, el sucesor lo deshace. Faltan cuadros competentes. A esto se añade la persistencia de los conflictos en Abkhasia y Osetia del Sur que alimentan todo tipo de contrabandos y tráfico ilícitos. En este contexto Rusia encuentra un campo abonado para toda clase de maniobras. El crimen organizado es claramente un problema de seguridad mayor para Georgia.

El libro es una buena fuente de información sobre las estructuras del crimen organizado, los grupos de contrabandistas, grupos armados y criminales que operan en Abkhasia y Osetia del Sur, o la complicidad de las fuerzas de paz de Rusia, y el papel y colusión de los gobiernos secesionistas de Abkhasia y Osetia del Sur.

El capítulo sobre la reforma de la policía es también revelador. La reforma de la educación en la Academia de policía, la reforma de la policía de patrulla, el despido de 16.000 policías y los problemas que han creado, la falta de coordinación y mala organización, son elementos que se anulan unos a otros y permiten a los autores del quinto capítulo afirmar que los grupos criminales están cobrando fuerza.

El libro se cierra con un último capítulo sobre la Revolución de la Rosa cuya autora es Londa Esadze, coordinadora desde 2002 del proyecto sobre Georgia, el blanqueo de dinero y crímenes económicos en el Centro de Estudios sobre el Crimen Transnacional y la Corrupción. La crítica a Saakashvili y su falta de motivación política en la lucha contra la corrupción es un punto significativo a resaltar, como lo es la afirmación de que la prevención se ha acabado basando en el temor más que en los cambios de actitudes y mejoras en la actividad de los funcionarios, las restricciones a la actividad de los jueces, falta de profesionales a todos los niveles y el intento de controlar la opinión pública. El capítulo explica también las razones para un cierto optimismo en función de algunas reformas realizadas en la policía y en la Cámara de Control, pero llama la atención sobre la posibilidad de que los cambios positivos desaparezcan si no se mantiene el proceso de reformas que parecen haberse paralizado.

El libro constituye una buena fuente para el entendimiento de las dificultades existentes en este Estado, el arduo camino a recorrer y dificultades para su homologación con los Estados Occidentales, un trasfondo poco conocido del separatismo de Abkhasia y Osetia del Sur y el juego de actores estatales y no estatales en esta zona del Cáucaso y que proyectan luz a la guerra que ha tenido lugar en agosto de 2008.



Se echa de menos un estudio más a fondo del impacto y conexiones regionales de este crimen organizado incluyendo no solo a los Estados del Cáucaso sino a Rusia y Turquía. El capítulo tercero escrito por Louise Shelley es, en este sentido, muy insuficiente.



CRÍTICA DE LIBROS:

Berrah, Nureddine; Feng, Fei; Priddle, Roland and Wang, Leiping (2007):
Sustainable Energy in China, The Closing Window of Opportunity,
Washington, The World Bank
ISBN: 9780821367537. 273 pp.

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La obra bajo análisis en el presente comentario representa un interesante resumen de los progresos realizados hasta el momento desde la reforma económica en China en el campo de la política energética y una clara exposición de los desafíos que se le presentan y que crecientemente se imponen en el intento de establecer principios de sostenibilidad energética. El título “*The Closing Window of Opportunity*” es explícito en la emergencia con que ha de ser resuelto el dilema de armonizar el crecimiento económico con las exigencias de respeto al medio ambiente, pues los riesgos de polución lejos de escapar al ámbito económico, son externalidades que ponen en cuestión el desarrollo a largo plazo; de optar por el mismo modelo económico que el que los actuales estados desarrollados aplicasen en su día, las reformas se volverían mucho más complejas de quererse cambiar el curso. Ante lo que pueda parecer una injusta exigencia del mundo desarrollado ante el creciente impacto que China está teniendo por sus emisiones en el cambio climático y la consecuente contribución que de ella se espera en su lucha en contra, cabe destacar que China goza de oportunidades antes inexistentes gracias a la gama de avances tecnológicos en la reducción de emisiones. Ser capaz de combinar desarrollo económico con sostenibilidad y de paso poder igualmente gozar de los recursos energéticos autóctonos, escapando en la medida de lo posible a la inseguridad energética y de los altos niveles de polución, es el gran desafío energético chino y que por desgracia no parece ir por el curso óptimo en vista del análisis del libro: de mantenerse el presente curso, el objetivo de alcanzar la sostenibilidad energética quedará dañado irremediabilmente, de ahí la emergencia con que se plantea dicho desafío.

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Esta obra logra poner de manifiesto con la suficiente claridad la situación en que se encuentra China desde el punto de vista energético, es decir la total falta de armonía entre el imperativo de asegurar un crecimiento económico rápido y sostenido con el suficiente respeto al medio ambiente; en este sentido, este problema que es tanto nacional, como regional y por supuesto mundial, procede del elemento primordial para alimentar el crecimiento y el desarrollo: las fuentes de energía. China, un país sobradamente dotado de recursos carboníferos, se encuentra en la situación de que su uso tiene externalidades nefastas para la economía; el crecimiento a largo plazo requiere de su mitigación, y lograr la armonía entre crecimiento económico y respeto al medio ambiente es el fundamento del concepto de desarrollo sostenible.

Los progresos realizados en los 80 y 90 en la materia fueron impresionantes: gracias a las reformas económicas, las empresas energéticas más ineficientes fueron sustituidas lográndose en tal etapa sorprendentes resultados: con un crecimiento que cuadruplicó el PIB, el consumo energético sólo se duplicó. Sin embargo más allá de estas circunstancias puntuales (modernización de una producción energética enormemente ineficiente), lograr mantener índices de elasticidad² por debajo de 0.50 como los que caracterizaron dicha etapa (0.43) exige reformas más profundas. De hecho tal hito inspiró al 10º Plan Quinquenal (2000-05) la convicción de la posibilidad de mantener tal ratio hasta 2020: sin embargo durante esos años el consumo se disparó; el resultado ha sido una elasticidad similar a la que ha caracterizado a todo país en vías de industrialización hasta el momento en torno por encima del 1.0 (llegando al 1.4 durante tal plan quinquenal).

Si bien lejos de no tener en cuenta el desafío de la sostenibilidad, el gobierno chino intenta poner en marcha políticas en dicha dirección, el contraste entre las intenciones y los resultados es total. Las inmensas reservas de carbón son una peligrosa tentación, pero su índice de polución, mucho mayor que el del petróleo y el del gas, por no hablar de las fuentes de energía limpias, hace de los actuales índices de consumo algo insostenible (en torno al 70 %). Recurrir masivamente a recursos energéticos del extranjero y poner así en entredicho la seguridad energética ante la vulnerabilidad que los crecientes precios del petróleo y los peligros de interrupción en zonas de paso sensibles imprimen, no es tampoco una solución viable.

El libro por tanto apunta con acierto a la necesidad de una revolución tecnológica que permita el uso intensivo de carbón (doméstico y por tanto no sujeto al peligro de la inseguridad energética) logrando mitigar las externalidades derivadas de los efectos de la polución. Obviamente toda la industria y la política china han de ser repensadas, pues antes de aplicar los avances tecnológicos existentes como la desulfuración de las emisiones de carbón o las más avanzadas tecnologías de captura, ha de introducirse en la medida de lo posible el uso de de otras fuentes mucho más limpias y mecanismos de eficiencia; el énfasis en las innovaciones tecnológicas procede de la constatación de que aún en el mejor de los casos, poco se podría hacer para que el consumo de carbón bajase de índices elevados como el 60 %, de ahí la necesidad de asegurarse medios de descontaminación eficaces.

² Dato que se obtiene a partir de la división entre el crecimiento del consumo energético y el crecimiento económico.



En el plano de la eficiencia, se hacen necesarias políticas a largo plazo que pongan el énfasis en mecanismos fiscales que penalicen el uso descontrolado y las prácticas más contaminantes y el establecimiento de verdaderos mecanismos de mercado que trasladen los costes verdaderos al consumidor y desincentiven usos intensivos que provoquen índices de contaminación intolerables; a medida que el consumo se traslade de la industria al sector terciario y el consumo individual ya sea en transporte o en calefacción alcance proporciones crecientes en los patrones de consumo, las medidas centralizadas habrán de dar mayor cabida a políticas de incentivos como las mencionadas para animar cambios a nivel social.

Sin embargo aun a pesar de las buenas intenciones del gobierno y de los logros objetivos como la traslación de los costes de mercado en la industria del carbón, la falta de una verdadera planificación más allá de la retórica ponen en entredicho los objetivos marcados. Las crisis de desabastecimiento animaron a principios de la presente década a la creación de una industria energética en la que la ineficiencia productiva era la tónica general. Pero peor aún es el aspecto político en el que esta obra no entra: la ilegitimidad del sistema de gobierno de la República Popular China y el fantasma de la inflación detrás de los sucesos de Tiananmen hacen de la puesta en práctica de unos mecanismos de mercado que supriman plenamente los subsidios a combustibles de crítica importancia como los derivados del petróleo, una peligrosa apuesta si ello se traduce en los primeros años por lo menos en rápidas subidas de precios para el consumidor; la estabilidad política de un régimen autoritario se sustenta principalmente en una economía que asegure el crecimiento y el bienestar y por mucho que finalmente un sistema de competencia pudiese asegurar precios relativamente asequibles, la tendencia mundial alcista hace de ello algo arriesgado. Si a ello añadimos el caos burocrático de las numerosas agencias, débiles y carentes de personal frente a las NOCs³ que hacen todo lo posible para imponer sus intereses particulares (y que ponen en entredicho cualquier posibilidad de establecer una verdadera competencia en el sector) nos encontramos con que las perspectivas no son muy halagüeñas⁴.

Volviendo al tema de las innovaciones tecnológicas que podrían significar una revolución en la reducción de la polución, se menciona, acertadamente en nuestra opinión, la cooperación internacional y los mecanismos de mercado que a través de “joint ventures” extranjeras aporten la tecnología necesaria; es interesante la reflexión de que esa tecnología, una vez establecida la producción doméstica, no sería tan prohibitiva como podría parecer. Sin embargo quizá parezca algo ingenuo esperar que la participación del sector privado pudiese aportar mucho en comparación con una intensa cooperación internacional a nivel bilateral y multilateral; pero por encima de ésta que es una opinión particular de quien aquí escribe, no hay que perder de vista la importancia política que ha cobrado el traspaso de tecnología: La reunión que China y la ONU celebrarán a finales de este mes se centrará especialmente en este aspecto que ya ocupaba un papel primordial en la UNFCCC⁵ y el Plan de Acción de Bali⁶ aprobado en diciembre de 2007⁷ en su marco.

³ Nacional Oil Companies.

⁴ El siguiente artículo de Erica S. Downs actualizado a este año puede dar fe de la deficiencia de las reformas: Downs, Erica S.: “China’s Energy Policies and Their Environmental Impacts”, Brookings, John L. Thornton China Center, (13 de agosto de 2008) en http://www.brookings.edu/testimony/2008/0813_china_downs.aspx

⁵ UN Framework Convention on Climate Change.

⁶ “UN, China to co-organize high-level event on climate change”, *People’s Daily*, 4 de octubre 2008 en <http://english.people.com.cn/90001/90776/90883/6509364.html>

⁷ Ver: http://unfccc.int/meetings/cop_13/items/4049.php



Otras iniciativas existentes no mencionadas en esta obra, ya sea a nivel unilateral, como la iniciativa “Cool Earth 50” de Japón⁸, nivel bilateral como la cooperación China-EEUU del Departamento del Tesoro⁹ y entre China y la IEA o multilaterales como el “Asia Pacific Partnership on Clean Development and Climate”¹⁰, el “International Partnership for Energy Efficiency Cooperation (IPEEC)” establecido en la reunión G8+3 de junio de este año en Japón¹¹, el marco de cooperación China, India, Japón, ROK y EEUU¹², o la medida auspiciada por Japón “Hacia un Asia Oriental Sostenible” demuestran que la región se halla avanzada en cuanto a la concienciación sobre los desafíos medioambientales. Sin embargo establecer una cooperación sustancial de traspaso tecnológico que eliminase la susceptibilidad China hacia las exigencias occidentales y que por encima de los efectos inmediatos que tuviese, animase a China a poner en marcha políticas más activas de reducción de la polución¹³ sería de una importancia capital que incluso podría posibilitar de manera realmente efectiva la apertura de China al capital privado introduciéndose así innovaciones tecnológicas; así se haría posible la previsión que los autores hacen de que la apertura de un mercado de tales dimensiones crearía la demanda suficiente como para rentabilizar tal industria.

Pero la conclusión más capital y que como se indicaba en la introducción da el título a la obra en cuestión es quizá lo que más haya que retener: con “*Closing Window of Opportunity*” se da entender que no sólo es importante introducir todas las reformas necesarias para la consecución de niveles aceptables de sostenibilidad, sino que además es de crítica importancia hacerlo precisamente en este momento: ahora que la industria energética se está expandiendo, la oportunidad de establecer innovaciones en nuevas plantas de producción energética es única; de no hacerse, tales unidades, de muy larga vida productiva, habrían de ser bien sustituidas varios años más tarde, lo cual aumentaría el coste de oportunidad o bien habría de esperarse varios decenios a que se volviesen obsoletas, perdiendo así un tiempo vital no sólo para la economía china sino para la salud ecológica del planeta. No hay ningún diagnóstico que apunte a que realmente se aprovechará tal oportunidad y que se evitarán consecuencias de proporciones seguramente catastróficas, pero la divulgación del actual estado de cosas y de las soluciones existentes para contrarrestar el curso es seguramente el mayor mérito de esta obra reseñada.

En los meses y años siguientes, con el muy posible acceso a la presidencia de los EEUU del candidato demócrata Barack Obama, mucho más comprometido contra el cambio climático que su predecesor y contendiente en liza, John McCain, se podría impulsar decisivamente la cooperación en este aspecto con China, factor posiblemente determinante

⁸ Ver discurso de presentación de la iniciativa del ex primer ministro de Japón, Shinzo Abe en: http://www.kantei.go.jp/foreign/abespeech/2007/05/24speech_e.html apoyada explícitamente en el punto 6º de declaración del primer ministro Hsien Loong de Singapur sobre la 3ª Cumbre EAS de noviembre 2007: <http://www.aseansec.org/21127.htm>

⁹ “Fact Sheet”: <http://www.ustreas.gov/press/releases/reports/sedjointfactsheet.pdf>

¹⁰ Ver Carta Fundacional en: <http://www.app.gov/app/about/key/92865.htm>

¹¹ Ver: <http://www.doe.gov/nationalsecurity/6319.htm>

¹² En la reunión en junio de este año se aprobó la iniciativa sobre cooperación en Hidratos de Metano (<http://www.fossil.energy.gov/programs/oilgas/hydrates/index.html>) Ver: <http://www.doe.gov/news/6317.htm>

¹³ En conexión con esta reflexión cabe mencionar el dilema existente entre China y los EEUU, que William Chandler denomina muy gráficamente como “Pacto Suicida” y que consiste en la reticencia del uno de actuar antes de que el otro lo haga eliminándose la sensación de que es el otro socio quien quiere aprovecharse de los esfuerzos de su contraparte (Chandler, William: “Breaking the Suicide Pact: US-China Cooperation on Climate Change”, Carnegie Endowment for Peace, *Policy Brief*, nº 57, (Marzo 2008) en http://www.carnegieendowment.org/files/pb57_chandler_final2.pdf) De hecho la cooperación en transferencia tecnológica podría generar la suficiente confianza.



para que la reducción de emisiones en China siga un curso satisfactorio y que muchas de las recomendaciones de esta obra pudiesen realizarse.





CRÍTICA DE LIBROS:

Tibi, Bassam (2008):
*Political Islam, World Politics and Europe.
Democratic Peace and Euro-Islam versus Global Jihad,*
Abingdon Oxon, Routledge
ISBN: 9780415437813. 311 pp.

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La presente obra aborda el Islam Político y sus implicaciones sobre la política mundial en general y sobre Europa en particular. Constituye además el más reciente esfuerzo de Bassam Tibi, profesor de Relaciones Internacionales de la Universidad de Goettingen, para que el “factor cultural” se incluya de forma sistemática en el estudio de las Relaciones Internacionales. Y es que la globalización de las estructuras tras la Guerra Fría no significa, ni mucho menos, la universalización de los valores.

El primer punto sobre el que insiste es en la diferenciación entre el Islam –como religión– y el Islamismo –como politización de un sistema de creencias–. Mientras una versión civil del primero es compatible con la democracia laica, el segundo es su gran enemigo. Tibi afirma con rotundidad que todo islamista, ya sea Jihadista –aquel que emplea la violencia– o Insitucional –el que se integra en el juego político– representa una amenaza. Ambas versiones comparten un mismo objetivo: cambiar el orden internacional heredado de la Paz de Westfalia por un nuevo sistema mundial basado en la idea de orden islámico (o la extensión de dar-el-Islam a todo el mundo).

Uno de los puntos fuertes de la obra que tenemos entre manos es el origen y trayectoria biográfica del autor. No sólo la extensa bibliografía en árabe es una ventaja respecto a otros

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autores que estudian el Islamismo; también lo es su peculiar forma de ejemplificar la combinación de diferentes identidades (política, racial y religiosa) sin tensiones.

El volumen presenta tres partes diferenciadas. En la primera explica la crisis –normativa y estructural- del mundo musulmán en cuyo contexto cobra cada vez más protagonismo el Islam Político como alternativa al modelo Estado-nación. Esta crisis refleja, a su juicio, la existencia de un sistema internacional que no tiene los puntos comunes necesarios para establecer una sociedad internacional, donde se compartan no sólo los marcos, sino también los valores y las normas. Establece las nociones básicas de la competición entre los dos grandes conceptos de orden: el que nace de la visión kantiana de “la paz democrática” y el explicitado por Qutb de “la expansión islámica”. En los primeros capítulos este reconocido académico plantea un mundo con estas dos solas opciones: Jihad Global o triunfo de la Democracia.

En la segunda parte se aborda el Islamismo de corte internacionalista y sus distintos modelos, desde el wahabismo al proselitismo iraní. Uno de sus grandes aciertos es, sin duda, plantear la democracia no como un préstamo occidental, sino como algo propio al Islam. La (re)apertura de este sistema ha de hacerse mediante la vuelta a su época más esplendorosa: la del Islam medieval, donde adquiere elementos del helenismo. La democracia se vive no como una imposición, sino como algo perteneciente a su tradición; y el helenismo como el punto de encuentro entre las dos civilizaciones y como fuente, además, y aquí está una de las claves, de la modernidad secular.

La tercera y última parte es quizás la más innovadora. Plantea una propuesta única que, muy a mi pesar, adquiere poca notoriedad en el debate de las Relaciones Internacionales. Afirma que Europa está “en la primera línea de fuego del Islamismo”, pues le afecta no sólo como conflicto internacional sino también como asunto doméstico tras la llegada de millones de inmigrantes musulmanes. Por eso es precisamente Europa la que ha de dar una respuesta más contundente a los desafíos presentados: el Euro-Islam (o la europeización del Islam frente a la islamización de Europa). Tibi se niega a convertir al Islam en una “esencia” y lo planeta como una “cultura en desarrollo” capaz de asumir elementos de la civilización europea y compatible por tanto con la democracia secular tras renunciar a la *sharia* como última fuente de legitimación. El objetivo es convertir a los musulmanes en “ciudadanos de corazón”. El rechazo del modelo multiculturalista es claro. Este musulmán de origen sirio residente en Alemania prefiere la integración cultural frente a la inserción comunitaria y la primacía del grupo. Establece un claro marco de convivencia: la democracia como cultura política. Lo peor de este impecable planteamiento teórico, que el Euro-Islam es más una idea, un propósito político que una realidad.

Éste es quizás el libro más completo y brillante que este profesor de Relaciones Internacionales dedica al Islamismo y a su propuesta de Euro-Islam, ampliamente discutida en otros foros y artículos. Sin embargo, para sus lectores habituales, muchas ideas y párrafos le sonarán en exceso.

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Ejemplos:

⁶ Véase Keohane y Nye, *op. cit.*, p. 45.

⁷ *Ibid.*, pp. 78-79.

⁸ Un ejemplo aparece en Snyder *et al.*, *Foreign Policy Decision-Making, op. cit.*, pp. 51-52.

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The author's full name, professional category, institution, main research areas, postal address and e-mail should be stated in the body of the message.¹ On the title page, authors should include an abstract of 100-150 words, as well as several keywords that accurately describe the contents of the article. Images and graphs should be included in the text and also attached as separate files (.bmp, .gif or .jpg).

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- Theoretical rigour and coherence.
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- Contribution to the existing literature.
- Clarity of style.
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If there are more than two authors or editors, all of them should be mentioned the first time. The following citations will include only the first author’s or editor’s surname, followed by “*et al.*”.

When the source is the same as that of the previous citation, “*ibid.*” is used, followed by the page numbers (if different).

Examples:

⁶ See Keohane and Nye, *op. cit.*, p. 45.

⁷ *Ibid.*, pp. 78-79.

⁸ An example appears in Snyder *et al.*, *Foreign Policy Decision-Making, op. cit.*, pp. 51-52.

A) Books

Surname, First Name (Year): *Book Title*, xth ed., Book Series, No. x, Place, Publisher.

Waltz, Kenneth N. (1979): *Theory of International Politics*, Boston, Addison-Wesley.

B) Collective Books

Surname 1, First Name 1; Surname 2, First Name 2 and Surname 3, First Name 3 (Year): *Book Title*, xth ed., Book Series, No. x, Place, Publisher.

Buzan, Barry; Wæver, Ole and De Wilde, Jaap (1998): *Security: A New Framework for Analysis*, Boulder / London, Lynne Rienner.

C) Edited Books

Editor’s Surname, First Name (ed.) (Year): *Book Title*, xth ed., Book Series, No. x, Place, Publisher.

Lynch, Dov (ed.) (2003): *The South Caucasus: A Challenge for the EU*, Chaillot Papers, No. 65, Paris, EU Institute for Security Studies.

D) Book Chapters

Surname, First Name (Year): “Chapter Title”, in *Book Title*, xth ed., Book Series, No. x, Place, Publisher, pp. xx-xx.

Wendt, Alexander: “Three Cultures of Anarchy”, in *Social Theory of International Politics*, Cambridge, Cambridge University Press, pp. 246-312.

E) Book Chapters in an Edited Book

Author's Surname, First Name: "Chapter Title", in Editor's Surname, First Name (ed.) (Year): *Book Title*, xth ed., Book Series, No. x, Place, Publisher, pp. xx-xx.

Sakwa, Richard: "Parties and Organised Interests", in White, Stephen; Pravda, Alex and Gitelman, Zvi (eds.) (2001): *Developments in Russian Politics*, 5th ed., Durham, Duke University Press, pp. 84-107.

F) Journal Articles

Surname, First Name: "Article Title", *Journal*, Vol. xx, No. x (Month Year), pp. xxx-xxx.

Schmitz, Hans Peter: "Domestic and Transnational Perspectives on Democratization", *International Studies Review*, Vol. 6, No. 3 (September 2004), pp. 403-426.

G) Press Articles

Surname, First Name: "Article Title", *Newspaper*, Day Month Year.

Bradsher, Keith: "China Struggles to Cut Reliance on Mideast Oil", *New York Times*, 3 September 2002.

H) Articles in On-line Publications

The same as above, but adding "at <http://www.xxxxx.yyy>".

Gunaratna, Rohan: "Spain: An Al Qaeda Hub?", *UNISCI Discussion Papers*, No. 5 (May 2004), at <http://www.ucm.es/info/unisci>.

I) Other On-Line Sources

Document Title, at <http://www.xxxxx.yyy>.

Charter of the Shanghai Cooperation Organization, at <http://www.ln.mid.ru>.

Contact details

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