PAIX ET SÉCURITÉ INTERNATIONALES

03

2015

REVUE MAROCO-ESPAGNOLE
DE DROIT INTERNATIONAL ET RELATIONS INTERNATIONALES
(NOUVELLE SÉRIE- VERSION ÉLECTRONIQUE)

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janvier/décembre
2015

CÁTEDRA JEAN MONNET «INMIGRACIÓN Y FRONTERAS»
DE DERECHO DE LA UNIÓN EUROPEA
Serie Estudios Internationales y Europeos de Cádiz

La correspondance con la Revue PAIX ET SÉCURITÉ INTERNATIONALES peut être adressée au Directeur Exécutif de la Revue:

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web: http://catedras.uca.es/jean-monnet/revistas/paix-et-securite-internationales/index
mail: paixetsecurite@uca.es

ISSN: 2341-0868
Dêpot Legal du Maroc 2003/0091

Diseño de Cubiertas: *CADIGRAFÍA Publicidad y Comunicación SL* - Ronda de Vigilancia s/n, Edificio Tartessos, 11011, Cádiz

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Número 3, janvier/décembre 2015

ÉTUDES

DOCUMENTATION: *Reunión de Alto Nivel España-Marruecos, Madrid, Junio de 2015*

ÉTUDES

DEVELOPING EFFECTIVE PARTNERSHIPS IN PEACEKEEPING OPERATIONS BETWEEN THE UN AND REGIONAL ORGANIZATIONS. A RECENT REPORT OF THE UN SECRETARY GENERAL ON THE TRANSITION IN MALI AND IN THE CENTRAL AFRICAN REPUBLIC

Andrea De Guttry[1]

ABSTRACT: Developing effective partnerships between the UN and Regional organizations involved in the delivery of Peace-keeping Operations (PKOs) has become a key element to improve the effectiveness, credibility and sustainability of these missions. The recent trend of transferring authority from a regional Organization to a UN PKO represents an interesting tool based on the principles of complementarity and comparative advantages. At the request of the Security Council, the UN Secretary General carried out a lessons-learned exercise on the transition from African Union peace operations to UN PKOs in Mali and in the Central African Republic (CAR). This article provides a critical analysis of this Report and argues that a smooth transition phase from one operation to the other is possible provided that a set of conditions are fulfilled. Moreover, the present contribution highlights that the two cases offer interesting lessons to be learned, which could prove to be essential for the future transition from the African Union Mission in Somalia (AMISOM) to a UN operation.

KEY WORDS: UN, Regional organizations, Peace-keeping, Partnerships.

DEVELOPPER UN PARTENARIAT EFFICACE ENTRE L'ONU ET LES ORGANISATIONS REGIONAUX DANS LE DOMAINE DES OPERATIONS DE MAINTIEN DE LA PAIX. LE DERNIER RAPPORT DU SECRETAIRE GENERAL DES NU SUR LA TRANSITION AU MALI ET EN REPUBLIQUE CENTRAFRICAINE.

RÉSUMÉ : Développer des partenariats efficaces entre l'ONU et les Organisations régionales engagées dans le déploiement des Opérations de maintien de la paix (OMP) est devenue un élément

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clé pour améliorer l'efficacité, la crédibilité et la durabilité de ces missions. La récente pratique de transférer l'autorité d'une mission de maintien de la paix du niveau régional au niveau de l'ONU représente un outil intéressant basé sur les principes de complémentarité et de l'avantage comparatif. À la requête du Conseil de sécurité, le Secrétaire général de l'ONU a réalisé un étude sur les leçons apprises concernant l'attribution des opérations de maintien de la paix au Mali et en République centrafricaine de l'Union africaine aux Nations Unies. Cet article propose une analyse critique de ce Rapport et va démontrer que une phase de transition « douce » entre une opération à l'autre est possible si des conditions spécifiques se réalisent. En plus, cet écrit va montrer que les deux opérations offrent des intéressantes leçons à tirer, qui pourraient se révéler utiles hors de la transition de la Mission de Paix de l'Union Africaine en Somalie (AMISOM) aux Nations Unies.

MOT CLES: O*NU, Organisations Régionaux, Maintien de la paix, Partenariats*

DESARROLLAR UNA COLABORACIÓN EFICAZ EN LAS OPERACIONES DE MANTENIMIENTO DE LA PAZENTRE LAS NACIONES UNIDAS Y LAS ORGANIZACIONES REGIONALES. UN INFORME RECIENTE DEL SECRETARIO GENERAL DE LAS NACIONES UNIDAS SOBRE LA TRANSICIÓN EN MALI Y EN LA REPÚBLICA CENTROAFRICANA

RESUMEN: Desarrollar una colaboración eficaz entre las Naciones Unidas y las Organizaciones Regionales involucradas en la realización de Operaciones de Mantenimiento de la Paz **(**OMP) se ha convertido en un elemento clave para mejorar la eficacia, la credibilidad y la sostenibilidad de estas misiones. La tendencia reciente de transferencia de autoridad desde una Organización Regional a una OMP de las Naciones Unidas representa un instrumento interesante basado en los principios de la complementariedad y de las ventajas comparadas. A petición del Consejo de Seguridad, el Secretario General de las Naciones Unidas ha llevado a cabo un ejercicio de lecciones aprendidas sobre la transición de las operaciones de paz de la Unión Africana para las OMP de las Naciones Unidas en Mali y en la República Centroafricana. Este artículo ofrece un análisis crítico de este Informe y argumenta que una fase de transición suave de una operación a la otra es posible a condición de que un conjunto de condiciones se cumpla. Además, la presente contribución evidencia que los dos casos ofrecen lecciones interesantes que pueden ser aprendidas y que podrían ser esenciales para la transición futura de la Misión de la Unión Africana en Somalia (AMISOM) para una operación de las Naciones Unidas.

PALABRAS CLAVE: Naciones Unidas, Organizaciones Regionales, Mantenimiento de la Paz, Colaboración

I. INTRODUCTION

In recent decades PKOs have undergone major changes, as is evident from the large number of contributions published in this Journal. One of the significant innovations which has occurred is related to the actors involved in delivering these kinds of field operations. While in the past the UN, who rightly claims to have

invented them, enjoyed a *de facto* monopoly in organizing PKOs, in more recent times regional Organizations, coalitions of the willing, groups of States and even individual States have entered this "market" and started to offer their services. This new situation should not come as a surprise: in 1945 the drafter of the UN Charter in San Francisco introduced a specific rule, namely Article 52, in which the role of regional organizations in dealing with such matters relating to the maintenance of international peace and security was not only predicted but even welcomed.[2] The increasing activism of different players interested in delivering PKO's, especially in the African continent,[3] has even provoked a kind of latent competition between these actors, entailing positive as well as negative effects. On the one hand this competition has stimulated all the actors to improve the quality of their services, while on the other hand it has resulted in a trend of only calling in the UN in situations where other parties are reluctant to become involved with a given region/area.

In more recent times the various PKO providers seem to have changed their attitude from one of "competition" to one of "cooperation". Various forms of cooperation between the UN and regional organizations and/or coalitions of the willing have already been carefully examined by several scholars.[4] One issue that has received a lot of attention recently is the "transition phase" from a PKO carried out by regional organizations to the UN and vice versa. International practice, especially in the African continent,[5] demonstrates that these transition phases are becoming popular and that the manner in which they are carried out has a decisive impact on the effectiveness of the operations. Two recent cases confirm this thesis: the transition from the African-led peace operations to the UN PKOs in Mali and in Central Africa Republic. Both cases presented complex challenges to the two institutions involved and raised sensitive issues: this is why the SC requested in its Resolution 2167(2014)

[2] For more on this, see Walter, C., "Regional Arrangements and the United Nations Charter", in Rudiger, W. (ed.), *Max Planck Encyclopedia of Public International Law*, Oxford University Press, Oxford, 2009.

[3] On the role played by AU in this regard see Engel, U. and Gomes Porto, J. (eds.), *Towards an African Peace and Security Regime: Continental Embeddedness, Transnational Linkages, Strategic Relevance*, Ashgate, London 2013 and Hull Wiklund, C. and Ingerstad, I., *The Regionalisation of Peace Operations in Africa, Advantages, Challenges and the Way Ahead*, FOI, Stockholm, 2015.

[4] See de Guttry, A., "Recent trends in peacekeeping operations run by regional organizations and the resulting interplay with the United Nations system" , *African Journal of Conflict Resolution,* Vol. 11, No. 3, 2011, p. 27 ff.

[5] Boutellis, A. and Williams, P. D., *Peace Operations, the African Union, and the United Nations. Towards more effective Partnerships in Peace Operations,* International Peace Institute, New York, 2013.

that the UN Secretary General (SG) initiate, in full cooperation with AU, a lessons-learned exercise on the transition from AU to UN operations and provide specific recommendations that could be used for future transitional arrangements. The UN SG presented his Report to the SC on 5 January 2015:[6] this contribution is aimed at thoroughly examining and commenting on this report and the recommendations contained therein.

II. THE METHODOLOGY ADOPTED TO PREPARE THE REPORT OF THE SG

The lessons-learned exercise, which served as the basis for the Report, was driven by the DPKO in collaboration with United Nations Office to the African Union, the United Nations Multidimensional Integrated Stabilization Mission in Mali (MINUSMA), the United Nations Multidimensional Integrated Stabilization Mission in the Central African Republic (MINUSCA), the AU, the Economic Community of Central African States (ECCAS), the Economic Community of West African States (ECOWAS) and relevant United Nations departments, offices, agencies, funds and programs. After a desk review phase aimed at examining all the relevant reports, the process included an interview phase with relevant UN and AU officials as well with other relevant stakeholders. The preliminary findings emerging from these two phases were presented and discussed during a meeting in Cairo, on 19 November 2014, which was attended by all relevant international and regional actors directly involved in the operations in the two countries. Finally a Joint UN-AU validation meeting took place in Addis Ababa, at the Headquarters of AU, to endorse the findings and the recommendations.

III. THE EVENTS IN MALI AND IN THE CENTRAL AFRICAN REPUBLIC WHICH LED TO THE DEPLOYMENT OF AFISMA AND MISCA AND LATER OF MINUMSA AND MINUSCA

The outbreak of a severe crisis in Mali after the coup d'état that occurred in Bamako in March 2012, which caused disturbances, riots, lootings and a very confusing situation about the real leadership in the country, induced several regional actors (in particular ECOWAS and AU) to make efforts to find a political solution in order to restore democracy and to stabilize the country. As the situation was

[6] S/2015/3.

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deteriorating, the UNSC, taking note of the requests of several actors involved in the country,[7] on 20 December 2012 adopted Resolution 2085(2012) which authorized the deployment of an African- led International Support Mission to Mali (AFISMA) with a robust mandate.[8]

In the following Resolution 2100(2013) of 25 April 2013 the SC decided to establish the United Nations Multidimensional Integrated Stabilization Mission in Mali (MINUSMA) to which AFISMA was requested to transfer authority as from 1 July 2013. As a consequence, about 6500 personnel of AFISMA were re-hatted. The mandate conferred upon to MINUSMA was very ambitious and clearly exceeded that which was previously attributed to AFISMA.

The events in the CAR were even more complicated. After the civil war broke out in December 2012 the country, and in particular the civilian population, faced terrible consequences (internally displaced persons, human rights abuses, use of child soldiers, rape, torture, extrajudicial killings and forced disappearance)[9]. As a result, a group of African States[10] decided to contribute by sending troops to the

[7] The UNSC Resolution explicitly makes reference to the requests of the Transitional authorities of Mali dated 18 September 2012, of the Final communiqué of the Extraordinary Session of the authority of ECOWAS Heads of State and Government held in Abuja on 11 November 2012 and of the subsequent communiqué of the African Union Peace and Security Council (13 November 2012).

[8] AFISMA, has been tasked to take all necessary measures, in compliance with applicable international humanitarian law and human rights law and in full respect of the sovereignty, territorial integrity and unity of Mali

(a) To contribute to the rebuilding of the capacity of the Malian Defence and Security Forces, in close coordination with other international partners involved in this process, including the European Union and other Member States;

(b) To support the Malian authorities in recovering the areas in the north of its territory under the control of terrorist, extremist and armed groups and in reducing the threat posed by terrorist organizations, including AQIM, MUJWA and associated extremist groups, while taking appropriate measures to reduce the impact of military action upon the civilian population;

(c) To transition to stabilisation activities to support the Malian authorities in maintaining security and consolidate State authority through appropriate capacities;

(d) To support the Malian authorities in their primary responsibility to protect the population;

(e) To support the Malian authorities to create a secure environment for the civilian-led delivery of humanitarian assistance and the voluntary return of internally displaced persons and refugees, as requested, within its capabilities and in close coordination with humanitarian actors;

(f) To protect its personnel, facilities, premises, equipment and mission and to ensure the security and movement of its personnel.

[9] For more on this, see Armed Conflict Location & Event Data Project, Country Report: Central African Republic, January 2015 <www.acleddata.com/wp-content/uploads/2015/01/ACLED-Country-Report_Central-African-Republic.pdf>.

[10] Angola, Cameroon, Chad, Democratic Republic of the Congo, Gabon, Republic of Congo and South Africa.

Economic Community of Central African States' to help the government to repel the rebels approaching the capital, and to support the work that had been carried out since 2008 by the ECCAS Peace Consolidation Mission in the Central African Republic (MICOPAX). Considering the difficult situation in the country, the UNSC, in response to a request of the Peace and Security Council of the AU, authorized in Resolution 2127(2013) the deployment of the African-led International Support Mission to the Central African Republic (MISCA) which was supposed to replace MICOPAX. The transfer of authority took place on 19 December 2013. Taking into due account that both AU and ECCAS indicated that MISCA may require eventual transformation into a United Nations peacekeeping operation, in the same Resolution the SC tasked the SG to undertake expeditiously contingency preparations and planning for the possible transformation into a United Nations PKO.[11]

About 4 months later the SC decided, through Resolution 2149 (2014) of 10 April 2014, to establish the United Nations Multidimensional Integrated Stabilization Mission in the Central African Republic (MINUSCA). The transfer of authority from MISCA to MINUSCA took place on 15 September 2014. In less than a year, the UN transferred the authority of the mission in CAR first to an African-led Operation, and then to MINUSCA. In this case too the mandate given to the UN Operation by far exceeded the mandate of MISCA.

IV. SIMILARITIES AND DIFFERENCES BETWEEN THE TWO CASES OF MALI AND CAR

The two cases of Mali and CAR present a few similar features and several differences, which deserve to be briefly described as they had an impact on the successive transfer of authority to the UN missions. In both cases there was a clear urgency to deploy, in the shortest possible time, a robust international operation to prevent any worsening of the local situation with dramatic consequences for the local population. In both cases, due to this feeling of urgency, the easiest and most rapid way to intervene was identified as the deployment of African-led operations with a contribution of troops mostly from States located in the immediate vicinity of the crisis-affected State. Taking into account the high level of tension and internal disturbances in the two countries, African–led operations were perceived as preferable to operations with contingents coming from outside Africa. This was

[11] Paragraphs 46, 47 and 48 of UNSC Resolution 2173(2013).

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not only because the African contingents are supposed to have a better knowledge of the military and political scenario in the two countries but also because the local population might have been more inclined to accept them. Finally it must also be mentioned that there were not many States, beside those who volunteered to send troops for the two missions, ready to offer troops for UN operations in Mali or in the CAR.[12]

In both cases the deployment of the regional force was authorized by the UNSC on the basis of a specific request not only of the AU institutions and/or sub-regional organizations (ECCAS and ECOWAS) but also of the national authorities of the two involved States. The mandate of the subsequent UN operations clearly exceeded that of the previous regional operation, although both the regional and UN operations in Mali and in CAR enjoyed a so called "robust mandate" i.e. they were authorized to use any necessary measure (including the use of force) to carry out the task assigned to them.[13]

Among the differences relevant for the purposes of this contribution it might be worth underlining that in the case of the CAR, the SC, while authorizing the deployment of MISCA, had already acknowledged that this operation might possibly be transformed into a UN PKO and gave clear indications to the SG on how to best prepare for this event.[14] In the case of Mali however, UNSC Resolution 2085(2012) simply requested the SG to establish a multidisciplinary UN presence in the country, in order to provide coordinated and coherent support to the on-going political and security processes, including assistance with the planning, deployment and operations of AFISMA. In addition to this the SG was requested to actively

[12] In this regard it has to be remembered that there were other actors present in the two countries with armed contingents, but within autonomous missions: the French Operations SANGARIS (in CAR) and SERVAL (in Mali) and the European Union Military Operation EUFOR RCA in CAR established by the Council on 10 February 2014. See more on EUFOR CAR: <http://eeas.europa.eu/csdp/missions-and-operations/eufor-rca/index_en.htm>.

[13] See paragraph 9 of the UNSC Resolution 2085(2012) and paragraph 17 of the UNSC Resolution 2100(2013) concerning respectively AFISMA and MINUSMA and paragraph 28 of the UNSC Resolution 2127(2013) and paragraph 29 of the UNSC Resolution 2149(2014) concerning respectively MISCA and MINUSCA.

[14] In paragraph 47 of its Resolution, the SC requested the Secretary-General "to undertake expeditiously contingency preparations and planning for the possible transformation into a United Nations peacekeeping operation, stressing that a future decision of this Council would be required to establish such a mission": Furthermore, in paragraph 48 the SG was instructed "to report to the Security Council no later than 3 months from the adoption of this resolution with recommendations on the possible transformation of MISCA to a United Nations peacekeeping operation, including an assessment of progress towards meeting the appropriate conditions on the ground…".

cooperate, in close coordination with all interested partners and international organizations, in the planning and the preparations for the deployment of AFISMA.

The highlighted differences in the content of the two relevant resolutions deserve proper attention as they influenced, to a certain extent, the different modalities of the transition from an African mission to a fully fledged UN mission.

V. THE MODALITIES OF THE TRANSFER OF AUTHORITY FROM THE AFRICAN-LED OPERATIONS TO THE UN PKOS

The transfer of authority from AFISMA to MINUSMA was regulated in UNSC Resolution 2100(2013). In this Resolution, the SC, after having commended the efforts of all those who contributed to the deployment of AFISMA, recalled two different sets of documents. First of all the SC referred to the letter, dated 25 March 2013, addressed to the SG by the transitional authorities of Mali, which requested the deployment of a UN operation to stabilize and restore the authority and the sovereignty of the Malian State throughout its national territory. Furthermore the Council made reference to several letters of regional African organizations [15] expressing full support for the transformation of AFISMA into a UN stabilization operation in Mali. These two sets of document played a different role: while the first letter of the Malian transitional authorities constituted the legal basis for the deployment of MINUSMA, the second set of letters had a higher political value as they confirmed the full support of the regional actors for the deployment of a UN mission replacing the African-led mission.

Taking into account, amongst others, the above mentioned documents, the Security Council:

> […] decides to establish the United Nations Multidimensional Integrated Stabilization Mission in Mali (MINUSMA), […] requests the Secretary-General to subsume the United Nations Office in Mali (UNOM) into MINUSMA, with MINUSMA assuming responsibility for the discharge of UNOM's mandated tasks, as of the date of adoption of this resolution, further decides that the authority be transferred from AFISMA to MINUSMA on 1 July 2013 at which point MINUSMA shall commence the implementation of its mandate […] for an initial period of 12 months and requests

[15] The SC refers, more precisely to the letter, dated 26 March 2013, addressed to the Secretary-General by the President of the ECOWAS Commission, to the communiqué, dated 7 March 2013, of the AU Peace and Security Council, as well as to the letter dated 7 March 2013 and addressed to the Secretary-General by the AU Commissioner for Peace and Security.

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> the Secretary-General to include in MINUSMA, in close coordination with the AU and ECOWAS, AFISMA military and police personnel appropriate to United Nations standards.

Besides a specific paragraph devoted to the timing of the phases of deployment on MINUSMA, the SC Resolution contains only one additional operational paragraph regulating the transition of authority from AFISMA to the UN Mission. In paragraph 11 of the Resolution, the Council:

> Requests the Secretary-General to appoint expeditiously a Special Representative for Mali and Head of Mission of MINUSMA, who shall, from the date of appointment, assume overall authority on the ground for the coordination of all the activities of the United Nations, and its agencies, funds and programmes, in Mali and shall use good offices and coordinate efforts of the international community […] and who shall, from the transfer of authority from AFISMA to MINUSMA, lead all tasks of the mandate of MINUSMA as defined in paragraph 16 below, and coordinate the overall support of the international community in Mali, including in the field of Disarmament, Demobilization and Reintegration (DDR) and Security Sector Reform (SSR), further emphasizes that the Special Representative shall ensure optimal coordination between MINUSMA and the United Nations Country Team in Mali, in connection with the aspects of their respective mandates.

The transition from MISCA to MINUSCA was regulated under UNSC Resolution 2149(2014) which is based, as in the case Resolution 2100(2013) concerning Mali, on the request of the local Government,[16] serving as legal justification for the deployment and for the political consent of the AU to such transfer of authority.[17] The SC decided to establish MINUSCA and requested the Secretary General to subsume the presence of the United Nations Integrated Peacebuilding Office in the Central African Republic (BINUCA) into MINUSCA as of the date of the adoption of the resolution and to ensure a smooth transition from BINUCA to MINUSCA. The various temporal phases of the transition period between MISCA and MINUSCA are clearly indicated in the Resolution. The Council, furthermore, requested the SG, in close coordination with AU:

> to deploy a transition team to set up MINUSCA and prepare the seamless transition

[16] See the letter from the Minister of Foreign Affairs of the Central African Republic dated 27 January 2014 requesting the deployment of a United Nations peacekeeping operation to stabilize the country and address the civilian aspects of the crisis, quoted in paragraph 35 of the Preamble of the UNSC Resolution.

[17] See para 36 of the UNSC Resolution.

> of authority from MISCA to MINUSCA by 15 September 2014 and to take necessary steps to prepare and position MISCA, as soon as possible, for its re-hatting to a United Nations Peacekeeping operation.

The two Resolutions of the SC regulating the transitions from the African-led operations in Mali and in the CAR to fully fledged UN PKOs present similarities and a few interesting differences which can partially be explained considering that when adopting Resolution 2149(2014) concerning the CAR, the Council already possessed the experience of and lessons learned from the previous case concerning Mali. The most interesting difference consists, undoubtedly, in the more detailed rules concerning the transfer of authority in Resolution 2149(2014). This occurred, despite the fact the situation in the two countries (from the perspective of the transfer of authority) was quite similar and that in both countries there was already a significant UN field presence (UNOM in Mali and BINUCA in the CAR).

VI. LESSONS LEARNED FROM THE TWO CASE STUDIES

From the perspective of the effectiveness of the transitions from African-led Peace operation to UN PKOs, the two cases presently being examined offer interesting opportunities for a lessons-learned exercise. The report of the SG is very timely and useful to support the decision makers at the UN in improving the quality of UNSC Resolutions and the impact, quality and effectiveness of the political/operational work carried out by the SG through the personnel deployed in the field. The conclusion can be drawn that a smooth transition from one operation to the other can represent a significant contribution to the stability of the country and, therefore, improve the living conditions and the human security of the local population which is (or should be) the main goal of any PKO.

According to the report by the SG there are six main areas in which lessons learnt could play a major role: strategic cooperation on pre- and post-transition, operational planning and coordination, command and control, re-hatting modalities, civilian capacities and support arrangements. Each of them deserves to be briefly introduced and commented upon.

1. STRATEGIC COOPERATION IN THE PRE- AND POST-TRANSITION PHASE

The first, and perhaps the most important, lesson learnt from the two recent cases

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is related to the fundamental need to ensure political coherence and harmonization of policies and strategies at the highest level between the institutions involved in the transition process. To the extent possible, the mandates given to the two missions need to be developed through close cooperation. As anticipated, the mandate of the incoming UN missions, in both cases, has been much wider than the mandate attributed to the previous African-led operation: to avoid any inconsistencies which might significantly affect the smooth transition process and the full effectiveness of the deployed missions, a close coordination in the definition of the respective mandate is of essential importance. Various tools and practices are available and have been used in the two cases under scrutiny to carry out this cooperation: joint assessment of the operation requirements, joint meetings at political, diplomatic and operational level, both at Headquarters and in the field, involving all the relevant actors and stakeholders, continuous exchange of information, harmonized recommendations to the respective decision making bodies, creation of *ad-hoc* task forces within the respective institutions and, finally, the setting up of specific political bodies to provide the necessary political support, coordination and input (for example the Support and Follow-up Group on the Situation in Mali and the International Contact Group on the Central African Republic).

As far as the post-transition phase is concerned, the two precedents prove the importance of keeping the relevant regional and sub-regional organizations fully involved, even beyond the closing of their field operations, in order to better support and complement the new UN missions. In UNSC Resolution 2149(2014) the Council requested AU and ECCAS to support the transition process beyond the transfer of authority on 15 September 2014. We cannot but agree with the words of the SG who in his report states that:

The establishment of strong, post-transition African Union missions, such as the African Union Mission for Mali and the Sahel and the African Union Mission for the Central African Republic and Central Africa, contributed to sustaining regional engagement and maintaining coherence and unity of vision at the strategic level. In the long term, it could also contribute to facilitating United Nations exit strategies.

In any case the timely indications by the SC of its intention/willingness to transform the regional operation into a UN PKO (as was the case for the CAR), undoubtedly represents another instrument which contributes to improving the coordination between regional organizations and the UN and to smoothing the

transition phase.

To sum up, from the two cases under scrutiny, it clearly emerges that a close cooperation between the regional actors and the UN from the very beginning of the planning of a regional mission is of essential importance to guarantee a smooth transition at a later stage. In the interim, once the UN mission replaces the regional one, the regional actors should remain closely associated and involved in the country. The creation of ad *hoc* regional missions, such as those in the CAR and in Mali after the transfer of authority to the UN, proved to be an important tool to guarantee continuing political support to the new mission.

2. OPERATIONAL PLANNING AND COORDINATION

The active participation of dedicated UN staff in the operational planning of a regional mission to be later transferred under the authority of the UN, represents another essential component for a successful transition.[18] In both cases UN officers working in the field and at Headquarters supported the regional counterparts in the challenging process of mission planning. Although with different timing (in the case of Mali the real cooperation began only after ECOWAS and AU had already started to develop distinct concepts of operations), the participation of both institutions to the operational planning of the regional mission proved to be decisive. The UN staff provided mainly "technical and expert advice to support the planning and deployment of MISCA and strengthen its command and control, administrative infrastructure and training capacity"[19] though specific support teams were tasked not only to assist the regional actors in planning their activities but also later in preparing the subsequent smooth transfer of authority to the UN missions.

3. COMMAND AND CONTROL

"Clear command and control structures are critical to the success of peacekeeping operations, particularly as they operate in volatile political and security

[18] The Report of the UNGA Special Committee on PKOs of March 2014 (A/68/19) recognized "the growing importance of partnership and cooperation between the United Nations and regional arrangements in planning and conducting United Nations peacekeeping operations. The Special Committee encourages the Secretariat to continue developing exercise and training policies with these regional arrangements aimed at improving interoperability": See also WIHARTA, S., "Planning and deploying peace operations", *SIPRI Yearbook 2008: Armaments, Disarmament and International Security*, 2008, p.97 ff.

[19] Report of the SG (see n.5 above), p.5.

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environments".[20] This clear cut statement of the SG reflects a widely agreed concept. Unfortunately, its implementation has not been consistent, especially in the African continent. The challenges in this regard proved to be complex due to a lack of resources which made communication between force headquarters and those deployed in the field difficult and problematic. In Mali, the short transition time did not allow the issue to be approached in a proper manner (with negative consequences on the process itself). In contrast, in the CAR the attention devoted to it was much higher: well before the effective transfer of authority, a common Joint Operations Centre between the African Union and the UN had been established for this purpose. This Centre proved to be an essential component of the transitioning strategy, which was carried out in a complex framework in which other missions in the country, such as operations Sangaris (carried out by France) and the EU-led EUFOR RCA had inevitably to be fully involved in the entire transition exercise.

Well defined mandates of the different actors in the field, a clear chain of command amongst them, fully coordinated activities and the establishment of a Joint Operations Center to manage the transition phase are, from the lessons-learned exercise in the two African countries, clearly important aspects of a transition strategy and machinery.

4. RE-HATTING MODALITIES

In most of the cases in which a transfer of authority from one mission to the other occurs, the military and police components of the previous mission are, to a large extent, re-hatted and join the subsequent mission. The re-hatting phenomenon in PK and in PB operations is quite common and the number of personnel involved is very significant.[21]

Notwithstanding the dimensions of the problem and the way it has affected (very often negatively) the transition phase from a regional actor to the UN, the problems which have been experienced in the past have not yet been overcome. The general quality and level of preparation of the contingents, their equipment, the command and control structures, and the human rights record are often below the requested UN standards. These deficiencies have had an immediate impact on the quality, efficiency and rapidity of the deployment of the subsequent UN Mission.

[20] *Ibid.*

[21] Soeters J. and Manigart, P. (eds.), *Military Cooperation in Multinational Peace operations. Managing Cultural Diversity and Crisis Response,* Routledge, Oxon and New York, 2008.

The two cases under examination here suffered the same problems notwithstanding the concession of period of grace, the organization of additional training activities and efforts to upgrade the equipment. The duty-of- care the UN faces towards their staff on one hand and the human rights due diligence policy (which requires the UN not to deploy anyone who has been involved in violations of international human rights or humanitarian law) have been seriously compromised.

Even taking into due account the pressure on the UN to promptly deploy and implement the mandate these shortcomings should by carefully considered and specific strategies to overcome them should be elaborated even in the preliminary stage of mission-planning. In any case there are no quick and easy solutions to these challenges: as underlined in the SG Report, Member States and international donors must increasingly support the capacity of African States to deliver troops equipped, trained and screened according to the UN standards.[22] The generous contributions of the EU to support the African Peace and Security Architecture (and to finance several AU-led Peace Support Operations) as well as that of many States acting on a bilateral basis[23] are positive steps but much more has to be done. Furthermore a closer relationship in the planning phase between the regional deploying organization and the UN could also contribute to ensuring that the troops selected to operate in a regional PKO have the same standards as required by the UN: this would simplify the transition and re-hatting phase significantly. Finally and in line with the increased attention to the accountability of the UN, special attention must be devoted to ensuring that the UN human rights screening policy is fully implemented and respected, without exception. Once more, increased cooperation between the regional actors and the UN at the preliminary phase of the planning of a regional PKO could ensure that the required human rights standards are incorporated into the selection process of the regional PK forces. This would have a very positive impact on the credibility and accountability of the UN and of the regional deploying institutions.

5. CIVILIAN CAPACITIES

The civilian mandate of most of the recent UN PKOs has significantly increased

[22] Report of the SG (see n.5 above), p.7.

[23] As an example it might be worth quoting the significant work carried out by the Center of Excellence for Stability Police Units (COESPU) of the Italian Carabinieri, located in Vicenza, where hundreds of African peace-keepers have been trained.

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and become more substantial, more complex and more demanding. To fulfill these new tasks there is a need to find properly trained, skilled and motivated personnel, able to work in a challenging environment and to interact with the military and police components. The UN and some regional organizations involved in the delivery of PKOs (and *in primis*, the EU) have given the necessary priority to identifying, recruiting and training the right personnel. The creation of rosters with restricted and conditional access, the organization of training activities and the pre-selection of potential candidates ready to be mobilized, are only part of the strategy to equip the UN and other regional organizations with well trained and qualified staff. At African level similar efforts have been recently initiated, although the results are not yet entirely satisfactory. According to Article 13 of the Peace and Security Council (PSC) Protocol, the African Standby Force (ASF) shall be composed of multi-disciplinary civilian and military components held on standby in their countries of origin, and ready for rapid deployment at appropriate notice. The Protocol states, furthermore, that the AU should establish and centrally manage a roster of "mission administration and civilian experts to handle human rights, humanitarian, governance, reconstruction and DDR functions in future missions". In 2006 a Technical Experts Workshop on the Civilian Dimension of the ASF took place in Ghana and adopted a detailed document on "The Policy Framework for the Civilian Dimension of the ASF".[24] Two years later, an "African Union ASF staffing, training and rostering workshop" took place in 2008 in Uganda and recommended that each regional capacity should be prepared to deploy approximately 60 civilians. To this end a civilian standby roster of approximately 300 civilian specialists should be developed in each sub-region.[25] The African Regional Economic Communities (RECs) and Regional Mechanisms (RM) recently launched an ambitious training and rostering process which has significantly improved the overall situation. Notwithstanding all these efforts,[26] there are still many deficiencies that need to be overcome. Not only is the quantity/quality of the civilians involved in PKOs a problem in the African continent, but the precise definition of the civilian mandate remains problematic, as well as the reporting methodology. The latter causes discrepancies with the risk of

[24] The meeting of the African Ministers of Defence and Security of March 2008 considered and took note of this document.

[25] The report was subsequently noted and acted upon at the 6th Meeting of African Chiefs of Defence Staff and Heads of Safety and Security of May 2009.

[26] For more on this see de Coning, C. and Kasumba, Y. (eds.), *The Civilian Dimension of the African Standby Force,* ACCORD, Johannesburg, 2010.

rendering previous reports unusable by the succeeding organization, with a serious impact on the credibility of the missions and very often an increase in impunity for human rights violations.

Most of these problems are dealt with in the Report of the SG although his proposals about how to overcome these deficiencies seem insufficient, considering the importance of the issue. The SG merely suggests a more systematic coordination between the two organizations combined with enhanced civilian capacity to implement strategies related specifically to the protection of civilians. Much more could and should be done: the organization of joint training activities between UN and African civilian staff on essential issues (such as monitoring and reporting), a better definition by the UN of their reporting standards and a coordinated effort to harmonize within UN and AU the methodology on following up on human rights violations and on the modalities of sharing info in this regard. This last aspect seems to be crucial to make sure that investigations and follow up on violations of human rights proceed smoothly and without being affected by the transition from one organization to the other. These innovations must happen soon in order to ensure the respect which is due to the victims of human rights abuses.

6. SUPPORT ARRANGEMENTS

Extraordinary efforts have been carried out in recent years by the AU as well as by the RECs and the RM to be ready to deploy on short notice and to have all the necessary material available for use. In the meantime generous contributions of many regional organizations and member States have facilitated the capacity of the AU to deliver timely field operations. This notwithstanding, there is a persistent need to overcome the limited ability, so far, of the AU to secure adequate support in the conduct of its peace operations. The UNSC Resolutions authorizing the deployment of MISCA and of AFISMA requested the SG to provide soft support to these missions. To fulfill this demand the SG deployed additional UN experts to support MISCA in the areas of mission support, communication and military and police planning. The UN support to AFISMA and MISCA has also materialized through another instrument: the creation of trust funds, in order to supplement the resource mobilization carried out by AU. The SC in both Resolutions 2085(2012) and 2127 (2013) formally tasked the SG to establish these funds: the result was far beyond expectations. The funds received for the mission in Mali amounted to

$44 million while for the mission in CAR the funds received were only $5 million. Although a few member States, and especially the USA and France, were generous in providing bilateral support directly to a number of troop or police-contributing States, the donor conference for MISCA which was organized by AU in Addis Ababa, confirmed the limited generosity in feeding the trust funds. Further, the conditionality which was attached to the funding (in most cases the funds disbursed by Member States were earmarked for non-lethal assistance) rendered these funds unable to be spent supporting the field operations and later on the smooth transition. As stressed in UNSC Resolution 2167 (2014), there is an urgent priority to enhance the predictability, sustainability and flexibility of financing regional organizations when they undertake peacekeeping under a SC mandate.

To be effective the transfer of authority must happen between an already well-functioning mission and another which will build on and benefit from the experiences and the results achieved by the previous operation. In both cases the constraints faced by the AU in the delivery of field operations should have suggested an increase in the financial and logistical support to AU. This would have contributed to increasing the impact of the mission itself, facilitating a smooth transition process and allowing the benefits and the added value of regional organizations deploying a field operation in a member State to be fully realised. This represents, undoubtedly, an important lesson learnt.

VII. CONCLUDING REMARKS

Peacekeeping Operations have become very popular in recent decades and they have attracted the interest of several actors who promoted themselves, for different reasons, as potential deliverers of these field missions. Regional and sub-regional organizations have been very active in this regard and most of them have initiated ambitious programs and activities to be ready to deliver in an efficient manner these more and more demanding and complex operations. Considering the political situation in many African countries and the legacy of history, and taking into account that most of these operations are deployed in the African continent, it does not come as a surprise that regional institutions in Africa have been at the forefront in building up their capacity to deliver PKOs. The development of the African Peace and Security Architecture as well as the ASF are positive initiatives, which deserve the necessary political and technical support. The contribution of many

States and partners in terms of financial support and in kind donations have thus far proved to be fundamental, yet still not enough. The need to develop new synergies and forms of cooperation between regional and UN operations has become of pivotal importance and recently many new ideas/models of partnership have been experimented with: from the mere logistical/financial support offered by the UN to regional organizations to the authorization by the SC to a Regional organization to deliver a PKO, [27] or even the joint delivery of a field operation (such as in the case of UNAMID).[28] One of these models, which is gaining momentum, consists in initiating a PKO by the competent regional organization and then to transfer the authority, after a given period, to the UN. This model, mostly used in Africa, has many positive aspects but also poses several challenges, most of them being related to the constraints the AU is facing.

In any case, in addition to the numerous goodwill statements and political declarations concerning the need to reinforce the mutual cooperation between the UN and AU, several concrete actions have been already undertaken. At least three deserve special mention due to their far-reaching impact and relevance for the transition from an AU-led to a UN PKO: the creation of the African Union Peacekeeping Support Team within the Department of Peacekeeping Operations and the establishment of the United Nations Office to the African Union (UNOAU) as coordinating structures, aimed at providing necessary expertise and transfer of technical knowledge to enhance the capacity of the African Union's Peace Support Operations Division, including in mission planning and management. The third element which could further contribute to definitively improve the transition phase is associated with the setting of benchmarks (agreed upon by both the regional deploying organization and the UN) on when it might be appropriate to deploy a UN PKO. This specific activity would tremendously impact on the quality of the planning, it would provide greater clarity on the timelines and conditions under which transitions take place and, therefore, increase their predictability, and would demonstrate unity of strategic vision between the two actors involved in the present

[27] For more on the challenges related to this model see GILL T.D., "Legal Aspects of the Transfer of Authority in UN Peace Operations'", in DEKKER I.F. and HEY E. (eds.), *Netherlands Yearbook of International Law,* 2011, p.32 and BELLAMY A.J. and WILLIAMS P.D (eds.), *Providing Peacekeepers. The Politics, Challenges and Future on United Nations Peacekeeping Contributions*, Oxford University Press, Oxford, 2013, at p.437 ff.

[28] For more on this see GELOT L., *Peace Operations and Global Regional Security: The African Union-United Nations Partnership in Darfur,* Routledge, Oxon and New York, 2012.

and future operations. The interesting benchmarking exercise, strongly encouraged by UNSC Resolution 2093(2013), concerning Somalia and implemented jointly by the AU and the UN, provides enough evidence of the potential positive impact of this instrument.[29]

The lessons-learned exercise initiated, upon request of the SC, by the UNSG with specific reference to the transfer of authority of the missions in Mali and in the CAR, proved to be useful and relevant as it has been conducted in a sound and transparent manner which allows the shortcomings and strengths of both actors involved to be highlighted and proposes a few realistic suggestions and recommendations to be taken into account for future missions.

The methodology used to prepare the report seems adequate to the specific needs at stake although a more active role of the real beneficiaries of the two operations, namely the two States directly involved, Mali and the CAR, as well of representatives of the civil society of the two countries would have been beneficial to increase the diversification of the sources of information on which the Report is based and therefore the credibility of the Report itself.

The problematic issues associated with the two cases have been carefully addressed in the previous paragraph: the next challenge is now to make sure that the SC (and other UN institutions) and the AU competent bodies make good use of this exercise. This is crucial for increasing integration, interoperability and effective mission mandate implementation, avoiding unnecessary overlapping while searching for all possible synergies and cooperation; developing the capacity of the staff to work together with members of other International Institutions working in the same country; contributing to create some common and inter-institutional culture among the different components of crisis management operations. The long-awaited transfer of authority from AMISOM to a UN PKO could be the next case which might benefit from this lessons-learned exercise. [30]This would be already a great contribution of the report of the SG, especially considering the broader framework of Chapter VIII of the UN Charter that not only requests States to

[29] For more information on this case see the Report of the Chairperson of the Commission on the Joint AU-UN Benchmarking Exercise and the Review of the African Union Mission in Somalia, PSC/PR/2. (CCCXCIX) < www.peaceau.org/uploads/psc-rpt-399-amisom-09-10-2013.pdf>.

[30] See the interesting article by Freear, M. and de Coning, C., "Lessons from the African Union Mission for Somalia (AMISOM) for Peace Operations in Mali", *Stability, International Journal of Security & Development*, Vol. 2(2), 2013, p. 11 ff: the two authors investigate the extent to which the AMISOM experience influenced the operations in Mali.

make every effort to achieve peaceful settlement of local disputes through regional arrangements before referring them to the Security Council but also reiterates that:

The Security Council shall encourage the development of pacific settlement of local disputes through such regional arrangements or by such regional agencies either on the initiative of the states concerned or by reference from the Security Council.

Very much in line with this article, UNSC Resolution 2167 (2014) which was adopted at the conclusion of the open debate on "Peacekeeping Operations: The United Nations and Regional Partnerships and its evolution" which took place in New York at the end of July 2014, welcomed:

> the continuing efforts and enhanced peacekeeping role of regional and subregional organizations, consistent with the Charter of the United Nations and Security Council resolutions and decisions, including in preparing the ground for United Nations peacekeeping operations and calling upon regional and subregional organizations to promote coherence and coordination of their peacekeeping efforts with those of the peacekeeping operations and special political missions, as well as with the wider United Nations presence on the ground.

The experiences of the two cases in Mali and in the CAR prove that the growing contribution made by regional and subregional organizations can usefully complement the work of the UN in maintaining international peace and security: what is needed now is for everyone involved, from the UN to the regional actors, from the member States to other IOs, to play their respective roles as requested in various UNSC Resolutions to consolidate this mutual cooperation and transform it into a winning strategy. This would be the best contribution of the international community as a whole to improve the human security of the local population of countries emerging from conflicts or from other disasters.

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ISSN 2341-0868, Num. 3, janvier-décembre 2015, pp. 13-32

INTERNATIONAL LAW AND GLOBAL HEALTH: AN OVERVIEW

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In memory of Ned Hayes

INTERNATIONAL LAW AND GLOBAL HEALTH: AN OVERVIEW

ABSTRACT: Contemporary international society is characterized, among other elements, by its progressive humanization, which situates human beings at the centre of all international concerns. This conceptual approach, and the capacity of global health to situate itself transversally across multiple dimensions, means that health is a material domain that can become a central axis of international action and of International Law. In this paper are discussed, firstly, the international notion of health and its global character in a globalized world; secondly, are analysed certain key aspects concerning health as an object of cooperation and international regulation, particularly as it involves the United Nations and the World Health Organization (WHO). Finally, are presented some of the principal substantive dimensions of current international action in matters of global health.

KEY WORDS: Global Health; United Nations; World Health Organisation; foreign policy; epidemic outbreaks; social determinants of health.

LE DROIT INTERNATIONAL ET LA SANTÉ MONDIALE: UN APERÇU

RÉSUMÉ: La société internationale contemporaine est caractérisée, entre autres éléments, pour leur humanisation progressive, qui a placé l'être humain au centre de toutes les préoccupations internationales. Cette approche conceptuelle et la même capacité de la santé mondiale à être placé transversalement dans des multiples dimensions configure la santé comme un domaine matériel qui peut devenir une pièce maîtresse de l'action internationale et du droit international. Cet article présente, en premier lieu, une approche à la notion de santé internationale et sa nature global dans un monde globalisé; deuxièmement, sont discutés certains aspects référées à la santé comme un objet pour la coopération et la réglementation internationale, en particulier autour de l'Organisation des Nations Unies et de l'action de l'Organisation mondiale de la Santé (OMS); enfin, on fait

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une brève présentation de certaines des principales dimensions de fond de l'action internationale actuelle autour de la santé mondiale.

MOTS CLÉS : Santé mondiale ; Nations Unies ; Organisation mondiale de la Santé ; politique extérieur ; flambées épidémiques ; déterminants sociaux de la santé.

DERECHO INTERNACIONAL Y SALUD GLOBAL: UNA PANORÁMICA

RESUMEN: La sociedad internacional contemporánea se caracteriza, entre otros elementos, por su progresiva humanización, que ha situado a los seres humanos en el centro de todas las preocupaciones internacionales. Este planteamiento conceptual y la misma capacidad de la salud global para situarse transversalmente en múltiples dimensiones configuran a la salud como un ámbito material que puede convertirse en un eje central de la actuación internacional y del Derecho Internacional. En este artículo se presenta, en primer lugar, una aproximación a la noción internacional de salud y a su carácter global en un mundo globalizado; en segundo lugar, se analizan algunos aspectos clave en relación con la salud como objeto de cooperación y regulación internacional, en particular en torno a las Naciones Unidas y a la acción de la Organización Mundial de la Salud (OMS); por último, se formula una rápida presentación de algunas de las principales dimensiones sustantivas de la actual actuación internacional en materia de salud global.

PALABRAS CLAVE: Salud global; Naciones Unidas; Organización Mundial de la Salud; política exterior; brotes epidémicos; determinantes sociales de la salud.

I. INTRODUCTION

Today's complex international society is characterized, among other elements, by the universality, diversity and heterogeneous nature of its components, but it remains a society whose principal actors are the different States. They retain -in a decentralized fashion, as sovereign subjects- political power on the international stage. They are also the principal creators and subjects of international legal norms. This traditional element -inherited from the Westphalian model of States- is today blended with important new developments at the level of principles, institutions, processes and international regulations, which are themselves a result of the evolution of international society and the globalization process.

For my present purposes, I point out that the international society of the 21st century recognizes as fundamental values, among others: human rights, the achievement of peace -and, therefore, the peaceful resolution of international controversies and the prohibition of threat or use of force-, the self-determination of peoples, as well as the pursuit of common and universal objectives that satisfy human needs, foster economic and social development, and allow all human beings

to live with dignity and without the fear of violence or of a life of misery.[2] All these elements, which have important ethical repercussions, also present important challenges, given the profound inequalities of the contemporary world and the moral imperative that all human beings might live in a society that respects their rights and satisfies their necessities.[3] This humanization of international society, which situates human beings at the centre of all international concerns, can have as its axis a single basic human right, namely, the right to the highest possible degree of health.

This conceptual approach, and the capacity of global health to situate itself transversally across multiple dimensions, means that health is a material domain that can become a central axis of international action and, for our current purposes, of International Law. In the following pages I will first discuss the international notion of health and its global character in a globalized world. Following this, I will analyse certain key aspects concerning health as an object of cooperation and international regulation, particularly as it involves the United Nations (UN) and the World Health Organization (WHO). Finally, I will briefly present some of the principal substantive dimensions of current international action in matters of global health.

II. GLOBAL HEALTH AND THE GLOBALIZATION OF HEALTH

The starting point for my approach is the notion of health itself, as it has been recognized internationally since 1946, the year that the WHO was created. In addition, we must also take into account the undeniable phenomenon of the globalization of health, which has progressively accelerated over the last few decades.

1. THE INTERNATIONAL CONCEPT OF HEALTH

Even though it is commonly known, I reiterate that the preamble to the Constitution of the WHO, adopted in 1946, establishes that "Health is a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity".[4] For my present purposes, I will emphasize the reference to

[2] This line of discourse clearly underlies Kofi Annan's insightful report: "In larger freedom: towards development, security and human rights for all", Document A/59/2005.

[3] Similarly, article 28 of the Universal Declaration of Human Rights recognizes that: "Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized".

[4] The Constitution of the World Health Organization, signed on 22 July 1946, and revised on numerous occasions, is available at <http://apps.who.int/gb/bd/PDF/bd47/EN/constitution-en.pdf?ua=1>.

a state of "*social*" welfare, given that my approach is based on the social sciences and, specifically, on Public International Law. This initial proposal in the WHO's Constitution, genuinely visionary for its time, has been strengthened and extended over the years in other texts and resolutions deriving from the WHO.

There are several fundamental milestones concerning the issues I wish to emphasize. First, the Alma-Ata Declaration on Primary Health Care (adopted in 1977) asserts that "the attainment of the highest possible level of health is a most important world-wide social goal whose realization requires the action of many other social and economic sectors in addition to the health sector".[5] Second, the Ottawa Charter on Health Promotion (1986) states: "The fundamental conditions and resources for health are: peace, shelter, education, food, income, a stable ecosystem, sustainable resources, social justice, and equity".[6] On the basis of these texts we can attest that health is clearly closely connected with other economic and social sectors that have an impact on the health of individuals and on peoples as a whole. As an initial approach, therefore, we can say that the international concept of health has a holistic and transversal character, which also highlights the international dimension of the problems related to health. Thus, I employ the concept of "*global health*" intending to highlight the norms, institutions, and international processes that work with, and are related to, health.

2. THE GLOBALIZATION OF HEALTH

The second initial idea that I wish to emphasize is the constantly growing globalization of health. Certainly, as we will see further on, there are historical precedents for international cooperation in health matters. Nevertheless, in the last few decades the phenomenon of globalization -with an accelerated growth of contacts of all kinds between States and other international agents- has also given rise to a rapid globalization of health.[7] One of the key factors in this acceleration and change that has influenced the globalization of health is the on-going change in international demographics. This is not only because there has been an increase in

[5] See the Declaration of the International Conference on Primary Health Care, Alma-Ata, September 1978, available at <http://www.who.int/publications/almaata_declaration_en.pdf>.

[6] See The Ottawa Charter for Health Promotion, First International Conference on Health Promotion, Ottawa, 21 November 1986, available at <http://www.who.int/healthpromotion/conferences/previous/ottawa/en/>.

[7] There is no doubt that the "Globalized Health Hazards" demand collective global action (see, in this regard, Gostin, L. O., *Global Health Law,* Harvard University Press, 2014, especially pp. 32-58).

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life expectancy and a reduction in mortality rates, but also because of the massive population displacements facilitated by the spectacular developments in modern means of transport. Whether for tourism or business purposes, or to escape economic misery or armed conflict, hundreds of thousands of people travel daily -in good or bad conditions- from one side of the planet to the other. This clearly produces a possible vector for the transmission of disease; indeed, in many cases, the precariousness of these movements of persons turns them into an authentic health problem. Seen from the same perspective, there is another factor relating to acceleration and change: the liberalization of international trade in goods and services that globalization brings. International trade, occurring as never before in history, also constitutes a potential vector for disease transmission. This is not only because of certain agriculture and livestock products transported to feed various regions of the world, but also because the international movement of goods itself could also inadvertently carry viruses or other disease strains.

In addition -and also with consequences for the globalization of health- the enormous development in information and communication technologies generates knowledge, reaction and decision-making regarding problems of global health. Nonetheless, these new technologies can have negative effects internationally due to the alarm that may be caused by disease outbreaks or the arrival on the international stage of a new disease. There are also grey areas in modern breakthroughs in the biomedical sciences, for, together with the immense possibilities of new treatments for illnesses and the early detection and prevention of diseases, we know that these undeniable benefits are and will be unequally divided amongst the world's countries, and even within these countries. In addition, scientific experimentation also brings risks with it, and has generated serious challenges in bioethical terms and with issues relating to human dignity.

If we also add some of the problems and characteristics of the current international health situation to these factors of acceleration and change, there remains no room for doubt that health has become globalized.[8] Indeed, in the last few decades we have witnessed the emergence of new forms of rapidly-spreading infectious diseases, such as HIV/AIDS, Severe Acute Respiratory Syndrome (SARS), the avian influenza or the H1N1, to mention but a few. To these we can add the re-

[8] See, for a general overview, Pons Rafols, X., "La salud como objeto de cooperación y regulación internacional", in Pons Rafols, X. (ed.), *Salud pública mundial y Derecho internacional,* Marcial Pons, Madrid, 2010, pp. 23-66.

emergence of diseases that were previously thought to be under control, such as tuberculosis.[9] Both phenomena coexist with important -albeit occasional- epidemic outbreaks of already known infectious diseases, such as the recent Ebola epidemic outbreak in West Africa, the persistent and grave issue of malaria -endemic in many developing countries- and tropical neglected diseases, such as Chagas disease. To all of this, we must add the prevalence of certain chronic, non-transmissible and non-declarable illnesses, such as cardiovascular diseases, diabetes or oncological diseases.[10]

All this, as I have indicated, places global health at the centre of international concerns. This central position is furthermore reinforced by the evolution of International Law and the international community. Indeed, beginning in the second half of the 20th century, international society has on the one hand become progressively more human, establishing human dignity as an essential value, with all that entails in terms of human rights and the personal welfare of individuals.[11] On the other hand, international society has recognized international cooperation as one of its structuring principles. International cooperation is, therefore, not only an obligation for States, but also an imperative for the collective satisfaction of needs and demands that one State -even if it is the biggest and most powerful of all- cannot adequately respond to by itself.

In this context, it should be kept in mind that there are deep health inequalities existing within the populations of individual nations, as well as between different nations. These inequities -which are avoidable in matters of health- are the inevitable result of the inequalities that exist at the heart of individual societies and between different societies. That is why I hold that global health has become a global public good that must be safeguarded on an international basis.[12] Hence the necessity for international cooperation and of an international legal framework that deals with global health problems from the holistic and transversal perspective that I indicated

[9] In its most recent Factsheet N°104, updated October 2014, the WHO confirmed that Tuberculosis (TB) is second only to HIV/AIDS as the greatest killer worldwide by a single infectious agent, and that in 2013 9 million people fell ill with TB and 1.5 million died from the disease.

[10] Which have also become a guiding principle for international action. See, in this respect, the crucial Political Declaration on the High-level Meeting of the General Assembly on the Prevention and Control of Noncommunicable Diseases, Resolution 66/2 of the General Assembly, 24 January 2012.

[11] See, for all, the position sustained by Carrillo Salcedo, J.A., *Soberanía de los Estados y Derechos Humanos en el Derecho Internacional contemporáneo,* ed. Tecnos, 2nd ed., Madrid, 2001.

[12] See, for example, Kaul, I., Faust, M., "Global public goods and health: taking the agenda forward", *Bulletin of World Health Organization*, 2001, 79 (9), pp. 869-874.

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above, a framework that will have progressively greater content.[13]

III. GLOBAL HEALTH AS AN OBJECT OF INTERNATIONAL REGULATIONS AND COOPERATION

The idea that global health should be the object of international regulation and cooperation is due, on the one hand, to its historical precedents and, on the other hand, to the international community's response to current health problems. In my opinion this response must involve the participation and leadership of the UN as its guiding institution and of the WHO as the international authority in all health matters.

1. HISTORICAL BACKGROUND OF INTERNATIONAL COOPERATION FOR HEALTH

The historical origins of international health cooperation must be placed, fundamentally, in the 19th century, with the convergence of a double phenomenon: on the one hand, there are the economic and social developments and the growth of medical knowledge in the 19th century that resulted in a powerful reorientation regarding the prevention of diseases; on the other hand, there has been a progressive growth in the State's role as a guarantor of health services. All this led to a certain level of international health cooperation, initially focussed on the fight against the spread across borders of infectious diseases on an international scale. That is to say, the States themselves sought to protect themselves against foreign health threats. These efforts would eventually extend to other dimensions of public health, such as the traffic of drugs, narcotics, and labour security issues.[14] The first International Health Conferences were thus held in the second half of the 19th century. They were aimed at enforcing quarantine measures against cholera, yellow fever, and plague. The first international health agreements were adopted at these Conferences.

The establishment of the first international regulations in the area of infectious disease control not only sought to protect Europe against these diseases and to harmonize the quarantine requirements that distorted international trade; in addition, they aimed to create an international system of vigilance against

[13] Some authors speak of an International Law of Health as being a set of international norms directed to safeguarding and improving people's health (see for example Seuba Hernández, X., "La emergencia del Derecho Internacional de la Salud", *Revista Digital de la Facultad de Derecho de la UNED*, 1 (2009).

[14] See, in general, Fidler, D.P., "The globalization of public health: the first 100 years of international health diplomacy", *Bulletin of the World Health Organization*, 79 (2001): 842–849.

epidemics and, ultimately, international institutions that would coordinate with the participating States in all matters relating to the fight against infectious disease.[15] In addition to these initial measures regarding norms and international cooperation, an institutional leap came in the 20th century with the creation of the first international Organizations with competences over health matters, such as L'Office International d'Hygiene Publique (1907) which, beginning in 1923, overlapped with the Health Organisation of the League of Nations. The two Organizations, with differing initial perspectives, maintained this overlap as well as their independent activities despite several attempts at coordination by the League of Nations.[16] On the other hand, there was also -at a regional level- the creation of the Pan American Sanitary Bureau (1902), now more than a century old, which was the seed of the still existing Pan American Health Organisation (PAHO), and which is now the WHO Regional Office. This first phase of institutionalization of health cooperation in the first half of the 20th century eventually led, during the period after the Second World War and the years of the exponential growth in multilateral relations, to the creation of the World Health Organization (WHO) as the only institution established to lead international health actions and practice Global Health Diplomacy.[17]

2. THE INTERNATIONAL COMMUNITY'S RESPONSE TO CURRENT QUESTIONS AND PROBLEMS REGARDING GLOBAL HEALTH

In regards to the holistic, transversal character of global health, as well as its international dimension, the first noteworthy feature of the international community's response has been the creation of numerous legal instruments together with the use of existing legal regimes, as well as diverse institutions and international Organizations. Indeed, to the extent that numerous aspects of international cooperation can directly or indirectly relate to global health issues, there are several international regimes that deal, directly or indirectly, with issues relating to global health. To give only a few examples, questions related to food safety are the ambit

[15] See in this respect Fidler, D.P., *International Law and Infectious Diseases,* Clarendon Press, Oxford 1999, pp. 28-35.

[16] Regarding the precedents of international health cooperation, see Seuba Hernández, X.,"Los orígenes de la cooperación sanitaria internacional", in X. Pons Rafols (ed.), *Salud pública mundial y Derecho Internacional, op. cit.,* pp. 67-87.

[17] See, among others, Kickbusch, I., Ivanova, M., "The History and Evolution of Global Health Diplomacy", in Kickbusch, I., Lister, G., Told, M., Drager, N.(eds.), *Global Health Diplomacy. Concepts, Issues, Actors, Instruments, Fora and Cases,* ed. Springer, New York, 2013, pp.14-26

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of the WHO and of the FAO (Food and Agriculture Organization of the United Nations), which together have co-established the *Codex Alimentarius Commission*, an institution that adopts international regulations regarding food safety standards. Questions related to the dangers and impacts on human health of chemical, nuclear or bacteriological weapons are the object of numerous international treaties and come under the jurisdiction of organizations such as the IAEA (International Atomic Energy Agency) and the OPCW (Organisation for the Prohibition of Chemical Weapons). Concerns regarding the ethical implications of developments in the life sciences fall within the scope of UNESCO (United Nations Educational, Scientific and Cultural Organization), which has already adopted several Declarations regarding these issues. Within these differing institutional frameworks, international instruments concerning multiple issues have been adopted, directly or indirectly related to global health, with some of which are mandatory and other non-legally binding.

In addition to the normative and institutional diversity of the international community's response, a recent phenomenon relating to global health has been the appearance on the international stage of new private or public-private actors, whose influence is steadily growing. Thus, to the work of philanthropic foundations and private sector corporations connected to the pharmaceutical sphere, we must add the recent blooming of public-private partnerships. These latter are new institutional mechanisms, of a private legal nature, that have competence in the domain of global health, particularly in relation to the financing of the fight against the great pandemics, such as HIV/AIDS, malaria and tuberculosis.

As I understand it, however, the United Nations remains the guiding institution on the international stage, while the WHO constitutes, without a doubt, the authority in international health matters. It must be within the framework of these international Organizations that the principal dimensions of International Law relating to global health are developed.

A) The United Nations as guiding institution of the international system

Since its creation in 1945, the United Nations has become the framework institution of contemporary international society. In particular, its constitutive Charter and other legal instruments adopted by the UN have shaped the legal framework of contemporary International Law. Its goals, of a general, universal,

timeless and interdependent nature, as well as its composition (also universal), the principles it has proclaimed and defined since its creation, and its activity over the course of the last decades, have worked together to situated the UN as the guiding institution of the international system.[18] Specifically, in respect to global health, one of the principal purposes of the UN is that of confronting health problems. Thus, within the framework established in a general way in article 1.3 of the UN Charter -where it establishes the goal of achieve international cooperation in solving international problems of an economic, social, cultural and humanitarian character- article 55 of the Charter refers expressly to health problems. Nevertheless, what is most relevant, in my opinion, are the generality, timelessness and universality of the UN's aims. Their interconnection constitutes the additional element necessary for an international approach to global health issues; issues which, as I have pointed out, are of a holistic and transversal nature.

This interdependence between conceptual and operational aspects, already present in 1945, has only grown thanks to globalization. It undoubtedly influences the international approach to global health. In the '90s, in the new conditions of the post-Cold War world, the great international conferences sponsored by the UN focused international concern on human beings [19] with the formulation of new concepts such as sustainable development and human security. Furthermore, these conferences highlighted clearly the presence of interdependent, indispensable and mutually-reinforcing dimensions in these matters.[20] These dimensions have become, inexorably, the guiding principles of the international system, as demonstrated by the Heads of State and Government who came together at the 2005 World Summit, where they recognized that "peace and security, development and human rights are the pillars of the United Nations system and the foundations for collective security

[18] For a panoramic vision of the role of the United Nations in the 21st century, see Pons Rafols, X., "Las Naciones Unidas en el siglo XXI: funciones, retos y opciones de futuro", *Agenda ONU,* 7 (2005), pp. 239-297.

[19] This is how it is presented in the Rio Declaration on Environment and Development, adopted at the first and most important Conference in this cycle of International Conferences, the 1992 Rio de Janeiro Conference on Environment and Development. The first principle of this Declaration establishes that: "Human beings are at the centre of concerns for sustainable development" [see the report of the UN Conference on Environment and Development, Document A/CONF.151/26/Rev. 1 (Vol. I)].

[20] Former Secretary-General Kofi Annan, in his important 2005 Report -to which I have already alluded- "In larger freedom: towards development, security and human rights for all", emphasized these interdependent and indispensable dimensions, which mutually reinforce each other. He states "we will not enjoy development without security, we will not enjoy security without development, and we will not enjoy either without respect for human rights" (Document A/59/2005, par. 17).

and well-being" and that "development, peace and security and human rights are interlinked and mutually reinforcing".[21]

There is, therefore, no doubt that each of these three essential pillars of the UN system is closely linked with global health. Thus we can assert, on the one hand, that threats to human health can also be considered threats to international peace and security from a global and inclusive perspective on health.[22] The Security Council itself has very recently stated that this is so, speaking forcefully on the occasion of the Ebola crisis in Western Africa: Resolution 2177 (2014), of 18 September 2014, determined that the Ebola outbreak constitutes a threat to international peace and security. At the same time, it adopted several measures and supports the Secretary General's creation of a United Nations Mission for Ebola Emergency Response (UNMEER).[23] On the other hand, it should be understood that threats to international peace and security also constitute threats to global health. The response must focus on the consequences to human health resulting from armed conflict, the use of weapons -of whatever kind- and, in general, any threat to peace.

In a similar vein, the interactions between a low level of development and global health are undeniable. Global health ends up becoming a prior condition, a result, and an indicator of development. The unequal burden of diseases and inequalities in health have not been resolved through the Millennium Development Goals (MDGs), adopted in the year 2000 as goals to be attained by 2015. Some of these MDGs refer specifically to health-related issues, such as the goals of reducing child mortality, improving maternal health and fighting HIV/AIDS, malaria, and other diseases. There can be no doubt that the goal of promoting development has a direct influence on the decrease in health inequalities.

Lastly, regarding the third essential pillar of the UN, concerning human rights, it should be noted that from the first international text on this topic, the human right

[21] See the World Summit Outcome of the 2005 World Summit, Resolution 60/1 of the General Assembly, 16 September 2005, par. 9.

[22] As Kofi Annan indicated in his 2005 Report, emphasizing this ecumenical perspective on security and threats against peace in the 21st century, these threats "include not just international war and conflict but civil violence, organized crime, terrorism and weapons of mass destruction. They also include poverty, deadly infectious disease and environmental degradation since these can have equally catastrophic consequences. All of these threats can cause death or lessen life chances on a large scale. All of them can undermine States as the basic unit of the international system" (Document A/59/2005, par. 78).

[23] In addition to the resolution just cited, the Reports of the Secretary General contained in Documents A/69/389-S/2014/679 and A/69/404 are of particular importance.

to health has been internationally recognized. The Constitution of the WHO itself states in its preamble that "The enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being without distinction of race, religion, political belief, economic or social condition". A similar assertion is found in the Universal Declaration of Human Rights (1948), article 25.1, from an integrative perspective: "Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services". Finally, article 12.1 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) clearly establishes that "The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health".

From this angle we can understand the human right to health as a right that forms part of the core of inderogable human rights. Even if it is not an absolute right in the sense of an entitlement to health, it is a right having priority that is an essential condition for the enjoyment of other rights. It is also a right that is simultaneously individual and collective, and which incorporates the universal right of access to health services, prevention, assistance, treatment, rehabilitation, palliative care, aid and access to medicines, i.e., everything that we can subsume under the notion of universal health coverage. Based on what was demanded by the ICESCR, the Committee on Economic, Social and Cultural Rights (CESCR) adopted, in the year 2000, its General Comment No. 14 (2000) on "The right to the highest attainable standard of health".[24] This document stressed that the human right to health foreseen in the International Covenant is a right linked to other rights, has an "inclusive" character -in the sense that it highlights the holistic and transversal character of global health [25]- and which includes, as fundamental elements, the availability, accessibility, acceptability and quality of health services.

[24] General Comment No. 14 (2000), *The right to the highest attainable standard of health (article 12 of the International Covenant on Economic, Social and Cultural Rights)*, Document E/C.12/2000/4.

[25] The Committee interprets the right to health "as an inclusive right extending not only to timely and appropriate health care but also to the underlying determinants of health, such as access to safe and potable water and adequate sanitation, an adequate supply of safe food, nutrition and housing, healthy occupational and environmental conditions, and access to health-related education and information, including on sexual and reproductive health" (par. 11 of the General Comment No. 14).

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B) The World Health Organization (WHO) as the international authority in health issues

The creation of the WHO in 1946 [26] in the context of the creation of diverse international Organizations that would later be linked to the UN as specialized Organisms, involved a significant qualitative leap with respect to prior international institutions and objectives in the area of health, which were fundamentally focused on the fight against the international propagation of infectious diseases. Indeed, beyond these approaches, and while maintaining the same perspective on the concept of health given in the preamble to its Constitution, the WHO declares: "The objective of the World Health Organization shall be the attainment by all peoples of the highest possible level of health" (article 1). This is, obviously, a generic, universal, and timeless goal that should be linked to the human right to health and to the holistic and transversal concept of health itself. It has an undeniable power due to its clarity and forcefulness.

Responding to this generic goal, the WHO's functions are of a broad and preferentially technical character, taking responsibility for all matters and related issues regarding health and hygiene on a global scale.[27] Among other functions, it acts as a directing and coordinating authority. It helps governments provide health services and public health resources, such as technical or emergency help. It carries out tasks related to epidemiology (studies, statistics, and actions to suppress diseases), promotes the improvement of hygiene standards (nutrition, housing, sanitation, economic and labour conditions, etc.) and promotes accords and regulations concerning international health. Finally, it provides preventive and operative technical assistance in the area of health, especially immediate alerts and preventive action in the face of epidemic outbreaks.[28]

The WHO carries out these functions through an institutional architecture that

[26] The WHO Constitution went into effect on 7 April 1948. Previously, between 1946 and 1948, an Interim Commission, with the participation of 18 countries, took over the work of L'Office International d'Hygiene Publique, the Health Organisation of the League of Nations, and the Health Division of the UN Relief and Rehabilitation Administration (see, in this regard, McCarthy, M., "A Brief History of the World Health Organization", *The Lancet,* Vol. 360, Issue 9360, 2002, pp. 1111-1112).

[27] Regarding the general role of the WHO, see Saura Estapà, J., "La Organización Mundial de la Salud y la cooperación internacional frente a las grandes pandemias: el nuevo Reglamento Sanitario Internacional", in Pons Rafols, X. (ed.), *Salud pública mundial y Derecho internacional, op. cit.,* pp. 165-192.

[28] See, in this regard, Ruger, J.P., Yach, D., "The Global Role of the World Health Organization", *Global Health Governance,* vol. 2, num. 2 (2008/2009).

is fundamentally realized in the World Health Assembly and the Executive Board, which are its two principal inter-governmental organs. The Director-General, currently Dr. Margaret Chan, from China, together with the necessary personnel, provides assistance to these institutions from the headquarters of the WHO in Geneva, and from the Regional Offices scattered throughout the world. As I have indicated previously, the WHO is characterized by a considerable degree of decentralization in its activities, thanks to the establishment of Regional Offices; the WHO Regional Office for the Americas is also the headquarters of the independent Pan American Health Organization.

It should be emphasized that the WHO also has normative competences, which, in accordance with articles 19-23 of its Constitution, enable it to adopt conventions or agreements, regulations and recommendations.[29] The adoption of conventions and international agreements requires the approval of two thirds of the World Health Assembly and, obviously, their entry into force requires the formal consent of its Member States. In any case, the original feature of the WHO is that an 18 month window is established for ratification of these agreements by the Member States. If one of these States does not ratify the agreement, it must formally communicate its reasons to the Assembly; this constitutes a facilitating mechanism with dissuasive elements. Nevertheless, these broad possibilities for the development of international conventions about a wide range of matters relating to health have not, up to now, been taken advantage of sufficiently. Over the years the adoption of various conventions has been proposed -for example, about infectious diseases or about biomedical research- but within the framework of the WHO only one convention has been adopted: the WHO Framework Convention on Tobacco Control, approved in 2003, in force since 2005 and, currently, with 179 States taking part.[30]

The possibility of adopting legally binding regulations is also provided for in the WHO's Constitution, though it is restricted to certain matters specified in that document, and which are limited to sanitary and quarantine requirements, along with other procedures developed to prevent the international spread of diseases: Fixing

[29] See in this respect Gostin, L.O., Sridhar, D., "Global Health and the Law", *The New England Journal of Medicine*, 370, 18 May 2014, pp. 1732-1740; and Solomon, S.A., "Instruments of Global Health Governance at the World Health Organization", in Kickbusch, I., Lister, G., Told, M., Drager, N. (eds.), *Global Health Diplomacy. Concepts, Issues..., op. cit.,* pp. 187-198.

[30] Available at <http://www.who.int/fctc/text_download/en/>.

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the nomenclature of diseases and causes of death; Advocating for standards with respect to the safety of biological, pharmaceutical and other products moving in international commerce; and Advertising and labelling of biological, pharmaceutical and similar products moving in international commerce.

In spite of this constitutional foresight, the WHO has adopted only two sets of regulations: the International Statistical Classification of Diseases and Related Health Problems (ICD) in 1948 (revised on several occasions)[31]; and the International Health Regulations (IHR), a first version of which was adopted in 1951, and then thoroughly amended in 2005. I will refer to these later in this paper. One remarkable peculiarity of the WHO's regulations -which clearly favours their universality and effectiveness- is that, after due notice has been given of their adoption, they come automatically into force and are obligatory for all Member States except for such Members as may notify the Director-General of rejection or reservation within the period stated in the notice (like a kind of "opting out" or "contracting out" clause).

Finally, the WHO has competences over the adoption of recommendations about all kinds of issues related to health, a competence which the World Health Assembly and the Executive Board employ extensively. Some of these recommendations are especially important and have a certain normative component, even if they are not binding. These include, for instance, the Pandemic Influenza Preparedness (PIP) Framework and the Global Code of Practice on the International Recruitment of Health Personnel. The lack of a mandatory character has strengthened, without a doubt, their general adoption, particularly in regards to health policy and the description, etiology and treatment of diseases. In general, these recommendations have turned out to be sufficiently effective, since the States have ended up recognizing the central authority of the WHO in health matters. As a result, they normally adjust their activities to comply with these recommendations.

IV. PRINCIPAL DIMENSIONS OF INTERNATIONAL ACTION REGARDING GLOBAL HEALTH ISSUES IN THE FIRST DECADE OF THE 21ST CENTURY

It is now time to tackle, again in a panoramic manner, the principal dimensions of international action in the area of global health in the first decades of the 20th century. I will briefly discuss five issues: health in the foreign policy of the States; international cooperation against epidemic outbreaks and public health emergencies

[31] Available at: <http://www.who.int/classifications/icd/en/>.

of international concern; the social determinants of health and international action to promote development; global health, innovation and intellectual property; and, finally, international innovative financial mechanisms in the area of global health.

1. THE INFLUENCE OF HEALTH ISSUES ON THE POLICIES AND AGENDAS OF THE FOREIGN POLICY OF THE STATES

The starting point of the approach to health in all policies, including the foreign policy of the States is, naturally, the holistic and transversal character of global health. This obvious integration has become stronger and more intense in recent decades. For illustrative purposes, I will highlight certain elements that clearly express it in highly relevant international forums. Thus, for example, the WHO itself has proposed an evolution in its institutional goals; the notion maintained of "*Health for All*"[32] has evolved to incorporate the idea of "*Health in All Policies*", with the aim of integrating health into all public policies. Overall, the WHO seeks to confront health inequalities using a multifaceted approach.[33] This is actually a political concept that originated in certain Member States of the European Union -basically Finland- and which is also reflected in the current article 168 of the Treaty on the Functioning of the European Union (TFEU), which states that "A high level of human health protection shall be ensured in the definition and implementation of all Union policies and activities", thus integrating health in all Community policies -both at a conceptual and operative level- even though concrete competencies linked to public health in the EU are only at the level of support, coordination or supplementary competences.

Along these lines, an important initiative has recently been put into motion to incorporate global health in the foreign policy agenda, an initiative that began with the Oslo Ministerial Declaration of 2007 about "Global health - a pressing foreign policy issue of our time".[34] In recent years, to the extent that the UN General

[32] A central axis of the WHO's policies since 1978 has been influenced by the adoption of the Alma-Ata Declaration and the "*Health for All by the Year 2000*" strategy.

[33] The definition suggested in the Declaration of Helsinki, and adopted at the 8th Global Conference on Health Promotion (Helsinki, 10-14 June 2013), states that "Health in All Policies is an approach to public policies across sectors that systematically takes into account the health implications of decisions, seeks synergies, and avoids harmful health impacts in order to improve population health and health equity. It improves accountability of policymakers for health impacts at all levels of policy-making. It includes an emphasis on the consequences of public policies on health systems, determinants of health and well-being". The Declaration is available at <http://www.who.int/healthpromotion/conferences/8gchp/8gchp_helsinki_statement.pdf?ua=1>.

[34] The Oslo Ministerial Declaration reproduced in Document A/63/591.

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Assembly has adopted this initiative, the Secretary General has published several reports and the General Assembly has adopted numerous resolutions regarding the topic of global health and foreign policy. These documents have highlighted, on the one hand, the existence of important foreign policy matters that influence global health, such as: security, arms control, armed conflicts and their aftermath, the economic and financial global crisis, natural disasters and emergency responses, climate change, food insecurity, the promotion of health as a human right, and migrations. Additionally, there are important issues of global health that should be confronted via the foreign policy of the States, such as: the place of health in national and global security, achieving the Millennium Development Goals related to health, securing access to and affordability of medicines, controlling new infectious diseases, particularly through the exchange of biological material with the potential pathogen, improving access to vaccines, medications and other benefits, promoting international support to strengthen healthcare systems, addressing the challenges faced by global governance in matters of global health, and, finally, integrating health into all policies and confronting non-transmissible diseases.[35]

From this perspective, the UN General Assembly's Resolution 68/98 of 11 December 2013, on "Global health and foreign policy", reiterated the call to increase the attention paid to health issues "as an important cross-cutting policy issue on the international agenda, as it is a precondition for and an outcome and indicator of all three dimensions of sustainable development"; it also called for "enhanced partnerships by Member States and other relevant stakeholders, from the public and private sectors, including civil society and academia, to improve health for all, in particular by supporting the development of sustainable and comprehensive health systems, ensuring universal access to quality health services, fostering innovation to develop to meet current and future health needs and promoting health throughout the life course".[36]

[35] See, among others sources, the extensive and complete Report by the General Secretary entitled "*Global health and foreign policy: strategic opportunities and challenges*" (Document A/64/365, from 23/09/2009).

[36] In this same resolution, the Secretary General was asked to produce "a report on partnerships for global health that assesses and addresses global health governance and the interlinkages between health and all determinants, including social, economic and environmental determinants, and presents recommendations for action to be taken by relevant stakeholders to achieve improved global health governance, taking into account, in particular, human rights, good governance, mutual respect, equity, sustainability, solidarity, shared responsibilities of international community and a people-centred approach".

2. INTERNATIONAL COOPERATION AGAINST EPIDEMIC OUTBREAKS AND PUBLIC HEALTH EMERGENCIES OF INTERNATIONAL CONCERN

The fight against infectious or contagious disease has been, as I have already indicated, a constant in international health cooperation. Recent decades, however, have seen the emergence of new, rapidly spreading infectious diseases, which in turn has required a qualitative leap in the demands for international cooperation. In these matters, the WHO acts as governing authority, employing the International Health Regulations (IHR), which I have already referred to as well, as the instrument for international cooperation. The first version of these regulations was adopted in 1951, and they were amended in 1969 and 1981. Despite these revisions, over time the IHR became an obsolete and ineffective norm, unable to impede the global spread of diseases, since it provided only for notification and action regarding certain specific diseases: until 1981 these included cholera, plague, yellow fever, typhus, smallpox and recurring fever; since then, only cholera, plague and yellow fever have been included. Furthermore, the IHR did not include adequate instruments for guaranteeing correct compliance with WHO decisions by its Member States. This situation, and especially the appearance of new illnesses like HIV/AIDS, avian influenza and SARS -which I have also mentioned already- created pressure in the 90's for a revision of the IHR. This revision was finally achieved in 2005, and the newly revised IHR came into force on 15 June 2007.[37]

The purpose and scope of the revised IHR, as stated in its article 2, is "to prevent, protect against, control and provide a public health response to the international spread of disease in ways that are commensurate with and restricted to public health risks, and which avoid unnecessary interference with international traffic and trade". Besides highlighting its similarities with previous goals and a clear prevalence of interests related to international commerce, the essential novelty of the new IHR resides in the fact that the obligation of notification is no longer limited to certain diseases, but extends to any "events that may constitute a public health emergency of international concern" (PHEIC). That is to say, it extends to any risk for the public health of other States through the global spread of a disease, where the latter is defined, in its broadest sense, as "an illness or medical condition, irrespective of origin or source, that presents or could present significant harm to humans" (article 1). The IHR includes a mechanism for officially declaring the existence of a public

[37] Available at <http://www.who.int/ihr/publications/9789241596664/en/>.

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health emergency of international concern, beginning with the notification of the affected State. The official state of emergency is to be determined by the Director-General of the WHO with the counsel of an emergency committee, and may imply the adoption of temporary or permanent recommendations.

In this way, the IHR establishes as primary obligations of the States: notifying of events that occur in their territory that may constitute a public health emergency of an international concern; having the capability to detect, evaluate, and notify of these events; having the necessary capabilities to rapidly and efficaciously respond to public health risks and emergencies of international concern. Due to the difficulties experienced by some States, the IHR provided for a period of five years after coming into force before it would demand these capabilities of all States. The WHO was also directed to provide assistance to Member States that need help with putting all of these capacities into place. There is clearly a commitment shared by all the Member States for the purpose of facilitating technical cooperation and logistical support in order to strengthen these capacities.

During the epidemic outbreak of Ebola in Western Africa in 2014, the emergency mechanism of the IHR was activated, though probably too late, if we consider the extent and magnitude of the outbreak. This outbreak initially occurred in December of 2013 and spread to Guinea, Liberia and Sierra Leone -with projected spread to other countries- over the course of eight months. It was not until the 8th of August 2014 that the Emergency Committee was convened by the Director-General, who declared that the conditions for a Public Health Emergency of International Concern (PHEIC) had been met. On this basis, the WHO coordinated the international adoption of means for confronting the epidemic and, as I have already noted, the United Nations as a whole also put into effect their emergency response mechanisms, including the creation of a United Nations Mission for Ebola Emergency Response (UNMEER).

3. SOCIAL DETERMINANTS OF HEALTH AND INTERNATIONAL ACTION TO PROMOTE DEVELOPMENT

Social determinants are all the dimensions, fundamentally economic and social, that affect the health of persons and peoples. In general terms, they are the circumstances in which people are born, grow, live, work and grow old, including the health system. It should be recognized that these circumstances depend, at a global,

national and local level, on the distribution of wealth and the policies adopted at each level. From this broad perspective, which is clearly subsumed by the international concept of health that I indicated at the beginning of this paper, there is no doubt that these social determinants of health are what best explains the largest part of health inequalities, i.e. of unjust and avoidable differences within and between the States in regards to their health situation. What is relevant for my argument is that in recent years an authentic new paradigm of international action has arisen, and there has been a shift from an approach that is more strictly medical (an emphasis on epidemiological factors and on public and community health) to one that is much more global, with an explicit acknowledgment of the multiplicity of international factors of a socioeconomic character that impact global health.

In the face of the growing concern provoked by these health inequalities, which are persistent and constantly growing, the WHO established in 2005 a Commission on Social Determinants of Health, which would offer advice on the ways to alleviate health inequality. The final report of the Commission, published on August 2008, is titled "Closing the gap in a generation. Health equity through action on the social determinants of health".[38] In the Report, on the basis of the three principal axes suggested by the Commission's analysis, three general recommendations were put forth: first, to improve daily living conditions with more healthy and just environments; secondly, to tackle the inequitable distribution of power, money, and resources; and finally, to measure and understand problems and assess the impact of actions. While the first recommendation suggests proactive action and the third one an analysis, the second recommendation clearly calls into question the profound inequalities of today's world. This may be the reason why the World Health Assembly -after taking note of the Report, thanking the Commission for its labours and drawing the Member States' attention to its content- limited its operative response to the future celebration of a worldwide meeting that the Member States would attend in order to "to discuss renewed plans for addressing the alarming trends of health inequities through addressing social determinants of health".[39]

This meeting was the World Conference on Social Determinants on Health, held in Rio de Janeiro on 19-21 October 2011. One result of this Conference was the adoption of the Rio Political Declaration on Social Determinants of Health which,

[38] The Report is available at: <http://www.who.int/social_determinants/thecommission/finalreport/en/>.

[39] Resolution WHA62.14 of the World Health Assembly, 22 May 2009.

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among other aspects, recognized that "health equity is a shared responsibility and requires the engagement of all sectors of government, of all segments of society, and of all members of the international community, in an 'all for equity' and 'health for all' global action". The Declaration speaks of the existence of five spheres of activity held to be critical for dealing with the problem of health inequalities. These are: (i) to adopt better governance for health and development; (ii) to promote participation in policy-making and implementation; (iii) to further reorient the health sector towards reducing health inequities; (iv) to strengthen global governance and collaboration; and (v) to monitor progress and increase accountability.

It also declares that governance for addressing social determinants necessarily implies transparent and inclusive decision-making processes. These are relevant considerations, but they are not far from being mere international rhetoric, since in the Declaration there is no questioning of the unequal distribution of wealth among the States and in their interior. But the fundamental problem is that despite affirming the necessity of and determination to act on the social determinants of health, no effective financial commitments were incorporated into the Declaration.[40]

Linked to all of this, it should also be noted that the results achieved respect to the MDGs related to health and the MDGs in general -which I have already referred to- are very unequal, and vary according to the countries and regions in question, leaving important deficiencies to address. This situation, with the looming approach of the 2015 deadline set by the Millennium Declaration of the year 2000, brings with it the perspective of the current debates about the Post-2015 Development Agenda, which, in regards to health, seem to be oriented -at least from the point of view of the WHO- towards attaining universal health coverage.[41]

4. GLOBAL HEALTH, INNOVATION AND INTELLECTUAL PROPERTY

Another relevant factor in recent international action in relation to global health issues is closely linked with innovation and intellectual property: pharmaceutical patents, on the one hand and, on the other, access to essential medicines. Regarding the first issue, it should be noted that legal protection via patents on innovations

[40] See the Rio Political Declaration on Social Determinants of Health, Río de Janeiro, 21 October 2011, available at: <http://www.who.int/sdhconference/declaration/Rio_political_declaration.pdf?ua=1>.

[41] See, along these lines, *Health in the Post-2015 Development Agenda*, Report of the Global Thematic Consultation on Health, 2013, available at <http://www.worldwewant2015.org/file/311537/download/338636>.

of all kinds -with a highly unequal distribution in the different States- was one of the axes that gave focus to the negotiations at the Uruguay Round of the General Agreement on Tariffs and Trade (GATT), which culminated in 1995 with the creation of the World Trade Organization (WTO). One of the Agreements adopted in that Round -and administrated by the WTO- is the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement).

This Agreement, recognizing that in developed countries there already exist guarantees and legal protections that are not present in developing countries, and also recognizing the growth of industrial and technological piracy, imposed upon all Member States of the WTO the obligation to protect via patent "any inventions, whether products or processes, in all fields of technology, provided that they are new, involve an inventive step and are capable of industrial application" (article 27 of the TRIPS Agreement).[42] The rights implied by the patent can be enjoyed without prejudice resulting from the location where the product was invented, the field of technology in question, or whether the products are imported or produced in the country in question. Furthermore, these rights apply to all kinds of products and procedures, including -and this is what is of interest here- products and procedures for the treatment of diseases, fundamentally pharmaceutical products.

The TRIPS Agreement allows for certain flexibility, such as the concession of compulsory licenses.[43] However, the truth is that, in connection with the protection of public health, the legal protection of pharmaceutical patents has been reinforced in all States. This, together with its possible effects on the price of and access to medications, promptly caused a sharp controversy between developed countries (which have the headquarters of the principal multinational pharmaceutical companies) and developing countries (the most affected, as I have mentioned, by infectious epidemic outbreaks, by neglected tropical diseases and by a growing prevalence of non-declarable diseases), and also the legal actions of

[42] See, for a general overview and among the Spanish internationalist legal doctrine, M. Martínez Barrabés, *La patente biotecnológica y la OMC,* ed. Marcial Pons, Madrid, 2014.

[43] They consist in the authorization by a government or a legal institution permitting a third party to use an invention even while it is protected by a right to intellectual property, and even without the approval of the rights holder. As a result, this right is transformed from exploitation of the product into royalties fees. Regarding these aspects see, for Spanish doctrine -and highlighting the connection between global health and the legal protection of pharmaceutical patents- Seuba Hernández, X., *La protección de la salud ante la regulación internacional de los productos farmacéuticos*, ed. Marcial Pons, Madrid, 2010, as well as Fernández Pons, X., "Las patentes farmacéuticas en el régimen del Acuerdo sobre los Aspectos de los Derechos de Propiedad Intelectual relacionados con el Comercio", in Pons Rafols, X. (ed.), *Salud pública mundial y Derecho internacional, op. cit.,* pp. 243-287.

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the pharmaceutical companies in domestic courts. A relevant milestone of this controversial situation was the "Ministerial Declaration on the TRIPS Agreement and Public Health", adopted at the meeting of the Ministerial Conference of the WTO celebrated at Doha on 14 November 2001.[44]

The Declaration, along with other later developments at the WTO, seeks to strengthen both compulsory licensing and the mechanism of parallel imports, with the aim of achieving that fragile and unstable balance between the protection of intellectual property and public health. In this vein, in May 2008 the World Health Assembly approved a "Global strategy and plan of action on public health, innovation and intellectual property" to give support to those countries that wish to make use of the dispositions of the TRIPS Agreement in the most flexible manner possible. This plan of action seeks to harmonize the potential market of pharmaceutical products with the health needs of peoples living in poverty, while at the same time preserving the incentives for the research and development of new medications.[45]

From another point of view, one of the noteworthy initiatives of the WHO in regard to access to medicines has been the promotion of the concept of essential medicines and its associated policies. The WHO defines essential medicines as those that are considered basic, indispensable and necessary for satisfying the high-priority health needs of the population. Since 1975 the WHO has promoted a policy whereby the States are responsible for the selection and supplying of essential medications at a reasonable cost, and in 1977 the Organization developed the first "WHO Model List of Essential Medicines". The WHO also promotes the rational use of drugs and, as part of its mission, fosters the development of national pharmaceutical policies. In spite of all this, the reality of the situation is that of a deep lack of equity in the access to medicines, which without a doubt constitutes an additional dimension of health-related inequities and, therefore, an attack on the human right to health, which includes access to medicines as a fundamental part.[46]

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[44] Available at <http://www.wto.org/english/thewto_e/minist_e/min01_e/mindecl_trips_e.htm>.

[45] See regarding all this Velásquez, G., "El derecho a la salud y a los medicamentos: crónica de una negociación sin rumbo claro", in Pons Rafols, X. (ed.), *Salud pública mundial y Derecho internacional, op. cit.,* pp. 289-309.

[46] See for example Seuba, X., "A human rights approach to the WHO Model List of Essential Medicines", *Bulletin of World Health Organization,* May 2006, 84 (5), pp. 405-407.

5. INTERNATIONAL INNOVATIVE FINANCIAL MECHANISMS IN THE FIELD OF GLOBAL HEALTH

The last dimension that I would like to stress -and which closely relates to those discussed above- is that which regards international financing for development, particularly the necessary international funding to confront global health problems, even if it is only to the same extent that underdevelopment is the greatest social determinant of health from the international perspective. From this perspective, recent trends in international financing for development revolve around The International Conference on Financing for Development, held in Monterrey in 2002, which produced the so-called "Monterrey Consensus".[47] The Consensus is oriented along three axes: the priority of mobilizing internal resources as the basis for development, the necessity of diversifying the sources of development funding, and finally, the necessity of coordination and greater cooperation among international Organizations. In the current climate of global financial and economic crises, this approach has experienced a strong drop in its effectiveness, with important restrictions and setbacks. This has prompted a necessary search for additional, innovative sources of income, because the funds provided by donors are not longer predictable nor sufficient. Novel ways to bring in financial resources have therefore been suggested; for example, there is the Tobin tax, the carbon tax and the air transport levy, to name a few.

In general, the fundamental features of these innovative income sources are, on the one hand, a greater predictability and sustainability of resources in the long term, and, on the other hand, a market focus that implies the introduction of market incentives for research and for the production of certain drugs, vaccines and other pharmaceutical treatments. In this way, these innovative sources have acquired a particular relevance in the domain of global health and have entailed its articulation via the establishment of diverse trust funds specialized in particular topic areas. Indeed, one of the principal landmarks in the domain of global health funding is the prominent presence of certain hybrid networks that bring together agents from the public and private spheres; these are referred to as public-private

[47] See the Monterrey International Conference Report, Document A/CONF.198/11, also available at <http://www.un.org/esa/ffd/monterrey/MonterreyConsensus.pdf>. In regards to this new international consensus around the strategy for cooperation with development, see, among others, the reflections of Abellán Honrubia, V., "Mundialización de la economía y estrategia internacional de cooperación al desarrollo", *Cursos Euromediterráneos Bancaja de Derecho Internacional,* Vol. 6 (2002), especially pp. 419 ff.

partnerships.[48] These are hybrid international networks whose purpose is providing funding in the area of health. To a large extent, they are shaping up to be structures that provide a genuine alternative to classic international actions that are financed through international Organizations which, in practice, end up being weakened by this process.

Participants in these public-private partnerships include international Organizations and States together with private agents, including NGOs and the private corporate sector, which includes private agents both with and without an interest in profit. The variable and changing character of these partnerships leads to their legal nature and structure being different in each case. The results depend on willingness and the relation that exists between the different agents that comprise the partnership, together with the financial contributions that they make[49] Thus, there are partnerships with a greater public participation and control in their organs of government, and partnerships where there is greater participation and control by the private sector, whether the private partners have a for-profit status or else have a non-profit status. As a result, the decision-making process can be conditioned at its origin due to the greater influence of certain partners. In some cases, further, there is a minimal participation of the States or the communities benefited by the actions of the public-private partnership. In the case of partnerships in the area of health, some may not even involve the presence of the WHO in the corresponding governing body.

Along this same line, one of the most delicate aspects of the functioning of these public-private partnerships concerns the risks and ethical contradictions that may arise in those partnerships that have a strong presence of the private sector -that is to say, the pharmaceutical industry- and which predominantly dedicate themselves to correcting market deficiencies. This they do by introducing commercial incentives for the research and development of new products or treatments, such as vaccines. The conflict of interests that can arise grows even more serious due to the fact that certain organizations in the private sector do not so much seek to promote worthy causes, but instead simply seek financial advantage over the long term. Others wish to obtain tax breaks, while yet others seek to improve their company's public image.

[48] See Nishtar, S., "Public-private 'partnership' in health - a global call of action", *Health Research Policy and Systems,* 2004, 2:5, p. 1.

[49] See Buse, K., Walt, F., "Global public-private partnerships: part II- what are the health issues of global governance", *Bulletin of the World Health Organization*, Vol. 78.5 (2000) pp. 700.

I believe, however, that the risks should be balanced with the advantages brought by these mechanisms.[50]

Thus UNITAID, for example, is a fund for the acquisition of medicines whose fundamental purpose is to reduce the cost of treatment of certain diseases such as HIV/AIDS, malaria, and tuberculosis, by way of influencing the market (both supply and demand). With the contributions of donors -principally States, but also other private and non-governmental sectors- capital is amassed in order to achieve an increased negotiation power, and in turn to obtain significant reductions in the price of certain medicines. These medications are then bought jointly and sent to the countries that need them. By guaranteeing sustainable and predictable income through the acquisition of particular medicines, UNITAID also serves the purpose of creating incentives to correct market defects, inducing manufacturers -pharmaceutical companies- to invest in research activities and the development of medicines that otherwise, due to their unprofitability, the pharmaceutical companies would not produce.

The Global Fund to Fight AIDS, Tuberculosis and Malaria was established in 2002 thanks to the impulse given by the United Nations; it might appear to be an international Organization, but legally speaking it is a non-profit foundation that exists under the jurisdiction of Swiss law. Its objectives are "to attract, manage and disburse resources that will make a sustainable and significant contribution to the reduction of infections, illness and death, thereby mitigating the impact caused by HIV/AIDS, tuberculosis and malaria in countries in need, and contributing to poverty reduction as part of the Millennium Development Goals established by the United Nations".[51] Representatives from developing States, donor or develop States, together with representatives of civil society and private sectors participate in the Global Fund Board. In addition, representatives of the WHO, the joint program of the UN on HIV/AIDS (UNAIDS), and the fund's trustee -the World Bank- participate but lack voting rights.

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[50] See, for a general perspective, Pons Rafols, X., "Mecanismos financieros internacionales de lucha contra las grandes pandemias: especial referencia al Fondo Mundial contra el Sida, la Tuberculosis y la Malaria", in Pons Rafols, X. (ed.), *Salud pública mundial y Derecho internacional, op. cit.,* pp. 339-374.

[51] Article 2 of The Global Fund to Fight AIDS, Tuberculosis and Malaria By-laws, as amended on 21 November 2011, available on <http://www.theglobalfund.org/documents/core/bylaws/Core_GlobalFund_Bylaws_en>.

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V. FINAL CONSIDERATIONS

As a summary of what has been discussed in these pages, I believe the first issue to highlight is the undoubtedly holistic, transversal, and international nature of the notion of global health, which leads to its characterization as a global public good that must be internationally protected. On the basis of this premise, the necessities and the reach of cooperation and the legal regulation of global health have been discussed, in particular, the international governance of global health in a world like our own, characterized by constant interaction between all the participating actors. In any case, what is also evident are the difficulties for and the imperious necessity of better international cooperation in the governance of global health, in order to attend to the social determinants of health, i.e. all the socioeconomic factors that affect the health of persons and peoples.

This perspective brings up the issue of the multiplication of international institutions and of various actors involved in the governance of global health, whether they are States, international Organizations, NGOs, the private sector or other mixed mechanisms, including public-private partnerships. Within this complex web of institutions, the WHO undeniably stands out as the guiding axis, due to its specialized and technical character; it should be properly recognized and its character as an international authority in health matters should be strengthened. In particular, it should be strengthened in relation to public health events of international concern, in relation to the social determinants of health, in relation to access to essential medicines and in relation to the financing of the fight against the great pandemics. In general terms, multilateral international cooperation focuses on the United Nations, which is founded, in turn, on three essential pillars which are also closely related to global health: peace and security, development, and human rights. These three pillars -the basis for "collective security and well-being"- are very much pertinent in this context, inasmuch as the major problems of global health entail serious threats against the security of the entire world, are important obstacles to development, and affect essential human rights such as that of the right to health.

The third concluding idea that I would like to emphasize has to do with the repeated verification of the profound health inequities that characterize the modern world, both between countries and within their borders. The conceptual connection between the social determinants of health and certain fundamental principles and

normative contents of contemporary International Law may be an incentive to the international community to address these issues and, therefore, to advance towards an improvement in the health of individuals and nations. Nevertheless, profound contradictions exist between States, as a function of their level of socio-economic development and their sovereign interests. Among other aspects, these contradictions are expressed via the presence of competing interests relating to the protection of intellectual property or relating to the financing of development and innovative mechanisms for the financing of international action in matters of global health.

Finally, I believe -without any doubt whatsoever- that greater international attention should be paid -together with better international financing- to global health and to all the other economic-social sectors that are connected with health. All persons and all peoples must be enabled to attain the highest possible level of health, i.e. the state of complete physical, mental and social well-being that the Constitution of the WHO referred to nearly seven decades ago.

Barcelona, December 2014

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MOROCCAN-BRAZILIAN BILATERAL COOPERATION: ACHIEVEMENTS AND PROSPECTS

Boutaima Ismaili Idrissi[1]

ABSTRACT: Nowadays south-south cooperation has become increasingly important as a framework that shape international cooperation. The search for beneficial economic relations has encouraged many developing and emerging countries to embark into a preferential set of relations through their economic actors. The aim is to boost trade and enhance investment through joint ventures operations in key economic activities deemed crucial to accelerate growth and create new jobs opportunities.

Moroccan-Brazilian relations represent to some extent an example of this type of cooperation. Both countries enjoy high growth potential and hold prominent positions within their respective regions.

In spite of increased trade between Morocco and Brazil, their relations have not reached yet its potential. Brazil's tremendous natural resources and the size of its market make it a potential trading and investment partner for Morocco. Whether in primary production (agriculture, energy), or in industrial production, Brazil holds significant competitive advantages. Therefore, Brazil could serve as a source of imports at competitive prices, while offering Morocco a platform to enhance its exports. Brazil's regional position could serve Morocco as a gate to the wide market of Latin America, particularly the Mercosur member countries.

KEY WORDS: South-South cooperation, Morocco, Brazil, international trade, investment, emerging economies, joint ventures.

LA COOPÉRATION BILATERALE MAROCO-BRESILIENNE: BILAN ET PERSPECTIVES

RÉSUMÉ : Aujourd'hui, la coopération Sud-Sud est devenue de plus en plus importante en tant que cadre qui structure la coopération internationale. La recherche de relations économiques bénéfiques a encouragé de nombreux pays en développement et les pays émergents à se lancer dans un cadre relationnel préférentiel à travers leurs acteurs économiques. L'objectif est de stimuler le commerce et accroître l'investissement à travers des opérations de joint-ventures dans des activités économiques clés à même d'accélérer la croissance et de créer de nouveaux emplois.

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Les relations maroco-brésiliennes représentent, dans une certaine mesure, un exemple de ce type de coopération. Les deux pays jouissent d'un fort potentiel de croissance et affichent un positionnement de premier plan au sein de leurs régions respectives.

En dépit de l'accroissement des échanges entre le Maroc et le Brésil, leurs relations n'ont pas encore atteint leur potentiel. D'énormes ressources naturelles du Brésil ainsi que la taille de son marché en font un partenaire commercial et investisseur potentiel pour le Maroc. Que ce soit dans le secteur primaire (agriculture, énergie) ou dans le secteur industriel, le Brésil détient des avantages concurrentiels importants. Par conséquent, ce pays pourrait constituer une source d'importations à des prix compétitifs, tout en offrant au Maroc une plate-forme pour améliorer ses exportations. Jouissant d'une position régionale, le Brésil pourrait servir le Maroc comme une porte d'entrée vers l'Amérique latine, en particulier les pays membres du Mercosur.

MOTS CLES: coopération Sud-Sud, Maroc, Brésil, commerce international, investissement, économies émergentes, joint-venture.

COOPERACIÓN BILATERAL MARROQUÍ-BRASILEÑA: BALANCE Y PERSPECTIVAS

RESUMEN: Hoy en día, la cooperación Sur-Sur se ha adquirido una importancia, cada vez mayor, como marco para estructurar la cooperación internacional. La búsqueda de relaciones económicas beneficiosas ha animado a muchos países en desarrollo y emergentes a participar en marco relacional preferencial a través de sus actores económicos. El objetivo es impulsar el comercio y aumentar la inversión a través de las operaciones de empresas conjuntas en actividades económicas claves capaces de acelerar el crecimiento y crear nuevos puestos de trabajo.

Las relaciones entre Marruecos y Brasil son, en cierta medida, un ejemplo de tal cooperación. Ambos países tienen un fuerte potencial de crecimiento y tienen una posición de liderazgo en sus respectivas regiones.

A pesar del incremento en el comercio entre Marruecos y Brasil, sus relaciones aún no han alcanzado su potencial. Recursos naturales enormes de Brasil y el tamaño de su mercado lo convierten en un potencial inversor y socio comercial de Marruecos. Ya sea en el sector primario (agricultura, energía) o en el sector industrial, Brasil cuenta con importantes ventajas competitivas. Por lo tanto, este país podría ser una fuente de importaciones a precios competitivos al tiempo que proporciona en Marruecos una plataforma para mejorar sus exportaciones. Teniendo una posición regional, Brasil podría ofrecer a Marruecos una puerta de entrada a América Latina, en especial los países miembros del Mercosur.

PALABRAS CLAVES: cooperación Sur-Sur, Marruecos, Brasil, comercio internacional, inversión, economías emergentes, *joint-venture*.

I. HISTORICAL NOTE

Moroccan-Brazilian relations find their roots in their common history and the cultural heritage of Portugal, which is decisive in the case of Brazil, and surely

significant in Morocco. Several villages and trading posts along Morocco's coastline served as staging points for African trade with North and South America, as late as the eighteenth century. From these localities and their vicinities, Portuguese explorers and Jewish Moroccans left for Brazil where some of them settled in the Amazonian region and established an important cultural legacy in Belém and Manaus.

Indeed, little is known in Brazil and the Arab world of the historical connection between Morocco and Brazil. The Moroccan city of Mazaghan, its original Berber name, was Portuguese colony until 1769 when it was taken over from Portugal after 250 years of occupation and renamed El Jadida, or the New City, its current Arab name.[2] Its population, including Portuguese and Moroccan Jews in particular, where expelled to Brazil and settled in Amapa, Amazonia where they established a settlement by the name of Nova Mazagão, in Amapa. Therefore, the early presence of a Jewish Moroccan community in Brazil forged a cultural link with Morocco that is part of Brazil's unique Lusitano culture.

It is worth noting that in the nineteenth century the first book ever published in Morocco was written in the language of two Brazilian literary figures, Camões and Machado de Assis.[3]

Morocco was the first African country to recognize Brazil's independence from Portugal in 1822. Indeed, Morocco was the first African country with which Brazil has established diplomatic relations. In 1884, Brazil opened a consulate in Tangier, then an international centre of commerce.[4] In 1906, Brazil's Plenipotentiary Minister in Lisbon presented his credentials to Sultan Moulay Abdelaziz of Morocco. Full diplomatic relations were established when Brazil appointed an ambassador in Rabat in 1962. Five years later, in 1967, Morocco opened an embassy in Rio de Janeiro, Brazil's former capital.[5]

[2] The city was taken over from Portugal during the reign of Sultan Mohammed ben Abdallah al-Khatib who was Sultan of Morocco from 1757 to 1790 under the Alaouite dynasty.

[3] "Ambassador highlights strength of Brazil-Morocco dialogue," *Brazil-Arab News Agency (ANBA)*, September 18, 2013. <http://www2.anba.com.br>.

[4] Workshop report on " Le Maroc et le Brésil, » March » 25, 2011, <http://iehl.um5a.ac.ma>.

[5] Statement made by Farida Jaidi, former Ambassador of Morocco to Brazil, "Les enjeux stratégiques des relations Maroc-Brésil," at a conference held by the *Royal Institute for Strategic Studies*, Rabat, July 11, 2011.

II. CURRENT STATE OF MOROCCAN-BRAZILIAN RELATIONS

Today, Moroccan-Brazilian relations fall within the broad concept of south-south cooperation, which has become increasingly important in international trade and investment. The search for beneficial economic relations has encouraged many southern countries to promote new framework of cooperation between their economic actors in order to boost their bilateral trade and support joint ventures in economic activities to accelerate growth and create new jobs opportunities.

While this feature is clearly observed through the regional integration process within countries in the same geographical region, we are experiencing the rise of new forms of south-south cooperation between countries belonging to different regions. This type of cooperation involves not only bilateral relations, but also opens possibilities for triangular relationships by extending the scope of cooperation to third countries.

Moroccan-Brazilian relations represent an example of this type of cooperation. Both countries enjoy high growth potential and hold prominent positions within their respective regions. This should permit both countries to establish strong economic ties. However, in spite of this potential, and the encouraging steps undertaken by Morocco and Brazil to prop up their trade and investment relations, the state of their cooperation remains below their expectations. Many constraints persist, which impede the two countries from realizing taking advantage fully of the various opportunities available to them. Therefore, this chapter will shed some light on the dynamics of cooperation between Morocco and Brazil. It will analyse critically the strengths and weaknesses of their relations. Finally, it will explore some options for enhancing their bilateral relations and on the regional level.

The two countries signed in 1999 a Memorandum of Understanding on political consultations between their respective Ministries of Foreign Affairs. These relations received a boost following the visit of His Majesty King Mohammed VI to Brazil in 2004, as part of a tour in Latin America.[6]

On the occasion of the first session of the Moroccan-Brazilian Joint Commission held on June 24-25, 2008, the two Ministries of Foreign Affairs highlighted the new dynamic in the two countries, which has helped to expand their bilateral cooperation in various areas and to capitalize on their promising partnership, particularly at the

[6] Foreign policy in South America, Ministry of Foreign Affairs and Cooperation, Kingdom of Morocco, <www.diplomatie.ma>.

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economic and scientific levels. During last few years, official visits were undertaken to reinforce these bilateral relations.[7]

Cooperation between Morocco and Brazil covers several political, economic, social, cultural, scientific and technical agreements, which include the following in particular: Air Transport Agreement of 1975; Trade Agreement of February 1983; Agreement on Scientific, Technical and Technological Cooperation of 1984; Cultural Agreement of 1984; Addendum to the Agreement on Scientific and Technical Cooperation Agreement of June 1994 between OFPPT and Brazilian SENAI on Vocational Training; Agreement on Cooperation in the Field of Tourism, of November 2004; Framework Agreement for Trade, of November 2004 between Morocco and the MERCOSUR member countries, which includes Brazil.[8]

The most recent agreements were signed during the first session of the Joint Commission, held in Rabat on June 24-25, 2008, which included: Veterinary and Health Agreement; Memorandum of Cooperation in the field of Environment and Management of Water Resources; and several amendments to the Agreement on Scientific, Technical, and Technological Cooperation.[9]

As for decentralized cooperation, a Cooperation Framework Agreement was

[7] Official visits included, in particular: visit to Morocco on February 8-9, 2012 by a delegation comprising senior officers of the Brazilian Army led by Mr Celso Amorim, Brazil's Minister of Defence; visit to Brasilia on November 26-29, 2012 by a Moroccan delegation from the House of Representatives; visit to Morocco on January 21, 2011 by Senator Suplicy from the Workers' Party to participate in the Forum of Deposit Offices organized by the Deposit and Management Office (CDG) in Marrakech; visit to Morocco on May 24, 2011 by Senator Cristovam Buarque from the Workers' Party to participate in a conference on education held at Mohammed V University in Rabat; visit to Morocco on September 5, 2011 by Mr Antonia Patriota, Brazil's Minister of Foreign Affairs during which he stated that Morocco and Brazil are "multicultural democracies" sharing common values.

[8] Foreign policy in South America, Ministry of Foreign Affairs and Cooperation, Kingdom of Morocco, <www.diplomatie.ma>.

[9] Addendum to the Agreement on Scientific, Technical and Technological Cooperation on the implementation of the Project "Support for the Establishment of a Pilot School in Civil Construction Jobs"; Addendum to the Agreement on Scientific, Technical and Technological Cooperation on the implementation of the Project "Support for the Office of Vocational Training and Working towards the Establishment of Seven Training Institutions for the Disabled"; Addendum to the Agreement on Scientific, Technical and Technological Cooperation on the Implementation of the Project "Partnership in the Field of Textile Clothing between ESITH/ Casablanca and the Technology Centre of Chemical Industry and Textile-CETIQT/RIO; Addendum to the Agreement on Scientific, Technical and Technological Cooperation on the Implementation of the Project "Capacity Building for Trainers in the Field of Civil Construction"; Addendum to the Agreement on Scientific, Technical and Technological Cooperation on the Implementation of the Project "Training for Trainers in the Field of Computer Literacy for the Blind and Visually Impaired"; Addendum to the Agreement on Scientific, Technical and Technological Cooperation on the Implementation of the Project "Support of Urban Development of Morocco."

signed on November 15, 2008 in Marrakech between the Council of Marrakech and Brazilian city Florianopolis. This agreement covers several areas of cooperation, such as health, environmental protection and wastewater treatment. At the cultural and technical levels, several groups of Brazilian artists participated in various festivals and cultural events in Morocco. Similarly, Morocco participated in several cultural and artistic events in Brazil.

III. MOROCCAN-BRAZILIAN TRADE

In 2012, Brazil became the 4th export market for Morocco, and its 7th supplier.[10] Its weight in total Moroccan exports has grown steadily, especially since 2007. The share of Brazil in total Moroccan exports has increased during the period 2002-2013 from 2 per cent to 7 per cent, respectively. This reflects the rapid growth of Morocco's exports to Brazil, which has emerged as an important trade destination. On the other hand, the weight of Brazil in total Moroccan imports remains stable at around 2 per cent during the same period. The slow development of imports can be explained partially by the low level of involvement of Brazilian firms targeting the Moroccan market, or as a conduit to regional markets. It is worth noting that Morocco views the Brazilian market not only for its own potential, but also as an entry point to the wider South American markets. This aspect constitutes a strong argument regarding the prospect of improving further cooperation between the two countries.

As shown in Figure 3 below, except for 2009, and to a lesser extent in 2010 - due to the financial and economic crisis that has affected both economies - Morocco's balance of trade with Brazil has improved steadily from the previous period (2002-2007) when Morocco ran a trade deficit.

Following their exceptional rise in 2008, Morocco's exports to Brazil have increased steadily since 2011 at a level that has allowed Morocco to have trade surpluses. The year 2013 was exceptional, with a trade ratio of 163 per cent, exceeding largely the level attained in 2008. The weight of phosphates and its derivatives exports explains this trend.

Looking at the main products imported by Morocco from Brazil from 2002 to 2012, more than three quarters are dominated by food. More than half of these

[10] Data collected from Chelem database, Brazil was the 5th largest customer of Morocco and its 10th supplier of goods country in 2010.

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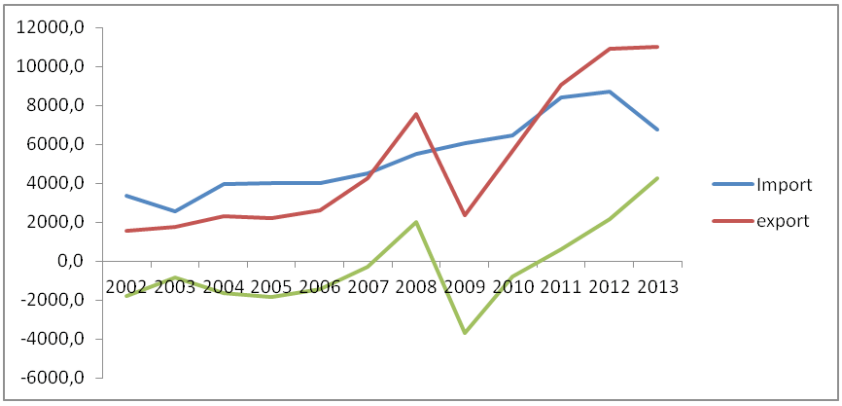
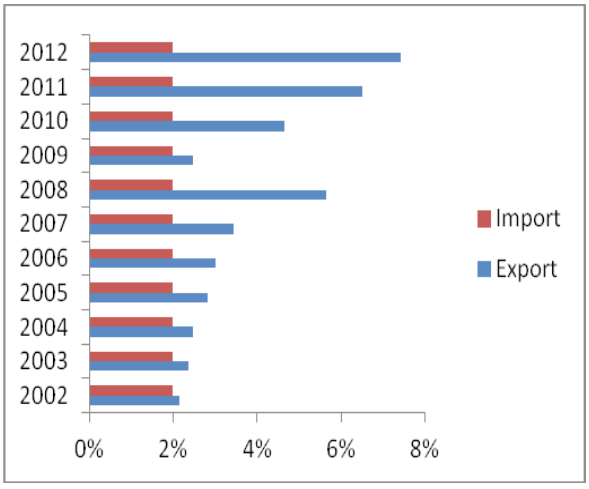
FIGURE 1
SHARE OF BRAZIL IN MOROCCO'S EXTERNAL TRADE
(IN MILLION OF MAD)



Source: Office des changes, author's calculation

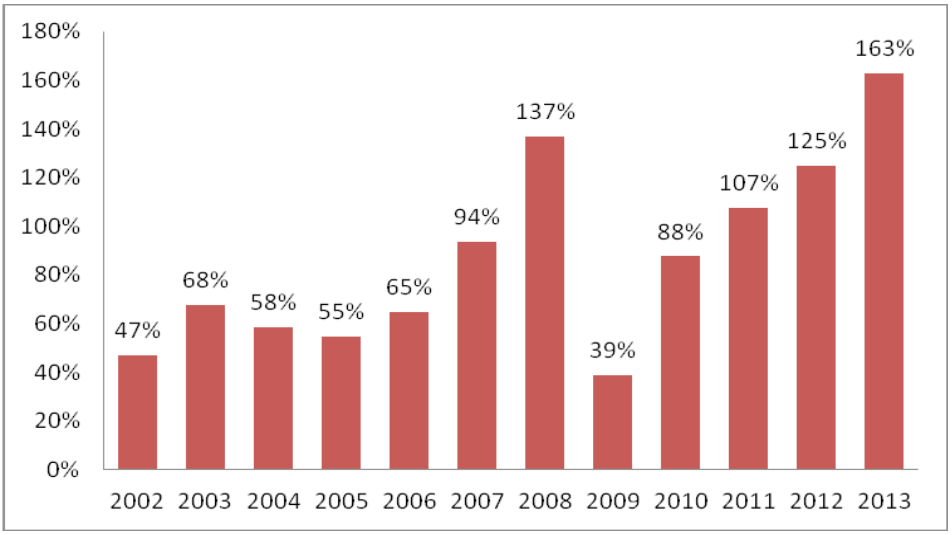
FIGURE 2
SHARE OF BRAZIL IN MOROCCO'S EXTERNAL TRADE
(IN MILLION OF MAD)



Source: Chelem, author's calculation

FIGURE 3

COVERAGE RATIO OF IMPORTS BY EXPORTS WITH BRAZIL (%)



Source: Office des changes, author's calculation

products consist of sugar. Cereals come in a second position, which have been increasing since 2008 to reach 33 per cent. Fat products have decreased from 21 per cent in 2002 to only 2 per cent in 2012. Morocco acquired Brazilian planes for the first time in 2010.

With regard to Morocco' exports, they are dominated by phosphates and derivatives. In 2012, these products accounted for 63 per cent of Moroccan exports to Brazil. Fishery products, mainly sardines, occupy the fourth place with about 2 per cent of total exports.

Morocco's Office Chérifien de Phosphates (OCP) is a leading provider of phosphate products to Brazil through Bunge Fertilizers of Brazil, which is the largest importer and distributor of fertilizers in South America. Brazil is the first customer of Morocco for natural and chemical fertilizers (3.2 billion dirhams in 2010), the second for phosphoric acid (542 million dirhams), and the 7th for raw phosphates (434 million dirhams).

Morocco exported to Brazil the equivalent to US$521 million in the first half of 2014, down 21.5 per cent in relation to the first half of 2013. The main items

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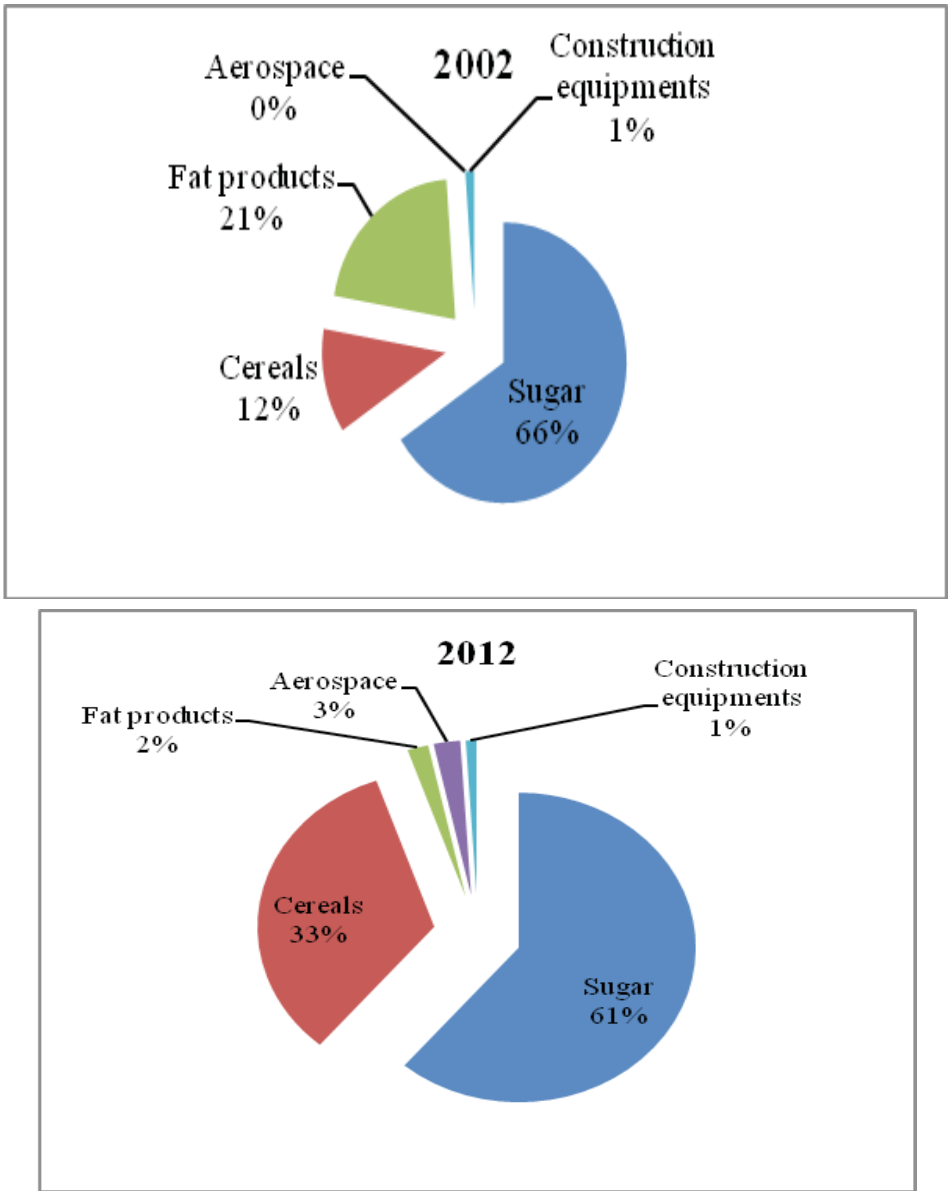
FIGURE 4

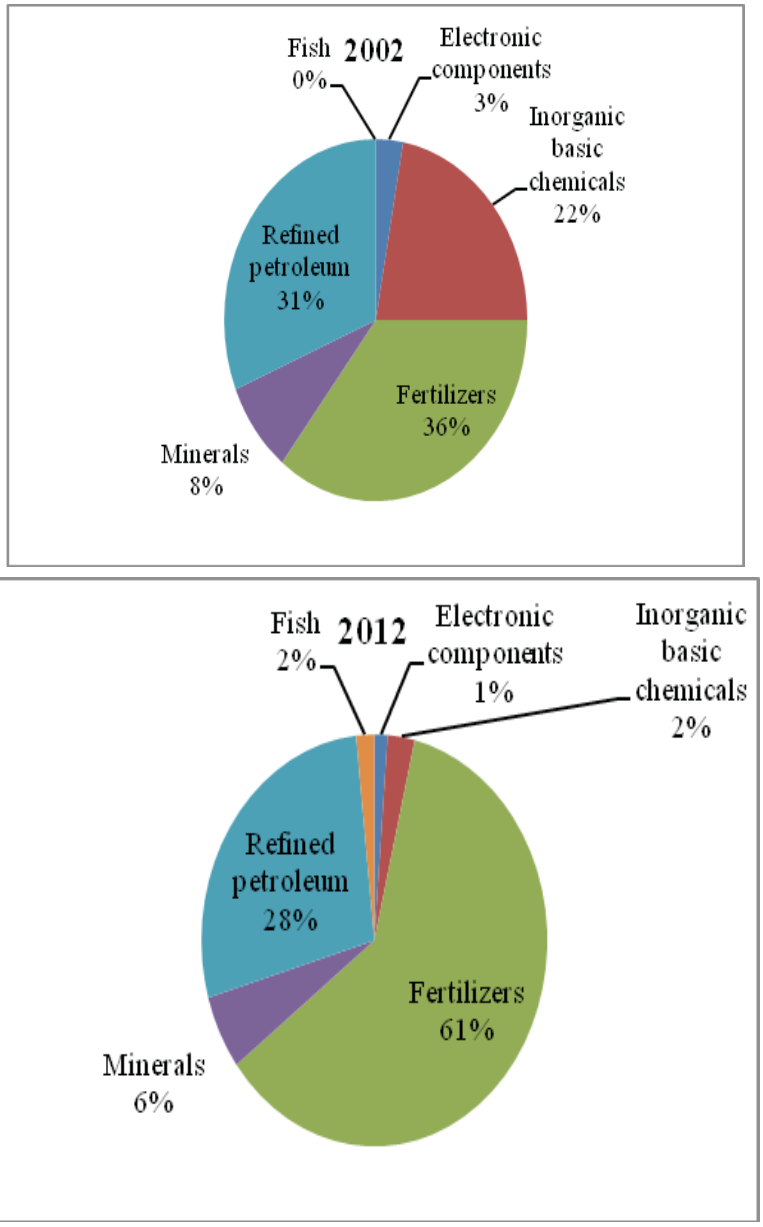
MOROCCAN IMPORT FROM BRAZIL (2002-2012)



Source: Chelem Database, author's calculation

FIGURE 5

MOROCCAN EXPORT TO BRAZIL (2002-2012)



Source: Chelem Database, author's calculation

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commercialized were fertilizers, naphtha, sardines and electric material. On the other hand, Brazilian exports to Morocco amounted to US$221 million, a decline of 29 per cent in relation to the first half of 2013. The main products were sugar, corn and soy.[11]

IV. BRAZILIAN DIRECT INVESTMENT IN MOROCCO

In contrast with its important position in Morocco's external trade, Brazil figures among the countries with limited and irregular investments flows to Morocco. Brazilian investments in Morocco stood at a very low level. In spite of the fact of Brazil' substantial investments abroad, no investment was undertaken in Morocco by Brazilian firms between 2001 and 2006. In 2010, Brazil invested only 1.9 million dirhams, ranking the 50th investor in Morocco. Thus, of the $11.5 billion that Brazil invested abroad in this year, Morocco received only $0.2 million.

The largest Brazilian investment in Morocco was recorded in 2008 in the amount of 504.4 million dirhams, representing 1.8% of the total FDI received by Morocco during that year. This investment was part of the joint venture "Jorf Lasfar Partnership" between OCP and Bunge Fertilizers of Brazil for the production of fertilizers.[12]

In 2012, Brazilian investment in Morocco totalled 4 million dirhams, representing just 0.01 per cent of total FDI received by Morocco. The recent withdrawal of Bunge Fertilizers from its joint venture with OCP cast a shadow on the future collaboration of both countries in fertilizers production.

The low level of Brazilian investments in Morocco contrasts with the dynamics of Morocco as an attractive FDI destination, both from developed and emerging countries. Considering the high improvement of Morocco's business environment, one of the explanations that could be offered is that the Brazilian firms seem less informed about the various business opportunities in the Moroccan Market. This corresponds with the limited impact of economic promotion structures in both countries on direct Brazilian investment flows toward Morocco.

Of course, the fierce competition within the Moroccan Market, especially from

[11] "Moroccan exports of phosphates down 12%," Brazil-Arab News Agency (ANBA), July 18, 2014. <http://www2.anba.com.br>.

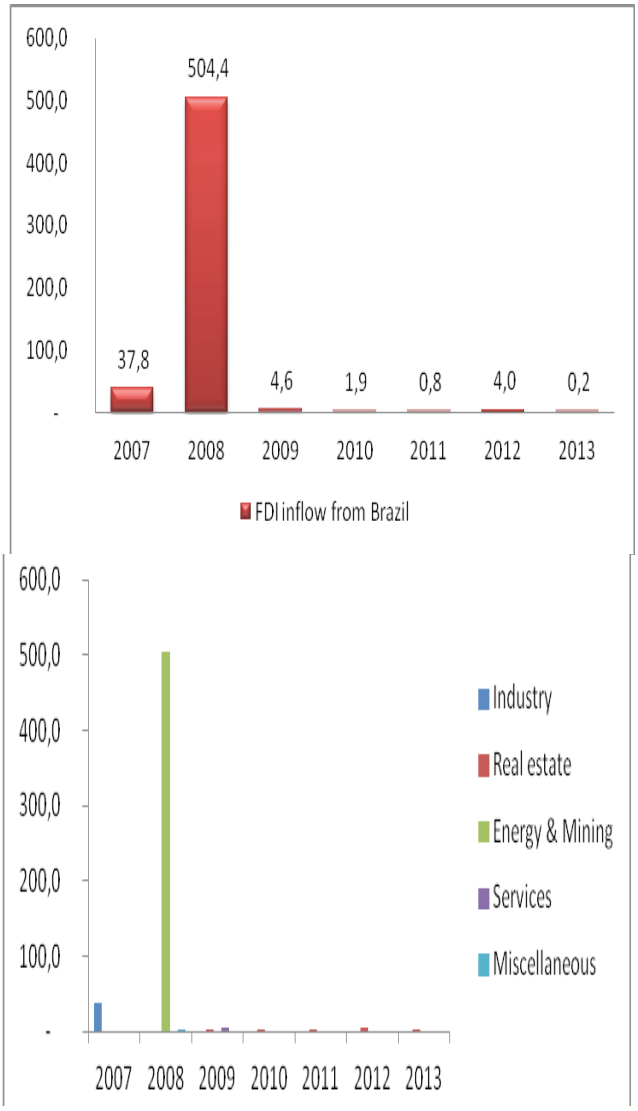
[12] This joint venture includes a production of sulphuric acid (1,125,000 ton/year); production capacity of 375,000 ton/year of the phosphate-acid plant; and a fertilizer production plant with a capacity of 300,000 ton/year.

FIGURE 6

FOREIGN DIRECT INVESTMENT FROM BRAZIN IN MOROCCO

(IN MILLIONS MAD)

(2007-2013)



Source: Oficce des Changes, author's

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European firms, which holds strong positions in many economic activities, could be considered as a constraining factor for Brazilian firms to embark on investment projects in Morocco. This type of situation can be resolved, however, through specific incentives, given the political will of the two countries to develop further bilateral cooperation.

V. MOROCCAN MIGRATION FLOW TO BRAZIL

Brazil has received in recent years a steady flow of young Moroccan immigrants who are encouraged by the economic and social opportunities that Brazil offers. It is estimated that 1,500 Moroccans live in Brazil. However, less than 500 are registered at the Consular Section of the Embassy of the Kingdom in Brasilia, while the rest hold Brazilian nationality.

Almost 90 per cent of Moroccan immigrants live in Rio de Janeiro, Sao Paulo and Curitiba, and the rest are distributed in Brasilia, Salvador, Fortaleza and Manaus in the north. Most Moroccan immigrants are involved in trade, industry and services. A limited number of Moroccan professionals are involved in engineering, administration or higher education.

In 2010, Brazil-Morocco Association of Friendship and Cooperation was established to strengthen the long-standing relations between the two communities. This represents an important platform to promote economic, social, human and cultural exchange between the two communities.

VI. ASSESSMENT OF MOROCCAN-BRAZILIAN RELATIONS

A cursory review of Moroccan-Brazilian cooperation shows that their bilateral relations have remained below the expectations proclaimed by their mutual diplomatic discourse. The weakness of the institutional framework for such cooperation and the lack of efforts for closer economic relations contrast sharply with the willingness of both countries to translate their common assets, such as history and geography, into a transatlantic agreement.[13] The following are some factors to be considered:

[13] Statement made by Said Moufti, Research Director at the Royal Institute for Strategic Studies at a conference on "Les relations Maroc-Brésil," organized by Ecole Hassania des travaux publics (EHTP) in Casablanca, March 19, 2014.

1. A POSITIVE DYNAMIC OF POLITICAL RELATIONS BUT MUCH HAS TO BE DONE AT THE TRADE LEVEL

Moroccan-Brazilian relations have always been perceived through the cultural-historical perspective drawn from their Portuguese heritage. Recently, political and economic factors have emerged as a part of the perception that each country holds vis-à-vis the other. The evolution of their bilateral relations reflects the diplomatic ties between the two countries.

Brazil seems to adjust its perception of Morocco through a pluralistic vision, combining economic, political, social and cultural dimensions. This perception is, to some extent, consistent with the image that Brazil holds of itself at the international level. Brazil is defined as a multicultural democracy, which has achieved political transition successfully. Therefore, Brazil represents a model for a country such as Morocco, which has pursued the same process. This self-perception is a fundamental element of the Brazilian diplomatic action that is engaged in the construction of an image that presents Brazil as a partner for democracy and a politically stabilizing power.

Brazil considers Morocco a reliable partner and a country with multiple identities: Atlantic, Arab, African, and Mediterranean. The progress made by Morocco as reflected in the last constitutional reform has been supported by Brazil. Morocco is considered as a strategic interlocutor in the Arab world, particularly with regard to its democratic progress.

From the Moroccan perspective, there is an increasing awareness among decision-makers that foreign policy may no longer be structured through geopolitical considerations, but should increasingly take into account geo-economic mutations as a part of a strategy of diversification of partnerships.[14] Therefore, taking into account recent developments in the international and regional environments, some key points should be highlighted regarding Moroccan-Brazilian relations:

First, recognizing Brazil's international role in light of its global economic standing and its leadership in South America. This position opens areas of cooperation for Morocco by creating opportunities for building and promoting a multipolar world system. Second, Strengthening relations with Brazil through political dialogue and concluding a trade agreement with Mercosur would lead to

[14] This aspect has been highlighted in various speeches addressed by H.M. King Mohammed VI on Moroccan diplomacy; the latest was delivered on August 30, 2013.

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mutual benefits in the context of South Atlantic Dialogue. And third, pursuing bilateral relations by increasing the number of meetings of the Joint Committee and official visits. Indeed, the last visit by HM King Mohammed VI to Brazil on November 26, 2004 opened up a new chapter in bilateral relations. Both countries expressed their support for a balanced international order, rather than one dominated by a single superpower. They also agreed to coordinate their efforts toward a multilateral approach to global governance. Morocco supported the proposed reforms of the UN system and Brazil's candidacy for membership at the Security Council. Both countries also agreed to provide mutual support for their respective candidates in international organizations.

With respect of South-South cooperation, the two countries agreed to coordinate their actions in various forums, such as the Africa-South America Process (ASA), the Summit of South American and Arab Heads of State (ASPA), and the Zone of Peace and Cooperation Atlantic South (ZPCAS). The objective of these forums is to promote stronger partnerships between Arab and African countries, and those of South America.

2. BRAZIL'S NEUTRAL POSITION REGARDING THE ISSUE OF MOROCCAN SAHARA

Brazil does not recognize the "Polisario" and maintains a policy based on neutrality and peaceful resolution of the Sahara issue within the UN framework. Brazil abstained from voting on this issue when it was brought before the UN General Assembly and the Security Council. Nevertheless, the pro-Polisario activism of some Brazilian members of parliament has provided an opportunity for Algeria to exert pressure on Brazil. Indeed, Latin American socialist parties have called for the recognition of Polisario during the Brazilian Socialist Party conference held in Brasilia on December 6, 2011.[15]

3. STRATEGIC AGENDAS WITH SIMILAR PRIORITIES

Brazil ascended to the global stage thanks to its economic standing and the strategic orientation of its foreign policy. Therefore, Morocco has shown great interest in developing closer relations with the only Latin American country with the status of international power. In fact, relations between Morocco and Brazil put both countries on the same path in their respective regions. Brazil is involved in

[15] « Les partis socialistes d'Amérique latine appellent le Brésil, l'Argentine et le Chili à reconnaître la RASD », December 6, 2011, <http://www.spsrasd.info>.

South America where it maintains leadership. Similarly, Morocco aims to preserve its geopolitical position in the Arab and Mediterranean region while trying to establish its leadership in Africa.[16]

The two countries have a common strategic maritime space, which allows them to serve as a bridge between Africa and the Arab world, on the one hand, and the South American sub-continent on the other. The two countries could build an important strategic partnership. Their agenda seems to have similar regional priorities, based on the diversification of their international relations.

4. A POLITICAL AND LEGAL FRAMEWORK THAT SHOULD BE ENHANCED FURTHER

The political and legal framework that governs Morocco and Brazil's bilateral relations is quiet rich. Nevertheless, in spite of the several agreements that have been signed, no agreements of strategic importance have been concluded, such as strategic dialogue, investment agreement or security cooperation.

First, the lack of a common statement with respect of their strategic interests deprives both countries of significantly leveraging their relationship. The rate of high-level mutual visits is discontinuous or unbalanced. For example, the visit of Brazilian President to Morocco has been postponed several times. The institutional mechanism of bilateral relations also seems to have stalled. In fact, no meeting of Moroccan-Brazilian Joint Committee has taken place since the first one held on 24 June 2008. In contrast, the Algerian-Brazilian Joint Committee has met four times since 2007.

Second, the absence of a bilateral investment treaty explains, among other things, the limited Brazilian investment flows to Morocco. Agreements that relate to the promotion and protection of investments, as well as the avoidance of double taxation, are essential for the expansion and diversification of trade and investment between the two countries.

Lastly, the lack of security cooperation has an adverse effect on the prospect of a genuine partnership between the two countries. Both countries are parts of the Atlantic Ocean space, and therefore concluding a security cooperation agreement would enhance cooperation in safety and maritime security.

[16] This can be perceived through the various agreements concluded with sub-Sahara African countries as well as the investment of Moroccan firms in several countries of west and central Africa in "Economic Report, Finances law", Ministry of Economy and Finance, 2014.

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5. WEAK INVOLVEMENT OF NON-STATE ACTORS

A close look at Moroccan-Brazilian relations reveals lack of involvement of non-state actors and large industrial and financial groups from both sides. Apart from the limited activities of the Parliamentary Friendship Group Morocco-Brazil, the presence of OCP in Brazil, and certain actions limited to some decentralized cultural cooperation, there are no significant parallel actions through which both countries could establish and sustain their mutual interests and the convergence of views and strategic outlooks.

VII. LOOKING TOWARD THE FUTURE

In spite of increased trade between Morocco and Brazil, their relations have not reached their potential. Brazil's tremendous natural resources and the size of its market make it a great potential trading and investment partner for Morocco. Whether in primary production (agriculture, energy), or in industrial production, Brazil holds significant competitive advantages. Therefore, Brazil could serve as a source of imports at competitive prices, while offering Morocco a platform to enhance its exports. Brazil's regional position could serve Morocco as a gate to the wide market of Latin America, particularly the Mercosur member countries.

On the other side of the Atlantic, Morocco offers Brazilian companies the opportunity to invest in the inter-continental markets where it could serves as an export platform at the crossroads of European, African and Arab markets. Morocco has concluded a number of free trade agreements, which could be used beneficially by Brazilian firms looking to extend their international operations.

Expanding trade relations with Brazil could be beneficial for Morocco because this would reduce its dependency on trade with Europe. The 2008 global financial crisis has shown the severe impact of dependency on export markets. Having new partners in emerging countries creates new networks that would lessen such dependency and bring more balance into the international trading system.[17]

1. MOROCCAN DOMESTIC MARKET POTENTIAL AS A LEVER TO PROMOTE BILATERAL TRADE AND INVESTMENT RELATIONS

The Moroccan domestic market is experiencing rapid growth, which makes it

[17] Idrissi, B. I., «Le partenariat Euromed face aux nouvelles donnes concurrentielles internationales», (PhD dissertation, Université de Perpignan, 2009).

attractive for both local and foreign firms. This situation reflects the dynamic of economic convergence on which Morocco has embarked in terms of its economic modernization and increased revenues. Ambitious sectorial strategies, particularly "Morocco Green Plan" and the "New Industrial Compact" are also suitable platforms for investment by Brazilian firms, especially with view to important incentives provided by the Moroccan government.

Morocco has all the assets needed to attract Brazilian investments. It has an appropriate business climate and a suitable infrastructure that improves steadily. Partnerships may include sectors such as the car industry, agro-business, chemicals and pharmaceuticals, as well as the information technology sector.

Morocco wishes to increase agricultural GDP to US$17 billion (140 billion dirhams) by 2020. In 2013, the sector generated US$11.56 billion (95 billion dirhams). A strategy was announced in 2008 that aimed to promote Moroccan agribusiness with new investments of US$1.1 billion (9 billion dirhams) by the end of the decade of 2020.

With view to expanding production, Morocco started leasing land for agriculture projects. Participation is open for both Moroccan and foreign investors. At the present, 100,000 hectares of lands have been leased, and another 600,000 hectares are to be leased by 2020. At the present, 31 foreign projects have been approved with a total land lease of 7,800 hectares. The leased land may be used for a period of more than 40 years, with the possibility for contract renovation, and the conditions for participating in the process are the same for Moroccans and foreigners.

The aircraft industry is considered among the emerging sectors in Morocco. In this area, Brazilian company Embraer[18], the world's third aircraft manufacturer (after Airbus and Boeing) could benefit greatly from expanding its current investment in Morocco.[19]

2. EXPORT POTENTIAL FOR MOROCCAN FIRMS

Except for the phosphates sector, the current state of development of the Moroccan economy does not allow Moroccan firms to invest directly in the Brazilian market. Therefore, available opportunities are limited to exports.

[18] Embraer delivered over 50 planes to the following Arab countries: Egypt, Jordan, Libya, Bahrain, Oman, Saudi Arabia and Lebanon.

[19] Among the parts produced in Morocco for Brazilian aircrafts are devices to reduce engine noise by up to 90 per cent, which are installed in the 170 models.

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Currently, Morocco's main agricultural products are oranges, milk, beef and vegetables. Olives offer an export opportunity for the Brazilian market, which is a net importer of olive oil. For example, the Meknes region produces various types of olives (Moroccan, Greek, Spanish and Italian) with the best quality olive oil that meets the highest international standards. Currently, most of the Moroccan olive oil is exported to the United States. Morocco could have a share of the Brazilian market, particularly in the high-end olive oil segment.

Other sectors that hold great potential for cooperation, in particular, are agriculture, fisheries and bio-energy. Brazil is a major agricultural powerhouse with great experience and huge potential in the sector, and therefore could serve as a strategic partner for Morocco's Green Plan and Plan Halieutis. Morocco could also target the Brazilian market for other industrial components, especially electrical cables, car industry components, thus offering new markets for the emerging Moroccan industry.

3. THE TOURISM SECTOR

The Moroccan real estate market could attract Brazilian investors and tourism professionals who could contribute to the creation of an integrated tourist market beneficial to both sides. A new direct airline operated by the Royal Air Morocco (RAM) connecting Casablanca and Sao Paulo was opened on December 20, 2013, making RAM the 4th African airline to fly to Sao Paulo. The direct line would help establish closer economic links to boost economic cooperation, trade, investment and tourism between the two countries. Morocco is already the first African destination of Brazilian tourists with nearly 15,000 Brazilian visitors in 2012. In 2013 Moroccan visitors to Brazil numbered 2,900, an increase by more than 15 per cent compared to 2012.[20]

The importance of tourism rests on its ability to have a positive effect on other economic sectors, particularly the service sector that accounts for a substantial part of global trade.[21] This effect could be amplified further if placed within a regional context in which both countries would grasp opportunities in the Maghreb and South America markets.

[20] Statement made by Frederico S. Duque Estrada, Brazil's Ambassador to Morocco at the conference organized by Ecole Hassania des travaux publics (EHTP) in Casablanca on "les relations Maroc-Brésil," March 19, 2014.

[21] UNCTAD Statistics, published in April 14, 2014, <http://unctad.org/en/pages/Statistics.aspx>.

4. MOROCCO AS KEY OF ENTRY TO REGIONAL MARKETS

The importance of Moroccan phosphate exports to Brazil, coupled with the free trade agreements between Morocco and the United States, on one hand, and between Morocco and the European Union, on the other, explain the interests of Southern Common Market (Mercosur) in negotiating a similar agreement with Morocco. Negotiations started in November 2004 to establish a zone of progressive free trade with Mercosur. Once concluded, the agreement would ease trade barriers and open new opportunities for both countries.

Indeed, Morocco has concluded a set of important free trade agreements with several developed, developing and emerging countries. These agreements provide Morocco with access to a global market of almost one billion consumers. This permits Morocco to enjoy a central position, highly attractive for Brazilian firms looking for business opportunities in Africa and the Arab markets. Morocco's proximity to Europe is another asset, particularly with respect of its advanced status at the European Union.[22]

Other significant assets could facilitate the status of Morocco as an export platform serving neighbouring markets. This platform is supported by the quality of Moroccan labour force, its infrastructure and easy connections, as well as the positive image that Morocco enjoys in Africa and the Arab world.

5. THE ROLE OF NON-STATE ACTORS

Several institutions could facilitate the expansion of relations between the two countries and provide support for strengthening their economic cooperation. These include, in particular: Arab-Brazilian Chamber of Commerce in Sao Paulo that promotes increased trade between Arab countries and Brazil; Moroccan-Brazilian Chamber of Trade, established in 2007; and Honorary Consuls of Morocco in Brazil (Sao Paolo, Rio de Janeiro, Florianópolis, Curitiba, Belo Horizonte and Vitoria), who contribute to boosting cooperation ties.

It is essential for both countries to promote relationships between their respective civil societies in order to create a sustainable base for their cooperation. Agreements do not create trade flows; close relationships between business and

[22] Idrissi, B.I., Analysis of Morocco-European Union partnership within the framework of the advanced status: Main features and challenges," Europautredningen, Norway, Report n°21, September 2011

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non-state actors do. Therefore, it is important to expand relations among private sector participants, civil society organizations and representative institutions in order to translate effectively the political will into economic outputs within a win-win strategy.

FOREIGN FIGHTERS AND JIHADISTS: CHALLENGES FOR INTERNATIONAL AND EUROPEAN SECURITY

Inmaculada Marrero Rocha[1]

ABSTRACT: Over the past three years the number of foreign fighters either resident in Europe or of European nationality fighting in conflicts in Syria and Iraq has increased. Most of them share radical Islamist religious motivations, and many States and international institutions classify them as terrorists or potential terrorists. In this study we aim to identify and characterize the phenomenon of foreign fighters starting from a historical perspective until reaching their impact on current international security relations. This work also analyses the causes why some groups of foreign fighters might pose a greater danger to national security than in earlier periods, and the reasons why the increase in the number of foreign fighters in armed conflict generates a series of changes in conflictual international relations. Finally it analyses the fundamentals of the measures proposed by the Security Council, the European Union and international cooperation forums to deal with the danger posed by foreign fighters of European origin, especially those proposals that impose sanctions as well as those that prefer to tackle the problem from a preventive and rehabilitative perspective of the individual.

KEYWORDS: Foreign figther, jihadist, international security, european security.

COMBATTANT ÉTRANGER ET DJIHADISTES: DÉFIS DE LE SÉCURITÉ INTERNATIONALE ET EUROPÉENNE

RÉSUMÉ: Le nombre de combattants étrangers de nationalité ou résidence européenne qui se sont engagés dans les conflits en Syrie et en Irak a augmenté au cours des trois dernières années. La grande majorité d'entre eux partagent des motivations religieuses islamistes radicales, et ils sont à ce titre qualifiés par plusieurs États et institutions internationales de terroristes ou de potentiels terroristes. Dans cette étude, nous prétendons identifier et opérer une classification du phénomène des combattants étrangers, à partir d'une perspective historique et en prenant en compte son influence sur les relations internationales actuelles en matière de sécurité. De même, nous analyserons les causes pour lesquelles certains groupes de combattants étrangers pourraient représenter aujourd'hui un plus grand danger pour la sécurité nationale que dans les époques passées, et les raisons pour lesquelles cet accroissement du nombre de combattants étrangers dans les conflits armés génère une série de changements dans les relations conflictuelles internationales. Enfin, nous analyserons les fondements des mesures proposées par le Conseil de Sécurité, par l'Union Européenne et lors de forums internationaux de coopération pour faire face au danger

[1] Assistant/Tenured Professor of International Relations, University of Granada.

que représentent les combattants étrangers d'origine européenne, notamment les propositions qui revêtent un caractère de sanction ainsi que celles qui préfèrent affronter le problème selon une approche préventive et de réhabilitation de l'individu.

MOT CLÉS: Combattant étranger, djihadisme, sécurité internationale, sécurité européenne.

COMBATIENTES EXTRANJEROS Y YIHADISTAS: RETOS PARA LA SEGURIDAD INTERNACIONAL Y EUROPEA

SUMARIO: En los últimos tres años se ha incrementado la cifra de combatientes extranjeros de nacionalidad o residencia europea que luchan en los conflictos de Siria e Irak. La mayor parte de ellos comparten motivaciones religiosas islamistas radicales, y muchos Estados e instituciones internacionales los califican de terroristas o potenciales terroristas. En este estudio pretendemos identificar y tipificar el fenómeno del combatiente extranjero partiendo de una perspectiva histórica hasta llegar a su incidencia en las relaciones de seguridad internacionales actuales. Igualmente se analizarán las causas por las que algunos grupos de combatientes extranjeros podrían suponer un mayor peligro para la seguridad nacional que en épocas anteriores, y las razones por las que el incremento del número de combatientes extranjeros en conflictos armados genera una serie de cambios en las relaciones conflictuales internacionales. Por último analizaremos los fundamentos de las medidas propuestas por parte del Consejo de Seguridad, la Unión Europea y foros de cooperación internacionales para afrontar el peligro que suponen los combatientes extranjeros de origen europeo, especialmente aquellas propuestas que tienen un carácter sancionador y, también, las que prefieren afrontar el problema desde una perspectiva preventiva y rehabilitadora del individuo.

PALABRAS CLAVES: Combatiente extranjero, yihadista, seguridad internacional, seguridad europea.

I. INTRODUCTION

Barely a year after the outbreak of the war in Syria, a number of research centres, think tanks and cooperation forums, many with important ties with the European Union and its Member States, focused much of their efforts in analysing the phenomenon of "foreign fighters" from very different points of view, such as: their origin, motivation, recruitment mechanisms and especially the consequences for European security of their countries of origin of a new generation of fighters of European nationality or residence once they return from conflict areas in which they have been fighting[2]. After an extensive review of scientific articles, analyses

[2] Without seeking to be exhaustive, outstanding among the research centres and intergovermental cooperation forums which have been intensively involved recently in this matter are: Foreign Policy Research Institute, The Soufan Group, Global, Counterterrorism Forum, Radicalization Awareness Network, International Center for Counter-Terrorism, King College, International Center for the Studies of Radicalization and Political Violence, Institute for Strategy Dialogue.

and technical reports that have been prepared on the issue in record time, we can draw the following preliminary conclusions: 1) most of these analyses consider that foreign fighters may be a real threat to the safety of their home countries, although there is no agreement on the nature, size and actual extent of the danger posed; 2) in recent times the figure of the foreign fighter has tended to be assimilated with the terrorist; 3) and the proposals made to deal with the danger posed by foreign fighters obviate the difficulties in tackling an investigation that offers accurate data on the type, profile, motivation and development of foreign fighters. It also sets out the difficulties in adapting to the idiosyncrasies of each of the Member States of the European Union, above all, those think that this issue has one dimension, primarily of national security.

Taking into account the review of the latest analyses on this issue, examining existing doctrine on the phenomenon of foreign fighters, before the wars in Syria and Iraq, and the study of the treatment the Security Council and the United Nations Member States of the European Union have given to this issue, in these pages we intend to address the phenomenon of foreign fighters starting from a historical perspective to reach their impact on current international security relations. In a second section, we will identify the reasons why some groups of foreign fighters from Europe today could pose a greater danger to national security than in the past, leading to a greater concern among national and international institutions. Likewise, we will examine the reasons why the increase in the number of foreign fighters in armed conflicts generate a series of changes in conflicting international relations, which affect the Member States of the European Union and virtually all States of the international community. Finally, the work addresses the fundamentals of the measures and proposals being developed by the Member States of the European Union to neutralize the danger posed by foreign fighters of European origin.

II. FOREIGN FIGHTERS AND JIHADISTS

Foreign fighters are considered to be those who join an insurgency during a civil conflict in countries of which they are not nationals[3]. Thomas Hegghammer adds that they have no previous ties to the state or the various warring factions, do not belong to any official military organization and are not profit-making, which

[3] Malet, D., *Foreign Fighters: Transnational identity in Civil Conflicts*, Oxford University Press, New York, 2013, p. 9.

excludes them from the definition of mercenaries, although there is no evidence that foreign fighters do not receive pay as soldiers[4]. This definition excludes exiles and refugees from the country where the conflict develops and who return to join the insurgency. In principle, the foreign fighter can be differentiated from the terrorist, who often acts in an area outside the armed conflict and against civilians[5].

However, since 2012, the flow of foreign fighters to Syria has increased substantially, which has led to the inclusion of other figures such as jihadi or terrorist in the category of foreign fighters. The confusion over the term foreign fighter with terrorist and jihadist is due in large part to the stereotype that the media offer. A study on Italian right-wing foreign fighters in Ukraine by Agenfor Media, an Italian agency for investigative journalism, shows that radicalization is an ancient, global phenomenon that is not only associated with Islam[6]. Islamist narrative is only part of a broader phenomenon, and if we do not understand that reality, we can hardly know the roots of the problem and devise effective policies of de-radicalization. Therefore, we must take into account the different circumstances of foreign fighters, which is a phenomenon linked to radicalization, but also appreciate that radicalization can have secular and nationalist roots and, at other times, the roots are religious, whether Jewish (fighters in the conflict in 1948 in Israel), Christian (as Sutoro Christian militias in Syria or the Christian group Dwekh Nawsha, fighting in Iraqi Kurdistan) or Islamist (Afghanistan, Burna / Myanmar, Bosnia, Libya, Kashmir, Syria , etc.)[7].

David Malet, a professor of Colorado State University (USA) addressed the phenomenon of foreign fighters from a historical and comprehensive perspective (*The Foreign Fighter Project*), concluding that foreign fighters are neither a new

[4] Canny, N., "A Mercenary World: "A Legal Analysis of the International Problem of Mercenarism", *University College Dublin Law Review*, Vol. 3, 2003, pp. 33-56 and Liu, H. J., "Mercenaries in Libya: Ramifications of the Treatment of 'Armed Mercenary Personnel' under the Arms Embargo for Private Military Company Contractors", *Journal of Conflict and Security Law*, Vol. 16, Nº 2, 2011, pp. 393-319.

[5] Hegghammer, T., "The Rise of Muslim Foreign Fighters. Islam and the Globalization of Jihad", *International Security*, Vol. 35, Nº 3, 2010/2011, pp. 57-58.

[6] "Italian Right Wing Extremists As Foreign Fighters in Ukrania", *Foreign Fighters: A Critical Analysis, Annex 2*, Agenfor Media, 2014, <http://www.agenformedia.com>.

[7] In the final Report of the Europeo EURAD project(www.euradinfo.eu) there is a large number of interviews with non-Islamist foreign fighters who are now fighting for Christian militias Dwekh Nawsha on the Kurdish side. Likewise there are interviews with an interesting number of Italian soldiers fighting in the ranks of Ukrainian forces against pro-Russian independents (Bianchi, S., *Is Islamism a Threat? A New Comprehensive Model to Counter the Obscure Heart of Radicalism,* Agenfor Italia, EURAD Project, 2015, pp. 26-35).

phenomenon nor exclusively Islamist[8]. Malet identified the first foreign fighters in the War of Independence of Greece in 1820, in which Lord Byron fought, through to the pan-Arab volunteers who fought against the Zionist movement in the 1940s to the Spanish civil war, which featured recruitment centres in Moscow and Paris, among others, from where between 35,000-50,000 volunteers departed and entered Spanish territory to fight alongside either the Republican forces or the Franco Nationalists[9].

At present, large contingents of Western fighters are fighting without religious motivations in the Ukrainian conflict, both on the side of the Ukrainian government forces and on the pro-Russian side; others are supporting Christian minorities in Syria and Iraq They are participating in the conflict assisting Kurdish forces in northern Iraq, including foreign fighters from Shi'ite Iran, Iraq or Lebanon in Syria fighting alongside the forces of Bashar al-Assad[10]. However, certain common aspects can be found between current foreign fighters and European leftists or liberals who fought in the Republican ranks in the Spanish civil war, such as the disappointment of thousands of young people unemployed after World War II, many of them descendants of second-generation migrants, who suffered from the stagnant economy, lack of integration and opportunities[11]. And although the contingent of foreign fighters in Syria is not the most numerous throughout history[12], today it receives most of the media, academic-scientific and political

[8] *The Foreign Fighter Project* (2007), <http://www.foreignfighter.com> and *Foreign Fighters: Transnational Identity in Civil Conflicts* (2009), <http://www.proquest.com/products_umi/dissertations>.

[9] Levenberg, H., *Military Preparations of the Arab Community of Palestine, 1945-1948*, Frank Cass, Portland, 1993, pp. 41-43 and Johnstons, V. B., *Legions of Babel: The International Brigades in the Spanish Civil War*, Penn State University Press, University Park, 1967, p. 37.

[10] Barrett calculates that the contribution of combatants from Hezbollah to help the Assad regimen was between 3000-4000 individuals at the end of 2014 (Barrett, R., *Foreign Fighters in Syria*, The Soufan Group, June 2014, p. 11).

[11] In Mendelsohn, B., "Foreign Fighters-Recent Trends", *Orbis*, Spring 2011, pp. 190 -191.

[12] Among the analyses published on armed conflicts with a high number of foreign fighter, the following can be recommended: Davis, A., "Foreign Combatant in Afghanistan", *Janes's Intelligence Review*, Vol. 5, Nº 7, 1993, pp. 327-331; Bruce, J., "Arab Veterans of the Afghan War", *Jane's Intelligence Review*, Vol. 7, Nº 4, 1995, pp. 178-180; Brown, V., "Foreign Fighters in Historical Perspective: The Case of Afghanistan, in Brian Fishman (ed), *Bombers, Bank Accounts and Bleedout: Al-Qaida Road In and Out of Iraq*, West Point, New York, Combating Terrorism Center, 2008; Kohlmann, E. F., *Al-Qaida's Jihad in Europe: The Afghan-Bosnian Network*, Berg, London, 2004; Schindler, J., *Unholy Terror: Bosnia, al-Qaida, and the Rise of Global Jihad*, Sta. Paul, Minn: MBI, 2007; Batal Al-Shishani, M., *Rise and Fall of Arab Fighters in Chechnya,* Jamestown Foundation, Washington, 2006; Williams, B. G., "Al-lha's Foot Soldiers: An Assessment of the Role of Foreign Fighters and Al-Qaida in the Chechen Insurgency", in Moshe Gammer (ed.), *Ethno-Nationalism, Islam, and the State of Caucasus: Post-Soviet Disorder*, Routledge, London, 2007, pp. 156-178; Hewitt, Chr. y Kelley-Moore, J., "Foreign Fighters in Iraq: A Cross-

attention for several reasons[13].

In the first place, since the 1980s, the number of foreign fighters for Islamist religious reasons has increased in conflicts such as Bosnia, Kashmir, Chechnya, Afghanistan, Libya and Syria, with figures ranging from 10,000 to 30,000 individuals. Moreover, it is the group that has participated in the largest number of far-reaching, international conflicts such as Iraq, Syria and Afghanistan. They have transnationally recruited networks, occasionally connected or led by international terrorist groups like Al-Qaeda or, now, Islamic State, which is what constitutes the major threat to current international society. However, it is a rather heterogeneous group so far as its ideology, support and aspirations are concerned, if we bear in mind the movement from the Six-Day War to the present conflict[14]. For Michael Noonan, we are experiencing a third great wave of Muslim foreign fighters: the first wave is that consolidated as a result of the invasion of Afghanistan and the second is the product of conflicts such as Bosnia-Herzegovina and conflicts in Chechnya or Kashmir. This third wave has a network of seasoned fighters, who are based in countries such as Algeria, Egypt, Bosnia-Herzegovina and Chechnya and who, through the mass media offered by Al-Qaeda and others have been able to improve the fabric of recruitment[15].

In the second place, the most recent analyses show the war in Syria as an incubator of a new generation of foreign fighters, considering that about 12,000 men and women from 81 different nationalities have moved to this area to take part in hostilities, of whom it is estimated that between 2500-3000 are Western nationals, mostly European. Of that amount, they calculate that at least 2,500 have European nationality, but the vast majority of foreign fighters in Syria and Iraq are from neighbouring countries[16]. Gilles de Kerchove, coordinator of the European

National Analysis of Jihadism", *Terrorism and Political Violence*, Vol. 21, Nº 2, 2009, pp. 211-220.

[13] Hegghammer, T., "The Rise of Muslim Foreign Fighters. Islam and the Globalization of Jihad... *cit.*", p. 53.

[14] Peeters, B., *Choosing Battles. A Cross-Case Analysis of Seven Muslim Foreign Fighters Mobilization (1980-2014)*, Masterthesis, Utrecht University, 2014.

[15] Noonan, M. P., *The Foreign Fighters Problems, Recent Trends and Case of Studies. Selected Essays*, Foreign Research Institute, Philadelphia, 2011.

[16] Rand, D. and Vassalo, A., "Bringing the Fight Back Home. Western Foreign Fighters in Iraq and Syria", Center for New American Security, *Policy Brief,* August 2014 and Noonam, M. P., "15,000-Plus for Fighting: The Return of The Foreign Fighters", *War on the Rocks*, http.://warontherocks.com/2014/10/15000-plus-for-fighting. Other equally alarming numbers are those given by the *International Center for Counter-Terrorism* of The Hague, when it announced that the Westerners displaced in the Syrian conflict 2013, between 120 and 150 were Australians (Zelin, A. Y., *ICSR Insight: Up to*

Union anti-terrorist struggle, estimated that in 2014, around 2,000 citizens of the 28 states of the European Union were fighting on the Syrian front, while a year earlier the figure was 500[17]. However, the differences in figures offered by the research institutes and think tanks generate much confusion about the accuracy of the data collection and the analyses developed on the basis of these. Some of these institutions are the *Foreign Policy Research Institute*, which estimated that between 6,000 and 12,000 foreign fighters are fighting in the conflict in Syria, while King's College London gave the figure of 8500, only five months before[18]. However these figures do not distinguish between foreign fighters who fight within moderate groups in the Free Syrian Army or individuals carrying out humanitarian work from those who have joined radical and extremist groups. In this sense James Clapper, Director of USA National Intelligence pointed out that the number of foreign fighters in Syria, in January 2014, was slightly higher than 7,000 individuals from 50 countries, well below that offered by other institutions for the same period[19]. These figures, in any event, are alarming when compared with the movement of Muslim fighters from Afghanistan and the Soviet invasion to the various conflicts in which they have participated until 2001, which is estimated at some 10,000[20].

It is evident that the differences in figures, and the extent of the range offered make us wonder what data are used to make these estimates and if they are checked in the field because to do so would be difficult and risky. In addition, in cases in which they have been checked, the falsity of some of these figures has been demonstrated. As Agenfor Media points out in its research, the English Institute,

11.000 Foreign Fighters in Syria; Steep Rise Among Western Europeans, The International Center for the Studies of Radicalization, 17 December 2013, <http://icsr.info/2013/12>).

[17] Counter-Terrorism Coordinator for the European Union, Briefing on 29 April 2014.

[18] Foreign Policy Research Institute, "Foreign Fighters in Syria and Beyond", FPRI, Symposium and Webcast, 23/11/2013 and <http://icsr.info/2013/12/icsr-insight-11000-foreign-fighters-syria-steep-rise-among-western-Europeanns/>. See also the numbers given by the *Institute for Strategic Dialogue* in 2014, which pointed out that between 6.000 and 1.000 foreign fighters go to Syria every year, of whom 10% were Europeans (Briggs, R. and Frenett, R., "Foreign Fighters, The Challenge of Counter-Narratives, *Policy Report*, 2014, pp. 8-9).

[19] "The great majority of foreign fighters appear to join extremist groups. One reason for this is the chronic failure of mainstream rebel forces to fight effectively and work together, which has led to maintain their influence rather than build a force capable of taking on the Syrian Army. By contrast, the more extreme groups, especially those with a high number of foreign fighters, are better resourced, fight harder, are more disciplined, and better motivated. This give them advantages, both against government forces and when competing for recruits or territory with other rebel groups. A further reason is that extremist group are better able to absorb foreigners who may not speak Arabic and generally have no military training" (Barrett, R., *Foreign Fighters in Syria, op. cit.,* p. 10).

[20] *Ibid*., p. 14.

International Centre for the Studies of Radicalization and Political Violence (ICSA), in April 2013 announced that eight Swiss citizens were fighting jihad in Syria[21]. In December of that same year, the same ICSR corrected the data, lowering it from 8 to 1 Swiss Islamist jihadist in Syria. Agenfor Media, in its desire to shed light on the veracity of the information, went to the field to locate the alleged Swiss Islamist, who happened to be a young Christian from Locarno, Johan Cosar, who had travelled to Syria to train Sutoro Christian forces, fighting alongside the Kurds against Al Qaeda and Islamic States. As a result of this investigation, it cannot be said that all those who go to Syria to fight are jihadists and join what are considered criminal or terrorist organizations. Many are struggling in insurgent groups who even have some international legitimacy. Hence, the question that we have to ask is: 'Where were these figures obtained?' The truth is that they were obtained from the Internet, and on the basis of the statements and propaganda of jihadi recruitment networks, such as the Islamic State. During the research conducted by Agenfor, through its EURAD project funded by the EU, it found that the interest of jihadist recruitment organizations is basically to inflate the figures to publicize the success of their cause and the enormous number of people that they are identified themselves as part of the community they represent. The use of inflated figures contributes to associate, immediately, the idea of foreign fighter with radicalization, extremism and terrorism, to generate moods and design specific policies without a basis of accurate information[22]. The most worrying aspect of the methodology

[21] The ICRS, in 2013, estimated that between 135-590 European foreign fighters travelled to Syria: Albania (1), Austria (1), Belgium (14-85), United Kingdom (24-134), Bulgaria (1) Denmark (3-78), Finland (13), France (30-92), Germany (3-40), Ireland (26), Kosovo (1), Netherlands (5-107), Spain (6), Sweden (5) and, in 2014, it estimated that at least 70 to 441 were still there. This represents between 7 and 10% of foreigners who are in the area (Zelin, AY, "ICSR Insight: European Foreign Fighters in Syria" http://icsr.archivestud.io/category/publications/insights, 2014) . The same year the same institution gave an impressive turn in the figures without explanation of the methodology used to obtain them, but indicated that information came from government, media and social groups of extremists who communicated over the network. In April of that year, the number of Europeans in Syria was between 135-590 and a few months later had become of between 396-1937, so that Europeans accounted for a total of 18% of foreign Fighters in the area (Zelin, AY, and David, A, "ICSR Insight: Up to 11,000 Foreign Fighters in Syria; Steep Rise Among Western Europeans", loc cit.). According to CNN, National Government, Pew Research, in 2014, about 800 Russian citizens, 700 French, 500 British, 300 Germans, 250 Belgians, 120 Dutch, 100 Americans, 250 Australians, 100 Danes, 50 Norwegians, 30 Irish and 30 Swedes were fighting in Syria <http://yle.fi/uutiset/cnn_finland_tops_list_of_countries_with_muslim_fighters_in_syria/7446816>. However, German authorities said in January 2015 that there were 600 Germans fighting in Syria, and have data of 378 individuals, of whom 89% were men and the mean age was 26.5 years (ICSR Insight: German Foreign Fighters in Syria and Iraq, <http://icsr.info/2015/01/icsr-insight-german-foreign-fighters-syria-iraq>.

[22] Agenfor media: "Foreign Fighters: Critical Analysis for Different Models of Exit Strategies. Ideas

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used in obtaining these figures is the fact that people who work for the police and judiciary in the European Union Member States cannot go to verify them and make decisions on the basis of data that magnify the situation and do not give information about all the profiles and realities of what we have defined as foreign fighters. In other cases, it is the data of the police and intelligence services which are doubtful, providing approximate figures, or these of think tanks, from people who have travelled or have returned to their countries. Anyway, potential European fighters enjoy greater ease of travel to Turkey as tourists and later go to Syrian territory, making it difficult for authorities to identify individuals who wish to join the Islamist insurgent groups.

In the third place, the fate of these fighters is difficult to control, especially because the stories that are known are very different and range from returning to their countries of origin, those who decide to settle in the country where the conflict takes place, forming a family, who are willing to go from conflict to conflict, wherever the Muslim community feels threatened and attacked, and finally, those who die in combat or as suicide bombers. Therefore, there is great uncertainty as to the vital sequence of individuals who decide to join the insurgency, since the information is rarely obtained firsthand, and in most cases comes from the content appearing on social networks, which are controlled and monitored by the very groups that recruit the fighters[23]. In this regard, what mainly alarms the authorities of European countries are the cases where their nationals fighting in Islamist groups subsequently return to their countries of origin with what intention the authorities cannot know. They fear that the number of foreign fighters of western origin, who have greater opportunities to travel without a visa, keep coming to Turkey and crossing the border with Syria to join the insurgents.

In short, foreign fighters of European nationality are not a new or homogeneous phenomenon. And it is not foreign fighters for ideological reasons who alert the police and intelligence services, nor those Europeans who during the 1980s and 1990s with an Islamist religious motivations who fought in the Afghan war against Soviet invasion, nor those foreign fighters who joined Bosnian Muslims, or those who fought in Kashmir. Only those who have moved to Syria and Iraq are foreign

for the Next Italian EU Presidency", Agenfor Italia, *Policy Paper*, 2014, núm. 3, pp. 6 and 7.

[23] These are the cases of Bekkay Harrach (alias Adu Talha al-Almani) and the American Abu Manosur al-Amriki who are known as media stars in their countries and in others (Mendelsohn, B., "Foreign Fighters-Recent Trends... *cit.*", pp. 199).

fighters and who have aroused the greatest fears for the safety of European states and national security; issues that will be addressed in the next section of this study.

III. IMPACT OF JIHADIST FOREIGN FIGHTERS ON THE INTERNATIONAL SECURITY AND ON THE MEMBER STATES OF THE EUROPEAN UNION

As shown in the previous section, Europeans with a Salafist Islamist ideology fall within the category of foreign fighters, who seek to move and who either go to or return from conflict in Syria and Iraq, who are identified as a threat to international security and specifically for European security. European fighters who are struggling in other countries and not religiously motivated, or are in Iraq and Syria fighting in defence of Christian minorities are excluded. Therefore, the analysis of the phenomenon and the proposed measures are limited to one type of foreign fighter distinguished by their nationality or place of residence (European), for their motivation to fight in a foreign country (Salafi Islamist, known as jihadist) and the geographical area to which they go to fight (Syria and Iraq), who seem to pose a danger to international and European security. These justify both the level of alarm and the nature of the steps which are being designed and taken to confront them, and they will be discussed in the final section.

1. FOREIGN FIGHTERS AND EUROPEAN SECURITY

The problems raised for European security by the group of jihadist foreign fighters is founded on the belief that the phenomenon transcends the activity of these individuals in the battlefield. That is, that the motivations which the individual had and which led to a radicalization process did not end when he was recruited, and were only the beginning of a life cycle that does not end when he reaches the battlefield, but will continue, entering a spiral of radicalization that may make him especially dangerous when he returns from Syria or Iraq. From there he may develop other activities that can further threaten European interests. First, he will become a recruiter of his compatriots and thus increase the number of foreign fighters in these conflicts by designing content or propaganda messages that reveal that the Muslim community in these countries is terribly threatened and needs help. Taking into account technological progress, a small number of foreign fighters returning to their European countries can have a major impact through social networks in

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their countries of origin[24]. Besides, his activity will be even more effective if he is able, boasting of his experience, to highlight the most positive aspects of joining other fighters who have been his family in the battlefield, thus enjoying elements of identity and integration which he had not enjoyed in Europe.

Second, foreign fighters of European nationality or residence return with a knowledge of military issues and can serve as trainers of new fighters, giving oxygen to the vicious cycle of radicalization. This training can even affect individuals who have no intention of going to fight in Syria, but wish to become "internal combatants" and carry out terrorist attacks on European soil. This hypothesis is not at all far-fetched, considering the cases of individuals of Australian, New Zealand or French nationality who underwent a process of radicalization virtually alone and who have attacked goods and people from their own countries, which the Islamic State has not hesitated to profit from and promote[25].

Thirdly, foreign fighters of European nationality can become part of the chain of command of jihadist terrorist organizations, in which Western citizens are of great strategic and logistical value, ready to threaten Western interests. This was the case of many combat veterans of the Afghan war against the Soviet invasion, whose recruitment activities had a major impact elsewhere, such as the civil war in Algeria, the emergence of jihadi groups in Egypt against the regime of Hosni Mubarak, the Chechen rebellion against Russia, military attacks on towns in the Philippines and Somalia or the war in Bosnia-Herzegovina. To these we should add that it was the veterans of the war in Afghanistan who created the Al-Qaeda organization and planned the 11 September 2001 attacks against the US, as well as a series of internal conflicts[26]. According to Barrett, although foreign fighters may

[24] Klausen, J. Y., "Tweeting the *Jihad*: Social Media Networks of Western Foreign Fighters in Syria and Iraq", *Studies in Conflicts and Terrorism*, Vol. 38, 2015, pp. 1-22.

[25] One of these examples was the attack of the Masked Brigade, affiliated to Al Qaeda, on 16 January 2013, in a gas central generating station in Tigantourine (Algiers), in which the terrorists took 800 hostages, 130 of whom were foreigners (Sinkkonen, T., "The EU's Toolbox for Responding to Terrorism Abroad", The Finnish Institute of *International Affairs Briefing Paper*, Nº 129, 2013). An even more direct blow was that perpetrated by Mohamed Merah, a young Frenchman of Algerian origin who turned to Salafism in prison and who made two journeys to Afghanistan and Pakistan where he was allegedly trained by al Qaeda. In March 2012 he killed seven people, French military and Jewish fellow citizens (Bakker, E., Paulussen, Chr. and Entenmann, E., "Dealing with European Foreign Fighters in Syria: Governance Challenges and Legal Implications", International Centre for Counter-Terrorism, *Research Paper*, The Hague, December 2013, p. 5). See, too, some examples in the Spanish case in Javier Jordan Enamorado, "The Evolution of the Structure of Jihadist Terrorism in Western Europe: The Case of Spain", *Studies in Conflict and Terrorism*, Vol. 37, Nº 8, 2014, pp. 654-673.

[26] Mendelsohn, B., "Foreign Fighters-Recent Trends", *loc. cit.,* pp. 191 and ff.

not return as terrorists to their respective countries, they will do so if they have been exposed to an environment marked by deep radicalization and violence, and their behaviour therefore is unpredictable, "The grinding brutality of the conflict will lead to yet more traumatized young men becoming accustomed to violence and ready to carry their binary worldview back home or a new front. Not only will they be able and willing to commit acts of terrorism, but they will also be in touch with a wide network of fellow fighters to whom they are likely to feel a greater sense of loyalty than to any other community"[27]. This was the case of Mehdi Nemmouche, a French citizen and author of the attack at the Jewish Museum in Brussels on 24 May 2014 in which four people died. He returned from Syria after fighting there for several years, marking the first time that the war in Syria hit directly in the territory of the European Union. Until July 2015, Nemmouche has been the only case of a foreign fighter returning and deciding to continue the jihad on European soil[28].

2. FOREIGN FIGHTERS AND INTERNATIONAL SECURITY

The recruitment of foreign jihadi fighters also poses a serious problem for international security in general, and may modify some important aspects of international security relations, which will influence the position of many States of the international community, especially Western ones.

The first of these aspects is the *increased potential military power of non-state actors*, which now disputes the monopoly of State forces that, so far, have kept it and used it to influence the conflicts that develop in the territory of other States by more or less direct support either to the insurgency or to government institutions. Foreign jihadist fighters are presented as an alternative to professional armies, acting mainly in asymmetric conflicts, where one of the parties is not a governmental actor but rather a guerrilla or insurgent group, using surprise attacks, sometimes suicide attacks with light weapons with minimal military training and combat experience.

Foreign fighters may also reduce the influence of States that have always been the protagonists of armed conflicts. Although not a new phenomenon, currently they have a higher prevalence in armed conflicts and in their classic actors than in the past, like the Cold War, when they constituted an instrument of interference by the international powers in internal conflicts, therefore they were not only tolerated

[27] Barrett, R., *Foreign Fighters in Syria*, *op. cit.,* pp. 7 and ff.

[28] Byman, D. and Shapiro, J., "Homeward Bound; Bosnia and Somalia", *ICCT Background Note*, June 2014 and Maher, S., "Foreign Fighters in Syria: A Threat at Home and Abroad?", *Chatham House*, p. 10.

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but facilitated the task, as happened during the invasion of Afghanistan, where foreign fighters became the best way to counter the progress of the USSR, short of a direct confrontation between the two superpowers[29]. Something similar occurred during the Bosnian conflict, and thanks to the incorporation of foreign fighters it was less difficult to push back the Serbian occupation and achieve a map of Bosnia-Herzegovina in accordance with European interests[30].

Second, foreign fighters *serve as global objectives of international terrorist groups*. The number of foreign fighters in Syria and Iraq without military knowledge and who are only useful as suicide bombers has grown, it could also be due to the difficulties in providing training for such a large number of volunteers. In Syria, the ratio of foreign fighters of European nationality and residence with groups considered terrorist such as Ahrar al-Sham, Jabhat al-Nusra and the Islamic State, all created by individuals from the ranks of al-Qaeda, is more than proven. As these groups increase the number of foreign fighters through their networks of international contacts, they also increase their chances of attacking western interests, hobbies and people and on western territory and could promote it among foreign fighters who return to their countries of origin[31].

In short, in conflicts with such a high number of foreign fighters as in Syria and Iraq, a process of privatization of the objectives of the conflict is developing, widely influencing the elements of power of the classic actors of the conflict. Currently, we are in a period in which foreign fighters maintain greater independence from third countries and, therefore, their ability to assert private influence. Moreover, they are able to challenge government forces to derail the state model and become indispensable to the negotiations and other peaceful means of dispute settlement. From the moment affecting the objectives of the insurgent groups and defending other transnational actors, they contribute to eroding the state monopoly in international relations, preferring the battlefield where this task is much easier. Therefore, Paul Overby shows that the ideologolization of Islam among foreign fighters, which was begun by Absullah Azzam, is not developing with the struggle for the rights of Muslims who are in their home countries, where the institutions

[29] Emadi, H., *State, revolution, and superpowers in Afghanistan.* Greenwood Press, New York, 1990.

[30] Blackburn, R., "The Break-up of Yugoslavia and The Fate of Bosnia", *New Left Review*, 1993, p. 100.

[31] Topal, O. F., "Foreign Fighters Involvement in Syria and Its Regional Impacts", *USAK Yearbook*, Vol. 6, 2013, pp. 285-289.

are long-established and there are mechanisms guaranteeing rights. Its struggle is concentrated in Islam on the periphery, where the community does not have strong political institutions, governments are unable to exercise their sovereign functions and the state can be described as failed. There, in those devastated areas is the place where theoretically a successful and exemplary community can be built, expelling the oppressors[32].

Thirdly, the increase in the number of foreign fighters in insurgent groups *modifies a certain quantitative and qualitative balance of forces of the parties who are fighting and which intensifies the situation of violence* experienced by the civilian population. Foreign fighters have a different motivation, but sometimes greater and more intense than that of local fighters, which has led them to leave their countries, travelling thousands of kilometres to unknown countries to risk their lives, and this determines their attitude within the insurgent group and the intensity of their actions. While local insurgency is normally focused on bringing about a change of regime or government, because of discrimination in participation in political life, distribution of wealth and violations of fundamental rights suffered by part of the population for political, religious or ethnic reasons, foreign fighters are usually motivated by a desire to contribute to spreading a number of political or religious ideals, identifying with the oppressed population whom the local insurgency represents. They have international objectives, and their actions usually respond to a logic with a greater reach than the local insurgency, even seeking to create an ideal Islamic state[33]. Moreover, as the duration of the conflict increases, the greater the chances that young people who are crowded in refugee camps in Syria will decide to join insurgent groups and serve as combatants or simply as suicide bombers, making the conflict even tougher.

Finally, foreign fighters also contribute to *the incorporation of other private actors in the conflict*, from the moment that public actors are unable to meet or counteract the actions of these individuals. Foreign fighters have their own international support, from States or transnational communities that fund them, provide them with military equipment, proper training and suitable logistics[34]. Increasing conflict

[32] Overby, P., *Holy Blood. An Inside View of the Afghan War, Westport*, Conn, Praeger Books, 1993, p. 190.

[33] De Roy van Zuijdewijn, J. and Bakker, E., "Returning Western Foreign Fighters: The Case of Afghanistan, Bosnia and Somalia", *ICCT Background Note*, International Centre for Counter-Terrorism, The Hague, June 2014, pp. 2 and ff.

[34] In this sense the Security Council requested the Group of Experts established within the

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areas, accompanied by greater involvement of civilians and combatants who are not parties to regular armed forces have expanded the demand for conventional weapons, especially light weapons and small arms. Also, organized criminal networks have found a new client to provide weapons through their smuggling routes or even to act as intermediaries for private aid coming from other areas and provide transport and equipment for foreigner fighters[35].

The incorporation of foreign fighters in local insurgencies and the ties they have with transnational groups that recruited them stimulate a war economy where resources come mainly from abroad, as the economic and productive fabric and infrastructure of the State are affected by the destruction, and it is impossible to carry out productive activities safely[36]. Especially in cases where governments fail to control and use their powers over the natural and economic resources of the country, the reliance on external funding is even more serious[37].

IV. MEASURES TO OFFSET THE SECURITY PROBLEMS GENERATED BY ISLAMIST FIGHTERS OF EUROPEAN NATIONALITY OR RESIDENCE

One of the main challenges currently faced by States and international institutions is not only to assess the extent of the danger posed by the increase of foreign fighters in conflicts such as Syria or Iraq, from the moment in which in addition to introducing important elements modifying conflicting international relations, negatively affecting international security as a whole, they also pose a direct threat to the security of States of which these fighters are nationals. This

Committee created by Resolution 1970 (2011) to evaluate the dangers that Libya represents in the current situation in the proliferation of arms and international terrorism and prepare a report about it. See Mikail, B., "Los múltiples restos de la reconstrucción de Libia", *Political Brief FRIDE,* Nº 72, 2012, pp. 3 and ff. and also Amirah Fernández, H., "El fin de Gadafi y la difícil (pero no imposible) construcción de una Libia estable y próspera, *ARI del Real Instituto Elcano*, Nº 91, 2011, pp. 9-13.

[35] Bapat, N.A., "State Bargaining with Transnational Terrorist Groups", *International Studies Quarterly*, Vol. 50, Nº 1, 2005, pp. 231-229 and Russell, J., "Non States Actors and the 2016 Proliferation Environment", *The Nonproliferation Review*, Vol. 13, Nº 3, 2006, pp. 645-657.

[36] Thomas K. Duncan and Christopher J. Coyne, "The Overlooked Costs of the Permanent War Economy: A Market Process Approach", *The Review of Austrian Economics*, Vol. 26, Nº 4, 2013, pp. 413-431.

[37] In the case of Iraq, it is the insurgent Group that benefits from the infrastructure and natural and energy resources; it begins to exploit and market them, so carrying out the basic functions of the State, developing an alternative economic scheme to the extent of one of the factions of the conflict and its interests (Watkin, K., "Targeting "Islamic State" Oil Facilities". *Int'l L. Stud. Ser. US Naval War Col.*, Vol. 90, 2014, pp. 499 and ff., and Emery, Cr., *After 13 years of criticism, Washington now needs to work with Iran to prevent disaster in Iraq*, LSE American Politics and Policy, 2014).

occurs when the process of radicalization leads them to motivate and train future internal fighters and foreigners and finally, to use their knowledge to perpetrate terrorist attacks in their own states. To confront this, the basis of the strategy has been designed by the UN Security Council and consists, first, in criminalizing the phenomenon and encouraging States to develop border control measures, in addition to administrative and criminal sanctions that may stem the flow of those who decide to travel to or return from Syria and Iraq and to deter others not to do so. And secondly, to encourage States to cooperate in the exchange of information, data and best practices, to address a problem that transcends state borders and requires a process of cooperation and coordination between the intelligence services and police in many States[38].

In principle, fighting in a foreign conflict is not prohibited by international law. In the context of an international armed conflict, international humanitarian law recognizes the figures of combatants, civilians and others affected by the fighting (wounded, sick and prisoners of war). Civilians and combatants have special protection recognized in the Geneva Conventions of 12 August 1949. Although these agreements do not specifically define the term of fighters, it does give them the right to participate directly in hostilities, and recognized that they cannot be persecuted for acts of war committed during the fighting, in addition to obtaining the status of prisoner of war in case of being captured by the enemy[39]. In any event, foreign fighters are subject to national law in internal armed conflict, even though their actions are fully regulated in international humanitarian law[40].

[38] Security Council Resolution 2178(2014) of 24 September (S/RES/2178(2014), See too the following resolution on the matter: Resolutions 1267 (1999), 1333 (2000), 1363 (2001), 1373 (2001), 1390 (2002), 1452 (2002), 1455 (2003), 1526 (2004), 1566 (2004), 1617 (2005), 1624 (2005), 1699 (2006), 1730 (2006), 1735 (2006), 1822 (2008), 1904 (2009), 1988 (2011), 1989 (2011), 2083 (2012), and 2133 (2014).

[39] The definition of combatant, therefore, can be inferred from that of the prisoner of war under Article 4 of the Third Geneva Convention and Article 44 of Additional Protocol I of 1977. These provisions include only the regular armed forces, members of other armed militias, members of other volunteer corps and organized resistance movements provided that they all belong to one of the parties to the conflict, regardless of nationality. Foreign fighters cannot be classified as mercenaries under international law from when they do not pursue profit when participating in hostilities (Article 47 of Additional Protocol No. 1 of 1977 to the Geneva Conventions, Article 1 of the Convention UN against the recruitment, use, financing and training of mercenaries and Article 1 of the Convention of the Organization of African Union to eliminate the mercenaries of 1972).

[40] The USA excludes foreign fighters from the IV Geneva Convention which forbids transferences of individuals protected by International Humanitarian Law between State territorios to another authority (Reyes Parra, P. D., "Los Detenidos de Guantánamo en el Contexto de la "Guerra Contra el Terrorismo y El Derecho Internacional de los Derechos Humanos". *Docentia et Investigatio*, Vol. 10,

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However, States and international organizations like the European Union and United Nations classify as terrorists individuals with a double condition: involvement in an internal armed conflict while at the same time being linked to terrorist groups, identified as such, in lists drawn up by USA and government organizations mentioned above. For example, the Security Council has called Islamic State and Jabhat al-Nusra terrorist groups and condemned their actions as terrorism, even though the individuals within their ranks and fight in the Syrian conflict are foreign fighters and they are subject to international humanitarian law[41]. Given that the legal body that governs the conduct of combatants in the field of either internal or international armed conflict is international humanitarian law, the question we might ask is to what extent in the development of combat an act can be considered as terrorist or criminal. In this regard, the International Commission of Inquiry found that in 2006 there was an armed conflict between Israel and Hezbollah, even though Israel had described Hezbollah as a terrorist organization[42]. This is because the purposes and the ideological motivation of a group are immaterial. The parties to a conflict are not required to follow a certain type of political agenda or reasons to be involved in armed violence.

But international humanitarian law prohibits terrorist acts in two cases: when referring to attacks against civilians with the aim of spreading terror, and when generally carrying out terrorist attacks against civilians not participating in the dispute or who have ceased to do so, without any offensive or defensive end. In short, although acts of terrorism might constitute a crime, its elements are not yet fixed[43]. Armed groups, whether or not described as terrorist groups must respect

Nº 2, 2014, pp. 127-142).

[41] Recalls that widespread or systematic attacks directed against any civilian populations because of their ethnic or political background, religion or belief may constitute a crime against humanity, emphasizes the need to ensure that ISIL, ANF and all other individuals, groups, undertakings and entities associated with Al-Qaida are held accountable for abuses of human rights and violations of international humanitarian law, urges all parties to prevent such violations and abuses; 4. Demands that ISIL, ANF, and all other individuals, groups, undertakings and entities associated with Al-Qaida cease all violence and terrorist acts, and disarm and disband with immediate effect; 5. Urges all States, in accordance with their obligations under resolution 1373 (2001), to cooperate in efforts to find and bring to justice individuals, groups, undertakings and entities associated with Al-Qaida including ISIL and ANF who perpetrate, organize and sponsor terrorist acts and in this regard underlines the importance of regional cooperation (Resolution 2170 (2014), 15 August 2014, S/RES/ 2170/2014, p. 3).

[42] "Report of the Commission of Inquiry on Lebanon, pursuant to Human Rights Council Resolution S-2/1, DOC. A/HRC/3/", 23 November 2006, p. 62.

[43] Gasser, H-P., "Prohibición de los actos de terrorismo en el derecho internacional humanitario".

international humanitarian law, provided they are well organized and their actions, even those that may be described as clearly terrorist acts against civilians, are subject to the law governing armed conflict, as were the actions of the National Liberation Army of Macedonia, or the Revolutionary United Front of Sierra Leone, both classified as terrorist groups[44]. However, individuals who are members of such groups who have committed crimes against humanity must be prosecuted, because neither combatant nor prisoner of war status grant immunity to perpetrators of such crimes; however, problems arise when states must obtain the evidence to prosecute those crimes, and in the best of cases only some audiovisual documents that can be found on the network are not always evidence[45].

Therefore, the application of the rules of international humanitarian law has become a very complex issue, from the moment that the identification of the parties to the conflict is complicated by recruiting these fighters, and it is they who control strategies and acts of many insurgent groups. Moreover, because of the dimensions this phenomenon has acquired, and the ties of recruitment networks and insurgent factions with groups that are considered international terrorists means that many States believe that the rules of armed conflict are not applicable to foreign fighters whom they simply consider as jihadist terrorists. Moreover, the situation became even more complex in 2014, when States want to qualify violent actions as terrorist acts, which develop during the fight, not only against civilians but also against other parties to the conflict. Thus, acts of foreign fighters appear to be in a legal limbo, which can hardly require international responsibility of them, although the States want to punish these practices, which in the past have been allowed and encouraged, now modifying their domestic legislation to prevent the exit and controlling the arrival of these combatants to their countries of origin[46].

The Security Council, like many States and the European Union, has automatically matched the figure of foreign fighters with terrorists, calling them

Revista Internacional de la Cruz Roja, 1986, Vol. 11, Nº 76, pp. 208-221 and Sánchez Legido, A., *Jurisdicción Universal Penal y Derecho Internacional.* Tirant lo Blanch, Valencia, 2004.

[44] Sassòli, M. and Rouillard, L. "La définition du terrorisme et le droit international humanitaire", *Revue Québécoise de Droit International*, Hors-série (2007), pp. 31 and ff.

[45] Bakker, E., Paulussen, Chr. and Entenmann, E., "Dealing with European Foreign Fighters in Syria: Governance Challenges and Legal Implications", International Centre for Counter-Terrorism, *Research Paper*, The Hague, December 2013, pp. 9-14.

[46] As happened in the case of the Bill for Organic Act which modified Organic Act 10/1995, 23 November, of the Spanish Penal Code on terrorism which punished "the displaced terrorist combatant" of an internal conflict in another State.

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Foreign Terrorist Fighters in Resolution 2178 (2014), adopted unanimously by the members of the Council, and in which it condemns extremist violence and urges the Member States to prevent "recruitment, organizing, transporting or equipping of individuals who travel to a State other than their States of residence or nationality for the purpose of perpetration, planning of, or participation in terrorist acts". To do so, the Security Council decided that all States shall ensure that their legal systems shall provide for the prosecution, as serious criminal offences, of travel or related training for terrorism as well as the financing or facilitation of such activities[47]. The EU's Framework Decision on Combating Terrorism proposed to define terrorism as any action that is intended to cause death or serious bodily harm to civilians or non-combatants, when the purpose of such act is to intimidate a population, or compel a Government or an international organization to do or to abstain from doing any act[48].

From the point of view of international law, according to the Academy of International Humanitarian Law and Human Rights in Geneva, it is a "simplistic and confused" association, as there is a branch of international law governing armed conflict and another different one that handles prevention and suppression of terrorism[49]. Either way, a global treaty banning terrorism does not exist in international society, due to difficulties in reaching agreement on the definition of terrorism. There is no international treaty in force that condemns membership of a terrorist group or terrorist training, and certainly none of the treaties that exist in the fight against international terrorism includes acts related to issues in the context of a armed conflict, although it is true that the resolutions adopted by the Security Council strive to differentiate terrorists from the warring parties, especially when terrorists are parties to the armed conflict[50]. But the Council also decided that

[47] Resolution of the Security Council 2178(2014) 24 September, p. 2, (S/RES/2178(2014).

[48] "Islamist militancy combines a strict, literalist practice of Islam with a revolutionary political ideology, proclaiming a global community of believers (the Ummah) to be liberated and/or united under Islamic rule, and the belief that the most effective way to accomplishing this aim is through violence or armed struggle", in *Recruitment and Mobilization for the Islamist Militant Movement in Europe*. A study carried out by King's College London for the European Commission (Directorate General Justice, Freedom and Security), The International Centre for the Study of Radicalization and Political Violence, 2014, p. 7.

[49] "Foreign Fighters under International Law", *Academy Briefing*, *loc. cit.,* p. 3.

[50] The States have reached agreements on certain aspects of terrorism as shown by: the International Convention for the repression of terrorist attacks committed with bombs of 15 December 1997; the International Convention for the repression of Financing of terrorismo of 9 December 1999 and the International Convention for the repression of nuclear terrorismo of 13 April 2005.

States shall prevent entry or transit through their territories of any individual about whom that State had credible information of their terrorist-related intentions, and require airlines to provide passenger lists for that purpose (…) outlining further measures for international cooperation to counter international terrorism and prevent the growth of violent extremism"[51]. In short, the Security Council intends to strengthen border controls, the control of travel documents, the development of sanctions and penalties for those who attempt to travel to or return from armed conflict provided that they have fought alongside groups considered terrorists or have perpetrated terrorist attacks.

The attacks that took place in Paris between 7 and 9 January 2015 further warned the European authorities of the need to tackle this problem from a integrated perspective. The Member States of the European Union have themselves accepted the figure of the Foreign Terrorist Fighter, and have adapted their legislation and adopted measures to prevent a Diaspora of European extremists who want to join the Syrian insurgency[52]. But there is no harmonization of the laws of the Member States to halt the coming and going of foreign fighters. Some researchers like Bakker, Paulussen and Entenmann, the Global Center on Cooperative Security, the Human Security Colletive, or the Centre for Security Studies in Zurich have developed studies of the measures the Member States of the European Union have adopted. Some have decided to withdraw residence permits and citizenship from those individuals who had more than one nationality, even, have brought judicial proceedings against these individuals in some Member States, but with great difficulty in obtaining evidence to prove the crimes committed in the combat zones[53].

[51] UN Security Resolution 2178(2014), 24 September 2014.

[52] Article 27 (1) would justifiably exclude foreign fighters from the enjoyment of the primary and individual right of the European citizen to free movement within the internal market due to the threat they pose for public security (Directive 2004/38). See Sinkkonen, T., *War on Two Fronts. The EU Perspective on the Foreign Terrorist Fighters of ISIL*, The Finnish Institute of International Affairs Briefing Paper, Nº 166, 2015.

[53] After the attacks of 11 September 2001 in USA, the struggle against terrorism in the EU "moved rapidly to the forefront of the EU's policy agenda, with the result that the 28 members of the European Union today are now obliged to implement a vast body of legislation and policy. This includes a common legal definition of terrorism and terrorism offences, and a host of substantive criminal and legal definitions of terrorism and terrorist offences, and a host of substantive criminal and procedural laws and mechanism for cross-border police cooperation, as well as scores of supplementary "security" and preventive measures. In addition, numerous EU bodies and agencies have been given a mandate to implement or coordinate EU-counter-terrorism policies" (*Securing Europe Through Counter-Terrorism: Impact Legitimacy and Effectiveness*, Catalogue of EU Counter-Terrorism Measures, adopted since 11

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But the question is to know why some foreign fighters when they return to the States of which they are nationals or residents are able to reintegrate into their normal lives and others are not. All this, taking into account the cultural and social circumstances of these individuals, varies depending on the country of the European Union where we find them (in the countries of southern Europe, immigration movements of Muslim communities are more recent, while in other States, the third generation of Muslim immigrants has already reached adolescence and, equally, the geographic origin of these communities is different), raises several questions: Do they relate only to people who have had that experience or similar, strengthening their identity as foreign fighters? Are they suffering sequelae due to their experiences in the battlefield that do not allow them to get on with their lives? Will they take on another role in the global fight which could lead them to become recruiters, design radical content for social networks, trainers, to provide the infrastructure and logistics necessary for the next generation of foreign fighters? Will they carry out terrorist acts in the territories of their own States?

The truth is that many foreign fighters do not survive the conflict, others just want to fight for a limited period of time, others prefer to stay in the place of conflict hoping to build an ideal Islamic state and have established family ties with local people. Yet others continue moving from conflict to conflict, and only a minority becomes leaders of organizations that recruit other fighters[54]. There is only one foreign fighter who has returned to European territory and perpetrated a terrorist attack, mentioned previously. In addition, the attacks in Toulouse, although they were perpetrated by individuals who had not fought in Syria or Iraq, have alarmed the European population with 19 million Muslims residing in their territory. According to Byman and Shapiro, the real danger posed by foreign fighters has been exaggerated, mixing the intentions of this group, on their return, with those called internal fighters[55]. Both researchers stated in 2014 that between 10 and 20%

September 2001, European Union Seventh Framework Programme (FP7/2007-2013), 2014); E., Paulussen, C. and Entenmann, E., "Dealing with European Foreign Fighters in Syria: Governance Challenges and Legal Implications... *cit.*", pp. 12 and ff; "Addressing the Foreign Terrorist Fighters Phenomenon from a European Union Perspective", Global Center for Collective Security*, Brief Paper,* December 2014 and, *Foreign Fighters: An Overview of Responses in Eleven Countries*, Center for Security Studies, Zurich, March 2014.

[54] Omar Hammani, an Americam originating in Alabama, acted as a foreign fighter in Somalia and now occupies an important leadership position in al- Shabad (Elliot, A., "The Jihadist Next Door", *New York Times Magazine*, January 27, 2010).

[55] Byman, D. and Shapiro, J., "Homeward Bound? Don't Hype Threat of Returning Jihadists",

of foreign fighters had no plans to return to their home countries, and only one in nine of those who fought abroad, between 1990 and 2010, might return with the intention of perpetrating a terrorist attack in their home countries[56]. According to the interview by Sergio Bianchi in 2013 of Yilmaz, a Dutch foreign fighter in Syria, when asked about his intentions regarding Europe, the fighter replied: "I came to Syria for Syria only. I didn't come to Syria to learn how to make bombs and to go back. We came here basically, and I know it sounds harsh, but many of the brothers here including myself we came here to die, so us going back is not part of our perspective here" Usama Hasan, leader of the Salafist movement in the UK, with experience in the first Afganistan war and recruiter of fighters for other conflicts responded similarly: "We were very clear in our minds that Britain was not a place of Johad tant is what we grow up, went to school and university, had a job, we supported the local football team"[57] Most foreign fighters never return to their countries of origin and many idealize their march to the combat zone and fight for a relatively short period of time, but may return disappointed, and after their return they are easily identified by the authorities of their countries. Their intentions were to defend the Muslim community in danger and not to attack the West. "Iraq's previous war offers the most obvious example. Between 2003 and 2011, dozens of Muslims from Europe and the United States traveled to Iraq to fight Western forces. Some of them supported Al Qaeda after it established a local affiliate in 2004 (a group known as al Qaeda in Iraq, which became the precursor to ISIS), and many grew more radicalized during their stay"[58] Therefore, most jihadist attacks on European soil have been perpetrated by people whose radicalization process has been developed to carry out attacks against the West, with no intention of joining insurgent groups in Syria[59]. As noted by The International Centre for the Study or Radicalization and Political Violence, recruitment is understood as the mechanisms and pathways through which an organization gets members or active sympathizers,

Foreign Affairs, November/December 2014, p. 37.

[56] "This is the case of Mohammad Abusalha, the first American to carry out a suicide bombing in Syria, and which illustrates this phenomenon. Originally from Florida, Abusalha joined Jabhat al-Nusra after travelling to Syria in late 2013, and his death stirred US Officials' fears of a terrorist attack on domestic soil", Ibid., 41 and 42.

[57] Bianchi, S., *Is Islamism a Threat? A New Comprehensive Model to Counter the Obscure Heart of Radicalism*, *op. cit.*, pp. 29 and 30.

[58] Byman, D. and Shapiro, J., "Homeward Bound? Don't Hype Threat of Returning Jihadists... *cit.*", p. 40.

[59] Ibid., p. 38.

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while radicalization describes the changes in attitude that lead towards sanctioning and, ultimately, the involvement in the use of violence for a political aim[60].

The Radicalization Awareness Network (RAN) itself, created by the European Commission under the EU Internal Security Strategy has questioned the usefulness of excessive criminalization of young men and women who are in conflict zones when they decide whether or not to return to their countries of origin, because the proposed measures are not helping to curb the phenomenon. It has begun to develop more preventive measures and social reintegration to complement the foregoing. In fact, the proposals of the RAN, where representatives of civil society participate, seek to engage foreign fighters or potential foreign fighters and their social environments in order to build resilience and resistance to potential travel to foreign conflicts[61]. Similarly, preventive measures and rehabilitation have governed the Revised EU Strategy for Combating Radicalization and Recruitment to Terrorism on 14 May 2014, where the coordination of police and intelligence services of the Member States joins the work and collaboration with civil society[62]. According to Bianchi, "All these stories watt or raise awareness on the complexity of motivations behind the phenomenon of foreign fighters. It may seem cynical but we have to recognize that if somebody fights, dies or survives in Syria or somewhere else for a number of legitimate or illegitimate reasons, this is not something automatically connected to our domestic security, despite all spasmodic headlines in the news. The Foreign Fighters exists on many latitudes but this is not a risk analysis. It is verification. It is often enough that someone has a long beard and should mention religious problems in society or wants to fight against dictators or against government allied to Western powers for an analyst to automatically set off a terrorism alarm in Europe. Too easy to "media base"[63].

The Global Counterterrorism Forum has spoken out along the same lines in a meeting in which about 50 States of the international community hosted by Morocco and the Netherlands, which took place in The Hague from 19 to February

[60] *Recruitment and Mobilization for the Islamist Militant Movement in Europe*. A study carried out by King's College London for the European Commission (Directorate General Justice, Freedom and Security), The International Centre for the Study of Radicalization and Political Violence, 2014, p. 6.

[61] See *The RAN Declaration of Good Practices for Engagement with Foreign Fighters for Prevention, Outreach, Rehabilitation and Reintegration*, 2014.

[62] Revised EU Strategy for Combating Radicalization and Recruitment to Terrorism, Brussels, 19 May 2014, (5643/5/14).

[63] Bianchi, S., *Is Islamism a Threat? A New Comprehensive Model to Counter the Obscure Heart of Radicalism, op. cit.*, p. 34.

20, 2014 where Heads of States, Interpol and the United Nations shared their information and expertise in the fight against terrorism, analysing the case of foreign fighters. They discussed the danger that this group poses to radicalize other individuals and conveyed their military knowledge. Furthermore, they highlighted the need for increased border controls, particularly in transit countries such as Turkey; to improve communications and strategies among States to be able to draw up lists of individuals that should be forbidden to enter and leave certain States[64]. But they also agreed on the development of a comprehensive strategy, convinced of the need to improve relations with the religious authorities, communities, NGOs and families to which potential foreign fighters are linked in order to prevent their recruitment, obtain information about their travel plans and undertake the best psychosocial and health interventions after their return[65].

It is therefore necessary to adopt measures along the life cycle of radicalization of the foreign fighter of the future, ranging from a first phase in which he (or she) decides to join insurgent groups in the field, through the phase of military training and fighting The phase in which the return to their country of residence and finally the decision to continue serving the groups in which they fought either as a recruiter or a terrorist, or as is most common, to rejoin society and, in some cases, collaborate in programmes of prevention of radicalization and recruitment[66]. Even the former head of counter-terrorism and its intelligence services in the UK, MI5 and MI6, Richard Barrett, questioned the usefulness of denying entry to foreign fighters who return to their countries of origin, since their experience and testimony may be very useful to deter other potential combatants, speaking of the real situation on the battlefield, which has nothing to do with religious beliefs. Social reintegration can be very useful to deter potential combatants who have the same profile. In his report, Barrett believes that at least one-fifth of British

[64] "Foreign Terrorist Fighters Initiative", *Opening Meeting of the Global Counter-Terrorism Forum*, 19-20 February 2014, The Hague. Other document drawn up in the *Global Counter-Terrorism Forum* that can be recommended and that serve as a reference for the treatment of Foreign Fighters are: Rabat Memorandum on Good Practices for Effective Counterterrorism Practice in the Criminal Justice Sector, The Rome Memorandum on Good Practices for Rehabilitation and Reintegration of Violent Extremist Offenders and the Ankara Memorandum on Good Practices for a Multi-Sectoral Approach to the CVE; and Good Practices on Community Engagement and Community-Oriented Policing as Tools to Counter Violent Extremism.

[65] "Foreign Terrorist Fighters (FTF) initiative", *The Hague-Marrakech Memorandum on Good Practices for a More Effective Response to the FTF Phenomenon*, Global Counterterrorism Forum, 2014.

[66] Byman, D. and Shapiro, J., "Be Afraid. Be Little Afraid: The Threat of Terrorism from Western Foreign Fighters in Syria and Iraq", *Foreign Policy at Brookings, Policy Paper*, Nº 34, 2014.

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foreign fighters are disappointed with what they have seen on the battlefield and only want to return to the UK. Working with these individuals is of the utmost help in designing de-radicalization programmes[67].

V. CONCLUSIONS

Foreign fighters are not a new phenomenon but have more than 200 years of history. Their motivations may be very different and have ideological, political or religious roots. Their activities in many cases have been tolerated and facilitated by States when their intervention in a conflict is beneficial to its geostrategic objectives. At present, foreign fighters of European nationality or residence who are fighting in Syria or Iraq number around 2,500 or 3,000, a figure that has alarmed the authorities in many European states.

States and international institutions have decided to equate the European radical Islamist fighter with the terrorist and have adopted legal and administrative reforms that aim to prevent a European Diaspora to these conflicts. It is very difficult to know who died during the conflict and who has the intention of returning as veteran activists when fighters of European nationality or residence can move with ease within the territory of the Union. But as Hegghammer points out, only a minority of foreign fighters wants to attack in their home countries when they return from the Syrian or Iraqi conflict. Experience shows that it is the "domestic or internal combatants" without experience as combatants outside their countries, who have so far carried out most attacks on Western countries. However, there are few data on the biography of foreign fighters and their intentions after returning from combat zones to Europe[68]. Faced with this alarming uncertainty, most European states have undertaken legal and administrative reforms to criminalize and punish individuals who intend to travel to or from external conflicts.

Scientific and academic studies must overcome the politicization and automatic criminalization of foreign fighters, regardless of their life cycle, supporting

[67] Saudi Arabia, the country with the greatest number of nationals fighting for the Islamist State, calculates that of the 3000 foreign fighters who have undertaken rehabilitation programmes, only 10% have returned to violent activity (Noor, F. A. and Dorsey, J. M., "Responding to the Islamic State's Foreign Fighters: Redistribution or Rehabilitation?", *S. Rajartnan School of International Studies Commentary*, Nº 176, 2014, pp. 1-3).

[68] Hegghammer, T., "Should I Stay or Should I Go? Explaining Variation in Western Jihadists' Choice between Domestic and Foreign Fighting", *American Political Science Review*, February 2013, pp. 1-15.

measures for social reintegration, avoiding the assumption that any returnee means danger, and identifying which ones could be useful to participate in rehabilitation programmes that could deter other potential combatants[69]. The UN Security Council and forums such as RAN and the Global Counterterrorism Forum are increasingly aware of the need to address the problem of foreign fighters and jihadists from a multidisciplinary and holistic perspective where administrative sanctions and penalties are not the only measures, investing in policies to prevent radicalization and social reintegration, in which the participation of deradicalized former foreign fighters, moderate Muslim communities, NGOs and families is fundamental.

[69] Bakker, E., Paulussen, C. AND Entenmann, E., "Returning Jihadist Foreign Fighters", *Security and Human Rights*, Nº 25, 2014, pp. 11-32.

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NOUVELLE OFFENSIVE DIPLOMATIQUE DU MAROC EN AFRIQUE SUBSAHARIENNE : QUEL REGARD ?

Pierre Afouda Adimi[1]

RÉSUMÉ : « L'Afrique doit faire confiance à l'Afrique » : telle est aussi la déclaration du Roi du Maroc Mohammed VI à Abidjan lors du Forum Maroco-Ivoirien de 2013.

Pour joindre les paroles à l'acte, le Maroc a en effet depuis quelques années fait de la coopération sud-sud son véritable cheval de bataille avec une intensification de ses relations particulièrement avec l'Afrique subsaharienne où il réalise des performances économiques sans précédent. Cette coopération orientée vers l'Afrique subsaharienne est en même temps vitale pour le Maroc et ses partenaires subsahariens.

MOTS CLÉS: Maroc, Afrique subsaharienne, relations bilatérales, relations multilatérales, coopération sud-sud.

MOROCCO'S NEW DIPLOMATIC OFFENSIVE IN SUB-SAHARAN AFRICA: WHAT APPROACH?

ABSTRACT: "Africa must trust Africa" : such is the declaration of the King of Morocco Mohammed VI in Abidjan.To join the words to the act, Morocco indeed in recent years due to the South-South cooperation its true workhorse with an intensification of its relations particularly with sub-Saharan Africa, where he made unprecedented economic performance. This oriented sub-Saharan Africa cooperation is also vital for Morocco and its Saharan partners.

KEYWORDS: Morocco, sub-Saharan Africa, bilateral relations, multilateral relations, South-South cooperation.

NUEVA OFENSIVA DIPLOMÁTICA DE MARRUECOS EN ÁFRICA SUBSAHARIANA: ¿QUÉ VISIÓN?

RESUMEN: «África debe confiar en África» fue la declaración del Rey de Marruecos, Mohammed VI, en Abidjan (Costa de Marfil) en el Foro costamarfileño-marroquí de 2013.

Para transformar estas palabras en hechos, en los últimos años Marruecos ha convertido a la

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Cooperación Sur-Sur en su verdadero caballo de batalla, con una intensificación de sus relaciones con África –en particular al sur del Sáhara–, adoptando iniciativas económicas sin precedentes. Esta cooperación con el África Subsahariana se ha convertido en algo vital, tanto para Marruecos como para sussocios subsaharianos.

PALABRAS CLAVE: Marruecos, África subsahariana, relaciones bilaterales, relaciones multilaterales, cooperación Sur-Sur.

I. INTRODUCTION

Ces dernières années, le Maroc a intensifié ses relations de coopération avec l'Afrique du sud Sahara, en signant plusieurs accords de coopération avec cette région qui géographiquement lui est proche. Mais force est de constater que les relations du Maroc avec l'Afrique subsaharienne et en particulier l'Afrique de l'ouest sont très dominées par les relations économiques et commerciales.

Le renforcement de la coopération économique et commerciale bilatérale est au cœur de la politique commerciale extérieure du Maroc. Dans ce sens, un cadre juridique, au niveau bilatéral est mis en œuvre et constitue un outil essentiel pour la promotion des transactions commerciales avec l'extérieur, notamment ceux de l'Afrique subsaharienne. Les multiples voyage du Roi du Maroc en sud du Sahara a permis la signature de plusieurs accords de coopération économique et commerciale.

Durant la dernière décennie, le Maroc a opté en particulier pour le renforcement de ses liens économiques avec l'Afrique subsaharienne à travers la négociation et la conclusion de plusieurs accords commerciaux de type classique ou à caractère préférentiel avec plusieurs pays africains[2]. Une telle initiative visait tout autant à renforcer et à consolider les parts de marché acquises qu'à diversifier l'éventail des débouchés extérieurs.

Quels sont les enjeux de l'intérêt manifeste du Maroc pour les Etats de l'Afrique subsaharienne ? Ce renforcement de la coopération sud-sud profite t-il au Maroc tout comme à ses partenaire de subsahariens ? Telles sont les principales interrogations auxquelles nous tenterons d'apporter notre modeste éclairage. Il s'agira d'abord de la dimension bilatérale et multilatérale de la coopération Maroc Afrique subsaharienne (III), ensuite, il sera question des enjeux multidimensionnels du regain d'intérêts du Maroc en Afrique subsaharienne (IV). Mais avant il parait

[2] Parmi ces Etats, 8 sont de l'Afrique de l'ouest et de la CEDEAO à savoir Sénégal, Niger, Côte d'Ivoire, Mali, Bénin, Nigéria, Burkina Faso et Guinée. A ces Etats, il faut ajouter le Gabon, le Cameroun, le Tchad, la République Démocratique du Congo (RDC), et l'Angola.

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important de mettre en lumière la dynamique historique des relations entre le Maroc et l'Afrique subsaharienne (II).

II. DYNAMIQUE HISTORIQUE DES RELATIONS MAROC AFRIQUE SUBSAHARIENNE

Situé au nord ouest du continent africain, la Maroc se trouve à la croisée des chemins avec le continent européen, partageant ainsi la Méditerranée avec notamment l'Europe. Cet accès à la Méditerranée lui ouvre par voie de conséquence le chemin maritime vers une grande partie du continent asiatique. Déjà après les indépendances, la vision africaine du Maroc sera d'abord la lutte pour une émancipation effective du joug coloniale et ensuite l'unité africaine.

1. UNE DYNAMIQUE FONDEE SUR L'EMANCIPATION ET L'UNITE AFRICAINE

Nonobstant la proximité géographique avec l'Europe en particulier, le Maroc n'a de cesse affirmé son encrage en Afrique ; l'Afrique son continent d'appartenance. En effet, les relations entre le Maroc et l'Afrique subsaharienne remontent à des temps immémoriaux, à l'époque où le commerce ne revêtait qu'un aspect caravanier entre ces deux parties du continent africain.

Ainsi, le Professeur Rachid El Houdaigui[3] donne une grille de lecture qu'il faut avoir en vue d'une compréhension des relations extérieures du Maroc en ces termes :

> Le facteur nationaliste semble intervenir d'une manière permanente dans l'élaboration de la politique extérieure du Maroc, d'abord, en intervenant continuellement dans la définition de la perception des intérêts nationaux en tenant compte du contexte national, régional et international.
>
> Les premières orientations de la politique étrangère africaine du Maroc, sous Mohamed V allait plutôt inscrire le pays dans le camp progressiste. La politique du Maroc sera guidée par trois axes : le soutien aux peuples colonisés, […] la lutte contre son intégrité territoriale, et enfin, la recherche d'une voix autonome.[4]

Mais avant les indépendances déjà, le Maroc a mené solidairement la lutte contre le colonialisme avec ses pairs subsahariens sous la houlette du Roi Mohamed V.

Le lendemain des indépendances africaines connaitra une évolution significative des relations Maroco-Afrique-subsahariennes. Cette évolution sera matérialisée par

[3] Dans *La politique étrangère sous le règne de Hassan II*, éditions l'Harmattan, Paris 2003, p. 117.

[4] Antil, A., « Le Royaume du Maroc et sa politique envers l'Afrique subsaharienne », *Institut Français des Relations Internationales (IFRI),* novembre 2003, p. 26.

l'organisation à Casablanca en 1961 d'une conférence toujours sous les auspices du Roi Mohamed V.

Les objectifs de cette conférence qui a réunit plusieurs leaders progressistes africains tels que Modibo Kéita, Sekou Touré pour ne cité que ceux-ci avait pour objectifs une Afrique digne et forte face à l'impérialisme occidentale et face au début de la mondialisation.

L'organisation de cette conférence au Maroc en 1961 n'était que le début d'une longue période de l'intégration du Maroc et de l'amorce d'un leadership qu'il compte jouer dans une Afrique post coloniale à la recherche de sa voie pour le décollage économique et social. Ainsi, en 1963, le Maroc a montré son inconditionnel engagement en faveur de la création de l'Organisation de l'Unité Africaine (OUA) qui deviendra plus tard l'Union Africaine (UA) en 2000. Un changement d'horizon auquel le Maroc ne prendra pas part.

Dans la lancée de la Conférence de Casablanca de 1961, la charte de l'OUA va définir ses objectifs. Ainsi, dès l'origine, les principaux objectifs de l'organisation sont l'éradication du colonialisme et se fixe aussi comme autres missions de renforcer l'unité et la solidarité entre les Etats africains, de coordonner la coopération pour le développement, de préserver la souveraineté et l'intégrité territoriale des Etats membres et de favoriser la coopération internationale dans le cadre des Nations Unies[5].

Le Maroc s'illustre aussi dans un autre registre à savoir le maintien de la paix en Afrique à travers plusieurs actions qui vont être menées.

2. LE MAROC DANS LA DYNAMIQUE DE MAINTIEN DE LA PAIX EN AFRIQUE SUBSAHARIENNE

Le Roi Hassan II a été un grand artisan du maintien de la paix en Afrique du sud du Sahara. Il a en effet exercé un rôle de médiateur dans les différents conflits ou crises du continent africain, comme lors de la tension entre la Mauritanie et le Sénégal en 1989, ou encore lors du conflit angolais, (…). Le Maroc participera également sur le continent africain à plusieurs opérations de maintien de la paix ou de soutien[6].

Nonobstant cette volonté marocaine de porter haut l'étendard du continent

[5] Cf. Article II La Charte d'Addis Abéba de 1963 sur L'Organisation de l'Unité Africaine, portant sur les objectifs de l'organisation africaine.

[6] Antil, A., *op cit.* p. 27.

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africain, les relations multidimensionnelles que le Royaume entretient avec l'Afrique subsaharienne connaitra un coup d'arrêt en 1984. Affaiblie par les clivages politiques résultant de la guerre froide entre les USA et l'ex URSS, l'OUA a ainsi dans ce contexte connu la plus grave crise depuis la création de l'organisation. Celle-ci avait été provoquée par l'admission, en 1984, de la RASD (République arabe sahraouie démocratique) qui avait divisé ses membres et provoqué le retrait du Maroc de l'organisation[7].

Depuis ce retrait du Maroc de l'organisation panafricaine, au regard de la mise en cause de sa souveraineté, selon le Maroc, à travers l'adhésion en son sein de la RASD, l'OUA a évolué de division en division sur les questions essentielles ce qui rend rédhibitoire le projet d'intégration de l'organisation.

Le résultat de cet échec s'est matérialisé par le fait que l'OUA a continué à pâtir de la faiblesse de ses moyens d'intervention y compris militaires pour le maintien de la paix, face à la multiplication des conflits locaux qui minent encore le décollage du continent plus de cinquante ans après la création de l'organisation, qui pourtant n'a pas manquer de faire comme priorité la pacification et la viabilisation du contient.

Mais toutefois pour le Maroc, « l'épineux problème du Sahara eu également pour conséquence d'isoler le Maroc sur le plan diplomatique. Après que la Mauritanie se fut retirée du conflit en 1978, le Maroc eu à affronter seul les critiques des pays les plus progressistes ».[8]

C'est pourquoi, conscient de l'isolement de la scène africaine que ce retrait pourrait engendrer, le Maroc ne s'est pas empêché de continuer à entretenir une autre forme de relations avec l'Afrique subsaharienne : il s'agit de maintenir et de développer ses relations bilatérales avec les pays africains quels qu'ils soient. Cette politique est « une constante de la politique étrangère du Maroc. Elle trouve son sens dans le principe du partenariat pour la paix, si bien ancré dans la pratique diplomatique marocaine qu'il occupe aujourd'hui une place de choix dans la conscience collective stratégique nationale [9]».

C'est alors que le Royaume a donc toujours été aux côtés des Etats Africains par son engagement lors des Opérations de Maintien de la Paix (OMP) mises

[7] Kamto, M., Pondi, J. E., Zang, L., « L'O.U.A., rétrospective et perspectives africaines », Paris, *Economica*, 1990, p. 85-97.

[8] Antil, A., *op cit.* p. 25.

[9] El Houdaigui, R., La politique étrangère de Mohammed VI ou la renaissance d'une « puissance relationnelle », une décennie de réformes au Maroc, éd. Karthala, 2010, Paris. p. 9.

en œuvre dans certains pays qui ont traversé des conflits armés et ont subit de graves crises d'ordre humanitaire. Le Maroc a été ainsi présent dans la Mission des Nations Unies pour la Stabilisation en République Démocratique du Congo (RDC) en 2010, lors de l'Opération des Nation Unies en Côte d'Ivoire (ONUCI) mise en place en février 2004 par la résolution 1528 du Conseil de Sécurité de l'ONU et dernièrement dans la Mission multidimensionnelle des Nations Unies pour la Stabilisation du Mali (MUNISMA) qui a été aussi créée par la résolution 2100 du Conseil de Sécurité de l'ONU en avril 2013. Cette participation du Maroc dans ces OMP essentiellement en Afrique fait du Royaume le troisième pays francophone au monde contributeur à ces opérations onusiennes derrière la France et le Sénégal[10].

Le Souverain marocain Hassan II résume l'apport et la contribution des actions du Royaume à l'international en ces termes : « notre politique a contribué à forger l'image d'un pays pondéré et modéré, attaché à la paix et œuvrant inlassablement pour l'établissement de rapports fraternels entre les peuples. Il devient vite le lieu idéal pour les grandes rencontres et les grandes manifestations ou se décident la plupart du temps les grandes orientations de la politique internationale »[11].

Finalement, à travers ce type d'engagement en Afrique, la politique du Maroc vise donc deux objectifs essentiels : d'abord le Royaume entend jouer un rôle de pays leader et stabilisateur sur le continent et enfin la recherche de soutien et alliés politique, économique voir stratégique en Afrique.

Avec l'accession au trône en 1999 du Roi Mohamed VI, un contenu plus économique et commercial sera donné aux relations entre le Royaume et l'Afrique subsaharienne.

Les dimensions bilatérale et multilatérale ont été prises en considération dans l'élaboration des ces relations économiques et commerciales.

III. DIMENSIONS BILATERALE ET MULTILATERALE DES RELATIONS ECONOMIQUES ET COMMERCIALES MAROC-AFRIQUE SUBSAHARIENNE DEPUIS 2000

Dans le sillage de la dynamique nationale qui mène le Maroc vers le rang de « puissance relationnelle » (…), dynamique recadrée par une conceptualisation théorique de portée pratique, amplifiée par la diversification et la globalisation du

[10] Cf. Le rapport des Nations Unies sur « Contributors to United Nations Pacekeeping Operations » d'avril 2013, p.2.

[11] Propos cité dans El Houdaigui, R., *La politique étrangère sous le règne de Hassan II cit*., p.137.

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comportement du Maroc et entretenue par un appareil diplomatique en quête d'une mutation structurelle et fonctionnelle », le Maroc entend ainsi jouer un rôle de plus en plus croissant en Afrique et dans le monde [12]».

1. DIMENSION BILATERALE

Ainsi, l'accession au trône du Roi Mohamed VI a donné un coup d'accélérateur aux relations économique et commerciale entre le Maroc et ses partenaires de l'Afrique subsaharienne. Le Roi marocain a en effet donné une nouvelle impulsion, un nouveau dynamisme et une nouvelle vision à ces relations inter africaines. La matérialisation de cette nouvelle vision s'est traduite en 2000 par l'annulation par le Maroc lors du Sommet Afrique-Europe de l'ensemble des dettes de chacun des Pays africains les Moins Avancés (PMA), et de l'ouverture des frontières marocaines aux produits d'exportation en provenance de ces PMA africains[13]. Cette annulation de dette n'était que le début de l'intérêt de plus en plus croissant et d'une offensive diplomatique de Maroc en Afrique subsaharienne. En effet, le développement de la coopération commerciale et économique du Maroc vis-à-vis de l'Afrique subsaharienne est avant tout à mettre au crédit des efforts diplomatiques des autorités Marocaines en premier lieu le Roi Mohamed VI qui a multiplié des visites d'Etats en Afrique subsaharienne favorisant ainsi la mise en œuvre d'un cadre juridique qui servent aux investissements publics et privés des entreprises du Royaume. Au cours de l'ensemble de ces visites, plus de 300 accords ont été signés avec plusieurs pays de l'Afrique subsaharienne, notamment les Etats francophones tels que le Mali, le Sénégal, la Côte d'Ivoire et le Gabon, notamment sur le commerce, la protection des investissements, la non-double imposition et les transferts de dividendes[14]. Trois types de conventions marquent ce type d'accords : les conventions classiques fondées sur la clause de la « Nation la Plus Favorisée »; les conventions commerciales de type préférentiel ainsi que l'accord relatif au système global de préférences commerciales[15].

[12] El Houdaigui, R., La politique étrangère de Mohammed VI... cit». p. 2.

[13] Cf. le rapport sur « Point sur les relations du Maroc avec les pays de l"Afrique Subsaharienne », de la *Direction des Etudes et prévisions financières du Ministère de l'économie et des finances du Maroc*, Rabat mai 2010, p4.

[14] Plus de 300 accords, tous secteurs confondus, ont été signés entre le Maroc et les pays d'Afrique subsaharienne durant la dernière décennie, selon le *Ministère des Affaires Etrangères et de la Coopération du* Maroc (MAEC).

[15] Cf. « Performance commerciale du Maroc sur le marché de l'Afrique Subsaharienne », de la *Direction des Etudes et des Prévisions Financières du ministère de l'économie et des finances du Maroc,* avril 2012, p. 8.

L'importance de ces accords bilatéraux pour le Maroc se matérialise la mise en œuvre d'un Commission mixte public-privé pour le suivi de la bonne mise en œuvre des accords, et la réalisation des projets de développement économique et social qui ont été signés ou lancés à l'occasion de la tournée du Roi Mohammed VI dans plusieurs pays africains à savoir le Mali, la Côte d'Ivoire, la Guinée et le Gabon en février 2014. Le Maroc accorde aussi une importance non négligeable à la coopération multilatérale en Afrique subsaharienne.

2. DIMENSION MULTILATERALE

Sur le plan multilatéral, le Maroc, outre cette dimension bilatérale, a signé avec les pays de l'Union Economique et Monétaire Ouest Africaine (UEMOA) un accord commercial et d'investissement à Rabat en 2002 après quatre ans de discussions préliminaires, accord qui n'est pas encore rentré en vigueur[16].

Ce nouvel accord commercial et d'investissement, qui s'inscrit dans le cadre du renforcement des relations commerciales et de partenariat économique entre le Maroc et l'UEMOA, portera sur un échange de concessions tarifaires entre les deux parties et comportera des dispositions visant la levée des barrières non tarifaires qui entravent les échanges entre les deux parties. Au niveau du partenariat économique, le projet d'accord prévoit en outre des dispositions visant l'encouragement des investissements entre le Maroc et les pays membres de l'UEMOA.

Profitant de ce cadre juridique privilégié, de nombreuses entreprises marocaines font depuis plus de cinq ans le pari de l'Afrique, continent qui connaît une forte croissance[17]. Mais leur intérêt s'explique aussi par la volonté de réduire leur dépendance à l'égard des économies européennes aujourd'hui en crise.

[16] La difficulté tient au fait que certains Etats, considérant que leur économie n'est pas prête à concurrencer les firmes marocaines, souhaitent au préalable la mise en place de mécanismes asymétriques en termes de préférences tarifaires et de règles d'origine. De son côté, le Maroc propose l'entrée des produits industriels provenant de l'UEMOA sans droits de douane et une réduction sur les produits agricoles.

[17] Selon le Fonds Monétaire Internationale (FMI), *« Etudes économiques et financières »,* octobre 2014, les perspectives de croissance de l'Afrique subsaharienne sont positives avec un taux de croissance en progression passant de 4,4% en 2012 à 5,1% en 2013, avec des prévisions de 5,8 pour 2015, p.2. Consulté le 08 Octobre 2014 sur : <http://www.imf.org/external/french/pubs/ft/weo/2014/02/pdf/textf.pdf>.

3. LES PERFORMANCES ECONOMIQUES ET COMMERCIALES DES ENTREPRISES MAROCAINES EN AFRIQUE SUBSAHARIENNE

Le cadre réglementaire ouest africain a ainsi permis aux entreprises marocaines de se diversifier et de développer leurs activités dans cette région. Aujourd'hui, les grandes sociétés du pays œuvrant dans différents secteurs (télécoms, banque, mines, construction, eau et électricité, gestion des ports, etc.) sont présentes en particulier dans les pays de l'Afrique de l'ouest avec une présence très remarquée au Sénégal et en Côte d'Ivoire.

Les investissements privés marocains en Afrique commencent à prendre de l'ampleur, d'autant plus que ces marchés sont totalement ouverts aux firmes marocaines et que le Maroc jouit d'une image positive en Afrique. Du côté des investissements bancaires et financiers, Attijariwafa bank et BMCE (Manque Marocaine du Commerce Extérieure) Bank sont les premiers groupes à avoir conquis le marché international, en particulier le marché africain. Attijariwafabank est présent au Sénégal (rachat de 66,67% du capital de la banque sénégalo-tunisienne BST) et au Mali (acquisition de 51% des actions de la Banque Internationale du Mali pour près de 60 millions d'euros)[18].

En 2009, l'opérateur a renforcé sa présence en Afrique subsaharienne avec l'acquisition de 5 filiales de Crédit agricole en Côte d'Ivoire, Sénégal, (Gabon et au Congo en Afrique centrale). Ainsi, le Produit National Brut (PNB) des filiales d'Attijariwafa bank en Afrique de l'Ouest s'est établi à 1,47 milliard de dirhams contre 539 millions de dirhams dans la zone centrale. De plus, le groupe envisage, de se positionner bientôt dans six autres pays de la zone UEMOA[19].

En 2007, la BMCE a procédé à une prise de participation à hauteur de 35% dans le capital de Bank of Africa, 3ème groupe bancaire de l'Union économique et monétaire ouest africaine (UEMOA). Par ailleurs, la BMCE, à travers sa filiale BMCE Capital Dakar, a réalisé une émission d'emprunt obligataire de 50 millions d'euros pour le compte du Port autonome de Dakar. Les télécommunications occupent 25% de l'encours global des Investissements Directs Etrangers (IDE) marocains en Afrique.

Dans le secteur minier et de l'énergie, l'Omnium Nord Africain (ONA), à travers

[18] Cf. « Point sur les relations du Maroc avec les pays de l"Afrique Subsaharienne », de la *Direction des Etudes et des Prévisions Financières, du Ministère de l'économie et des finances*, mai 2010, p. 8.

[19] Cf. « Point sur les relations du Maroc avec les pays de l"Afrique Subsaharienne... *cit.*», p. 9.

sa filiale minière Managem, détient plusieurs gisements de minerais en Afrique (Guinée, Mali, Burkina Faso et Niger). Dans le domaine énergétique, l'Office National de l'Electricité (ONE) a remporté un projet d'électrification durant 25 ans des zones rurales au nord du Sénégal[20].

Le secteur des Bâtiment et Travaux Publique (BTP) et les opérateurs immobiliers, notamment pour la construction de logements sociaux (Addoha, Alliances Développement Immobilier – ADI – et Somagec), ont aussi investi le marché ouest africain notamment en Côte d'Ivoire et au Sénégal.

Aujourd'hui, le résultat de cette diplomatie économique fait que le Maroc est devenu le 2e investisseur africain (avec un investissement total de 18 milliards de dirhams en 2013) en Afrique subsaharienne derrière l'Afrique du Sud et le premier investisseur en Afrique de l'ouest et central[21].

Fort de cette performance économique, le Maroc entend désormais jouer un rôle de premier plan en Afrique subsaharienne. Voilà pourquoi depuis l'année dernière, le Roi du Maroc multiplie des voyages en Afrique du Sud Sahara pour intensifier ces relations avec les pays de la région.

Cet intérêt du Royaume dans cette partie du continent africain peut être analysé sous plusieurs paramètres.

III. LES ENJEUX MULTIDIMENSIONNELS DU REGAIN D'INTERET DU MAROC EN AFRIQUE SUBSAHARIENNE

Les enjeux de cette nouvelle diplomatie subsaharienne du Maroc sont à analyser sous deux angles essentiels.

1. LE TROPISME DE LA COOPERATION SUD-SUD

Premièrement, l'Afrique se trouve dans un contexte de plus en plus marqué par les limites des relations Nord/Sud, relations marquées par leurs caractères profondément asymétriques et ne profitant qu'à une seule partie : c'est-à-dire aux pays développés. Les Etats africains depuis leur accession à l'indépendance il y a plus de 50 ans, bien qu'ayant maintenu de relations de toutes sortes avec les anciennes métropoles n'ont pas su tirer avantages ou profits de celles-ci. Les

[20] Ibidem, p. 10.

[21] Cfr. l'Institut Marocain des Relations Internationales(IMRI) : <http://www.imri.ma/chronique_suite.php?id=196>.

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accords de coopération bilatérale économiques, commerciaux, militaires, etc... n'ont véritablement pas profité aux Etats de l'Afrique subsaharienne en générale.

Dans le même temps, les partenaires économiques de ces Etats restent ceux de l'Union Européenne. En Afrique de l'Ouest, l'UE est le premier partenaire commercial, avec 34,4 % du commerce extérieur de la région. L'Afrique de l'Ouest quant à elle, concentre ses exportations vers l'Europe principalement trois pays : le Nigeria, la Côte d'Ivoire et le Ghana, qui représentent à eux seuls près de 80 % des exportations de la région[22].

En effet, l'Afrique subsaharienne reste très fragmentée et faiblement intégrée sur le plan commercial, avec un faible tissu industriel, un niveau de compétitivité bas, une faible libéralisation des échanges et des échanges inter-pays rendus assez difficiles dans certains cas par des situations post-conflictuelles ou par insuffisance d'infrastructures de transport.

Même si l'Afrique élargit ses relations économiques avec d'autres continents, l'UE demeure le premier partenaire commercial du continent africain; alors que l'Afrique intervient dans les échanges commerciaux avec l'UE des 27 à hauteur de 9 %, la France, l'Italie et l'Allemagne représentent plus de la moitié de l'ensemble des échanges commerciaux de l'UE27 avec l'Afrique[23].

En plus de ce caractère asymétrique qui pendant plus demi siècle n'aurait pas profité au décollage économique de l'Afrique, l'aide publique au développement n'a pas aussi profité ni sur le plan économique, ni sur le plan social aux peuples du contient africain. Face à cette réalité, la promotion de la coopération sud/sud est de plus en plus mise en avant.

« L'Afrique doit faire confiance à l'Afrique[24] » ! Ces propos témoignent bien de la place que le Maroc compte désormais réserver en matière économique et commerciale à l'Afrique qui connait un regain de croissance économique de plus en plus importante ces dernières années.

Par ailleurs, les pays de l'Afrique subsaharienne sont pour la plupart en phase en construction et pour certains en phase de reconstruction post conflit. C'est le cas de

[22] Voir le site web de la Délégation du l'Union Européenne (UE) au Burkina Faso : <http://eeas.europa.eu/delegations/burkina_faso/eu_burkina_faso/trade_relation/index_fr.htm>

[23] Cfr. le rapport de *l'UE* sur la « Stratégie commune Afrique-UE: principaux faits Commission Européenne » MEMO/13/367 23/04/2013.

[24] Ses propos sont ceux du Roi du Maroc Mohammed IV lors du Forum économique Ivoiro-Marocain à Abidjan en Côte d'Ivoire, février 2014. Propos largement repris par les médias ivoiriens, marocains et internationaux.

la Côte d'Ivoire qui sort de plus de 10 années de conflit qui a dévasté l'économie du pays. C'est aussi le cas du Mali qui a vu son économie chuté après près de 2 années de crises. En Côte d'Ivoire, les répercussions de la crise ont affecté l'ensemble des secteurs d'activité. Dans le secteur primaire, la baisse de la croissance serait de 0,3 %, imputable à l'agriculture d'exportation (– 6,7 %) et à l'extraction minière (– 7,7 %). Les campagnes de commercialisation du cacao et du coton ont été fortement perturbées au cours du premier trimestre 2011.

En ce qui concerne le Mali, des secteurs comme le tourisme et l'hôtellerie ont subi de plein fouet les effets de la crise politique et sécuritaire, le secteur du BTP (bâtiment et travaux publics) ayant chuté de 35% et les services liés au tourisme enregistrant une chute de l'ordre de 40%[25].

Du fait de l'insécurité, les ouvriers agricoles ont abandonné les plantations de café. Des pertes importantes de production ont été enregistrées pour les produits périssables, tels que la banane et l'ananas, en raison de l'embargo sur les ports d'Abidjan et de San Pedro. Au niveau des activités extractives, la production de pétrole s'est nettement contractée, à la suite de la fermeture ou de l'arrêt récurrent de certains puits. Dans le secteur secondaire, l'activité industrielle reculait de 8,4 %, en liaison notamment avec les arrêts de travail dus à l'insécurité, les pillages et destructions de nombreuses unités de production, les difficultés d'approvisionnement en matières premières et la morosité de la conjoncture. Le secteur des BTP serait particulièrement affecté par la décélération du rythme d'exécution des investissements publics et privés. Au niveau du secteur tertiaire, la croissance ont baisé de 13,4 %, en raison principalement du reflux dans le commerce et les transports, imputable à la contraction de la demande, aux perturbations du trafic terrestre, aéroportuaire et maritime, ainsi qu'au recul des échanges commerciaux avec les pays de l'hinterland[26].

Pour ces pays en phase de reconstruction post conflit, leur besoin en termes d'investissements est plus que jamais vital dans un contexte où l'Occident partenaire traditionnel de l'Afrique traverse une crise économique et financière.

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[25] Cf. le Rapport de la *Banque Mondiale* sur le Mali « Rapport Economique Biannuel » janvier 2013, p. 5, consulté le 06/05/2013 sur : <http://siteresources.worldbank.org/INTAFRICA/Resources/257994-1363299134775/mali-rapport-economique-bi-annuel-2013.pdf>.

[26] Voir le Rapport de la *Banque de France* • Rapport annuel de la Zone franc • 2010, sur « L'évolution économique et financière dans les pays africains de la zone Franc ». p. 46.

Outre l'investissement, l'expertise, le savoir faire et la technologie sont aussi les besoins de l'Afrique subsaharienne dans leur projet de développement économique et de reconstruction post conflit.

Pour satisfaire ces besoins, le Maroc constitue au regard de ses performances économiques, de la stabilité de ses institutions politiques et de son expertise avérée dans plusieurs domaines à savoir banque, assurance, transport, énergie, télécom etc…. un partenaire idéal pour la plupart de ces Etat surtout en phase post conflit. La coopération avec le Maroc dans tous ses domaines permettront sans doute aux Etats subsahariens de relever de nombreux défis pour leur développement économique et social. Outre cet aspect, la coopération Maroc Afrique subsaharienne parait plus équilibrée que celle asymétrique qu'entretien le contient et les pays du Nord.

Le Maroc ne cesse de plaider et de soutenir la question de développement dans les pays du sud. C'est ainsi que lors de sa Présidence du groupe des 77 et la Chine, en 2003, le Maroc a réaffirmé son engagement en faveur de la coopération sud-sud, notamment en faveur des pays de l'Afrique subsaharienne. C'est dans ce sens que le Maroc a organisé en 2007 à Rabat en partenariat avec le Programme des Nations pour le Développement (PNUD), la première Conférence africaine sur le développement. Cette Conférence a eu pour mérite de répondre à l'ambition du Maroc de promouvoir un développement humain à travers le renforcement de la coopération sud-sud et la mise en œuvre des engagements pris dans divers forums internationaux, notamment ceux liés aux Objectifs du Millénaires pour le Développement (OMD).

Deuxièmement, cet engament du Maroc en faveur de l'Afrique subsaharienne rapporte aussi au Royaume des devises et renforce aussi sa position de leadership sur le continent africain.

2. LA RECHERCHE D'UN LEADERSHIP POLITIQUE ET ECONOMIQUE EN AFRIQUE SUBSAHARIENNE

D'abord sur le plan économique, les entreprises marocaines enregistrent de performances remarquables en Afrique subsaharienne. Dans ce cadre, les résultats de Maroc Télécom en Afrique subsaharienne sont éloquents. Ainsi, au cours de l'année 2013, les activités du groupe Maroc Telecom à l'International ont enregistré une hausse de 9,5% (+9,5% à taux de change constant) de leur chiffre d'affaires par rapport à 2012, qui s'est établi à 7 754 millions de dirhams. Cette performance

a été réalisée grâce à la très forte croissance des parcs Mobile (+30,0%), soutenue par les importants investissements réalisés dans la couverture et la qualité des réseaux. Sur la même période, le résultat opérationnel avant amortissements a progressé de 18,1% par rapport à 2012, (+18,0% à taux de change constant) à 3 904 millions de dirhams, soit une marge de 50,4% en forte progression de 3,7 points grâce à l'amélioration de 1,2 pt du taux de marge brute et à la maîtrise des coûts opérationnels qui ne progressent que de 1,3%[27].

Le marché subsaharien notamment ouest africain où sont solidement implantées les entreprises du Royaume est nécessaires pour elles dans leur politique et perspectives de croissance et de développement.

Sur le plan politique et diplomatique, alors que depuis plusieurs décennies le différend concernant le Sahara occidental avec le Polisario semble ne pas pour l'instant connaitre un épilogue, depuis, le Conseil de Sécurité appelle sans cesse les parties et les Etats de la région à continuer la coopération avec l'ONU pour mettre fin à l'impasse actuelle et à progresser vers une solution politique. En réponse à cet appel de la communauté internationale, le Maroc s'est inscrit dans une dynamique positive et constructive en s'engageant à soumettre une initiative pour la négociation d'un statut d'autonomie de la région du Sahara dans le cadre de la souveraineté du Royaume. « Dans ce sens l'autonomie élargie de la région du Sahara s'inscrit dans le cadre du principe de l'équité aussi bien du point de vu de la charge démocratique de son contenu que de sa finalité politique et géopolitique, celle de contribuer à mettre fin à un conflit qui plombe le Maghreb, à travers l'insertion des différents courants sahraouis (…) dans un processus politique régional (Sahara) garantissant les droits et obligations qu'octroie le statut d'autonomie dans le cadre de la souveraineté marocaine[28] ». Malgré cette ouverture, les négociations devant aboutir à ce règlement politique piétinent et n'avancent toujours pas.

2. LE MAROC FACE AU RISQUE « TERRORISTE » OUEST AFRICAIN

L'Afrique de l'ouest en particulier constitue aujourd'hui la partie de l'Afrique la plus dynamique. Une dynamique impulsée par les différentes organisations dont la CEDEAO et l'UEMOA région où le Maroc est le premier investisseur africain.

Cette région depuis peu est marquée par une instabilité matérialisée une présence

[27] Voir « Rapport financier 2013 » de *Maroc Télécom*. Document consulté sur : <http://www.vivendi.com/wp-content/uploads/2014/02/20140213_MT_Rapport-financier-2013_FR.pdf>.

[28] El Houdaigui, R., *La politique étrangère de Mohammed VI... cit*. p. 12.

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accrue des groupes terroristes qui y opèrent menaçant la stabilité de plusieurs Etats de la région où les entreprises marocaines sont de plus en plus importantes. La lutte contre le terrorisme en Afrique de l'ouest est aussi un enjeu pour le Maroc du fait du conflit du Sahara. En effet il serait établi que les éléments de la RASD entretiennent des relations d'intérêts avec le MUJAO[29]. Ce rapprochement entre certains groupes terroristes du nord Mali et des jeunes combattants du Polisario relève d'une « suite somme toute logique d'une radicalisation du Polisario et de l'exacerbation des conditions de vie dans les camps de Tindouf, où les populations sont séquestrées contre leur gré par les milices des séparatistes[30] ».

L'opération militaire française « serval », en appui avec les forces de la CEDEAO au nord du Mali a dispersé ces combattants venus notamment du camp de Tindouf qui sont repartis dans leur bastion. Ces combattants ont fui le Mali avec des armes et de l'expérience qui peut faire craindre une certaine radicalisation du Polisario.

Cette situation conduit progressivement le Maroc à s'intéresser à la crise malienne. Cet intérêt s'est matérialisé par la présence du Roi Mohamed VI lors de l'investiture du Président Ibrahim B. Kéita élu au terme de la transition, investiture au cour de laquelle il annonce son soutien au Mali.

Si la lutte contre le terrorisme en Afrique de l'ouest est un enjeu pour le Maroc du fait du conflit saharien, il m'en demeure pas moins que l'intensification des relations diplomatiques et politiques avec cette région permettra au Maroc de demeurer un leader dans cette partie du continent africain.

V. CONCLUSION

Depuis quelques années maintenant, le Maroc manifeste un intérêt de plus en plus croissant vis-à-vis des pays de l'Afrique subsaharienne. Si ces Etats en construction ou en reconstruction poste conflit notamment le Mali, la Côte d'Ivoire pour ne citer que ces exemples ont besoin des investissements, de l'expertise, du savoir faire ou encore de la technologie, domaines dans lesquels le Maroc est avancé comparativement à ces pays, il n'en demeure pas moins que le Maroc a aussi besoin

[29] Junger, K., « Les traces du Polisario sur le front malien se confirment », 01 mars 2013, p.1, consulté le 06/05/2014 sur : <http://www.droits-humains.org/index.php?view=article&catid=1&id=213%3Ales-traces-du-polisario-malien-se-confirment&format=pdf&option=com_content&Itemid=19>.

[30] Yonah Alexander, Directeur du Centre international pour les études contre le terrorisme (ICTS), relevant du Potomac Institute à Washington, dans « Les traces du Polisario sur le front malien se confirment », cité par Junger, K., *op.cit.*

du marché subsaharien pour la croissance et le développement de ses entreprises, lesquelles réalisent toute fois de bonnes performances économiques dans cette partie du contient africain.

Le développement des activités économiques et commerciales des entreprises marocaines a fait aujourd'hui du Royaume le deuxième investisseur africain en Afrique subsaharienne derrière la géante Afrique du Sud et le premier en Afrique de l'ouest et centrale. Cette performance et avant tout à mettre à l'actif du Roi du Maroc qui depuis quelque temps multiplie des visites d'Etats au sud du Sahara, et pour qui la coopération sud-sud, à l'heure où les pays occidentaux manifestent des signes tangibles d'un essoufflement économique, cette coopération est plus que jamais une option pour le développement économique et social du continent africain.

Si le Maroc doit avoir un regard de veille dans cette région compte tenu du terrorisme qui est sans frontière et dont les racines méridionales sont enfoncées en Afrique de l'ouest mais aussi vu la présence de plus en plus remarquée de ses entreprise dans la région, une coopération politique plus accrue lui offrira une convergence de vue pour la stabilisation de la région.

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LA SOUHAITABLE INCLUSION DES OPÉRATIONS DE PAIX DANS LA CHARTE DES NATIONS UNIES

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RÉSUMÉ : Ce document fait valoir que la réforme de la Charte des Nations Unies devrait incorporer dans le texte les concepts relatifs aux missions de maintien de la paix (*peacekeeping operations*). Ces opérations ont surgi de façon imprévue pour atténuer les differents types de conflits armés, et depuis plusieurs années leur évolution n'avait pas un cadre conceptuel adéquat. La systématisation de ses éléments, en tant qu'organisation, protocoles, règles d'engagement ou de soutien sur le terrain, a été le résultat d'une longue expérience de terrain, nonobstant, n'a pas pu abouti à la codification juridique et systématique. Vu cette realité, nous croyons nécessaire d'intégrer expresssément la réalité de ces missions à la Charte des Nations Unies afin de les doter d'une plus grande sécurité juridique, car il s'agit là des instruments d'action les plus visibles et évalués de l'ONU.

MOTS-CLÉS: La réforme de la Charte des Nations Unies ; missions de maintien de la paix.

LA DESEABLE INCLUSIÓN DE LAS OPERACIONES DE PAZ EN LA CARTA DE LAS NACIONES UNIDAS

RESUMEN: En este trabajo se defiende que la reforma de la Carta de Naciones Unidas debería incorporar a su texto los conceptos relativos a las misiones de mantenimiento de la paz (*peacekeeping operations*). Es sabido que éstas surgieron de modo improvisado ante la necesidad de enfriar conflictos armados de todo tipo, y su evolución careció durante muchos años de un marco conceptual adecuado. La sistematización de sus diferentes elementos, como organización, protocolos de actuación, reglas de enfrentamiento o apoyo sobre el terreno, ha sido el fruto de una larga experiencia práctica, pero no se ha acometido su codificación jurídica sistemática. Creemos necesario incorporar la realidad de estas misiones de paz expresamente a la Carta de Naciones Unidas para dotarles de mayor seguridad jurídica, toda vez que constituyen uno de los instrumentos de acción más visibles y evaluados de la ONU.

PALABRAS CLAVE: Reforma de la Carta de Naciones Unidas, misiones de paz.

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THE DESIRABLE INCLUSION OF PEACE OPERATIONS IN THE UNITED NATIONS CHARTER

ABSTRACT: This paper argues that the reform of the UN Charter should incorporate into its text the concepts relating to the peacekeeping operations. It is known that these arose makeshift way before the need to cool down armed conflicts of all kinds, and its evolution lacked an adequate conceptual framework for many years. The systematization of its elements, such as organization, protocols, rules of engagement or field support, has been the result of long practical experience, but a systematic legal codification has not been undertaken. We believe it necessary to incorporate the reality of these peacekeeping missions expressly to the Charter of the United Nations to provide them with greater legal certainty, since they constitute one of the most visible and evaluated UN instruments of action.

KEYWORDS: Reform of the Charter of the United Nations, peace missions.

I. INTRODUCTION

Les opérations de paix sont apparues de forme imprévue pendant la Guerre froide dans le but de contrôler les differents types de conflits armés. Leur évolution manque pendant des années d'un cadre conceptuel approprié. Leur nombre, le volume des missions et la complexité de leurs mandats ont augmenté de façon exponentielle dans la période postérieure à la Guerre froide. La systématisation de ses différents éléments, comme organisation, protocoles d'action, règles d'engagement ou soutien sur le terrain a été le fruit d'une longue expérience de terrain, laquelle a été l'origine de l'apparition de remarquables documents –à titre d'exemple le "Rapport Brahimi"[2], la "Doctrine Capstone"[3] ou le Processus "Nouvel Horizon"[4]-. Nonobstant leur codification et systématisation juridique n'ont pas été entreprises.

Nous estimons que le moment est venu pour intégrer expressément la réalité de ces missions de paix à la Charte des Nations Unies pour leur doter d'une plus grande sécurité juridique, chaque fois qu'ils constituent des instruments d'action les

[2] Le « Rapport Brahimi » est le Rapport du Groupe d'étude sur les opérations de paix de l'ONU (document A/55/305; S/2000/809, du 21 août 2000).

[3] Nations Unies, *Opérations de maintien de la paix des Nations Unies : Principes et Orientations («Doctrine Capstone»)*. Département des operations de maintien de la paix et Departement de l'appui aux missions, New York, 2008, <http://pbpu.unlb.org/pbps/Library/Capstone_Doctrine_ENG.pdf>.

[4] Ce processus «Nouvel Horizon» se développe depuis des années, en prenant comme point de départ du document suivant: Nations Unies, *Un partenariat renouvelé : définir un nouvel horizon pour les opérations de maintien de la paix des Nations Unies*, Departement des operations de maintien la paix et Departement de l'appui aux missions, New York, juillet 2009, disponible sur <http://www.un.org/fr/peacekeeping/documents/nh_fr_rev_temp.pdf>.

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plus visibles et évalués de l'organisation universelle. Cependant, cette consolidation légale devrait jouir d'une certaine flexibilité pour qu'elle soit capable de s'adapter à un monde exigent et de nature changeante comme l'actuel.

Dans cet article on va expliquer en premier lieu comment ils ont évolué les missions de paix créées par l'Organisation des Natios Unies, et quelles sont leurs caractéristiques. Par la suite, on va analyser le cadre juridique de ces opérations en se référant à la Charte des Nations Unies, cela nous permetrra de comprendre le fondement juridique de ces missions à travers l'analyse des articles du traité constitutif de l'ONU.

II. L'ÉVOLUTION HISTORIQUE ET LES CARACTÉRISTIQUES DES MISSIONS DE MAINTIEN DE LA PAIX DES NATIONS UNIES

1. DEVELOPPEMENT HISTORIQUE

Les opérations de mantien de la paix de l'ONU ont été créées de manière imprévue, le but était d'atténuer la persistance du conflit du Moyen-Orient. Le premier groupe d'observateurs a été créé en 1948 (ONUST) et la première force de maintien de la paix (UNEF I) a été établie en 1956 pendant la crise de Suez. C'était durant ces années, à l'occasion de la création et le déploiement des premières opérations de maintien de la paix que les Nations Unies ont fondé les principales caractéristiques de ces opérations[5].

La fin de la Guerre froide a marqué un tournant dans cette évolution. De fait, pendant les quarantes ans de la période d'affrontement entre les blocs occidental et soviétique, l'ONU a établi seulement treize de ces missions. La periode de l'après-guerre froide a connu une expansion rapide des opérations de maintien de la paix (OMP), avec 56 missions depuis 1989. Comme nous le savons, la chute du Mur de Berlin a débloqué le Conseil de Sécurté en ressuscitant l'espoir d'établir finalement le système de sécurité collective conçu dans la Charte des Nations Unies. Ainsi, les fonctions de ces missions internationales ont été élargies considérablement, en sus des mandats traditionnelles de contrôle des accords d'armistice, cessez-le-feu et/ou d'interposition entre les combattants, l'ONU a commencé à mettre en place des

[5] À cet égard voir par exemple, Cano Linares, M. A., *Orígenes y fundamentos prácticos del mantenimiento de la paz en Naciones Unidas: las posiciones durante el periodo de la Guerra Fría*, Dykinson, Madrid, 2011; et Nations Unies, *The Blue Helmets. A Review of United Nations Peace-Keeping.* 3eme ed., Nations Unies, New York, 1996.

opérations multidimensionnelles avec des mandats plus élargis et des composants policiers et civils plus signicatifs.

La combinaison de ces facteurs explique l'accroissement spectaculaire qu'ont connu les operations des *casques bleus* : ainsi, par exemple, en janvier 1988, les missions de paix de l'Organisation universelle ont à peine atteint 11 000 effectifs, entre personnel militaire, policier et civil, et un budget d'environ 230 millions de dollars. En décembre 1994, ce chiffre a augmenté jusqu'à atteindre 77 000 personnes encadrées en des opérations de ce type, avec des dépenses annuelles de 3.600 millions de dollars.

Toutefois, entre 1995 et 1998, le volume des *casques bleus* et le budjet ont diminué, cela est du principalment à l'épuisement financier de l'Organisation des Nations Unies et l'achèvement du mandat de certaines grandes opérations (Somalie, ex-Yougoslavie, Mozambique), tandis que durant les 15 dernières années se produit un écimage à cause des opérations complexes établies au Kosovo (MINUK), Sierra Leone (MINUSIL), Timor oriental (ATNUTO et MANUTO), Haïti (MINUSTAH) et surtout l'Afrique (MONUSCO en République Démocratique du Congo, MINUSCA en la République centrafricaine, MINUSMA au Mali, ONUCI en Côte d'Ivoire, MINUL au Libéria, et au Soudan MINUAD au Darfour – conjointement avec l'Union africaine -, FISNUA en Abyei et MANURSS au Soudan du Sud), atteignant le déploiement actuel d'environ 116.000 effectifs – entre militaires, policiers et civils provenant de plus de 120 États -, et un budget annuel qui a augmenté, en atteignant 7.830 millions de dollars entre 2013 et 2014.

En somme, les missions de paix ont éprouvé une progression évidente dans la période postguerre froide: fonctionnellement ont été entrepris des mandats très élargis et complexes; sur le plan géografique, ces missions ont été développées dans toutes les régions du monde avec une concentration spéciale en Afrique; en ce qui est de l'aspect quantitatif, le mécanisme du maintien de la paix a multiplié le nombre des opérations, le volume de personnel et les États participants[6].

La plupart de ces missions ont été destinées à la pacification des conflits armés internes – specialement en Afrique - provoqués par les dissensions ethniques, les luttes politiques domestiques ou l'effondrement des institutions étatiques. L'intensification des opérations qui visent les conflits internes a augmenté sa nature "d'interventionniste" dans les affaires de juridiction domestique des États.

[6] Voir par exemple, Sorenson, D. S. et Wood, P. Ch. (eds.), *The Politics of Peacekeeping in the Post-Cold War Era*, Frank Cass, Londres, 2005.

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Bien évidemment, ces missions de paix se heurtent à de grandes difficultés dues au caractère de conflit; un constant climat de confrontation armée, absence de frontières définies, absence de lignes claires de cessez-le-feu, le risque de compromettre la mission, voire la propre sécurité du personnel. Face à cette situation, il est necesessaire de réflechir sur la manière et le temps que les Nations Unies doivent prendre en considération pour qu'elles s'impliquent dans des opérations de maintien de la paix, car le déploiement des missions de cette envergure en certaines situations militaires est particulièrement risqué et inadéquat.

L'expérience montre comment le passage de la frontière entre l'utilisation de la force (et le consentement de toutes les factions armées) , maintien de la paix (*peacekeeping* en anglais) et l'imposition de la même (*peace enforcement*) fait des Nations Unies une partie prenante au conflit, tout en perdant sa légitimité et la crédibilité en tant qu'une tierce partie impartiale. Cet engagement compromet leur capacité de contrôler les événements et de risquer la sécurité des soldats, de sorte que la plupart de leurs efforts et ressources doivent être utilisés pour leur propre protection. Cette circonstance conduit invariablement à la perte de soutien populaire, escalade incontrôlée de la violence et une augmentation considérable de la tension politique. À cet effondrement, la seule solution c'est le retrait de l'opération.

2. CARACTERISTIQUES DES MISSIONS DE MAINTIEN DE LA PAIX DES NATIONS UNIES

D'abord, il faut reconnaître le manque d'une réglementation juridique spécifique et systématique sur la question. En dépit de ces lacunes, la pratique de l'ONU a établi certains principes, caractéristiques communes applicables à ces opérations de maintien de la paix[7]:

1. Le consentement de l'Etat hôte et toutes les parties de conflit avant

[7] Ces caractéristiques communes de ces missions de paix peuvent être identifiés à partir de la lecture combinée des résolutions de l'ONU habilitantes de ces opérations, les rapports du Secrétaire général sur les activités des différentes missions, les accords de participation conclus avec les États qui fournissent des contingents et de l'équipement, et les accords sur le statut des forces (SOFAs) conclus avec les pays qui les reçoivent. Voir Benvenuti, P., «The Implementation of International Humanitarian Law in the Framework of United Nations Peace-keeping Operations» en aa.vv, *Law in Humanitarian Crises. Le droit face aux crises humanitaires*, vol.1, Commission européenne, Bruxelles, 1995, p. 98; Goulding, M., «The Evolution of United Nations Peace-keeping», Cyril Foster Lecture 1993 at the Examination Schools, Universidad de Oxford, Oxford, 4 mars 1993 (pp.4-6), publiée en *International Affairs*, vol. 69, n.3, 1993, pp. 453-455; en outre, la déclaration du Président du Conseil de sécurité de 28 mai 1993 (document S/25859); *General Guidelines for Peace-keeping Operations*, Département des opérations de maintien de la paix, Nations Unies, New York, pp. 15-24.

l'établissement d'une mission. Le consentement est un prérequis essentiel qui doit être respecté en toutes circonstances, puisqu'une opération de maintien de la paix ne peut être considérée en aucun cas comme une mesure coercitive.

2. Le non-usage de la force : les Casques bleus ne sont pas autorisés à utiliser la force, sauf en cas de légitime défense, entendue comme autodéfense élémentaire devant une agression. De même, il est permis aux OMP de faire recours à la force lorsqu'il s'agit de la nécessaire « vis compulsiva » pour pouvoir remplir la mission, mais dans ce cas nous serions plutôt devant un état de nécessité. Toutefois, la pratique idéale serait n'avoir jamais recours à la violence et, en fait, beaucoup de ces opérations sont intégrées par des observateurs militaires non armés, et même les troupes qui composent les forces de maintien de la paix, et qu'elles sont armées portent uniquement un armement de caractère léger et défensif[8].

3. L'impartialité est un autre principe fondamental des missions de maintien de la paix. Ces missions ne doivent pas interférer dans les affaires internes de l'État hôte de l'opération, et doivent s'abstenir à favoriser les acteurs dans le conflit. Cette mesure est imposée aussi au personnel civil, qui doit "exercer ses fonctions en respectant les intérêts de l'Organisation des Nations Unies"[9].

4. Ces opérations sont placées sous commandement international, notamment du Secrétaire général de l'Organisation des Nations Unies, qui est à son tour le responsable devant l'organe créateur de la même. Les différentes troupes de ces missions internationales reçoivent leurs instructions opérationnelles du Siège de l'ONU à New York et non du commandement national.

5. Les États membres qui participent dans ces missions de paix doivent le faire d'une manière entièrement volontaire.

6. Ces opérations doivent disposer de l'appui de la communauté internationale, symbolisé dans le cas des *casques bleus* par l'intermédiaire de sa création par l'ONU.

[8] Les "Règles d'engagement" de la mission (ROE) contenant des modèles de comportement à suivre par les OMP qui concerne l'utilisation de la force armée. Ces règles ne sont généralement pas publiés, et ainsi en Espagne sont classés comme «diffusion limitée». Toutefois, cette caractéristique a évolué dans la période de l'après-guerre froide: voir Cardona Llorens, J., «Reflexiones a la luz de la evolución del denominado mantenimiento de la paz enérgico de las Naciones Unidas» en Aznar Gómez, M. J., et Cardona Llorens, J. (coords.), *Estudios de Derecho internacional y Derecho europeo en homenaje al profesor Manuel Pérez González*, vol. 1, Tirant lo Blanch, Valence, 2012, pp. 299-314.

[9] Voir par exemple le rapport du Secrétaire général à l'Assemblée générale concernant les aspects administratifs et budgétaires du financement des opérations de maintien de la paix des Nations Unies (document A/44/605, 11 octobre 1989, p.13).

III. BASE JURIDIQUE DES MISSIONS DE PAIX DE L'ONU: DISCUSSION DOCTRINALE

Pour trouver le fondement juridique des opérations de maintien de la paix établies par l'ONU, il faut revenir à l'acte constitutif de la Charte des Nations Unies, ce dernier ne fait aucune référence explicite aux OMP. Il est déduit que les pouvoirs implicites de cette organisation permettent de créer des opérations militaires pour le maintien de la paix internationale, objectif essentiel de ces missions, en appliquant ainsi une interprétation téléologique et dynamique des clauses de la Charte.

Si ces missions sont établies par l'Assemblée générale, leur fondement juridique se trouve dans les articles 10, 11 et 14 de la Charte. Cependant, presque toutes les missions de ce type ont été créées par le Conseil de sécurité, pour cette raison nous estimons que la base juridique se trouve dans l'article 40 de la Charte. Il s'agit là des mesures provisoires que le Conseil peut décider d'établir dans ce domaine. De nombreux auteurs coïncident avec cette hypothése, à titre d'exemple on évoque l'opinion de Schachter qui indiquait depuis des années, en se référant à la première Force d'urgence des Nations Unies (FUNU I), que l'opération de l'ONU ne devrait pas préjuger la solution des questions en litige, ni modifier l'équilibre politique des efforts de règlement du différend, ni modifier le *statu quo*[10]. En conséquence, la base juridique des OMP de l'Organisation des Nations Unies prévues par son Conseil de sécurité se trouverait dans l'article 40 de la Charte (Chapitre VII) et non dans son Chapitre VI, car ces opérations sont des mesures provisoires de caractère pacificateur et impartial adressées à la stabilisation provisoire d'une situation conflictuelle, mais ne sont pas destinées de façon directe au règlement pacifique du différend, à la différence des moyens énumérés à l'article 33 de la Charte. C'est pourquoi, nous pensons que la base constitutionnelle de ces opérations onusiennes ne peut se trouver dans le Chapitre VI de la Charte[11].

[10] Voir Schachter, O., «The Uses of Law in International Peacekeeping», *Virginia Law Review*, vol. 50, 1964, p. 1105; Abraszewski, A., «Financing of the Peace-keeping Operations of the United Nations», *International Geneva Yearbook*, 1993, p. 81; et Jiménez de Aréchaga, E., «United Nations Security Council», en Bernhardt, R. (ed.), *Encyclopedia of Public International Law*, 2ème ed., vol.4, North-Holland, Amsterdam, 2000, pp. 1168-1172.

[11] Voir Cioubanu, D., «The Power of the Security Council to Organize Peace-keeping Operations», en Cassese, A., *United Nations Peace-keeping. Legal Essays*, Sijthoff & Noordhoff, Alphen aan den Rijn, 1978, p. 17; contre Mariño Menéndez, F., «Perspectivas de las operaciones de mantenimiento de la paz de Naciones Unidas», *Tiempo de Paz*, vol. 43, 1996-1997, p. 44; Ruzié, D., «Maintaining, Building and Enforcing Peace: A Legal Perspective», *UNIDIR Newsletter*, nº24, 1993, p. 13; Fernández Sánchez, P. A., *Operaciones de las Naciones Unidas para el mantenimiento de la paz*, vol.1, Université de Huelva, Huelva,

Il est vrai que ces opérations, à certains moments concrets, peuvent exercer des fonctions de médiation ou de conciliation pour arrêter les affrontements armés entre les parties au conflit. Elles peuvent également participer à des négociations d'un cessez-le-feu ou à un processus de démobilisation et de désarmement de l'une des parties à un conflit, mais le mandat *per se* ne prevoit pas la résolution de différence politique de fond. Cela signifie que ces mssions ne sont pas des mesures de règlement pacifique des différends, prévus dans le Chapitre VI de la Charte. En tout cas, la distinction entre les Chapitres VI et VII de la Charte ne doit pas être identifiée avec la différence qui existe entre les activités de *peacekeeping* et celles de *peace enforcement*.

Selon le texte de l'article 40, "le Conseil de sécurité … peut inviter les parties intéressées à se conformer aux mesures provisoires", cette afirmation peut être considerée comme une simple recommandation, mais ne devient pas une contrainte. De toutes façon, et malgré l'énoncé de l'article 40, l'application des mesures provisoires sans affecter les positions des parties semble difficile à atteindre, ce qui nous laisse entendre que les parties sont -en quelque sorte- obligées à appliquer les résolutions prises en vertu de l'article 40, à cause de l'engagement général des États membres de s'acquitter -et s'entraider pour s'acquitter- les résolutions du Conseil de sécurité (arts.25 et 49). Et de cette manière, il est possible de comprendre comment le Conseil a organisé dans la pratique des mécanismes pour assurer l'application de ces mesures provisoires (commissions, représentants spéciaux, missions d'observateurs, les forces de maintien de la paix, etc.) et que, en tout cas, le Conseil de sécurité prend en compte la violation de ces mesures provisoires (art.40 *in fine*)[12]. Toutefois, ces mesures temporaires sont généralement respectées et appliquées, grâce à l'efficacité des pressions politiques plus qu'à la force de l'obligation juridique de preuve difficile.

Au cours des années, de diverses positions doctrinales ont traité le fondement juridique des missions des *casques bleus* créées par le Conseil de sécurité de l'ONU[13]:

1998, p. 30 et ss.; ou US Presidential Directive-Decision du 3 mai 1994, qui encadrait les OMPs traditionnelles au Chapitre VI de la Charte.

[12] Goodrich, L. M., Hambro, E. et Simons, A.P., *Charter of the United Nations. Commentary and Documents*, 3ème ed., Columbia University Press, New York, 1969, pp. 306-309; Schachter, O., «Legal Aspects of the United Nations Action in the Congo», *American Journal of International Law*, vol. 55, 1961, p. 6; Stone, J., *Legal Controls of International Conflict,* Stevens, Londres, 1954, p. 643 et ss.

[13] Voir Carrillo Salcedo, J. A., *La crisis constitucional de las Naciones Unidas*, CSIC, Madrid, 1966, pp. 91-104; Cellamare, G., *Le operazioni di peace-keeping multifunzionali*, Giappichelli, Turin, 1999, pp. 205-234; Karaosmanoglu, A. L., *Les actions militaires coercitives et non coercitives des Nations Unies*, Droz, Genève,

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1. En vertu de l'article 29 de la Charte, le Conseil de sécurité peut créer des organes subsidiaires –l'article 22 à l'Assemblée générale sur la même compétence- selon un auteur, cette clause peut être considérée comme étant le fondement juridique des missions de *casques bleus* créées par le Conseil,[14]. Cependant, face à cette proposition, il convient de souligner que le fondement juridique de l'établissement d'un organe subsidiaire dépend des fonctions qui lui sont conférées. En outre, tandis qu'un organisme subsidiaire peut être institué par un vote de procédure (neuf voix des membres du Conseil de sécurité), la pratique du Conseil de sécurité montre que la création d'une OMP ne peut être mise en place par un vote de ce type, car il s'agit d'une question de fond qui exige une majorité de neuf voix comprenant les membres permanents du Conseil[15].

2. Un autre courant doctrinal affirmait que le fondement constitutionnel des OMP peut se trouver dans l'article 41 de la Charte, car il pourrait être assimilé à des mesures de ce type qui n'impliquant pas l'utilisation de la force armée[16]. Toutefois, il convient de rappeler que ces missions de paix ne sont pas des mesures coercitives– telles que prévoit l'article 41 -, en plus, les OMP peuvent faire usage de la force armée en cas de légitime défense, et en état de nécessité, par contre les mesures de l'article 41 ne sont pas des mesures armées[17].

3. D'autre part, autres auteurs estiment que le fondemnet juridique de ces missions de paix se trouve dans l'article 42 de la Charte, relatif à des mesures coercitives armées[18]. Nonosbtant, face à cette proposition il convient de signaler

1970, p. 241 et ss.; Pineschi, L., *Le operazioni delle Nazioni Unite per il mantenimento della pace*, CEDAM, Padoue, 1998, pp. 41-53.

[14] Bowett, D. W., *United Nations Forces: A Legal Study of U.N. Practice*, Stevens, Londres, 1964, pp. 285 et 287; aussi Draper, G. I. A. D., «The Legal Limitations upon the Employment of Weapons by the U.N. Force in the Congo», *International and Comparative Law Quarterly,* vol. 12, 1963, p. 392.

[15] Voir, *inter alia*, Lehmann, T., «Some Legal Aspects of the United Nations Peace-keeping Operations», *Nordic Journal of International Law*, vol.54, n. 3-4, 1985, pp. 11-13; et Sheikh, A., «U.N. Peacekeeping Forces. A Reappraisal of Relevant Charter Provisions», *Revue Belge de Droit International*, vol. 4, n. 2, 1971, p. 489.

[16] Bowett, D. W., *United Nations Forces... cit.*, p. 280; et Sohn, L. B., «The Authority of the United Nations to Establish and Mantain a Permanent United Nations Force», *American Journal of International* Law, vol 52, 1958, p. 230.

[17] Voir Ciobanu, D., «The Power of the Security Council to Organize Peace-keeping Operations», en Cassese, A., *United Nations Peace-keeping. Legal Essays*, Sijthoff & Noordhoff, Alphen aan den Rijn, 1978, p. 18.

[18] Schwrzenberger, G., «Report on Problems of a United Nations Force», International Law Association, Hamburg Conference, 1960, p. 137; Sohn, L. B., «The Authority of the United Nations to Establish and Mantain a Permanent United Nations Force», *American Journal of International Law*,

que les OMP ne sont pas des mesures de caractère coercitif, en plus, tandis que l'application des mesures prévues par l'article 42 est subordonnée à la signature et à l'entrée en vigueur des accords spéciaux entre le Conseil de sécurité et les États membres comme il est prévu dans l'article 43 de la Charte, les *casques bleus* ne peuvent être créés ni dépendre du mécanisme de l'article 43[19].

4. Certains auteurs ont essayé de chercher le fondement juridique de ces mssions dans l'article 48.1 de la Charte[20], dont le libellé se lit comme suit:

> «Les mesures nécessaires à l'exécution des décisions du Conseil de sécurité pour le maintien de la paix et de la sécurité internationales sont prises par tous les Membres des Nations Unies ou certains d'entre eux, selon l'appréciation du Conseil».

À notre avis, toutefois, cette disposition concerne la participation des États membres à des actions militaires déjà décidées par le Conseil de sécurité sur la base des autres clauses de la Charte, notamment l'article 42.

5. Certes, il faut reconnaître qu'aucune des clauses qui forment le système de sécurité collective de la Charte des Nations Unies ne sont conformes en exactitude à toutes les OMP créées par le Conseil de sécurité, de façon que, trouver le fondement juridique de ces missions oblige de faire des interprétations forcées et extrêmes[21]. C'est précisément pour cela, que plusieurs auteurs, sachant qu'aucune disposition de la Charte ne fournissait une base juridique appropriée aux OMP, elles sont tournées vers les "pouvoirs implicites" de l'ONU -reconnus à plusieurs reprises par la jurisprudence internationale[22]- comme support juridique pour organiser ces opérations, pour la raison que l'ONU doit compter sur les pouvoirs qui lui sont

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vol. 52, 1958, p. 230. Également Spatafora fait appel à des articles 39 et 42, à considérer que celui-ci prévoit une simple action collective de caractère militaire - comme serait une force de police - mais non coercitive. Spatafora, M., «Gli interventi colletivi delle NU e il parere della CIJ», *Rivista di Diritto Internazionale*, vol. 47, 1964, pp. 37-39.

[19] Avis consultatif de la Cour Internationale de Justice (CIJ) du 20 juillet 1962 dans le l'affaire relative à *Certaines dépenses des Nations Unies (article 17, paragraphe 2, de la Charte), C.I.J. Recueil 1962*, p. 166; Ciobanu, D., *op. cit.*, 1978, pp. 18-19.

[20] Schwarzenberger, G., «Report on Problems of a United Nations Force», International Law Association, Hamburg Conference, 1960, p. 138.

[21] Fernández Sánchez, P. A., *Operaciones de las Naciones Unidas para el mantenimiento de la paz cit.,* p. 90; Picone, P., «Il peace-keeping nel mondo attualle: tra militarizzazione e amministrazione fiduciaria», *Rivista di Diritto Internazionale*, vol. 79, nº 1, 1996, p. 27.

[22] Voir respectivement des avis consultatifs de la Cour Internationale de Justice de 11 avril 1949 (*Réparation des dommages subis au service des Nations Unies*) et de 20 juillet 1962 (*Certaines dépenses des Nations Unies*), *C.I.J. Recueil 1949*, p. 182 et *C.I.J. Recueil 1962*, p. 213 - Opinion individuelle du juge G. Fitzmaurice -.

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nécessaires pour l'accomplissement de leurs fonctions[23].

Mais un fondement si vague comporte un risque lorsque les missions militaires de cette nature interfèrent à la souveraineté territoriale de l'État hôte, au contrôle et à la juridiction personnelle qu'exercent les pays participants sur leurs propres troupes[24]. En outre, certains traités multilatéraux reconnaissent *explicitement* les OMP, ont accordé une protection spéciale aux personnels, on mentionne ici la Convention de 1994 sur la sécurité du personnel des Nations Unies et du personnel associé, ou la Convention de 1980 sur l'interdiction ou la limitation de l'emploi de certaines armes classiques qui produisent des effets traumatiques excessifs ou qui réalisent des frappes sans discrimination[25]. Il est vrai que la Charte des Nations Unies ne les mentionne pas expressément, mais les OMP poursuivent des objectifs, portée conformes avec la Charte. En réalité, pour que les OMP obtiennent une vaste compétence dans le maintien de la paix et la sécurité internationales, les pays doivent reconnaître les pouvoirs implicites du Conseil de sécurité.

6. Une mission de paix doit être considérée comme une mesure temporaire, comme il a signalé dès le debut, le Secrétaire général de l'Organisation des Nations Unies [26]. C'est pourquoi plusieurs auteurs, avec lesquels nous convenons, déduisent que l'article 40 de la Charte peut servir de base juridique pour l'établissement des OMP, car les mesures provisoires visées par cette disposition s'inscrivent dans la définition de ces opérations[27]. Toutefois, ces mesures provisoires de l'article 40

[23] Voir Halderman J. W., «Legal Basis for United Nations Armed Forces», *American Journal of International Law*, vol. 56, 1962, pp. 972-973; Seyersted, F., «Can the United Nations Establish Military Forces and Perform other Acts without Specific Basis in the Charter?», *Österreichische Zeitschrift für öffentliches Recht und Völkerrecht*, vol. 12, 1962, p. 211 et ss.; Sohn, L. B., «The Authority of the United Nations to Establish and Mantain a Permanent United Nations Force... *cit.*», p. 230; Vallat, F., «The Competence of the United Nations General Assembly», *Recueil des Cours de l'Académie de Droit international*, vol. 97.II, 1959, p. 285; et en général Fernández Sánchez, P. A., *Operaciones de las Naciones Unidas para el mantenimiento de la paz... cit.,* pp 93-101.

[24] Voir à cet égard au Président de la CIJ, B. Winiarski, dans son opinion dissidente à l'avis consultatif de son propre tribunal dans l'affaire relative á *Certaines dépenses des Nations Unies*, *C.I.J. Recueil 1962*, p. 230; et Kosonen, A., *The United Nations General Assembly and the Authority to Establish UN Forces*, Université de Helsinki, Helsinki, 1986, pp. 86-88.

[25] Articles 1.c et 2.1 de la Convention de 1994 et à l'article 12 du Protocole sur l'interdiction ou la limitation de l'emploi des mines, pièges et autres dispositifs (Protocole II, tel qu'il a été modifié le 3 mai 1996), annexé à la Convention de 1980.

[26] Voir, à l'égard de la FUNU I, de l'*Étude sommaire sur l'expérience tirée de la création et du fonctionnement de la Force*, Rapport du Secrétaire général de 9 octobre 1958 (doc.A/3943, par.2).

[27] Bowett, D. W., *United Nations Forces: A Legal Study... cit.,* p. 280 et ss.; Higgins, R., *The Development of International Law through the Political Organs of the United Nations*, Oxford University Press, Londres, 1963, pp. 235-236; Schachter, O., «Legal Aspects of the United Nations Action in the Congo»,

possèdent deux limites claires : le premier de caractère temporaire, car il s'agit là d'un recours d'urgence, utilisable dans des délais limités; d'autre part, ces mesures ne doivent pas préjuger la solution du différend, ni modifier l'équilibre politique qui peut affecter les efforts établis qui visent à régler le conflit, ni de changer le status juris préalable.

À notre avis, les OMP créées par le Conseil de sécurité émergent de la nécessité du Conseil de sécurité pour assurer le respect des parties au conflit des autres mesures provisoires préalables, que nous appellerions de premier niveau ou primaires -cessez-le-feu, séparation des forces belligérantes, démobilisation militaire, création des zones de sécurité, etc.-[28]. Ainsi, existeraient deux types de mesures provisoires, des mesures primaires au sens strict, pour apaiser la situation conflictuelle et prévenir son aggravation (ordre de cessez-le-feu, appel à la trêve, retrait des troupes, etc.), et autres, comme les OMP, qui agissent comme des mécanismes pour superviser la mise en œuvre des premières.

Selon le même article 40, le Conseil tient dûment compte de la non-exécution de ces mesures provisoires, ce qui signifie qu'il lui appartient à cet organe de vérifier l'application de ces mesures. Dans ce sens, il est évident que les parties en conflit ne peuvent pas faire eux mêmes l'interprétation et l'exécution de ces mesures provisoires. Il est indispensable dans ce cas, l'instauration d'un régime de contrôle: une première et esentielle formule qui peut être utilisée consiste à demander aux parties du conflit d'informer le Conseil de sécurité sur l'application des mesures provisoires prises par eux mêmes. Et pour ne pas se baser uniquement sur la bonne volonté des parties, le Conseil est obligé à établir des organismes spéciaux chargés de surveiller l'application correcte de ces mesures provisoires, et là les OMP entreraient à agir.

Tant en Palestine qu'au Cachemire, les mêmes organes chargés du règlement politique des deux conflits (respectivement, le médiateur de l'ONU en Palestine

American Journal of International Law, vol. 55, 1961, pp. 4-6; Abi-Saab, G., *The United Nations Operation in the Congo 1960-64*, Oxford University Press, Oxford, 1978, pp. 103-105; Jiménez de Aréchaga, E., «United Nations Security Council... *cit.*», p. 1168 et ss.; White, N. D., *Keeping the Peace: The United Nations and the Maintenance of International Peace and Security,* 2e éd., Manchester University Press, Manchester, 1997, p. 228; et également Fernández Sánchez, P. A., admet l'article 40 comme base juridique possible des OMPs établies par le Conseil de sécurité dans le cadre du Chapitre VII, en *Operaciones de las Naciones Unidas para el mantenimiento de la paz cit*., pp. 302-303.

[28] Goodrich, L. M., Hambro, E. et Simons, A. P., *Charter of the United Nations. Commentary and Documents*, 3ème ed., Columbia University Press, New York, 1969, pp. 25-29 et 293-310; et Lagrange, E., *Les opérations de maintien de la paix et le Chapitre VII de la Charte des Nations Unies*, Montchrestien, Paris, 1999, pp. 81-85.

et la Commission des Nations Unies sur l'Inde et Pakistan) leur a confié la tâche supplémentaire de superviser les mesures provisoires prévues par le Conseil de sécurité, en leur fournissant divers groupes d'observateurs militaires[29], qui ont constitué précisément les premières opérations de maintien de la paix des Nations Unies (ONUST et UNMOGIP).

Or, l'octroi au même organe de fonctions de médiation -du Chapitre VI de la Charte- et de surveillance des mesures provisoires établies en vertu de l'article 40 de la Charte n'a pas bien fonctionné dans la pratique, car ces deux types de tâches peuvent entrer en collision à plusieurs reprises, et c'est pour cela que, confier deux tâches au même organe n'est pas souhaitable[30]. Si les deux tâches -de médiation et de surveillance- ne sont pas compatibles pour être exercées par un seul organe, ce problème signifie que la nature juridique de ces deux mandats est différente. De cela se déduit que la tâche de surveillance -mandat plus généralisé des OMP- ne peut pas être retenue dans le Chapitre VI de la Charte de San Francisco en tant qu'un instrument de résolution pacifique de conflits[31]. C'est pourquoi nous suggèrons, dans ce cas, que le rôle de cet organe -superviser la mise en oeuvre de mesures provisoires- détermine sa propre base juridique, qui serait dans ce cas l'article 40 de la Charte.

D'autre part, l'expérience de l'achèvement de la mission FUNU I en 1967 à cause du retrait du consentement du Gouvernement égyptien a eu pour conséquence que, depuis lors les opérations de maintien de la paix sont établies par l'organe créateur -en général, le Conseil de sécurité-, pour une période de temps délimitée, et élargies le cas échéant pour des périodes aussi précises, ce qui est conforme avec les fonctions menées par les OMP en tant que des mesures provisoires.

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[29] Voir sur le cas de Palestine les résolutions du Conseil de sécurité numéros 49 (1948), du 22 mai 1948; 50 (1948), du 29 mai 1948; et 54 (1948), du 15 juillet 1948; et quant au Cachemire, la résolution 47 (1948), du 21 avril 1948.

[30] Ainsi se prononçait par exemple le Médiateur par intérim de l'Organisation des Nations Unies en Palestine : «Notre expérience en Palestine avec la médiation et de la surveillance de la trêve était que les devoirs de surveillance et d'exécution souvent entrent en conflit avec les fonctions de médiation», S.C.O.R., 4e année, n. 36, pp.27-28. Voir Jiménez de Aréchaga, E., *Derecho constitucional de las Naciones Unidas. Comentario teórico-práctico de la Carta*, Escuela de funcionarios internacionales, Madrid, 1958, pp. 320-321; et Diehl, P. F., Reifschneider, J., et Hensel, P.R., «United Nations Intervention and Recurring Conflict», *International Organization*, vol. 50, n. 4, 1996, p. 686.

[31] De fait, les Nations Unies a compris l'erreur commise à mélanger lesfonctions incompatibles de médiation et l'observation dans la même opération, et séparé les deux types d'activités tant en Palestine -res.73 (1949) du Conseil de sécurité en date du 11 août 1949- comme au Cachemire -res.80 (1950) du Conseil de sécurité en date du 14 mars 1950-, et dans les OMPs ultérieures.

Certes, l'article 40 fait partie du Chapitre VII de la Charte, mais il jouit d'une autonomie assez large à l'égard du fonctionnement de la procédure coercitive de ce chapitre. La propre position de l'article 40 entre la clause qui dispose l'observation des situations dangereuses -art.39- et celles prévoyant le recours à des mesures coercitives - arts.41 et 42- dévoile l'intention des rédacteurs de la Charte de monter que l'application de l'article 40 produit un effet extintif des positions dangereuses concrètes.

Sans doute, le Conseil de sécurité peut également prendre des mesures provisoires en vertu du Chapitre VI de la Charte, via l'article 36.1[32], mais ces mesures ne doivent pas être confondues avec les mesures provisoires de l'article 40, qui prévoit le critère de differentiation, il s'agit de critére de "l'actuallité de la menace à la paix internationale". C'est-à-dire, l'article 40 fonctionne dans des situations "actuellement" dangereuses, tandis que la procédure préventive du Chapitre VI opère dans des situations de risque seulement "potentiel". De fait, l'application des mesures provisoires de l'article 40 vise à reconduire cette situation hypothétique de risque réel à un niveau de dangerosité seulement potentiel, pour permettre que le Conseil de sécurité recommande aux parties intéressées les procédures de règlement du différend appropriées (art.36.1 de la Charte), et par conséquent ramène la situation au Chapitre VI[33]. Cependant aucun critère légal objectif n'a été établi pour distinguer une menace réelle à la paix d'une circonstance seulement susceptible de menacer la paix. Dans la pratique, le Conseil de sécurité détermine chaque situation en s'inspirant des considérations politiques.

Il subsiste une étroite liaison entre les situations *ex* article 39 y l'article 40[34], et la pratique du Conseil de sécurité montre que la plupart des fois lorsqu'elles ont été appliquées des mesures provisoires de l'article 40, celles-ci ont évoqué l'une des situations de l'article 39. Cela signifie, qu'en général, une observation via article 39 anticipait l'application de l'article 40.

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[32] Goodrich, L. M., Hambro, E. et Simons, A. P., *Charter of the United Nations. cit.,* p. 305; et Torres Bernárdez, S., «Some Considerations on the Respective Roles of the Security Council and the International Court of Justice with Respect to "the Prevention of Aggravation of Disputes" in the Domain of the Pacific Settlement of International Disputes or Situations», en Al-Nauimi, N. et Meese, R. (eds), *International Legal Issues Arising Under the United Nations Decade of International Law*, Nijhoff, La Haye, 1995, pp. 670-685.

[33] Fabbri, F., «La misure provvisorie nel sistema di sicurezza delle Nazioni Unite», *Rivista di Diritto Internazionale*, vol.47, 1964, p. 207.

[34] Voir par exemple la résolution 54 (1948) du Conseil de sécurité en date du 15 juillet 1948 -para.1 à 3- sur la question de Palestine.

Bien que le libellé de l'article 40 permette au Conseil de sécurité de recourir aux mesures provisoires avant de prendre un autre type de mesures *ex* article 39, cependant, le Conseil a fait référence à plusieurs reprises à l'article 40 après avoir observé la présence de l'une des situations qui sont spécifiquement mentionées par l'article 39[35]. Or, cela ne signifie pas que le Conseil est obligé de déterminer la présence de l'une des situations de l'article 39 avant de recourir aux mesures provisoires de l'article 40, mais plutôt, cet article permet au Conseil de sécurité de prendre des mesures provisoires d'urgence pour empêcher l'aggravation de la situation tandis qu'il est incapable de déterminer l'existence des situations dangereuses que mentionne l'article 39, comme par exemple a fait en cas de la Palestine -Résolutions.43 (1948) et 54 (1948) - et au Congo -Résolution.143 (1960)-.

A vrai dire, ni l'abondante pratique du Conseil de sécurité jusqu'à nos jours, ni les travaux préparatoires pour l'élaboration de la Charte des Nations Unies ne permettent de résoudre la question de savoir s'il est nécessaire de faire une observation préalable *ex* article 39 pour pouvoir recourir à des mesures provisoires de l'article 40.

Les auteurs ne sont pas tous d'accord sur l'idée qui considère que l'article 40 de la Charte de San Francisco peut servir comme un fondement légal des opérations de *casques bleus* des Nations Unies, dans ce sens plusieurs arguments peuvent réfuter cette hypothése[36] :

1. Les OMP ne respectent pas le libellé de l'article 40, qui indique que les mesures provisoires doivent être préalables aux recommandations ou décisions prises par le Conseil de sécurité sur la base de l'article 39[37]. Face à cette objection, on peut affirmer que, selon la pratique du Conseil de sécurité en ce qui concerne l'article 40, il est vrai que l'adoption de mesures provisoires n'exige pas la détermination préalable de l'existence d'une des situations mentionées par l'article 39, nonobstant, on constate que cela ne s'oppose pas avec cette possibilité. De fait, en maintes

[35] Goodrich, L. M., Hambro, E. et Simons, A. P., *Charter of the United Nations. cit.,* p.304.

[36] Alessi, G. P., «L'evoluzione della prassi delle Nazioni Unite relativa al mantenimiento della pace», *Rivista di Diritto Internazionale*, vol. 47, 1964, pp. 559-560; Mestiri, M., «Rôle de la force armée dans la consolidation de la paix», *Études Internationales*, vol.36, 1990, p. 15; et le juge Vladimir M. Koretsky, dans son opinion dissidente l'avis consultatif de la CIJ sur *Certaines dépenses des Nations Unies*, *C.I.J. Recueil 1962*, p.275.

[37] Eide, A., «United Nations Forces in Domestic Conflicts», en Frydenberg, P. (ed.), *Peacekeeping: Experience and Evaluation*, Norwegian Institute of International Affairs, Oslo, 1964, p. 252; et Tondel, L. M. (ed.), *The Legal Aspects of the United Nations Action in the Congo*, 2e. Hammarskjold Forum, Oceana, Dobbs Ferry, 1963, p. 66.

reprises, le Conseil a observé la présence d'une menace à la paix, d'une rupture de la même ou d'un acte d'agression avant, à l'occasion de, ou même comme base pour prendre des mesures provisoires *ex* article 40[38].

2. Une autre difficulté peut surgir de l'intreprétation de l'expression qui considère que le Conseil de sécurité « peut inviter les parties intéressées à se conformer aux mesures provisoires qu'il juge nécessaires ou souhaitables »[39]. Dans ce cas, les parties sont elles obligées à s'acquitter de cette invitation? À cet égard, le Conseil de sécurité jouit de la liberté d'interpréter cette "invitation" aux parties intéressées comme une simple recommandation ou comme une décision contraignante, en fonction de son intention dans chaque cas particulier, chaque fois que l'action du Conseil de sécurité se déplace entre les recommandations du chapitre VI et des décisions sur les mesures du Chapitre VII[40]. D'autre part, plusieurs auteurs se sont fixés sur le texte de la sentence finale de cet article 40 («En cas de non-exécution de ces mesures provisoires, le Conseil de sécurité tient dûment compte de cette défaillance») pour souligner le caractère contraignant des mesures provisoires établies par le Conseil de sécurité[41]. Mais cela ne contredit pas nécessairement l'opinion qui considère que les OMP puissent être basées sur l'article 40 de la Charte, comme l'une des modalités possibles de mesures provisoires -dans ce cas non obligatoires, mais consensuelles- adoptables par le Conseil de sécurité.

En tout cas, pour qu'une position doctrinale soit contraingnante il serait nécessaire qu'elle dispose d'une acceptation générale[42]. Les OMP, par leur nature consensuelle et leur expérience pratique, ont besoin de jouir d'un caractère pacifique, uniforme, non polémique, et etre accepté *de facto* par tous les États membres des Nations Unies[43]. De fait, le caractère conservateur et auto-restrictif

[38] Voir Simon, D., «Commentaire de l'article 40», en Cot, J-P. et Pellet, A. (dir.), *La Charte des Nations Unies. Commentaire article par article*, 2e éd., Economica, Paris, 1991, pp. 670-671.

[39] Fernández Sánchez, P. A., *Operaciones de las Naciones Unidas para el mantenimiento de la paz*... cit. 1, p. 34 et ss.

[40] Voir par exemple Kelsen, H., *The Law of the United Nations*, Stevens, Londres, p. 740.

[41] Schachter, O., «Legal Aspects of the United Nations Action in the Congo», *American Journal of International Law*, vol. 55, 1961, p. 6; contre seront prononçait Fabbri, pour qui ne pouvait accorder caractère obligatoire à ces mesures provisoires de l'article 40, car il n'existait aucune garantie coercitive pour son application. Fabbri, F., «Le misure provvisorie nel sistema di sicurezza delle Nazioni Unite... *cit.»,* p. 202.

[42] Voir les travaux préparatoires de la Conférence de San Francisco, Comité IV/2 -Questions juridiques- (doc.933, IV/2/42 (2), U. N. C. I. O. , vol.13, p.710).

[43] Voir l'opinion individuelle du juge Percy C. Spender dans l'avis consultatif de la CIJ sur *Certaines*

des critères régissant la conduite des OMP obéit à la terrible fragilité de l'autorité de Nations Unies, qui ne lui permet d'imposer les solutions à aucun conflit sans le consentement des États concernés.

IV. EN GUISE DE CONCLUSION : LA RÉFORME DE LA CHARTE DES NATIONS UNIES ET LES MISSIONS DE PAIX

Au milieu du processus de réforme de l'Organisation des Nations Unies et de sa Charte[44], nous pensons qu'il serait désirable d'inclure expressément les missions de paix dans le dispositif de son traité fondateur, afin de les doter de visibilité et d'une plus grande sécurité juridique, car ces missons sont devenues parmi les instruments de l'action de l'ONU les plus importants, et couronnés de succès[45]. Comme nous le savons, toute tentative de réformer la Charte des Nations Unies entre en collision avec les intérêts contradictoires de nombreux États membres, surtout les grandes puissances du Conseil de sécurité. L'incorporation des missions *des casques bleus* au texte de la Charte pourrait servir comme un point de départ vers le consensus qui sans aucun doute encouragerait les intereventions de l'ONU dans d'autres questions plus controversées.

À notre avis, en vertu du Chapitre VII de l'article 40 de la Charte les opérations des *casques bleus* sont des mesures provisoires. En même temps, les articles 41 et 42 dénombrent expressément quelques mesures coercitives (que se soient armées ou non armées). On pourrait également considérer que l'article 40 fait référence à ces mesures coercitives. Par conséquence, il ne serait pas trop difficile que les Etats parviennent au consensus (y compris les membres permanents du Conseil de sécurité) pour l'incorporation de ces missions [46], sachant qu'actuellement les

dépenses des Nations Unies, *C.I.J. Recueil 1962*, p. 195; et Ciobanu, D., *op.cit.*, p.41.

[44] Voir par exemple le Rapport du Secrétaire général des Nations Unies, «Rénover l'Organisation des Nations Unies : un programme de réformes» (doc. A/51/950 du 14 juillet 1997); le Rapport du Groupe de personnalités de haut niveau sur les menaces, les défis et le changement intitulé «Un monde plus sûr : notre affaire à tous» (doc. A/59/565 du 2 décembre 2004); Müller, J. (ed.), *Reforming the United Nations. The Struggle for Legitimacy and Effectiveness*, Nijhoff, Leyde, 2006; Schrijver, N. J., «The Future of the Charter of the United Nations», *Max Planck Yearbook of United Nations Law*, vol.10, 2006, pp. 1-34; Danchin, P. G., et Fischer, H., *United Nations Reform and the New Collective Security*, Cambridge University Press, Cambridge, 2010.

[45] À cet égard, voir par exemple Cardona Llorens, J., «¿Es necesario un Capítulo VI y medio en una Carta reformada?» en Cardona Llorens, J. (ed.), *La ONU y el mantenimiento de la paz en el siglo XXI. Entre la adaptación y la reforma de la Carta*, Tirant lo Blanch, Valence, 2008, pp. 181-193.

[46] Sur ce point, il convient de rappeler que les réformes de la Charte de San Francisco doivent être adoptées et ratifiées par les deux tiers des Membres des Nations Unies, y compris à tous les membres

opérations de paix se sont très consolidées et ne suscitent pas le désaccord et le rejet des Etats en ce qui est de leur configuration et caractéristiques essentielles.

Le fait que ces missions sont consensuelles et non coercitives, ils peuvent être créées aussi par les organismes régionaux en vertu du Chapitre VIII de la Charte des Nations Unies, et d'ici ils pourraient également être expressément mentionnées dans l'article 54. De fait, ces dernières années on assiste à une coopération fructueuse et croissante entre l'ONU et les organisations régionales.

Au cours des dernières décennies, de nouveaux partenariats entre Nations Unies et diverses organisations régionales ont été développés dans des zones géographiques touchées par des conflits armés internes: rappelons dans ce sens la coopération des Nations Unies avec l'OTAN et l'Union européenne dans les Balkans, en Afghanistan et Tchad, et la cooperation de l'ONU avec l'OSCE dans diverses républiques de l'Europe orientale, et avec l'Union africaine et Tchad, et divers pays de l'Afrique centrale et occidentale.

permanents du Conseil de sécurité (article 108).

Paix et Securité Internationales
ISSN 2341-0868, Num. 3, janvier-décembre 2015, pp. 125-142

TARGETED KILLINGS OF SUSPECTED TERRORISTS IN THE LIGHT OF THE RIGHT OF SELF-DEFENCE

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ABSTRACT: The aim of this paper is to examine and discuss if the use of drones -when used as an offensive weapon to end the life of suspected terrorists- validly falls within the scope of application of Article 51 of the UN Charter. In order to do so, the requirements established by the mentioned Charter will be duly analysed. Consequently, we will be able to conclude if drones are or are not fulfilling the legal requirements requested by the right of self-defence, adjusting in the latter case the interpretation of international law to the particular national interests of some countries.

KEYWORDS: drones, counter terrorism measures, self-defence, principle of proportionality.

LOS ASESINATOS SELECTIVOS DE PRESUNTOS TERRORISTAS BAJO EL PRISMA DEL DERECHO A LA LEGÍTIMA DEFENSA

RESUMEN: El objetivo de este artículo consiste en examinar y discutir si el uso de aviones no tripulados -cuando se utilizan como estrategia para acabar con la vida de terroristas- queda enmarcado, válidamente, dentro del ámbito de aplicación del artículo 51 de la Carta de la ONU. Consecuentemente, los requisitos establecidos por la mencionada Carta serán debidamente analizados. Ello nos permitirá concluir si los *drones* cumplen o no con los requisitos legales exigidos -fundamentalmente- por el derecho a la legítima defensa, ajustando en caso contrario la interpretación del Derecho Internacional a los intereses nacionales de algunos países.

PALABRAS CLAVE: aviones no tripulados, medidas anti-terroristas, legítima defensa, principio de proporcionalidad.

LES ASSASSINATS SÉLECTIFS DE TERRORISTES PRESUMÉS AU REGARD DU DROIT DE LA LÉGITIME DÉFENSE

RÉSUMÉ: Cet article a pour fin l'analyse et la discussion de savoir si l'usage d'engins non pilotés, lorsqu'ils sont utilisés comme stratégie de guerre afin d'éliminer des terroristes présumés, s'ajuste aux conditions marquées par l'article 51 de la Charte des Nations Unies. L'étude des exigences du droit de légitime défense permettra conclure si l'utilisation de drones telle qu'on la connaît de nos jours peut se justifier au regard du droit à la légitime défense ou si, au contraire, l'interprétation faite

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par certains pays ne se conforme pas à la lettre et l'esprit de la Charte des Nations Unies.

MOTS-CLÉS : engins non pilotés, mesures contre le terrorisme, légitime défense, principe de proportionnalité

I. WHAT ARE UNMANNED AERIAL VEHICLE OR UNMANNED AIRCRAFT SYSTEMS?

Unmanned aerial vehicles, commonly known as drones, are aircrafts that do not have a human pilot. Within this context, the US Department of Defense defines these peculiar planes as "powered, aerial vehicles that do not carry a human operator, use aerodynamic forces to provide vehicle lift, can fly autonomously or be piloted remotely, can be expandable or recoverable, and can carry a lethal or non-lethal payload."[2] However, the UAV Association declared that the term "Unmanned Aircraft Systems" (UAS) is a more suitable one as it embraces all different aspects that compounds this vehicle.[3]

In any event, it is important to stress that this kind of vehicle sustained by aerodynamic lift, without an on-board crew, cannot be considered a new invention. During the First World War, UAS were tested although not used in combat.[4] In 1926, a report carried out by the New York Times mentioned that planes, which navigated autonomously with a high level of precision, were able to "blow a small town inside out."[5] Within the context of the Second World War, another important step was taken regarding the topic hereby discussed, as the US Military "refitted B-24 bombers filled to double capacity with explosives and guided by remote control devices to crash at selected targets in Germany and Nazi-controlled France."[6] After, throughout the Korean War and the Vietnam War, the US Armed Forces used UAVs for Intelligence, Surveillance and Reconnaissance (ISR) purposes. Further

[2] *Cfr.* Bone, E., Bolkcom, C., "Unmanned Aerial Vehicles: Background and Issues for Congress", *Report for Congress*, 2003.

[3] From our point of view, UAS is an appropriate term as aircrafts with no pilot on board involves, among others, the use of ground stations. Therefore, an adequate concept should not only refer to the air vehicle itself.

[4] *Vid. Infra*, footnote 17.

[5] Information hereby provided: <http://www.thenation.com/article/166124/brief-history-drones#>. Nevertheless, it has to be highlighted that those aircrafts were more similar to cruise missiles, although those nascent UAVs were designed with the intention of using them further on, once they had fulfilled their mission; a feature that strongly distinguishes from the formers.

[6] *Ibidem.* However, the technology at that time used had strong deficiencies, as they were not, strictly speaking, self-piloted during take-offs. In fact, it was when the plane reached a cruising altitude when the pilots had to parachute.

on, as Jeremiah Gertler clarifies, pilotless aircrafts were able to "deliver payloads and flew its first flight test as an armed UAV in 2002."[7] We can assert without a doubt, that the US Government has played an important role in developing UAS. Nevertheless, Israel has carried out an outstanding work too. During the military operations that took place in Lebanon, in 1982, the referred country used UAS successfully for many operations, constituting a turning point in the development of this kind of technology.[8]

Nowadays, these aircrafts piloted through a remote pilot station or through an on-board computer[9], are significantly used -gaining, in many occasions, a heated reputation- in the military field "[…] not only due to technological sophistication, but also due to perceived military requirements to support national objectives."[10] Indeed, the military dimension of drones is reaching, these days, unprecedented rates.[11] The escalation of violence after 9/11 crystallizes in, among others, large-scale military attacks launched by the US military forces, through the use of pilotless aircrafts, against presumed terrorists targets located, among other territories, in Afghanistan and Yemen. Likewise, in Pakistan, the US government has ordered drone missile strikes as a consequence of the ineffective previous counter-terrorism measures there applied.[12] Unfortunately, the implementation of such technology at the beginning of the new century grew at an outstanding rate, falling substantially since 2009. Be that as it may, we have to point out that "drone strikes are reported to occur almost once a day and target mainly six countries (Afghanistan, Pakistan, Yemen, Somalia, Libya and Gaza)"[13], being US, Israel and UK, the countries

[7] *Cfr.* Gertler, J., "US Unamanned Aerial Systems", *The Drone Wars of the 21st Century: Costs and Benefits*, Oxford University Press, 2014, at 29.

[8] *Ibid.* at 30.

[9] These planes still need to be guided by a pilot located in a pilot station -usually called as a ground control station- or through a pre-programmed flight plan. Nevertheless, in the following years, the idea is to produce aircrafts with capacity to take decisions, being the pilot only in charge of monitoring what those are doing. Information hereby provided: <http://www.theuav.com>.

[10] Information hereby provided: <http://isis-europe.eu/sites/default/files/publications-downloads/esr63_perspectivesUAVs_Dec2012MH.pdf>.

[11] *Vid.* Brooks, R., "Drones and the International Rule of Law", *Georgetown University Law Center,* 2013, 1-21, at 9.

[12] According to the information provided by The Guardian: "targeted killings have been a hallmark of this administration's counterterrorism strategy. Obama sharply increased the use of armed drones (begun under George W Bush), which have conducted lethal strikes against alleged terrorists in Pakistan, Yemen and Somalia". Information hereby provided: <http://www.theguardian.com/commentisfree/2014/may/23/obama-drone-speech-one-year-later>.

[13] *Ibidem.*

that have developed most this technology for mainly targeted killings[14], notably trespassing the ISR's area. Notwithstanding the foregoing, the utilization of UAVs cannot only be regarded as a weapon-delivery system. This true statement is linked to the fact that drones are increasingly having multiple civil applications, such as fire fighting, surveillance activities, etc.[15], which will surely "foster job creation and a source for innovation and economic growth for the years to come"[16], as the European Commission has envisaged.

Returning to the issue in hand, which refers to the reliance on unmanned aerial vehicles for combat operations, this transformational technology will definitely change, if it has not already done so, the way in which wars have been traditionally fought and won. And this -as it will be seen- has, of course, a strong legal repercussion.

Taking all this into consideration, it is important to highlight that the aim of this paper is to examine and discuss if the use of drones, when countries argue that they are fighting against terrorism, validly fall within the scope of application of Article 51 of the UN Charter. In other words, the purpose of this article is to analyse if the argument of self-defence raised, mainly, by the US and its allies is a legal one when using unmanned aerial vehicles as a counter terrorism measure. In order to do so, the requirements established by the UN Charter, such as the principle of proportionality, will be examined in detail. After such analysis, we will be able to conclude if drones -when used as an offensive weapon to end the life of suspected terrorists- are or are not fulfilling the legal requirements requested by the right of self-defence, adjusting in the latter case the interpretation of international law to the particular national interests of some countries. In any case, before doing this, it is important to stress a few basic ideas/considerations that may give us a hint on the huge controversy that surrounds the use of pilotless aircrafts in specific combat operations.

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[14] Targeted killings are seen as the main US strategy when fighting against terrorism, especially since the attacks of 9/11. Two examples of this new trend is the effective killing of Osama bin Laden in May 2011 and, a few months later, the drone strike addressed to Anwar al-Awlaki, an American-born Yemeni cleric and al-Qaeda propagandist.

[15] The Commission issued a Communication, in April 2014, to enable the progressive integration of Remotely Piloted Aircraft Systems into the European civil airspace. Information hereby provided: <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52014DC0207&from=EN>.

[16] *Ibidem.*

II. GENERAL CONSIDERATIONS WHEN PERPETRATING ARMED ATTACKS WITH UAS

President Bush alluded, during a speech made in December 2001, to the existence of UAS as a vital and necessary military component that has changed radically the dimension of the battlefield. The following words were pronounced just after the attacks of 9/11 within the context of the conflict of Afghanistan: "The Predator is a good example. This unmanned aerial vehicle is able to circle over enemy forces, gather intelligence, transmit information instantly back to commanders, and then fire on targets with extreme accuracy. Before the war, Predator had sceptics, because it did not fit the old ways. Now it is clear the military does not have enough unmanned vehicles. We're entering an era in which unmanned vehicles of all kinds will take on greater importance". Afghanistan is not the only country that has suffered the use of unmanned aircrafts. Other areas, such as: Kosovo in 1999 or Iraq in 2003, have been affected in the recent past by the use of this controversial military technology. Since then, an open discussion has appeared, as on the one hand -among numerous arguments[17]- scholars state that those "[...] are arguably cheaper to procure, and they eliminate the risk to a pilot's life"[18] but, on the other hand, they cause civilian casualties becoming this a crucial issue that needs to be tackled seriously. In other words, it is important to mention that, according to many scholars, the use of UAS can be extremely effective when trying to kill suspected terrorists; however, taking into account that the fight against terrorism is now seen as a global concern, several challenges and questions inevitably arise -despite the fact that transparency has been pledged by the current US President- when referring, in particular, to the targeted killings carried out by unmanned aerial vehicles.[19] Those challenges are mainly linked with the killings of

[17] Another important argument is the following one: "autonomous weapons systems, by preventing casualties on their own side and simultaneously removing war and its more dramatic consequences from the meticulous and commonly not particularly benevolent media attention it otherwise receives, clearly reduce the "political cost" of the use of force". *Cfr.* Gutiérrez Espada, C., Cervell Hortal, M.J., "Autonomous weapons systems, drones and international law", *Revista del Instituto Español de Estudios Estratégicos*, n. 2, 2013, 1-19, at 4.

[18] Information hereby provided: <http://fas.org/irp/crs/RL31872.pdf>. Other arguments should be mentioned: "UAVs protect the lives of pilots by performing the "3-D" missions - those dull, dirty, or dangerous missions that do not require a pilot in the cockpit. However, the lower procurement cost of UAVs must be weighed against their greater proclivity to crash, while the minimized risk should be weighed against the dangers inherent in having an unmanned vehicle flying in airspace shared with manned assets". *Ibidem.*

[19] This was said on 2013 in a speech made at the National Defense University. The following year,

civilians that drone strikes cause, emerging these combat operations as the current hallmark of the US administration's counterterrorism strategy.[20]

Moreover, the lack of spatial closeness between the drone pilot and the drone (that is controlled remotely) does not challenge the attribution of the specific act (the killings) to the State itself. The pilot is an organ of the State as stated in Article 4 of the Draft on State Responsibility (2001)[21].

Related to all the above, it is important to notice that, as a key outcome, there are many questions that remain unanswered in this area: Who can be considered an enemy combatant potentially subjected to be killed by a drone strike? Who is able to authorize those attacks? Are there geographical constraints when carrying out this kind of operations? If civilian casualties occur, who assumes responsibilities? Furthermore, can those attacks be considered as a violation of international law? As previously said, the US Government has dramatically increased the use of aircrafts without an on board pilot in these last years[22], trying consequently -through the Justice Department- to provide answers to some of the above questions. In this sense, it was said that three requirements had to be duly accomplished in order to lawfully use lethal force against a foreign country: 1) the targeted individual must pose an imminent threat; 2) the capture needs to be infeasible; and 3) the operation must be carried out in accordance with war principles.[23]

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at the US Military Academy (West Point), President Barak Obama repeated the same idea: "[A]s I said last year, in taking direct action, we must uphold standards that reflect our values. That means taking strikes only when we face a continuing, imminent threat, and only where [...] there is near certainty of no civilian casualties, for our actions should meet a simple test: we must not create more enemies than we take off the battlefield. I also believe we must be more transparent about both the basis of our counterterrorism actions and the manner in which they are carried out. We have to be able to explain them publicly, whether it is drone strikes or training partners. [...] when we cannot explain our efforts clearly and publicly, we face terrorist propaganda and international suspicion, we erode legitimacy with our partners and our people and we reduce accountability in our own government. Information hereby provided: <http://www.washingtonpost.com/politics/full-text-of-president-obamas-commencement-address-at-west-point/2014/05/28/cfbcdcaa-e670-11e3-afc6-a1dd9407abcf_story.html>.

[20] Information hereby provided: <http://www.theguardian.com/commentisfree/2014/may/23/obama-drone-speech-one-year-later>; <http://www.nytimes.com/2014/06/26/world/use-of-drones-for-killings-risks-a-war-without-end-panel-concludes-in-report.html?_r=1>.

[21] International Law Commission, *Responsibility of States for Internationally Wrongful Acts*, 2001 (Draft).

[22] The New America Foundation states that, during the government of the former US President, only 50 or less drone attacks took place in Pakistan, whereas the current US Head of State has ordered more than 300.

[23] Document hereby provided: <http://fas.org/irp/eprint/doj-lethal.pdf>.

Regarding the abovementioned criteria, which at first sight could be seen as reasonable ones, thorny issues immediately emerge when analysing them in detail: how can it be determined the *threat* of an imminent attack, taking into account that terrorists acts have normally a secret nature? The UN Charter refers to self-defence when a real harm takes place, but nothing is said about a *potential* one. The second requirement is also controversial, as the referred White Paper argues: "[...] capture would not be feasible if it could not be physically effectuated during the relevant window of opportunity or if the relevant country were to decline to consent to a capture operation". Within the context of this paper, the last prerequisite acquires the greatest relevance, insofar it is linked with the fact that lethal operations carried out by the United States have to strictly "[...] comply with the four fundamental law-of-war principles governing the use of force: necessity, distinction, proportionality, and humanity (the avoidance of unnecessary suffering)."[24] Bearing this in mind, do drone strikes fulfil this last condition even if collateral damage takes place? In essence, is this third criterion not legally fulfilled in case of civilian casualties? If so, which are the implications? Concerning this particular point, the above-mentioned White Paper states that "[...] it would not be consistent with those principles to continue an operation if anticipated civilian casualties would be excessive in relation to the anticipated military advantage."[25] From our point of view, the word "excessive" strongly deteriorates the US Government's determination when complying with the referred requirements, as it constitutes a vague expression, potentially subjected to a wide or, even worse, malicious interpretation. In any event, the mentioned document emphasis the following idea: "[…] there is no prohibition under the laws of war on the use of technologically advanced weapons systems in armed conflict-such as pilotless aircraft or so-called smart bombs-as long as they are employed in conformity with applicable laws of war."[26] Therefore, it is imperative to analyse the applicable regulation in order to determine if drone strikes comply with the legal provisions. For that reason, as mentioned before, Article 51 of the UN Charter will be analysed hereunder[27].

[24] *Ibidem.*

[25] *Vid. Supra.* footnote 22.

[26] *Vid. Supra,* footnote 22.

[27] In either case, not all are legal considerations. Indeed, many people think that drone attacks are very unpopular as with the use of this technology the flames of anti-Americanism are fanned. Other criticisms are based on a lack of transparency and information about how and on which legal bases targeted killings caused by drones take place.

III. ANALYSING ARTICLE 51 OF THE UN CHARTER

First of all, we have to stress that drones are not a prohibited weapon under international law, which means that the lawfulness of a response in self-defence using drones will be determined by the degree of compliance with the requirements established by Article 51 of the UN Charter: having suffered an *armed attack for which a State can be held responsible and the response shall be immediate, necessary, proportional, temporary and subsidiary to the action decided by the UN Security Council* (this body has to be informed of the measures taken in self-defense; the Security Council is the main organ responsible for the maintenance of international peace and security according to Article 24 of the UN Charter).

In the light of the above, we have to discuss how the right of self-defence is affected by the "war against terrorism" declared by the United States and its allies against this unknown enemy that appeared in 2001. In the context of this perpetual war, the use of drones raises a specific relevance.

Moreover, it is important to mention that, despite of the efforts made by scholars[28] and international organizations[29], there is no legal definition of the word "terrorism". Several international conventions[30] state what a terrorist attack is but no consensus has been reached to define the concept of "terrorism". The lack of legal definition implies highlighting certain peculiarities when linking terrorism with the right of self-defence.

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[28] *Cfr.* Alcaide Fernández, J., *et. al*, *Las actividades terroristas ante el Derecho Internacional contemporáneo*, Tecnos, Madrid, 2000, at 50; Ramón Chornet, C., *Terrorismo y respuesta de fuerza en el marco del Derecho Internacional*, Tirant lo Blanch, Valencia, 1993, at 36-37; Hoffman, B., *A mano armada. Historia del terrorismo*, Editorial Espasa, Madrid, 1999, at 62-63; Higgins, R., "The general international law of terrorism", en Higgins, R., y Flory, M., *Terrorism and International Law*, London y New York, 1997, at 27.

[29] Information hereby provided: A/57/270; A/RES/49/60; A/RES/56/88; A/59/565.

[30] (1963) Convention on Offences and Certain Other Acts Committed On Board Aircraft, (1970) Convention for the Suppression of Unlawful Seizure of Aircraft, (1971) Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, (1973) Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons, (1979) International Convention against the Taking of Hostages, (1980) Convention on the Physical Protection of Nuclear Material, (1988) Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, (1988) Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf, (1991) Convention on the Marking of Plastic Explosives for the Purpose of Detection, (1997) International Convention for the Suppression of Terrorist Bombings, (1999) International Convention for the Suppression of the Financing of Terrorism, (2005) International Convention for the Suppression of Acts of Nuclear Terrorism, (2010) Convention on the Suppression of Unlawful Acts Relating to International Civil Aviation

1. ARMED ATTACK

Even though the particular interpretation made by the USA on their "war on terrorism", the terrorist phenomenon as such does not give rise to the activation of Article 51 of the Charter. Indeed, terrorist acts are the ones that must be taken into account when assessing whether a State has or not the right to respond. The International Court of Justice made it clear: "in the case of individual self-defence, the exercise of this right is subject to the State concerned having been the victim of an armed attack."[31]

Therefore, the relation between terrorism and the right of self-defence must be based on the intensity of the attack, seen from the perspective of individual acts attributable to a State. It should be assessed whether the terrorist acts rise to the level of sufficient intensity and severity to qualify an armed attack within the meaning of Article 51.[32] That implies that its intensity and effects are such that they would be classified as an armed attack if they were carried out by regular armed forces.

2. ATTRIBUTABLE TO A STATE

Even if the United States does not link the use of drones for targeted killings with the international responsibility of a specific State, the use of armed forces without the consent of the territorial State can only be justified if the latter has an international responsibility regarding the acts committed by these individuals (self-defence). The draft of the International Law Commission on State Responsibility[33] defines the attribution of a particular conduct to a State. In regards of terrorist attacks, Article 8 states that "the conduct of a person or group of persons shall be considered an act of a State under international law if the person or group of persons is in fact acting on the instructions of, or under the direction or control of, that State in carrying out the conduct."

Acting on the instructions requires that an organ of the State, contracts or induces individuals or groups, who do not belong to the formal structure of the state, to act

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[31] *Military and Paramilitary Activities in and against Nicaragua (Nicaragua* v. *United States of America). Merits, Judgment. I.C.J. Reports 1986*, p. 14, § 195.

[32] *Ibidem.*

[33] Responsibility of States for Internationally Wrongful Acts, 2001, GA/RES/56/83, *Annex.*

as auxiliary. The International Court of Justice analysed this particular situation in the *Nicaragua case:* "the Court finds it established that, on a date in late 1983 or early 1984, the President of the United States authorized a United States government agency to lay mines in Nicaraguan ports; that in early 1984 mines were laid in or close to the ports of El Bluff, Corinto and Puerto Sandino, either in Nicaraguan interna1 waters or in its territorial sea or both, by persons in the pay and acting on the instructions of that agency, under the supervision and with the logistic support of United States agents."[34]

The second assumption of attribution of acts carried out by individuals to a State is when they act under its direction or control. *Effective control* is required according to the International Law Commission and the International Court of Justice: "The Court has taken the view that United States participation, even if preponderant or decisive, in the financing, organizing, training, supplying and equipping of the contras, the selection of its military or paramilitary targets, and the planning of the whole of its operation, is still insufficient in itself, on the basis of the evidence in the possession of the Court, for the purpose of attributing to the United States the acts committed by the contras in the course of their military or paramilitary operations in Nicaragua. Al1 the forms of United States participation mentioned above, and even the general control by the respondent state over a force with a high degree of dependency on it, would not in themselves mean, without further evidence, that the United States directed or enforced the perpetration of the acts contrary to human rights and humanitarian law alleged by the applicant state. Such acts could well be committed by members of the contras without the control of the United States. For this conduct to give rise to legal responsibility of the United States, it would in principle have to be proved that that state had effective control of the military or paramilitary operations in the course of which the alleged violations were committed."[35]

Following the declarations made by the International Court of Justice, Lamberti states that "[…] the actions of the armed groups must always be kept distinct from the acts of assistance or acquiescence performed by the state. If the armed groups act independently as private individuals, with no connection, even unofficial, with the military organization of the state, and if the state does no more that give

[34] *Military and Paramilitary Activities in and against Nicaragua (Nicaragua* v. *United States of America). Merits, Judgment. I.C.J. Reports 1986*, p. 14, § 80.

[35] *Ibid,* § 115.

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various kinds of assistance (organizational, financial, military) or simply tolerate the presence of these groups in its territory, the conduct of armed bands cannot constitute an international wrongful act because it cannot be attributed to a state. The conduct of the state is certainly unlawful under international law, but it is not itself a use of force, still less an armed attack in the sense of Art. 51."[36]

Thus, the attribution or terrorist acts to a State depends on the degree of involvement of the same in the planning, preparation and execution of the attacks. This participation must be important and fundamental for the reaching of the pursued goal.

3. SAFE HAVENS

So, do we have to deny that providing a safe haven to terrorists does not activate the right of self-defence? This point of view is fought by most American scholars. Following the International Court of Justice's Advisory Opinion on the *Wall in Palestinian Occupied Territory*, Murphy argued that the Court's interpretation implies that: 1) A State may provide or supply arms, logistical support and provide sanctuary to a terrorist group; 2) this group can inflict violence of any severity level to another State, even with weapons of mass destruction; 3) the attacked State has no right to respond in self-defence because the assistance provided by the host State cannot be considered as an armed attack within the meaning of Article 51 of the Charter; 4) the victim State cannot use self-defence against a terrorist group because this behaviour cannot be attributed to the host State if there is no proof that a terrorist group was sent by the latter.[37]

Wedgwood argues that Article 51 is restricted to the armed attack perpetrated by one State against another. This does not fit with the applicable international legal provisions, especially since 2001, when it was found that non-State actors can use force comparable to those State actors: "any use of force by a private transnational terror network […] is illegal. But its illegality and qualification as a war crime does not change the fact that it also constitutes an armed attack under Article 51."[38]

[36] *Cfr.* LAMBERTI ZANARDI, P.L., "Indirect Military Aggression", in, CASSESE, A. (Ed.), *The Current Legal Regulation of the Use of Force*, Martinus Nijhoff Publishers, Dordrecht/Boston/Lancaster, 1986, 111-119, at 113.

[37] MURPHY, S.D., "Self-Defense and the Israeli Wall Advisory Opinion: An Ipse Dixit from the ICJ?", *American Journal of International Law*, Vol. 99, No. 1, 62-76, at 66; the ICJ Advisory Opinion on the Israeli Security Fence and the Limits.

[38] WEDGWOOD, R., "The ICJ Advisory Opinion on the Israeli Security Fence and the Limits of Self-

Several UN resolutions stress there is an obligation for the States to refrain from organizing, tolerating, provoking or helping to realize acts of terrorism against another State[39]. Thus, although constituting a violation of the international obligation to refrain from tolerating terrorist activities in the territory of the State, providing safe haven cannot be considered, however, as an armed attack according to Article 51 of the UN Charter. The analysis of international law and the practice of the Security Council support this conclusion.[40]

4. IMMEDIACY

Article 51 of the UN Charter is in the centre of a doctrinal debate as to whether, beside the conventional rule that recognizes the inherent right of self-defence against an armed attack, a natural right of self-defence recognized by customary international law remains with a more permissive content that authorizes the exercise of anticipatory self-defence. There are two clearly opposing positions regarding the nature of the right of self-defence. According to Corten, points of view are more or less restrictive depending on the importance given to customary law.[41]

Indeed, scholars proposing an extensive approach based on the international custom consider the State practice as the main source of the principle of self-defense, which implies that great importance is given to political decisions and the organs that take them. According to that, the principle would be formed according to the practice of the most powerful States and will be in line with their interests. This entails in the same way that we will have to accept the possibility of creating *instant custom*. Supporters of the restrictive approach however put in the forefront the law, understood as the one formed both by custom and written law. Being the premise that States are equal in rights, the formal source has to change or new

Defense", *American Journal of International Law*, Vol. 99, No. 1, 52-62, at 58; in the same way, see Ch. J. Tams, "Light Treatment of a Complex Problem: The Law of Self-Defense in the Wall Case", *European Journal of International Law*, 2005, vol. 16, nº5, 963-978.

[39] Information hereby provided: UNGA Resolution 2625 (XXV); UNGA Resolution 2734 (XXV).

[40] González Vega, J., "Los atentados del 11 de septiembre, la operación "Libertad duradera" y el derecho de legítima defensa", *Revista Española de Derecho Internacional*, 2001, 247-271, at 255-256; in the same way, Acosta Estévez, J. B., "La operación *Libertad Duradera* y la legítima defensa a la luz de los atentados del 11 de septiembre de 2001", *Anuario Mexicano de Derecho Internacional*, vol. VI, 2006, 13-61, at 40-41.

[41] Corten, O., "The Controversies Over the Customary Prohibition on the Use of Force: A Methodological Debate", *European Journal of International Law* (2005), vol. 16, No. 5, 803-822, at 804.

custom has to be created for the law to evolve.

For the scholars that argue that the inherent right of self-defence refers to the customary nature of the right, prior to the adoption of the UN Charter, the use of self-defence was allowed for the protection of nationals abroad, as well as an anticipatory self-defence. Thus, this doctrine assumes that under customary international law anticipatory self-defence is permitted against imminent danger. Therefore, the Webster doctrine allowing preventive action as self-defence was assimilated to an aspect of the right of self-preservation. For instance, Bowett argues that "action undertaken for the purpose of, and limited to, the defense of a State's political independence, territorial integrity, the lives or property of its nationals cannot by definition involve a threat or use of force."[42] The author points out that although it is generally accepted that Article 51 incorporates the content of self-defence under the Charter of the United Nations, it can be argued that the customary right of self-defence is in force for the member States of the referred Organization: "We must presuppose that rights formerly belonging to member status continue except in so far as obligations inconsistent with those existing rights are assumed under the Charter […] It is, therefore, fallacious to assume that members have only those rights which the Charter accords to them; on the contrary they have those rights which general international law accords to them except and in so far as they have surrendered them under the Charter."[43]

In addition, some authors recognize that there are situations in which it is possible to support a right of self-defence against an imminent attack. Thus, as argued by Bowett or Waldock, the English sentence in Article 51 *if an armed attack occurs* should not be interpreted as *only if an armed attack occurs* since the Charter does not say the latter. Therefore, reactive self-defence, understood as a response to an armed attack, would be only one form of self-defence allowed by the Charter. Another one would be anticipatory self-defence.[44] However, the Charter does not say *only if an armed attack occurs* nor *or threatens*. Therefore, other scholars argue that the right of self-defence is applicable exclusively when there is a prior armed attack. As an exception to the prohibition of the use of force contained in Article

[42] *Cfr.* BOWETT, D., *Self-Defense in International Law*, New York, F.A. Praeger, cop. 1958, at 185-186.

[43] *Ibid.* at 184-185.

[44] *Vid.* KOLB, R., *Ius contra bellum*, Helbing & Lichtenhahn/Bruylant, Bâle-Genève-Munich/Bruxelles, 2003., at 193, quoting C. H. M. Waldock, "The Regulation of the Use of Force by Individual States in International Law", *Recueil des Cours de l'Académie de Droit International*, Tome 81 II, 1952, 451-515, at 497-498.

2.4, legal provision 51 has to be interpreted narrowly. The limits of self-defence in Article 51 would be meaningless if a broader interpretation was retained. They also claim that before the Charter, customary law allowed uniquely a restricted right of self-defence.[45]

Following this reasoning, self-defence was conceived as an exception to the prohibition in Article 2.4; therefore, it is an exceptional right, a privilege. Indeed, the aim of the referred Charter is the use of force to be under the control of the Organization -monitored, in particular, by the Security Council- and, says Brownlie, proof of that is the requirements of temporality and subsidiarity, as well as the obligation for the State to inform the Council immediately.[46] Another argument would be that, since the use of armed force was not forbidden by the classical international law, conventional nor customary law, both aggression and the use of force were legitimate without being relevant if they were conducted for offensive or defensive purposes. Consequently, a rule authorizing the use of force in self-defence (such as Article 51) only makes sense if that use is prohibited.[47] That is what ruled the International Law Commission: "The absolutely indispensable premise for the admission of a self-contained concept of self-defence, with its intrinsic meaning, into a particular system of law is that the system must have contemplated as a general rule the general prohibition of the use of force by private subjects and hence admits the use of force only in cases where it would have purely and strictly defensive objectives, in other words, in cases where the use of force would take the form of resistance to a violent attack by another. Another element —which, in logic, is not so indispensable as the foregoing, but has been confirmed in the course of history as its necessary complement — is that the use of force, even for strictly defensive purposes, is likewise admitted not as a general rule, but only as an exception to a rule under which a central authority has a monopoly or virtual

[45] *Vid.* Brownlie, I., *International Law and the Use of Force by States*, Oxford University Press, Oxford, 1963 (repr. 2002), at 264 and following; Eduardo Jiménez de Aréchaga, "International Law in the Past Third of a Century", *Recueil des Cours de l'Académie de Droit International de La Haye*, Tome 159, 1978-I, 9-343, at 96 and following; J. L. Kunz, "Individual and Collective Self-Defense in Article 51 of the Charter of the United Nations", *American Journal of International Law*, Vol. 41, 1947, 872-879, at 878; M. Bothe, "Terrorism and the Legality of Pre-emptive Force", *European Journal of International Law*, 2003, vol. 14, nº 2, at 227-240.

[46] *Ibid.* at 273-274.

[47] *Vid.* Pastor Ridruejo, J. A., *Curso de Derecho Internacional Público y Organizaciones Internacionales*, 14ª edición, Tecnos, Madrid, 2010, at 624; Remiro Brotóns, A., *et al.*, *Derecho internacional. Curso General*, Tirant Lo Blanch, Valencia, 2010, at 672.

monopoly on the use of force so as to guarantee respect by all for the integrity of others."[48]

The International Law Commission's reasoning implies that, having legally regulated self-defence, the Charter excludes any other concept more permissive to authorize its use for preventive purposes. The International Court of Justice confirmed the narrow concept of self-defence in the mentioned *Nicaragua case:* "[The] reference to customary law is contained in the actual text of Article 5 1, which mentions the "inherent right" (in the French text "droit naturel") of individual or collective self-defence, which "nothing in the present Charter shall impair" and which applies in the event of an armed attack. The Court therefore finds that Article 51 of the Charter is only meaningful on the basis that there is a "natural" or "inherent" right of self-defence and it is hard to see how this can be other than of a customary nature, even if its present content has been confirmed and influenced by the Charter. Moreover the Charter, having itself recognized the existence of this right, does not go on to regulate directly all aspects of its content. In the case of individual self-defence, the exercise of this right is subject to the state concerned having been the victim of an armed attack".[49]

In regards to drones, Gutiérrez Espada and Cervell Hortal seem to suggest that the leader targeted by a drone should be the leader of an actual on going attack; if so, the drone strike could be justified by the right of self-defence.[50] We must disagree with this interpretation. A pre-emptive response is a legitimate response to an aggression that is about to take place. The test of the armed attack under Article 51 of the UN Charter would be fulfilled in cases where the attack is imminent and there is certainty about its happening. Pre-emptive self-defence is always lawful. Nonetheless, when the United States argue that they act in self-defence in Pakistan, they understand that these actions are taken in order to prevent further attacks. It is difficult to meet the requirement of immediacy when self-defence is used in response to terrorist attacks because these are characterized by immediacy in its execution. The consensus shown by the international community in 2001 to accept the US right of self-defence lasted what the shock for the events lasted. Although

[48] Report of the International Law Commission on the work of its Thirty-second session, 5 May - 25 July 1980, Official Records of the General Assembly, Thirty-fifth session, Supplement No. 10 (A/35/10).

[49] *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America). Merits, Judgment. I.C.J. Reports 1986*, p. 14, § 80.

[50] *Vid.* Gutiérrez Espada, C., y Cervell Hortal, M. J., *op. cit.*, at 19.

it was thought that the acceptance of the quasi-unanimity of the states induced to think that a new international custom was being conceived, this conclusion has not been confirmed for several reasons. One of them is that the response of the coalition that intervened in Afghanistan was so disproportionate (coming to overthrow the Taliban government) that many countries raised their voices and stopped supporting the intervention. In addition, the reaction of the international community was not similar regarding other terrorist attacks (for instance, in Madrid, London or Bali).

Operation Enduring Freedom in Afghanistan, in 2001, was launched to prevent and avoid terrorist attacks in the future. So, according to the United States, there was a risk of repetition of such actions that required defensive measures. If we consider that there was a chain of attacks on going, this argument could be accepted; several attacks launched in a reasonable period of time and against the same target (a State) could be accepted as an ongoing armed attack. But in 2001, there were no further attacks coming. Neither are they in Yemen or Pakistan. It is difficult to believe that future actions are part of a chain of attacks, which would be characterized by temporal proximity in their development. Moreover, it is mandatory to determine which one is the *first attack* from which to start counting.

If anticipatory self-defence is difficult to sustain, much more complex is to do so regarding *a posteriori* self-defence. If we use the following example given by Kretzmer, we can analyse self-defence *a posteriori*: "In November 2002 a car travelling in a remote part of Yemen was destroyed by a missile filed from an unmanned Predator drone. Six people in the car, all suspected members of al-Qaeda, were killed. While the US did not publicly acknowledge responsibility for the attack, officials let it be known that the CIA had carried it out. One of the men killed, Qaed Salim Sinan al Harethi, was said to be a former bin Laden security guard who was suspected of playing a major role in the October 2000 attack on the US destroyer Cole, in which 17 sailors were killed."[51]

After the terrorist attacks on September 11, 2001, the United States declared that they should use the right to exercise self-defence a posteriori. A month after, a letter was sent to the Security Council by the US government, stating the following: "since 11 September, my Government has obtained clear and compelling

[51] *Cfr.* Kretzmer, D., "Targeted Killing of Suspected Terrorists: Extra-Judicial Executions or Legitimate Means of Defence?", *European Journal of International Law*, 2005, Vol. 16 No. 2, 171-212, at 171-172.

information that the Al-Qaeda organization, which is supported by the Taliban regime in Afghanistan, had a central role in the attacks. There is still much we do not know. Our inquiry is in its early stages. We may find that our self-defence requires further actions with respect to other organizations and other states." The American declaration has been regarded as a wilful and *contra legem* interpretation of the right of self-defence.[52]

The American statement raises some questions. The first one is that self-defence can be invoked in the future. Therefore, it is not alleged in reference to an actual armed attack but against an armed attack that has already happened and ended. This leads to the lack of temporal connection between the attack and the response in self-defence. In this case we would forget the customary requirement of immediacy, delaying the response until the State attacked sometime before decides -subjectively, of course- that it is time to fight back.

What self-defence *a posteriori* actually advocates is that any armed attack by one State against another would be likely to receive a response *ad infinitum*. And how would we evaluate this? Until five years later? Until ten years later? For example, would it be considered lawful today a US response against Pakistan because of that country's alleged involvement in the attacks of 11 September 2001? Certainly not.

So, when the United States argues being acting in self-defence for the targeting and killing of an Al-Qaeda leader, even if this individual played a major role in a terrorist attack carried out more than 10 years ago, there is no right to exercise self-defence. In fact, that should be considered as a retaliation measure prohibited by international law. Kretzmer provides us with another example of self-defence using drones: "The [US] Yemen attack came two years after Israel adopted a policy of 'targeted killings' of Palestinians alleged to be active members of terrorist organizations involved in organizing, promoting or executing terrorist attacks in Israel and the Occupied Territories. This policy commenced with the attack on Hussein 'Abayat and was followed by a series of attacks culminating recently in the attacks on the Hamas leaders Ahmed Yassin and Abdel Aziz Rantisi. In many of these attacks innocent bystanders were killed or wounded. This policy has been officially acknowledged and is at the time of writing being defended by the

[52] *Vid.* Vallarta Marrón, J. L., "El derecho inmanente a la legítima defensa individual o colectiva en caso de ataque armado. ¿Se justifica una interpretación extensiva para incluir medidas preventivas y punitivas? Una visión israelí", *Anuario Mexicano de Derecho Internacional,* vol. IX, 2009, 69-115, at 97.

government before the Supreme Court of Israel."[53] The Israeli policy of targeted killings cannot be justified with Article 51. The International Court of Justice made clear that the Israeli argument of being acting in self-defence failed because of the lack of the international element of the armed attack and, since a State cannot invoke the right of self-defence against himself, the Israeli arguments were not acceptable. Indeed, the Palestinian territory is an *occupied* territory and, therefore, its administration is under Israeli control.[54]

In regards of the actions of Israel in Lebanon against Hezbollah, the attribution of the Hezbollah actions to the Lebanese government remains doubtful. Hezbollah is not a *de jure* an organ of the Lebanese State, nor could Lebanon be attributed a responsibility on the basis of an organic *de facto* relationship. Cannizzaro denies that Hezbollah may have a sufficient degree of autonomy to be considered a subject of international law because to do so, it should exercise exclusive control of the territory as well as being comparable to a new territorial entity possessing sovereignty. Therefore, there should have been a process of insurrection and authorities should have had provided some stability in that territory. Clearly, this is not the case of Lebanon, whose unity was never contested.[55] Consequently, the Israeli use of drones against Hezbollah leaders follows the same reasoning mentioned above.

IV. IS THE PRINCIPLE OF PROPORTIONALITY DULY ACCOMPLISHED?

When trying to determine if the legal provision 51 of the UN Charter is being duly satisfied or not, it is crucial not only to examine the above legal aspects, but also the following criterion of fairness and justice: the principle of proportionality. Why is the mentioned principle a basic element when applying article 51?

As suggested by Aurescu, the proportionality of the reaction in self-defense has two dimensions[56]. The first one, "quantitative", expresses a correspondence between the gravity of the attack suffered and the scale of the reaction, which

[53] *Cfr.* Kretzmer, D., *op. cit.*, at 172.

[54] *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I. C. J. Reports 2004*, p. 136, § 139.

[55] *Vid.* Cannizzaro, E., "Entités non-étatiques et régime international de l'emploi de la force. Une étude sur le cas de la réaction israélienne au Liban », *Revue Générale de Droit International Public*, 2007, vol. 111, nº2, 333-352, at 335.

[56] *Vid.* Aurescu, B., "Le conflit libanais de 2006. Une analyse juridique à la lumière de tendances contemporaines en matière de recours à la force", *Annuaire Français de Droit International*, LII, 2006, p. 154.

must be limited in its object to the restoring of the existing situation before the aggression. On the other hand, the "qualitative" dimension was analyzed by the International Court of Justice in its Advisory Opinion on the *Legality of the Threat or Use of Nuclear Weapons:* the use of armed force in self-defense has to meet the requirements of the law applicable to armed conflicts. Therefore, self-defense might not authorize the use of means that are opposite to the principles and the content of International Humanitarian Law[57].

This principle of proportionality entails that the impact of retaliation measures has to be evaluated. A similar idea is contained in an open-letter written in 2003 by Moreno Ocampo, the former Chief Prosecutor of the International Court of Justice: "(...) A crime occurs if there is an intentional attack directed against civilians (principle of distinction) (...) or an attack is launched on a military objective in the knowledge that the incidental civilian injuries would be clearly excessive in relation to the anticipated military advantage (principle of proportionality)[58]".

Be that as it may, when considering if the right of self-defence has been breached it is crucial to combine the interpretation of the above principle with another one: the principle of necessity, which implies that the use of force must be consistent with the achievement of legitimate military objectives. Therefore, these two principles have to be duly respected when exercising the right of self-defence. Not doing this will entail the violation of international legal provisions. In this regard, we should mention that Israel has been accused of not fulfilling those in, among others, the attack launched in Gaza in 2006 after an Israelite soldier was captured.

Returning to our topic, when using drones, we have seen that civilian casualties take place. In this regard, we have to mention what Human Rights Watch has said: "the impact on civilians must be carefully weighed under the principle of proportionality against the military advantage served; all ways of minimizing the impact on civilians must be considered; and attacks should not be undertaken if the civilian harm outweighs the definite military advantage, or if a similar military advantage could be secured with less civilian harm".[59] Thus, when pilotless aircrafts are injuring or killing civilians, article 51 of the UN Charter is frontally violated.

[57] *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports 1996,* p. 226.

[58] This letter was published during the Irak invasion of 2003.

[59] This idea has been posed by Human Rights Watch in the following document: <http://www.hrw.org/news/2006/08/01/questions-and-answers-hostilities-between-israel-and-hezbollah>.

Without doubt, the abovementioned principle is interlocked with human rights regulation when it refers to the killings of civilians. Along the same line, Philip Alston understands that "[...] the legality of a killing outside the context of armed conflict is governed by human rights standards, especially those concerning the use of lethal force […]. [A] targeted killing in the sense of an intentional, premeditated and deliberate killing by law enforcement officials cannot be legal because, unlike in armed conflict, it is never permissible for killing to be the sole objective of an operation"[60]. Thus, airstrikes that have perpetrated targeted killings and caused death, in a non-armed conflict area, must be subjected to the application of relevant legal provisions, such as: Article 3 of the Universal Declaration of Human Rights (UDHR), Article 6 of the ICCPR, Article 2 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, etc.

The last legal document above mentioned contemplates the possibility of a legitimate use of force provided that the principle of proportionality is duly complied. Regarding the issue here discussed, problems arise when acknowledging that drone strikes always occur far beyond the borders of the country that has ordered the attack. Thus, as explained before, can the use of force be legal if it is perpetrated in another State unable to pursue the crimes itself or unwilling to help the State of the victim? Forgetting sovereign considerations, can we understand that the victim State has no other possibility but to display its force against the suspected terrorist? As Kretzmer suggests, "[…] it could not do so if its aim were to punish the suspected terrorist for past acts or to deter potential terrorists from acting"[61]. This is obvious. However, as the author argues, what will happen if a State has evidence that the alleged terrorist is planning an attack against people in its territory? Within this context, is the use of force absolutely necessary?[62] It does not seem like it. In this respect, a suitable question should be taken into account: "how can one decide if lethal force is necessary to prevent a possible future attack about which one knows nothing?"[63] Either way, we must highlight that regarding the ICCPR, no one shall be arbitrarily deprived of his life. Therefore, can a pre-emptive attack be considered as an arbitrary life deprivation? In this regard, the Human Rights Committee declares the following: "The Committee is concerned by

[60] See paragraph 33.

[61] *Cfr.* Kretzmer, D, *op. cit.*, at 179.

[62] *Ibid.* at 180.

[63] *Cfr.* Brooks, B., *op. cit.*, at 21.

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what the State party calls 'targeted killings' of those identified by the State party as suspected terrorists in the Occupied Territories. This practice would appear to be used at least in part as a deterrent or punishment, thus raising issues under article 6 [...]. The State party should ensure that the utmost consideration is given to the principle of proportionality in all its responses to terrorist threats and activities. State policy in this respect should be spelled out clearly in guidelines to regional military commanders, and complaints about disproportionate use of force should be investigated promptly by an independent body. Before resorting to the use of deadly force, all measures to arrest a person suspected of being in the process of committing acts of terror must be exhausted"[64].

Consequently, the Committee argues that the use of force should be considered as a strategy of last resort. Therefore, States have to ensure that the basic rights of persons within its jurisdiction are duly protected. This, of course, includes territories under its occupation or control. At the same time, they have to implement counterterrorism measures to prevent, among others, instability. In parallel, the strategies implemented when fighting against terrorism have to successfully overcome the test of proportionality and necessity. All this previous considerations provide a challenging and complex scenario difficult to solve in a dramatic real-life event, in particular when drones are used.

V. CONCLUSIONS

The use of drones for extrajudicial targeted killings during the permanent war against terrorism implemented by the United States and some of its allies to different groups since 2001, hardly fits the requirements of the right of self-defense (Article 51) alleged by the perpetrators.

The lack of legal definition on terrorism implies that the phenomenon (terrorism) is not the enemy; to raise a response in self-defense, terrorist acts are the ones that should be taken into consideration. These acts, under certain circumstances, could reach the level of intensity necessary to be qualified as an armed attack according to Article 51 but their attribution to a particular State is difficult to establish; the groups or individuals targeted by drones are not acting on behalf of a public authority nor on the instructions or the effective control of any specific State.

[64] See Concluding Observations of *the Human Rights Committee: Israel*. Available at: <http://adalah.org/upfiles/ConcludingObservations/HRC-Concluding%20Observations%20(2003).pdf>.

Regarding the condition of immediacy of the response in self-defense, the use of drones is not a response to any specific attack; the argument to be in "war against terrorism" hampers the acceptance of self-defense: there is no response, there is a war.

However, even recognizing there is a war, is it highly doubtful that the use of drones for targeted killings respects the law applicable to armed conflicts and particularly International Humanitarian Law (another requirement for self-defense). The amount of civilian casualties shows that this "collateral damage" is clearly excessive in relation with the anticipated military advantage. Moreover, if proportionality is not respected, neither is necessity; targeted extrajudicial killings of individuals suspected to be terrorists entailing *per se* the killing of civilian hardly harmonizes with the achievement of legitimate military objectives.

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ISSN 2341-0868, Num. 3, janvier-décembre 2015, pp. 143-164

NOTES

RISKS AND THREATS IN THE WESTERN SAHEL RADICALIZATION AND TERRORISM IN THE SUB-REGION

Carlos Echeverría Jesús[1]

I. INTRODUCTION TO THE WESTERN SAHEL SUB-REGION – II. RISKS AND THREATS BEFORE AND AFTER THE DIRECT IMPACT OF THE ARAB REVOLTS AND THE WAR IN LIBYA - III.THE EVOLUTION IN THE AREA – IV. CONCLUSIONS.

ABSTRACT: This article addresses the most important security challenges existing in the Western Sahel countries, an emerging sub-region encompassing Burkina Faso, Chad, Mali, Mauritania, and Niger. The sub-region is very much affected by developments in neighboring countries such as Algeria, Libya, and Nigeria, among others. A number of recent processes – the Arab revolts and their effects in Libya and Egypt, the reinforcement of Boko Haram as a regional terrorist threat, etc – have contributed to aggravate insecurity in a region that suffers environmental problems, political instability, inter-communitarian tensions and illegal trafficking since a number of decades ago. All these risks and threats are inviting states and international organizations to become more and more involved in order to provide responses and, eventually, solutions.

KEYWORDS: Al Qaida in the Lands of the Islamic Maghreb (AQIM); Ansar Eddine; Boko Haram; CEMOC (Coordination of Major Staffs from Algeria, Niger, Mali, and Mauritania); G-5 Sahel Organization; illegal trafficking; MINUSMA (United Nations Mission for the Stabilization of Mali); MUJAO (Movement for Unity and Jihad in Western Africa).

RIESGOS Y AMENAZAS EN EL SAHEL OCCIDENTAL. RADICALIZACIÓN Y TERRORISMO EN LA SUBREGIÓN

RESUMEN: Este artículo se ocupa de los desafíos de seguridad más importantes que podemos inventariar en los países del Sahel Occidental, una subregión emergente que incluye a Burkina Faso, Chad, Malí, Mauritania y Níger. La subregión se ve muy afectada por los procesos que se viven en países vecinos como Argelia, Libia y Nigeria, entre otros. Algunos procesos recientes – las revueltas árabes y sus efectos en Libia y Egipto, el reforzamiento de Boko Haram como amenaza terrorista regiona, etc – han contribuido a incrementar la inseguridad en una región que ya sufre desde hace décadas problemas medioambientales, inestabilidad política, tensiones intercomunitarias y tráficos ilícitos. Todos estos riesgos y amenazas invitan a los Estados y a las Organizaciones Internacionales a involucrarse cada vez más en el esfuerzo para encontrar respuestas y eventualmente soluciones a los mismos.

PALABRAS CLAVE: Al Qaida en las Tierras del Magreb Islámico (AQMI); Ansar Eddine; Boko Haram; CEMOC o Coordinación de Estados Mayores de Argelia, Níger, Malí y Mauritania); Misión

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de las Naciones Unidas para la Estabilización de Malí (MINUSMA); Movimiento para la Unicidad del Islam y el Yihad en África Occidental (MUYAO); Organización G-5 del Sahel; tráficos ilícitos.

RISQUES ET MÉNACES DANS LE SAHEL OCCIDENTAL. RADICALISATION ET TERRORISME DANS LA SUB-REGION

RÉSUMÉ: Cet article s' ocupe des défis de sécurité les plus importantes qu' on trouve dans la sub-région du du Sahel Occidentale (le Burkina Faso, le Tchad, le Mali, la Mauritanie et le Nïger). Cette sub-région deviens très touchée par les processus vécus en Algérie, en Libye et au Nigéria, parmis des autres pays voisins. Quelques evénements tels que les revoltes arabes dans la Libye ou en Egypte et aussi le renforcement de Boko Haram en tant que groupe terroriste de dimension régionale ont contribué à aggraver l' insécurité dans la région. En plus, les pays du Sahel Occidentale sont affectés depuis des decenies par des problèmes tels que les crises environmentales, l' instabilité politique, les tensions inter-communitaires et les traffics illicites. Tels risques et telles ménaces invitent les états et les organisations internationales à designer des réponses et, eventuellement, des solutions a ceux problèmes.

MOTS CLEFS: Al Qaida dans le Maghreb Islamique (AQMI); Ansar Eddine; Boko Haram; CEMOC (Coordination des états-majors de l' Algérie, le Mali, la Mauritanie et le Niger); Mission des Nations unis pour la Stabilisation du Mali (MINUSMA); Mouvement pour l' Unicité et pour le Jihad dans l' Afrique Occidentale (MUJAO); Organisation du G-5 Sahel; traffics illicites.

I. INTRODUCTION TO THE WESTERN SAHEL SUB-REGION

In security terms, the Western Sahel is a more than 3 million of square kilometers arid belt south of the Sahara where Jihadist Salafist terrorists and traffickers, among other threats, operate. These have been and remain much more concentrated in the Western Sahel, where they represent a threat for the African and Western countries. The Western Sahel sub-region is involving the five countries belonging to the G-5 Sahel Organization which was born in Nouakchott on 18 February 2014.[2] The building up of this International Organization is an additional effort in order to improve coordination on security and development among the countries of the Western Sahel.

The five countries and a number of neighbors (mainly Ivory Coast, Libya, Algeria or Nigeria, among others) we will deal with later must confront organized

[2] Burkina Faso, Chad, Mali, Mauritania, and Niger. Mauritania has the Presidency of the G-5 Sahel Organization this year, and Chad will lead it in 2015. Other sub-regional organizations active in the area are the Senegal River Organization (involving Mali, Mauritania, and Senegal), and the 27 states' Sahel and Sahara Community (CEN-SAD). The Economic Community of West African States (ECOWAS), involving 15 states, will be addressed in other chapter of this article. Finally, the 13 states Committee of States Fighting Against the Drought and Desertification in the Sahel (CILSS, in its French acronym) is not a strong organization able to deal with security and defense matters.

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crime, cross-border terrorism, clandestine immigration, drug trafficking, political corruption, economic problems and environmental crises. The region is also concentrating the largest density of poor people in the world if we take into account the human development list, mainly affecting countries such as Mali or Niger.

Also a number of these countries – mainly Mali – are politically unstable, wracked by ethnic and sectarian violence. Some of them can be considered failing states but they are not failed states in the terms that countries such as Somalia has been considered for years.

1. THE IMPORTANCE OF A NUMBER OF NEIGHBORING COUNTRIES

Ivory Coast, Guinea Bissau, Burkina Faso, Libya, Algeria or Nigeria are countries bordering the Western Sahel. A number of them can be considered countries in crisis. For instance, Mali, a full member of the Western Sahel, is politically unstable, wracked by ethnic and sectarian violence.

Ivory Coast and Libya were for decades two countries of opportunities for the people in the region, providing jobs to hundreds of thousands of immigrants until a number of years ago. The war in Ivory Coast in the 2000s and the revolts and the civil war in Libya in 2011 transformed negatively the situation of both countries. In Algeria, Libya and Nigeria, a miryad of terrorist groups are able to carry out terrorist operations across the borders in the region.

Libya is today a sanctuary for terrorists, allowing them being active in the Sahel to regroup, train and avoid detection in the afterwards of Operation Serval was launched led by France in January 2013.[3] The In Amenas attack in January 2013, and the two suicide attacks in Niger, in May 2013, were launched from the Libyan ground by a group led by an Algerian terrorist, Mokhtar Belmokhtar (aka Mr. Marlboro or Belouar). Algeria was very important in the past in terms of terrorist violence, with the Islamic Armed Group and the Salafist Group for Preaching and Combat (GIA and GSPC, in their French acronyms) projecting terrorism and radicalization in the Sahel in the last two decades. In addition to the terrorist activism, bad relations between Algeria and Morocco has traditionally been and already remains an additional negative input for the Sahel region in security terms.

In terms of drug trafficking, Guinea Bissau and Nigeria must also be pointed out. Guinea Bissau is deteriorating in security terms since the coup d' etat of 12

[3] "Libyan capital under Islamist control after Tripoli airport seized", *The Guardian,* 24 August 2014, in <www.theguardian.uk.com>.

April 2012, and Nigeria is a key country when we deal with the Western Sahel in security terms not only because it is the place where the terrorist organization Boko Haram was born and is already acting but also due to the fact that drug production and drug trafficking is very much affecting this country.[4] Burkina Faso has suffered a coup d' etat at the end of October 2014, and is also entering in a process of domestic deterioration of security with potential regional consequences.[5]

2. THE CENTRAL ROLE PLAYED BY NIGERIA IN THE REGION

Nigeria's population of 170 million, the biggest in Africa, is comprised of almost equal numbers of Christians and Muslims. The Boko Haram Jihadist Salafist offensive, very bloody in the last five years, is overlapped with a mix of tribal and religious animosity aggravated by political corruption, and growing rivalries over land and water resources. Boko Haram has gained the capacity to strike in increasingly urban centers and beyond national borders, towards Cameroon and also the Sahel.

Nigerians suffer real atrocities in the region around Lake Chad, which lies on the borders between Niger, Nigeria and Chad. Since the Nigerian Government declared a state of emergency in three states (Adamawa, Borno, and Yobe), in May 2013, nearly 100,000 people have fled to Niger, Camerun and Chad. In addition, more 1,5 million people is internally displaced inside Nigeria and more than 20,000 Nigerian refugees are in Niger. In this context, President Goodluck Jonathan appointed a new Defence Minister in March 2014, obligged by these circunstances. The massive kidnapping by Boko Haram of more than 200 girls in the Spring 2014 has contributed to place the Abuja's regime at the odds.[6]

Boko Haram's leader, Abubakar Shekau, has killed thousands of Christians and also a number Muslim leaders in Nigeria, has threatened directly the US and other Western countries and, in a twenty eight minutes video published on 19 February 2014, has also threatened the Nigerian oil facilities.[7] In sum, the year 2014 has been

[4] Nigeria enacted a comprehensive Anti-Terrorism Legislation and a Money Laundering Act, both in 2011, and has reinforced its Armed and Security Forces but this country continues to be a disturbing element in the region.

[5] Berrato, L., "Burkina Faso: Le gouvernement décrete l' etat d' urgence", *El Watan* (Algeria), 31 October 2014, in <www.elwatan.org>.

[6] In July 2013 the United Kingdom formally designated Boko Haram as a terrorist organization, with the US following in November 2013.

[7] Olugbode, M., "Nigeria: 25 Towns Under the Control of Boko Haram", *Allafrica.com*, 18 September 2014, in <http://allafrica.com>.

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and continuous to be entral for Boko Haram' letal activism in Nigeria and in the sub-region.[8]

Nigerian organized criminal networks also remain a major factor in moving cocaine and heroin worldwide being Nigeria a transit country for these drugs destined mainly for Europe. Widespread corruption in Nigeria facilitates criminal activity and combined with Nigeria's central location along major trafficking routes enables criminal groups to flourish and make this African country an important trafficking hub.

II. RISKS AND THREATS BEFORE AND AFTER THE DIRECT IMPACT OF THE ARAB REVOLTS AND THE WAR IN LIBYA

Before the Arab revolts the deterioration of security in Ivory Coast had provoked tens of thousands of immigrants from Mali, Niger or Burkina Faso, among other countries, came back to the Sahel. Illegal trafficking and corruption were important risks in the region. Al Qaida in the Lands of the Islamic Maghreb (AQIM) and Boko Haram were becoming trans-border threats with their terrorist attacks and the increasing number of kidnappings, and, finally, the Tuareg rebellions in Mali or Niger were also a reality in historical terms as well as a non-solved problem for these two Western Sahel countries.

Nevertheless none of these risks, or even all of them together, was or were a strategic threat to Western Africa or to the West. Before 2012, anger in northern Mali was stoked by collusion between northern Tuareg leaders and Bamako officials in illegal activities such as trafficking and hostage-taking by terrorist groups, mainly AQIM, but it had not strategic consequences. The GSPC kidnapping of 32 Western tourists, in southern Algeria in 2003, initiated an additional terrorist activity in the area to be added to the traditional illegal trafficking, affecting in that time to countries such as Mali, Libya, Niger or Chad. AQIM was born from the GSPC early in 2007 as an Al Qaida' s branch in the region: basically Algerian in leadership and membership, AQIM became also transnational operating mainly in Mauritania and Mali on a trans-border basis.[9]

[8] "Nigéria: l' armée rejette le 'califat islamique' proclamé par Boko Haram", *Jeune Afrique*, 25 August 2014, in <www.jeuneafrique.com>.

[9] See Echeverría Jesús, C., "Escenarios privilegiados de germinación del yihadismo salafista en la vecindad inmediata de Europa: del Magreb y el Sahel hasta Siria", in Bello Crespo, M. (Coord), *Yihadismo en el mundo actual,* Madrid, Ministry of Defence-Cuadernos de Seguridad y Defensa nº 62, September 2014, pp. 85-108, in <www.ceseden.es>.

But it was the remobilization of weapons and fighters from Libya since 2011 the fact that fed the contradictions in northern Mali and transformed the situation into a strategic threat for the region and for the Western countries as well.

1. THE DIRECT IMPACT OF THE LIBYAN REVOLTS AND CIVIL WAR IN MALI

The initial Tuareg revolt led by the National Movement for the Liberation of the Azawad (MNLA in its French acronym) elements moved from Libya to Mali in January 2012 was kidnapped by Jihadist Salafist groups, and an enormous portion of the Sahelian country fell into the hands of a myriad of terrorist groups in the first months of 2012 overhelming the Malian state. It was an unprecedented achievement for the terrorists – the emergence of a nucleic Al Qaida Jihadist state – requiring urgent and immediately countermeasures from the International Community, mainly from the West. The three mean terrorist actors at that time in northern Mali were AQIM, the Movement for Oneness and Jihad in West Africa (MUJAO) and Ansar Eddine.

For the time being the mean causes of Mali's 2012 instability have yet to be fully addressed by the Malian Government and its international partners, almost three years after the crisis started. Six causes must be pointed out:

• Communal divisions reflected in inter-communitarian tensions and conflicts remain. Disaffection in the north is demanding to reassert Governmental authority. Hundreds of thousands of either displaced or refugee people do remain. Almost two years after the Tuareg rebellion was launched the deep-rooted historical grievances of Tuareg people have not been addressed. Mali' s Army was forced to pull troops from the Kidal region in May 2014, after losing a battle following a botched attempt to seize the town from the Tuareg separatists.

• The second cause of instability is a fractured military that is demanding reforms in the Malian Armed Forces. The political legitimacy was implemented through the presidential and general elections in 2013, but with the Mali's Armed Forces only slowly rebuilt, France has been forced to delay its troop withdrawal.[10]

• Persistent concerns remain over what many analysts believe might be as inevitable terrorist attacks staged now from southern Libya. AQIM' s and other Jihadist groups' priority is to block the negotiations between Bamako and the

[10] Operation Serval has been transformed in Operation Berkhane in Summer 2014. See Gueye, Bakari: "France renews Sahel commitment", *Magharebia,* 7 August 2014, in <www.magharebia.com>.

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Tuareg leaders together with attacking the French, the UN Mission in the country (MINUSMA), the Malian and the Algerian forces and interests.[11] Concerning the MUJAO and the Belmokhtar's group "Those Who Sign With Blood", they announced their fusion in Summer 2013 as The Mourabitoun, and remain active as well.[12]

• Among the actors in the region we must also encompass Ansar Eddine, out of the negotiation processes held along 2014.[13] AQIM is ready even to attack MNLA, the Arab Movement of Azawad and the High Council for the Azawad (MAA and HCA in their French acronyms) in order to avoid any arrangement between them and the Malian authorities.[14] Confusion among Ansar Eddine and a miryad of Tuareg groups, movements, clans and tribes adds a difficulty for a definition of the negotiating actors.[15]

• A systemic corruption in the Malian state that is demanding to strengthen urgently the rule of law.

• To forge a lasting peace, the Malian regime must create economic opportunities in the north but the region is too dry for agriculture and lacks the mineral resources of the south. Government is seeking to attract companies to start oil production in the northern Taudeni basin, closed to the Algerian border, in the next five to ten years, but anything will occur before a lasting peace is restored and the terrorist threat is dismantled. In the absence of alternatives to criminality old networking will again take control of the north.

In this context, to analyse what is the role played by the most affected neighbors becomes a necessity.

[11] "Mali: UN peacekeepers killed by roadside bomb", *BBC News Africa*, 18 September 2014, in <www.bbcnews.com>.

[12] See "Les Almoravides, le nouveau groupe djihadiste de Belmokhtar et du Mujao", *El Watan (Algeria),* 23 August 2013, in <www.elwatan.com>.

[13] Ansar Eddine remains as the greatest terrorist group in the region, with about 800 members, and AQIM has around 700. Ansar Eddine's leader, Iyad Ag Ghali, supports not only to AQIM but also to the MUJAO and Boko Haram. See "Iyad Ag Ghali: une video pour signer la rupture avec Alger", *El Watan (Algeria),* 8 August 2014, in <www.elwatan.com>.

[14] MUJAO killed around 30 Tuareg in Tamkoutat, near Gao, on 6 February 2014.

[15] Ouazani, Ch., « L' Algérie, diplomate au long cours », *Jeune Afrique,* 27 October 2014, 4 pages, in <www.jeuneafrique.com>.

2. ALGERIA, NIGER, MAURITANIA, AND SENEGAL AS THE MOST AFFECTED NEIGHBORS

The Arab revolts in Tunisia, Egypt and Libya fully aggravated the situation in the region from the Algerian perception. Algeria tries to play the leadership in the Western Sahel, through bilateral contacts, and also through regional instruments such as the Coordination of the Joint Military Staffs (CEMOC, in its French acronym) since 2010.[16] For instance, Algeria has traditionally played a role of mediator in the context of the Tuareg revolts, and considers the region as a risky one concerning Jihadist terrorist activities.[17] Algiers is very much concerned by the fact that Sahel countries are stepping up their efforts with international partners to deal with the security threats confronting them, and tried to avoid in 2012 foreign intervention in northern Mali, mainly a Western one led by France.[18] According to the Algerian perception, the biggest Maghreb country is surrounded by the south and the east by weak governments and nebulous borders in a region facing rising extremist activity. The Algerian Ministers of Foreign Affairs, Ramtane Lamamra; of African and Sahel Affairs, Abdelkader Messahel; and of Religious Affairs and Wafks, Bounabdallah Ghlamallah, are particularly active in the region. For instance, the Minister Ghlamallah announced on 9 March 2014 the coming opening of a School for Imams in Tamanrasset, to be forming 150 imams per year for Algerian and the surrounding countries.[19]

Algeria is very active vis-à-vis Mali and the Western Sahel in large, not only due to historical reasons and the direct neighborhood, but also in order to confront the growing Moroccan presence in the area. The Algerian and Moroccan mutual rivalry is being very much reflected in the Western Sahel, a region where Algiers perceives with misperceptions the increasing presence of Morocco, a non Sahelian state, in Mali.[20] In 2013, the King Mohamed VI contributed to the Economic Community

[16] The CEMOC is involving the Chiefs of Staff of the Algerian, Malian, Mauritanian and Niger Armed Forces in terms of coordinating efforts, and is not a regional organization as such.

[17] President Liamine Zeroual visit to the Sahel countries in 1996 was very much connected with the GIA terrorist projection in that time in the region.

[18] The traditional Algerian opposition to the interference in the internal affairs of third states is behind the Algiers' diplomatic effort in order to facilitate dialogue and negotiation among the different groups fighting each other in Libya. See Ramzi, Walid: "Algeria ready to host Libya dialogue", *Magharebia,* 17 September 2014, in <www.elwatan.com>.

[19] "Algérie: hausse de 10% du budget militaire, à 13 milliards de dollars", *Jeune Afrique*, 9 September 2014, <www.jeuneafrique.com>.

[20] Morocco is occupying the Western Sahara since Autunm 1975, together with Mauritania until

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of West African States (ECOWAS) Summit in Yamoussouko (Ivory Coast) and attended the arrival to the Presidency of President Ibrahim Boubacar Keita in Bamako. In February 2014 the King visited again Mali and also attended, in Guinea Conakry in March, a regional summit with sub-regional implications.[21] Morocco is the country where the Community of States of the Sahel and the Sahara (CEN-SAD) annual ministerial meeting was held in November 2013.[22] Finally, Morocco has also been dealing with the sensitive Tuareg question increasing with that the concerns in Algeria.[23]

Together with these tensions, Algiers and Rabat are also and previously confronted due to the conflict in the Western Sahara, a territory fully connected with the Western Sahel. In this context, only 17 African states have recognized the RASD, a full member of the OAU since 1984, and Zambia in 2011 and Burundi in 2010 decided to change their positions becoming supporters of the Moroccan approach on an autonomy for the territory within the Kingdom. The Moroccan diplomatic and financial deployment in the African continent is very much connected with this effort in order to attract as many African countries as possible to its position. At the same time, Morocco continues doing an enormous lobby in order to transmit the message that the Polisario Front is a part of the global threat emerging from the Western Sahel, with direct connection with the jihadist groups.[24]

Historically, the Moroccan dynasty helped to export Islam to Africa south of the Sahara and still maintains influence in a number of "Zawiya" (Islamic religious bodies) such as the Tijani in Mali and other Sufi groups. The increasing visibility of Mohamed VI in West Africa and the Sahel is a big concern for Algeria. At the multilateral level, Morocco is providing ground for the CEN-SAD sub-regional organization. Also in Maghreb regional terms, Algiers has enhanced its influence

1979 and as the unique occupant since them. The Organization for African Unity (OAU) recognized the Arab Saharwi Democratic Republic (RASD, in its French acronym) in 1984, and Morocco is absent from the continental African Organization (OAU/AU, African Union) since then.

[21] Guinea Conakry is a country where the Muslim Zawiyas are very much influenced by Moroccan religious actors.

[22] "Maroc: démantelement d' une cellule terroriste liée aux radicaux islamiques", *El Watan (Algeria),* 13 September 2014, in <www.elwatan.com>.

[23] In January 2014 Mohamed VI met the MNLA Secretary-General Bilal Ag Achérif, in Rabat. In parallel, Algeria is trying to keep its role with a number of armed groups in northern Mali.

[24] See *The Truth about the Polisario. Security in the Sahara and Sahel. The growing threat posed by the Polisario run camps near Tindouf,* Government of Morocco, The Moroccan American Center for Policy (MACP), 13 October 2014, 12 pages, in <www.moroccoonthemove.com>.

over neighboring Tunisia under the guise of increased security cooperation.

Coming back to Algeria, the country continues suffering in 2014 the AQIM terrorist activism. At the same time, AQIM leader, Abdelmalek Droukdel, has refused to recognize the Islamic State (IS), preferring to renew his allegiance to Al Qaida. On 13 September 2014 an unknown Algerian terrorist group, Soldiers of the Caliphate in Algeria (Djound Al-Khilafa en Algérie), announced its split from AQIM and pledged allegiance to Abu Bakr Al Baghdadi' s group, the IS.[25]

Northern Niger, with its central point in Agadez, is one of the key routes between southern Libya and northern Mali, an often-used route for terrorists and traffickers, the latter trafficking mainly human beings, weapons and drugs. For years, Niger has been locked into its own contentious negotiations with Paris over the future of uranium mining in northern Niger.[26] In addition, Niamey is trying to leverage its concerns over instability in Libya to gain concessions from its former colonizer.[27]

In security terms, Niger has led in 2014 the Flintlock military exercise annually sponsored by the US, and the Government successfully lobbied Washington to place a drone surveillance facility in Niamey as is likely seeking greater cooperation, training and military aid from France. Niger suffered a double suicide terrorist attack in May 2013, with terrorists coming from southern Libya, and is very much concerned by the regional situation due to the fact it also has a complex relation with its own Tuareg community. Massoudou Hassoumi, Interior Minister of Niger, demanded a French foreign intervention in southern Libya – a region he defined as an "incubator for terrorist groups" - on 5 February 2014. On 10 October 2014, in northern Niger, French forces destroyed an AQIM convoy transporting weapons from Libya to Mali.

The Libyan jihadist group Ansar Al Sharía is based in Benghazi but also has branches in Ajdabiya, Derna and Sirte. On 29 April 2014 the Libyan Government labelled Ansar Al Sharía as a terrorist organization for the first time. Algerian

[25] See Fethi, N., "ISIS offshoot raises questions in Algeria", *Magharebia,* 17 September 2014, in <www.magharebia.com>.

[26] Since the expiration of its contract on 31 December 2013, the French company AREVA and the Niamey Government started negotiations to renew the contract, albeit on more favorable terms for Niger. Niger is the world's fourth largest producer of uranium after Khazajstan, Canada and Australia. However, uranium has not added wealth to Niger, one of the poorest countries with more than 60% of its 17 million people surviving on less than 1US$ a day.

[27] Cherfaoui, Z., "Les Français dissent non à Niamey", *El Watan (Algeria),* 12 February 2014, in <www.elwatan.com>.

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jihadists' presence in Libya has improved the sophistication of Jihadist actions. For instance, Algerian media confirmed on 17 May 2014 that two Algerians were killed and another was injured while fighting alongside Ansar Al Sharía in Benghazi. In Libya, the terrorists of Ansar Al Sharía have reiterated that security and stability in the country are dependent on the establishment of Sharia (Islamic Law) and not democracy, calling on "every Muslim to unite against infidels and traitors". Among the latter they situate the retired Libyan army officer General Khalifa Haftar who began military operations on 16 May 2014 against Islamist militias in Benghazi. General Haftar's operation, together with the proclamation of the Islamic Caliphate in northern Iraq in June 2014, have served as a further catalyst for Islamist militias in Libya to increase their cooperation. While increasing co-operation between Libyan jihadists has allowed those militants to co-ordinate and to extend co-operation with jihadists elsewhere in the region.[28] Close relations between Ansar Al Sharía in Libya and Mokhtar Belmokhtar has been evoked recently by a number of analysts in the region, as an example of how Libya is being transformed into a theatre for the battle for ascendency between a number of Al Qaida regional wings and global Jihadist groups such as the IS.[29]

Mauritania is playing a pivotal role in confronting terrorism and other risks and threats such as illegal trafficking in large. The Mauritanian Government considers one third of the total production of cannabis in Morocco transit by the Sahel through Mauritania, the Western Sahara and Algeria, northern Mali and Niger, and Latin American cocaine also transits by the Sahel strip.

AQIM has stated on a number of occasions that it views Mauritania as a legitimate target and has previously demonstrated a capability to carry out kidnappings and attacks using vehicle-borne improvised explosive devices (VBIEDs). For instance, three VBIEDs were intercepted on 1 February 2011 while travelling from Mali towards the French Embassy and government targets in Nouakchott, and three Spanish aid workers were kidnapped in November 2009 on the highway between Nouakchott and Nouadhibou.

The main Islamist party in Mauritania is Tawasoul, a Mauritanian affiliate of the international Muslim Brotherhood organization licensed as a political party in 2007.

[28] See "Militia- Libya tackles Islamist militant groups", *Janes's Islamic Affairs Analyst (Section: Africa. Country: Libya),* 28 May 2014.

[29] Oumar, J., "Jihadist forces vie for influence", *Magharebia,* 19 September 2014, in <www.magharebia.com>.

Tawasoul' s spiritual leader, Sheikh Mohamed Hasan Ould Dedew, who leads the charitable and cultural organization Moustakbel (Future) has traditionally presented himself as a champion of Muslim causes abroad while avoiding to appear to give support to domestic extremism at home. Concerning Jihadist projection, Mauritania has created a TV Channel providing moderate Islamic propaganda, the Mahdhara Fadharia, on 1 March 2014.[30]

Finally, Senegal, who shares 800 kilometers of borders with Mauritania and Mali, is also very much concerned by radicalization and by illegal trafficking.

III. THE EVOLUTION IN THE AREA

Sahel countries are stepping up their efforts with international partners to deal with the security threats confronting them.

The region needs to be secured by the support of foreign forces and other foreign instruments but there is no a permanent military solution for the threats these countries face. In the long run, economic development, good governance and sweeping counter-radicalization strategies are necessary to drain the swamps in which Jihadists festers.

National efforts remain central in security terms in the area, with Algeria as the central country.[31] In terms of the most recent examples of operations, Algerian security forces arrested 20 alleged criminals attempting to cross the border with Niger on 6 October 2014.[32] The Algerian&Moroccan competition in the area not only remains but it will increase in the next coming months and years. Unfortunately, this competition between the two Maghreb powers in the Western Sahel will increase the presence of religion and religious actors in the area, a potential additional problem for the future.[33]

Also situated at the sub-regional dimension, the role played by the ECOWAS, an

[30] See "Foregone conclusion- Incumbent favourite for Mauritanian presidential election"*, Jane's Islamic Affairs Analyst (Section: Africa. Country: Mauritania),* 13 June 2014.

[31] See on the re-organization of the military deployment in the 4th (Ouargla) and the 6th (Tamanrasset) Military Regions in Algeria "Ministère de la Défense Nationale (MDN): Quatre nouveaux secteurs militaries pour le grand sud", *El Watan (Algeria),* 24 June 2014, in <www.elwatan.com>.

[32] On this arrest see Ramzi, W.: "Algeria tightens Niger border security", *Magharebia,* 8 October 2014. On previous interventions of heavy weapons in the deep south borders see "Dix terrorists eliminés à Tinzaouatine (Tamanrasset). La menace persiste aux frontieres sud", *El Watan (Algeria),* 7 May 2014, and "L' armée algérienne saisit des armes de guerre près des frontières avec le Mali", *El Watan,* 9 April 2014.

[33] See "Foregone conclusion" *op. cit.*

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organization involving 15 states, must be evoked. ECOWAS is the most important actor in terms of international subregional organization. In Mali, for instance, the ECOWAS imposed the Burkina's President Blaise Compaoré negotiation with a number of Tuareg groups since the year 2013. A new of these negotiations between Bamako and Tuareg and MINUSMA elements initiated in 2014 was led by Algerian diplomats and was not involving the Burkinabe Mediator any more.

Mali and other countries in the region need to be secured not only by African forces but also by broader international actors. Mauritanian President Mohamed Ould Abdel Aziz is already the President of the AU, and he has tried to involve the continental organization in the efforts to restore peace and stability in the Western Sahel. In fact, neither the ECOWAS nor the AU have been able to play a rapid, active and effective role in the years 2012 and 2013, and then the UN was invited to pay attention to the conflict in the area through the Multidimensional Integrated Stabilization Mission in Mali (MINUSMA).[34] The MINUSMA is authorized to involve 12,640 troops and police, and waiting to arrive to its full capacity the US, French and European (the European Union Training Mission EUTM-Mali) militaries are training African forces contributing to MINUSMA.[35]

Since July 2013 up to 31 MINUSMA members have been killed by Jihadist terrorists.[36] Ten Chadian members of MINUSMA were killed in September 2014 and nine, all of them from Niger, were killed on 3 October 2014 between the towns of Menaka and Ansongo, in the Gao region.[37] An additional MINUSMA soldier, from Senegal, was killed on 7 October 2014 in Kidal.[38] On 9 October 2014 Malian Foreign Minister Abdoulaye Diop urged the UN Security Council to send a rapid intervention force to fight terrorists in the north of his country.[39]

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[34] "Mali conflict: UN urges to send more troops", *BBC News,* 10 October 2014, in <www.bbc.co.uk>.

[35] Schmitt, E., "US Trains Africa Commandos To Fight Terrorism", *The New York Times,* 26 May 2014.

[36] "Mali. L' ONU condamne l' attentat qui a coûté la vie à quattre Casques bleus", *El Watan (Algeria),* 13 June 2014, in <www.elwatan.com>.

[37] "Nine UN peacekeepers from Niger killed in ambush by rebels in Mali", *The Guardian,* 3 October 2014, in <www.theguardian.com>.

[38] "Mali. Durcissement du dispositif anti-terroriste au Mali, un Sénégalais tué à Kidal", *Jeune Afrique,* 8 October 2014, in <www.jeuneafrique.com>.

[39] Baldé, A., "Crise au nord-Mali: Bamako appelle au secours", *Afrik.com,* 9 October 2014, in <www.afrik.com>.

Niger is contributing with 600 military to MINUSMA since 2013. The recently inaugurated French military facility of Madama, north-east of Niger and 200 kilometers from the Libyan border, is a partial and late contribution to the security of the area. In this north-east portion of the country French forces destroyed an AQIM convoy transporting weapons from Libya to Mali on 10 October 2014.

Concerning again the West we must point out the role played by a number of European countries and the EU, on one side, and that of the US on the other side. Among the EU member countries the role played by France has been and remains central. Concerning the EU, its *Regional Strategy for the Sahel* was approved in March 2011, and since the year 2013 an Europe the EUTM-Mali is in charge of the training of Malian military.[40]

Concerning the US, in 2013 the US Special Operations Command begun a program to instruct and equip hundreds of handpicked commandos, in Libya, Niger, Mauritania and Mali.[41] At the diplomatic level, the Summit on African Security, held in Washington DC in August 2014 under the Presidency of Barack H. Obama, provided the political and doctrinal background to the USA approach to security in the area.[42]

Going to the south and involving Nigeria in our study, the terrorist activism of Boko Haram must be pointed out. This jihadist group remains very active in the last five years but it does exist since the year 2002. In July 2013 the UK formally designated Boko Haram a terrorist organization, with the US following suit in November 2013. Boko Haram is overlapped as a terrorist actor with a mix of tribal and religious animosity aggravated by political corruption, and growing rivalries over land and water resources focused mainly in northern Nigeria. Boko Haram has gained the capacity to strike increasingly in urban centers and beyond national borders, towards Cameroon and also to the Sahel.

Boko Haram has become a global threat, an enormous Jihadist Salafist threat, larger in scope than the international community may presume. The export of both Boko Haram's actions and its operatives is increasing concern not only in Cameroon but also in the Sahel. Boko Haram captured Gwoza in Summer 2014 and declared

[40] Concerning NATO, a number of allies have begun plans to train some 20,000 Libyan military in Europe through 2014, but the Alliance as such is not implicated either in Mali or in other Western Sahel countries. Mauritania is a member of the NATO Mediterranean Dialogue Initiative since the 1990s.

[41] See Schmitt, E., *op. cit.*

[42] "Alger appelle au renforcement du partenariat sécuritaire afro-américain", *El Watan (Algeria),* 8 August 2014, in <www.elwatan.com>.

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its "Caliphate" there. They captured armoured personnel carriers and even tanks in this town and continued its offensive in north-east Nigeria. Boko Haram has carried out incursions into Niger, Cameroon and even Chad, and in Autumn 2014 the Nigerian Army was preventing the terrorist group from capturing cities such as Maiduguri and Konduga, but the effort against this threat becomes more and more urgent and must be multinational in scope.

Nigeria and its neighbors Benin, Cameroon, Chad and Niger have recently decided, in Niamey on 8 October 2014, to deploy since November this year a 700 military joint force to combat this terrorist group. The Niamey meeting was a follow-up of a May 2014 Summit in Paris, where the leaders who attended promised to improve cooperation in the fight against Boko Haram after the terrorist group kidnapped more than 200 school girls in Chibok, north-east of Nigeria.[43] Unfortunately, the region and even the international community did not define an approach to a common reaction against Boko Haram until that massive kidnapping arrived.

Early in October 2014, the release of 27 hostages captured by Boko Haram meant that the group had received money and that a number of Jihadist prisoners in prisons of Cameroon had likely been liberated. That group of 27 hostages included 10 Chinese construction workers and the wife of a Vice-Prime Minister of Nigeria, among others.[44] Boko Haram does continue with its atrocities even if a negotiation effort, developed in Chad and in Saudi Arabia, for obtaining a cease fire and the release of many of the school girls kidnapped in Chibok, created expectation at the end of October.[45] In fact, the bloody offensive of Boko Haram does continue.[46]

Finally, a non-regional issue must be pointed out in terms of potential additional instability in the region. Returning jihadist already combating in battlefields such as Syria and Iraq can feed additional radicalization and terrorism activity in our region encompassing the Western Sahel, the Maghreb and Nigeria, and even in

[43] "Regional leaders step up Boko Haram fight with troops, command centre", *Reuters,* 8 October 2014, in <http://af.reuters.com>.

[44] "Nigerians doubful of girls' release after Boko Haram "truce" breached", *Reuters,* 19 October 2014, in <http://af.reuters.com>, and Johnston, Ch., "Fears grow that Nigeria ceasefire won't secure girls's release amid fresh attacks", *The Guardian,* 18 October 2014, in <www.theguardian.co.uk>.

[45] Elorriaga, G., "Boko Haram saquea una gran ciudad y desata el pánico en Nigeria", *Diario de Navarra,* 31 October 2014, p. 9.

[46] "Nigeria: la trêve avec Boko Haram rompue par un nouvel enlèvement et la reprise des combats", *Jeune Afrique,* 27 October 2014, in <www.jeuneafrique.com>.

Europe.[47] Previous generations of combatants in Afghanistan proved that Jihadist activists possessed leadership capabilities, organizational skills, high fighting spirit and strong momentum, playing very serious roles in the reinforcement of terrorist groups such as the Algerian GIA and the Libyan Islamic Combatant Group (GICL, in its French acronym). A new generation of terrorists who have gained combat experience, even as suicide bombers, have been trained and continuous being trained in Syria and Iraq.[48]

IV. CONCLUSIONS

In addition to the traditional risks and threats affecting the countries in the Western Sahel area, the Arab revolts which were initiated in the Maghreb in Autumn 2010, have transformed and enlarged negatively the region in security terms, also affecting neighboring areas such as the Western Sahel, and mainly Mali.

In addition, traditional rivalry between Algeria and Morocco in the Maghreb was and remain an additional negative input for the Western Sahel sub-region in security terms.

The Operation Serval, transformed into Operation Berkhane since 1 August 2014, has been an achievement in terms of avoiding the Jihadist total conquest of the Malian state. Nevertheless, the terrorist threat has not been defeated, and AQMI, the MUJAO and Ansar Eddine, the three mean terrorist actors since 2012, remain active in the area.[49]

Northern Mali is suffering a sharp increase in strikes on foreign forces, particularly on MINUSMA. The spike in attacks against the MINUSMA members comes as France has redeployed some of its forces away from Mali since August 2014. This reduction of the French troops and the absence of the Malian Army from northern Mali are contributing to the upsurge of terrorist activism.

From the south, Boko Haram is emerging as a global problem, an enormous Jihadist Salafist threat, larger in scope than the international community may presume. The export of both Boko Haram's mission and its operatives is an

[47] A former ISIS member killed four people in Brussels in May 2014. See Musée juif de Bruxelles. Un suspect arrêté à Marseille", *El Watan (Algeria),* 1 June 2014, in <www.elwatan.com>.

[48] Lahcen, M., "Caliphate bell tolls for the Maghreb", *Maghrebia*, 11 July 2014, in <www.magharebia.com>.

[49] Oumar, J., "MUJAO member claims Mali peacekeeper attack", *Magharebia,* 7 October 2014, in <www.magharebia.com>.

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increasing concern not only in Cameroon but also in the Western Sahel and neighboring countries such as the Central African Republic and Chad. The group is gaining influence in the region and will continue killing and kidnapping in order to reinforce its Jihadist enterprise. Boko Haram, together with the IS acting in Iraq and Syria, have both money, weapons and logistic equipment, and many fighters, and are gaining dangerously ground in their respective scenarios of activity increasing the global Jihadist threat.

Western Europe and Western interests in broad that are present in the Western Sahel and the Maghreb can suffer the extension of this Jihadist growing violence. Direct attacks against foreign forces deployed in Mali and the practice of kidnapping Western citizens in the Maghreb and the Sahel remain central in terms of threat. Additional terrorists to add to those already acting in the Maghreb, the Sahel or northern Nigeria could be the returning jihadists coming back from Syria and Iraq skilled in multiple systems of weapons and explosives.

L'EXTENSION DU PLATEAU CONTINENTAL AU-DELA DE 200 MILLES : UN POINT DE VUE JURIDIQUE

Sarra Sefrioui[1]

RESUME : La marge continentale et spécialement le plateau continental est, dans plusieurs endroits du monde, riche en ressources naturelles. Les Etats côtiers ont deux objectifs sur la zone du plateau continental étendu. Le premier objectif est de maximiser et protéger leurs revendications sur le plateau continental étendu en ce qui concerne la détermination des limites extérieures et de la délimitation du plateau continental avec les Etats dont les côtes se font face ou sont adjacentes. Le second, est de recevoir l'avis de la Commission des limites du plateau continental suivant l'article 76 de la Convention des Nations Unies sur le droit de la mer. Les deux objectifs peuvent parfois créer des tensions. Dans cet article, il est examiné dans un premier temps, l'encadrement juridique de l'extension du plateau continental et les différents critères retenus pour tracer la limite extérieure du plateau continental étendu. Dans un second temps, il est expliqué les grandes étapes de la procédure de dépôt de la demande d'extension du plateau continental par l'Etat côtier. Une attention particulière est accordée à l'implication d'un différend de délimitation maritime sur la demande d'extension du plateau continental et les conséquences découlant des recommandations de la CLPC.

MOTS CLES: extension du plateau continental; Commission des limites du plateau continental; determination et delimitation des limites extérieures du plateau continental; demande auprès de la CLPC.

THE EXTENSION OF THE CONTINENTAL SHELF BEYOND 200 NAUTICAL MILLES: A LEGAL POINT OF VIEW

ABSTRACT : The continental margin and specially the continental shelf is in many areas of the world, rich in natural resources. Coastal states have two goals in extending the continental shelf; to maximize and protect their claims to extended continental shelf as far as the determination of outer limits and the delimitation of continental shelf boundaries with opposite or adjacent States are concerned, and to receive the Commission's recommendations on their outer limit claim made pursuant to Article 76 of the Convention for the Law of the Sea. Tension can be created by the two objectives in some cases. This essay examines in the first place, the legal framework of the extension of the continental shelf and the different criteria used to delineate the outer limit of the extended continental shelf. In the second place, it describes the main steps followed by coastal

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states in their submission to the Commission on the Limits of the Continental Shelf (CLCS). Special consideration is given to the effect of an existing delimitation dispute on the submissions made to the Commission and the consequences of its recommendations.

KEY WORDS: extension of the continental shelf; Commission on the Limits of the Continental Shelf; delineation and delimitation of the outer limit of the extended continental shelf; submission to the CLCS.

LA EXTENSIÓN DE LA PLATAFORMA CONTINENTAL MÁS ALLÁ DE LAS 200 MILLAS MARINAS: UN PUNTO DE VISTA JURIDICO

RESUMEN: El margen continental –especialmente la plataforma continental– es, en varios lugares del mundo, rica en recursos naturales. Los Estados ribereños tienen dos objetivos sobre la zona de la plataforma continental extendida. El primer objetivo es maximizar y proteger sus reivindicaciones sobre la plataforma continental extendida, en cuanto a la determinación de los límites exteriores y de la delimtación de la plataforma continental con los Estados cuyas costas estan enfrentadas o son adyacentes. El segundo es recibir la opinión de la Comisión de Límites de la Plataforma Continental (CLPC), basandose sobre el artículo 76 de la Convención de las Naciones Unidas sobre el Derecho del Mar. Muchas veces los dos objetivos pueden ser fuente de tensiones. En este artículo examinamos, en primer lugar, el marco jurídico de la extensión de la plataforma continental y los diferentes criterios aplicados para trazar el límite exterior de la plataforma continental extendida. En segundo lugar, analizamos las grandes etapas del proceso de la presentación de la demanda de extensión de la plataforma continental por parte del Estado ribereño. Cabe recordar que acordamos una atención particular a la implicación de un litigio de delimitación marítima sobre la demanda de extensión de la plataforma continental y las consecuencias que emanan de las recomendaciones del CLPC.

PALABRAS CLAVE: extensión de la plataforma continental; Comisión de Límites de la Plataforma Continental; delineación y delimitación del límite exterior de la plataforma continental ; presentación a la CLPC.

I. INTRODUCTION

Historiquement, le sol et le sous –sol de la mer se situant au-delà de la mer territoriale ont souvent fait l'objet d'activités économiques sporadiques, du fait qu'ils sont difficilement accessibles. Plus tard, le progrès économique et scientifique a permis la découverte de ressources minérales (en particulier le pétrole et le gaz) et a assurer une viabilité économique pour une exploitation de ces ressources dans le futur. Grâce à ces développements, la pratique des États est devenue de plus en plus axée, pour les États côtiers, sur leur volonté d'affirmer leurs droits sur le plateau continental au-delà de la mer territoriale, et pour les États sans côtes, sur leur intérêt de préserver la liberté traditionnelle de la haute mer.

La marge continentale et spécialement le plateau continental est, dans plusieurs endroits du monde, riche en ressources naturelles. Les plus importantes sont les réserves en pétrole et de gaz qui représentent environ quatre vingt dix pourcent de la valeur totale des minéraux pris du sol et du sous-sol de la mer. La production du pétrole et du gaz comptait environ un tiers du total de la production mondiale ; et certains estimaient qu'environ soixante dix pourcent des réserves du monde non encore découvertes se trouvent dans les zones *offshore*. Ce qui explique qu'une attention particulière est tournée vers les nouvelles ressources.

L'Etat côtier peut procéder à l'exploration et l'exploitation de ses ressources naturelles qui se trouvent non seulement dans son plateau continental mais aussi au-delà de 200 milles marins à partir des lignes de base desquelles la mer territoriale est mesurée. En revanche, un préalable s'impose. Si le plateau continental n'a pas besoin d'être revendiqué, son extension devra faire l'objet d'une demande à travers laquelle l'Etat côtier devra démontrer à la Commission des limites du plateau continental (CLPC) que le prolongement naturel de son territoire terrestre s'étende jusqu'à cette distance.

Dans cet article, il est examiné dans un premier temps, l'encadrement juridique de l'extension du plateau continental et les différents critères retenus pour tracer la limite extérieure du plateau continental étendu. Dans un second temps, il est expliqué les grandes étapes de la procédure de dépôt de la demande d'extension du plateau continental par l'Etat côtier. Une attention particulière est accordée à l'implication d'un différend de délimitation maritime sur la demande d'extension. Enfin, les conséquences découlant des recommandations de la CLPC suite à la demande d'extension du plateau continental.

II. L'ENCADREMENT JURIDIQUE DE L'EXTENSION DU PLATEAU CONTINENTAL

Le régime juridique du plateau continental étendu (1) implique que l'Etat côtier est tenu de respecter des droits et des obligations sur cet espace maritime (2).

1. REGIME JURIDIQUE DU PLATEAU CONTINENTAL ETENDU

Vingt cinq ans après la déclaration de Truman, et avec l'adoption de la Convention de Genève sur le plateau continental de 1958, la doctrine du plateau continental avait pour objectif d'augmenter l'influence et le droit des États sur les espaces

maritimes.[2] La règle du titre des États côtier sur un plateau continental étendu au-delà de la mer territoriale s'est forgée devenant ainsi une règle de droit coutumier bien que sa portée géographique ne soit déterminée qu'avec la Convention des Nations Unies sur le droit de la mer de 1982 qualifiée de *« constitution complète pour les océans»*[3]. Celle-ci établit le régime des différents espaces marins et réglemente les activités en tenant compte des exigences du développement économique, du principe de liberté de navigation, des revendications territoriales des États côtiers et de la protection de l'environnement. La Convention consacre l'emprise des États riverains sur les espaces marins, dont témoignent, entre autres exemples, la création de la Zone économique exclusive. En ce qui concerne le plateau continental, elle souligne dans l'article 76 (1) que

> Le plateau continental d'un État côtier comprend les fonds marins et leur sous-sol au-delà de sa mer territoriale, sur toute l'étendue du prolongement naturel du territoire terrestre de cet État jusqu'au rebord externe de la marge continentale, ou jusqu'à 200 milles marins des lignes de base à partir desquelles est mesurée la largeur de la mer territoriale, lorsque le rebord externe de la marge continentale se trouve à une distance inférieure.

En effet, les Etats ont automatiquement un plateau continental d'au moins 200 milles marins qui dépends, non pas de la géomorphologie et de la géologie mais plutôt de la proximité. Si les droits souverains de l'Etat côtier aux fins de l'exploration du lit de la mer et de l'exploitation de ses ressources naturelles concernant le plateau continental existent *ipso facto* et *ab initio* en vertu de la souveraineté de l'Etat sur ce territoire et par une extension de cette souveraineté, « [i]l y a là un droit inhérent. Point n'est besoin pour l'exercer de suivre un processus juridique particulier ni d'accomplir des actes juridiques spéciaux. Son existence peut être constatée, comme cela a été fait par de nombreux Etats, mais elle ne suppose aucun acte constitutif. Qui plus est, ce droit est indépendant de son exercice effectif. » (CIJ, *Affaires de la délimitation en mer du Nord RFA/Danemark et RFA/ Pays-Bas*, Recueil 1969, § 19, p. 22). En revanche, au-delà de 200 milles, la question de savoir si l'Etat a un titre dépends de l'existence du prolongement naturel du territoire terrestre jusqu'au rebord externe de la marge continentale. Lorsque la marge continentale

[2] Pour plus de référence sur le sujet, voir, Bjarni Már, M., *The Continental Shelf Beyond 200 Nautical Miles: Delineation, Delimitation and Dispute Settlement*, Brill Nijhoff, 2015; Lucky, A. «The Issues Concerning the Continental Shelf: Reflections», *International Community Law Review*, vol. 17, afl.1, 2015, pp. 95-115.

[3] M. Tommy T. B. Koh, Président de la troisième Conférence des Nations Unies sur le droit de la mer, session finale de la Conférence de Montego Bay, 10 décembre 1982.

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s'étend au-delà de 200 milles à partir des lignes de base à partir desquelles la mer territoriale est mesurée, l'Etat riverain est tenu de présenter un dossier de demande d'extension du plateau continental auprès de CLPC (art. 76, para. 8 CNUDM ; art. 4, Annexe II). La Commission des limites du plateau continental[4] est créée par la Convention sur le droit de la mer à cet effet. Elle est chargée d'examiner les demandes d'extension et d'émettre des recommandations sur les limites extérieures revendiquées. L'exercice de la juridiction sur le plateau continental étendu implique des droits et obligations qui incombent à l'Etat côtier.

2. LES DROITS ET OBLIGATIONS DE L'ETAT COTIER SUR LE PLATEAU CONTINENTAL ETENDU

Les droits de l'Etat côtier sur l'espace maritime au-delà des limites extérieures de 200 milles de son plateau sont légèrement différents de ceux sur son plateau continental, puisque les eaux surjacentes sont considérées comme haute mer et non comme faisant partie de la zone économique exclusive de l'Etat côtier. En général, les mêmes droits relatifs à l'exploration, l'exploitation et l'établissement d'installations sont octroyés à l'Etat côtier. Aussi, les mêmes obligations s'appliquent-elles en ce qui concerne le respect des libertés de pose des pipelines et des câbles, ainsi que de navigation. Pourtant, il existe des différences signifiantes.

D'abord, une première différence concerne les ressources biologiques. La question de savoir ce qui peut être inclus dans la catégorie des espèces sédentaires devient de plus en plus critique. Puisque les espèces sédentaires restent sous le contrôle exclusif de l'Etat côtier, les espèces non-sédentaires tombent sous le régime de la liberté de pêche, comme l'une des libertés de la haute mer. En conséquence, si les pêcheries commerciales se retrouvent à ces distances de la terre, des différends peuvent naître sur la détermination si ces espèces sont sédentaires ou non-sédentaires.

Ensuite, et plus important encore, l'exploitation des ressources non-biologiques est sujette à des restrictions additionnelles dictées par la Convention sur le droit de la mer. Là où ces ressources sont exploitées dans cette zone au-delà de la limite

[4] Voir, Nelson, L. D. M., "The Commission on the Limits of the Continental Shelf with Special Reference to Developing Countries", en Bhuiyan, S., Sands, P., Schrijver, N., *International Law and Developing Countries : Essays in Honour of Kamal Hossain*, , Brill Nijhoff, 2014, pp. 251-261; Aussi, Jensen, Ø., *The Commission on the Limits of the Continental Shelf : law and legitimacy*, Brill, 2014; Kim, H. J., "Natural Prolongation: a Living Myth in the Regime of the Continental Shelf?", *Ocean Development and International Law*, vol. 45, afl. 4, 2014, pp. 374-388.

extérieure des 200 milles, l'Etat côtier lequel a le droit exclusif de s'engager dans ce genre d'exploitation, devra s'acquitter par le biais de l'Autorité internationale des fonds marins d'une contribution annuelle pour la valeur ou le volume de production du site après sa cinquième année d'exploitation. Cette contribution s'élèverait d'un pourcent à la sixième année à sept pourcent à la douzième année et les années qui suivent. L'Autorité devrait ensuite répartir ces contributions aux Etats parties à la Convention sur la base des critères de partage équitables, en tenant compte des intérêts et besoins des Etats en développement, en particulier des Etats en développement les moins avancés ou sans littoral (article 82(4) de la Convention).

Enfin, la troisième différence est que l'Etat côtier a en quelque sorte, un contrôle un peu plus limité sur la recherche scientifique marine au-delà de la limite du plateau continental. Il n'est pas clair, selon la Convention, si le consentement de l'Etat côtier est requis où la recherche est menée sur le lit de la mer. L'article 246(2) souligne la nécessité du consentement de l'Etat côtier sur la recherche scientifique menée « sur le plateau continental ». Ce qui pourrait laisser entendre que le consentement est requis seulement pour la recherche physiquement conduite sur le plateau continental. Toutefois, quelque soit l'interprétation correcte de l'article 246(2), les restrictions potentielles sur la recherche scientifique marine sont amoindries par l'article 246(6). Ce dernier dispose qu'un Etat côtier ne peut exercer son pouvoir discrétionnaire de refuser son consentement pour entreprendre des travaux de recherches aux fins d'exploration et d'exploitation des ressources naturelles sur le plateau continental au-delà de 200 milles marins des lignes de base à partir desquelles est mesurée la largeur de la mer territoriale en dehors de zones spécifiques désignées comme faisant l'objet, ou devant faire l'objet dans un délai raisonnable, de travaux d'exploitation ou de travaux d'exploration poussée.

La législation marocaine, à l'instar de celle de certains Etats (Côte d'Ivoire, Honduras, Indonésie, Tanzanie) a souligné que la recherche scientifique dans la zone économique exclusive requière le consentement de l'administration marocaine. En revanche, l'article 5 du dahir n° 1-81-179 du 3 joumada II 1401 (8 avril 1981) portant promulgation de la loi n° 1-81 instituant une zone économique exclusive de 200 milles marins au large des côtes marocaines ne précise pas plus de détails sur la recherche scientifique marine sur le plateau continental et le plateau continental étendu. Les seuls Etats qui ont, jusque là adopté une législation qui traite quasiment de toutes les questions relative à la recherche scientifique sont notamment la Malaisie,

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la Pologne, la Russie, l'Espagne et l'Ukraine dont les législations respectives suivent de près les dispositions de la Convention dans une grande partie.

Afin de pouvoir bénéficier des droits sur le plateau continental étendu développés ci-dessus et de se conformer aux obligations, l'Etat côtier devrait respecter certaines étapes de la demande d'extension au-delà de 200 milles marins.

III. ETAPES DE DEMANDE D'EXTENSION DE LA LIMITE EXTERIEURE DU PLATEAU CONTINENTAL AU-DELA DE 200 MILLES MARINS

La Commission des limites du plateau continental est une institution internationale créée par l'annexe II de la CNUDM et composée de 21 experts en matière de géologie, géophysique et en hydrographie. La Commission joue un rôle de supervision important dans le processus unilatéral d'établissement des limites extérieures du plateau continental selon l'article 76 de la Convention. En revanche, la Commission ne statue pas sur les questions de souveraineté ni sur les différends relatifs à la délimitation des frontières maritimes entre les Etats côtiers. Elle n'est pas non plus compétente de se prononcer sur le fond de la validité des lignes de division entre les Etats côtiers adjacents ou qui se font face dont les revendications se chevauchent. Les Etats constituent un dossier qu'il dépose auprès de cette Commission (1) mais la question qui se pose reste de savoir si l'existence d'un différend relatif à la délimitation maritime aurait une influence sur la demande d'un Etats d'étendre son plateau continental au-delà de 200 milles (2).

1. LA CONSTITUTION DE LA DEMANDE AUPRES DE LA COMMISSION DES LIMITES DU PLATEAU CONTINENTAL

Il revient à l'État côtier de démontrer, auprès de la CLPC, les limites extérieures de son plateau continental étendu au-delà des 200 milles marins selon des critères précisés par les paragraphes 4, 5, 6 et 7 de l'article 76 de la CNUDM. Pour fixer la limite extérieure du plateau continental revendiqué, l'Etat côtier doit se conformer aux Directives scientifiques et techniques émises par la CLPC le 13 mai 1999.

Les critères retenus pour tracer la limite extérieure du plateau continental étendu reposent sur les méthodes examinées comme suit :

– la méthode qui consiste à tracer une ligne qui relie les points fixes déterminés selon l'application de la formule de Hedberg (60 M du pied du talus) ;

– la méthode qui consiste à tracé une ligne qui relie les points fixes extrêmes où l'épaisseur des roches sédimentaires est égale au centième au moins de la distance entre le point considéré et le pied de pente selon la formule de Gardiner (1 % de l'épaisseur des sédiments);

– la méthode qui trace une ligne, à une distance de 350 milles des lignes de base à partir desquelles la largeur de la mer territoriale est mesurée ;

– enfin, méthode qui trace une ligne, à une distance de 100 milles de l'isobathe de 2 500 mètres.

L'Etat côtier intéressé dépose un dossier de demande d'extension du plateau continental au-delà de 200 milles auprès de la CLPC qui l'étudie. La Commission est composée de 21 membres élus par la Réunion des Etats Parties. Ce sont des experts en matière de géologie, de géophysique ou d'hydrographie et assurent une représentation géographique équitable au sein de la CLPC. Toutefois, ils exercent leurs fonctions indépendamment de leur pays d'origine ou de nationalité et de leur rattachement financier.

L'Etat qui voudrait présenter une demande auprès de la CLPC était tenu de respecter le délai fixé par la Convention sur le droit de la mer. Ce délai était de dix ans à partir de la date de l'entrée en vigueur de la Convention pour cet Etat. Or, il est vite apparu qu'il était difficile pour les Etats de respecter ce délai des dix ans (qui devait expirer en novembre 2004) et ce parce que la procédure de préparation de la demande est longue et coûteuse requérant ainsi la collecte de données scientifiques. Par conséquent, il a été décidé, suite à la onzième Réunion des Etats parties (14-18 mai 2001), que ce délai de 10 ans serait calculé à partir du 13 mai 1999, date de l'adoption des Directives scientifiques et techniques (CLSC/11 et Add.1). L'Etat côtier pourrait, de ce fait, déposer sa demande jusqu'en 2009.

Toutefois, pour l'Etat qui deviendrait partie à la Convention après cette date, le délai des 10 ans serait calculé à partir de l'entrée en vigueur de la Convention pour lui (SPLOS/72). Durant cette période, l'Etat côtier devrait déposer son dossier de demande complet ou encore des informations préliminaires lesquelles précéderaient le dépôt définitif du dossier complet contiendraient (1) des informations préliminaires indicatives sur les limites extérieures du plateau continental au-delà de 200 milles marins, (2) une description de l'état d'avancement du dossier et (3) une date prévisionnelle à laquelle le dossier sera soumis conformément aux prescriptions de l'article 76 de la Convention, au Règlement intérieur de la Commission des

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limites du plateau continental et à ses Directives scientifiques et techniques.

A ce titre, étant donné que le Maroc a signé la Convention des Nations Unies sur le droit de la mer le 10 décembre 1982 et l'a ratifié le 31/05/2007, le délai de dix ans à compter du 13 mai 1999 ne lui serait pas imposable. C'est à partir de la date de ratification que ce délai a commencé à courir. En effet, comprendra que le délai de dépôt fixé pour le Maroc est le 30 mai 2017.

Pour préparer sa demande, deux types d'assistance sont mis à la disposition de l'Etat côtier, en particulier l'Etat en développement, afin de répondre aux difficultés auxquelles il ferait face. D'une part, l'Etat côtier pourrait bénéficier d'une formation - destinée aux géophysiciens, géologues, hydrographes, géodésiens et autres concernés par la préparation des demandes à soumettre à la Commission - permettant de mieux comprendre les termes de l'article 76 de la Convention afin de préparer sa demande. D'autre part, il pourrait prétendre à une aide financière offerte par deux fonds d'affectation spéciale créés par l'Assemblée générale (résolution 55/7 du 30 octobre 2000). Ces fonds permettent notamment de financer les frais de voyage et indemnités journalières de subsistance des membres de la Commission nommés par des pays en développement qui demandent cette aide, de couvrir les frais de formation du personnel technique et administratif de l'Etat côtier concerné et de financer les éventuelles demandes d'assistance et de consultation.

Une fois la demande est déposée auprès du Secrétaire général des Nations Unies, la CLPC l'examine en deux étapes : (1) un examen initial général permettant de s'assurer que les informations fournies par l'Etat côtier sont suffisantes pour la poursuite des travaux et que les conditions de formes et de fond sont respectées ; (2) si le résultat de l'examen initial est satisfaisant, elle procède à une étude scientifique et technique à la lumière des dispositions de l'article 76 ainsi qu'à une vérification afin de savoir si les données présentées justifieraient l'extension du plateau continental au-delà de 200 milles marins. A l'issue de cet examen, la Commission émet des recommandations qu'elle transmet à l'Etat côtier concerné et au Secrétariat général qui rend public le résumé de ces recommandations[5].

[5] Ce résumé ne contient pas d'informations à caractère confidentiel ou qui pourraient porter atteinte aux intérêts de l'Etat côtier avec les autres Etats voisins.

2. L'EXISTENCE D'UN DIFFEREND RELATIF A LA DELIMITATION MARITIME AURAIT-ELLE UNE INFLUENCE SUR LA DEMANDE D'EXTENSION DU PLATEAU CONTINENTAL AU-DELA DE 200 MILLES?

L'extension du plateau continental au-delà de 200 milles est relative, d'une part, au critère de la distance qui permettrait cette extension et d'autre part, à l'absence de chevauchement des revendications de l'Etat sur cette zone avec celles d'un autre Etat côtier dont les côtes lui font face ou lui sont adjacentes. Les recommandations de la CLPC ne devraient pas porter préjudice sur les questions relatives à la délimitation des frontières maritimes entre les Etats dont les côtes sont adjacentes ou se faisant face (article 76 (10)). En conséquent, c'est aux Etats côtiers de régler leur différend de délimitation maritime avant de déposer leur demande d'extension de plateau continental au-delà de 200 milles. L'Etat côtier devrait informer la Commission de tout différend entre lui et un autre Etat dont les côtes sont adjacentes ou se font face, et de tout différend maritime ou terrestre non résolu (article 46 du Règlement intérieur de la CLPC).

En revanche, il a été souligné par la huitième Réunion des Etats Parties que « dans le cas où il existait un différend relatif à une région visée dans la demande d'un État côtier, la Commission ne formulerait pas de recommandation. Elle pouvait néanmoins examiner des demandes concernant la fixation de la limite extérieure du plateau continental si aucune partie au différend ne s'y opposait. Elle pouvait également examiner la partie de la demande qui ne concernait pas la région faisant l'objet du différend et qui était sans préjudice de la position des États parties à un différend maritime ou terrestre. Les États qui estimaient que la demande pouvait porter préjudice à la position des États parties à un différend maritime ou terrestre avaient la possibilité de faire des déclarations à ce sujet ou de formuler des objections dans les trois mois après que le Secrétaire général ait donné à la demande la publicité voulue. » (SPLOS/31 du 4 juin 1998).

De ce fait, deux situations peuvent se présenter : (1) en cas d'absence de différend relatif à la frontière maritime, l'Etat côtier préciserait en effet, qu'il n'existe aucun chevauchement de revendications sur la zone du plateau continental prolongé avec l'Etat voisin ; (2) en cas d'existence de différend de délimitation maritime, et pour que la CLPC examine la demande, les deux ou plusieurs Etats en question doivent exprimer à la CLPC l'assurance que dans la mesure du possible, la demande sera traitée sans préjudice des questions relatives à la fixation des limites entre Etats.

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Par ce moyen, ils permettent au travail de la Commission d'avancer même si un différend maritime existe entre les Etats concernés.

Il est important de souligner que le caractère de la recommandation de la CLPC n'est pas juridique. Lorsque la CLPC délivre ses recommandations, l'attitude de l'Etat côtier peut se manifester différemment. Il peut accepter ou refuser de la prendre en considération. En conséquence, l'acceptation implique qu'il est tenu de respecter la recommandation laquelle devient obligatoire. Il procèdera de ce fait, au dépôt des coordonnées géographiques et des cartes marines auprès du Secrétariat général des Nations Unies qui les publie et auprès du Secrétariat général de l'Autorité des fonds marins.

Néanmoins, en cas de refus de se conformer aux recommandations de la CLPC, l'Etat côtier peut rester silencieux et donc ne procède à aucune publication de la limite extérieure de son plateau continental, ou encore il peut faire une demande révisée ou préparer une nouvelle demande.

IV. CONCLUSION

La délimitation complète du plateau continental étendu ou la résolution de tous les différends pendants par les Etats côtiers n'est pas nécessaire avant de soumettre leur demande à la Commission. En effet, il paraît dans certains cas que seulement après la soumission totale de la demande qu'un Etat sache comment ou dans quelle mesure ses frontières maritimes devraient être tracées avec ses voisins. Toutefois, lorsqu'un différend non résolu est présent dans la zone concernée par la demande d'extension, l'Etat demandeur doit être conscient qu'il y a des possibilités que sa demande n'aboutisse pas. C'est la raison pour laquelle des approches différentes peuvent être adoptées par les Etats afin de dépasser le problème des différends non résolus. Ils peuvent en effet, résoudre leur différend avant de soumettre la demande; faire une demande partielle qui éviterait les différends non résolus; faire une demande conjointe entre plusieurs Etats ne laissant pas apparaître le différend; faire une demande séparée après consultation avec les Etats voisins afin d'éviter toute objection et faire une demande séparée sans aucune assurance de l'absence d'objection.

Enfin, il convient de noter que l'Etat côtier peut adopter, pour sa demande, des approches différentes. De plus, ces approches peuvent changer au fil du temps puisque, entre le moment du dépôt de la demande et la délivrance des

recommandations par la Commission, les relations entre les Etats côtiers voisins peuvent changer, évoluer vers des solutions ou générer des tensions.

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THE CHEMICAL, BIOLOGICAL, RADIOLOGICAL AND NUCLEAR (CBRN) RISK MITIGATION CENTRES OF EXCELLENCE OF THE EUROPEAN UNION: THE CASE OF MOROCCO

Ana Sánchez Cobaleda[1]

I. INTRODUCTION – II. ORIGINS AND LEGAL BASIS OF THE CBRN CENTRES OF EXCELLENCE OF THE EUROPEAN UNION – III. THE CBRN CENTRE OF EXCELLENCE IN MOROCCO – IV. CONCLUSION

ABSTRACT: The CBRN Risk Mitigation *Centres of Excellence* of the European Union are a European Commission initiative created to reinforce national and, therefore, regional, capacities regarding nuclear, chemical and biological security outside the European Union. They are made of a network of political and technical experts that mobilize resources in order to achieve a coherent CBRN policy through technical cooperation projects that have been tailored depending on the needs of each partner State. This paper focuses on the origin, legal basis and structure of the CoE taking the Centre of Excellence located in Rabat, Morocco, as a very illustrative example of the CoE functioning and potential. The case of Morocco is especially interesting as it hosts the Secretariat for the African Atlantic Façade, one of the eight regions where CoE can be found.

KEY WORDS: Centre of Excellence (CoE), CBRN risks, technical cooperation, Morocco, European Union

LES CENTRES D'EXCELLENCE POUR L'ATTÉNUATION DES RISQUES CHIMIQUES, BIOLOGIQUES, RADIOLOGIQUES ET NUCLEAIRES (CBRN) DE L'UNION EUROPÉENNE : LE CAS DU MAROC

RÉSUME: Les Centres d'Excellence (CoE) pour l'atténuation des risques CBRN de l'Union Européenne sont une initiative de la Commission Européenne créé pour renforcer des capacités nationaux et, par conséquent, régionaux, en matière de la sécurité nucléaire, chimique et biologique en dehors de l'Union Européenne. Ils sont constitués d'un réseau d'experts politiques et techniques qui mobilisent des ressources afin de parvenir à une politique CBRN cohérente à travers des projets de coopération technique qui ont été adaptés en fonction des besoins de chaque Etat partenaire. Ce document met l'accent sur l'origine, la base juridique et la structure des Centres d'Excellence en prenant le Centre d'Excellence situé à Rabat, au Maroc, comme un exemple très illustratif du fonctionnement et le potentiel des CoE. Le cas du Maroc est particulièrement intéressant car elle héberge le Secrétariat pour la Façade Atlantique de l'Afrique, l'une des huit régions où les CoE peuvent être trouvés.

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MOTS-CLÉS : Centres d'Excellence (CoE), risques CBRN, coopération technique, Maroc, Union Européenne.

LOS CENTROS DE EXCELENCIA DE MITIGACIÓN DE RIESGOS QUIMICOS, BILOGICOS, RADIOLÓGICOS Y NUCLEARES (QBRN) DE LA UNIÓN EUROPEA: EL CASO DE MARRUECOS

RESUMEN: los Centros de Excelencia (CoE) de mitigación de riesgos QBRN de la Unión Europea son una iniciativa de la Comisión Europea creada para fortalecer las capacidades nacionales y, por ende, regionales, en materia de seguridad nuclear, química y biológica fuera de la Unión Europea.

Están formados por una red de expertos políticos y técnicos que movilizan recursos para lograr una política QBRN coherente a través de proyectos de cooperación técnica que han sido adaptados a las necesidades de cada país socio. Este documento se centra en el origen, fundamento jurídico y la estructura de los Centros de Excelencia tomando como caso de estudio el Centro ubicado en Rabat, Marruecos, como un ejemplo muy ilustrativo del funcionamiento y el potencial de los CoE. El caso de Marruecos es particularmente interesante ya que alberga la Secretaría de la Fachada Africana Atlántica, de las ocho regiones en las que se pueden encontrar Centros de Excelencia.

PALABRAS CLAVE: Centros de Excelencia (CoE), riesgos QBRN, cooperación técnica, Marruecos, Unión Europea

I. INTRODUCTION

Today many of the threats a country has to face may have effects far beyond their own boarders. When threats have a nuclear, biological or chemical nature, any fatality may have implications for an entire region within hours. The European Union is no stranger to this reality and that is why, as part of its external policy, the Maastricht Treaty states that the EU will strive to achieve a high degree of cooperation in all areas of international relations in order, *inter alia*, to strengthen international security.[2]

This paper focuses precisely on one of the ways in which EU foreign policy develops technical cooperation measures to prevent the potential risks of chemical, biological and nuclear assets in third countries: the European Union's CBRN Risk Mitigation Centres of Excellence Initiative.

In the first part of this communication, the focus will be put on the origins and legal basis of this European Commission initiative. We will analyze the legal

[2] Treaty on European Union, article 21.2c) *OJ* C 326/01. 26.10.2012. *Consolidated Versions of the Treaty on European Union and the Treaty on the Functioning of the European Union (2012/C 326/01). <http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:12012M/TXT&from=EN>.*

framework as well as the objectives that all CBRN Risk Mitigation Centres of Excellence aim to achieve.

In the second part, we will study a Centre of Excellence, specifically the one the European Union has located in Rabat. From all the countries where these Centres can be found, Morocco presented itself as a good example to show the relevance and potential of this initiative, as it is not only a neighboring country but also an extremely important one in terms of security cooperation, geostrategic bilateral policies and historical diplomatic relations with the European Union. After going through the functioning and structure of the Centre in Morocco, we will study two of the several technical cooperation projects that have been implemented so far: one that has already concluded (related to the transfer of best practice on biosafety and biosecurity management)[3], and another one that is currently going on, that deals with the management of hazardous residues of chemical and biological waste.[4]

The last part of this work summarizes the final remarks that can be concluded from studying, even if superficially, the work developed by the CBRN Risk Mitigation Centre of Excellence of the European Union in Morocco. It is worth mentioning the importance that a proactive attitude of the third States has in terms of making the CoE initiative work. Counting on the complicity of partner countries, such as Morocco, to effectively fulfill the tasks assigned to each project has a major impact on the achievement of strategic objectives.

II. ORIGINS AND LEGAL BASIS OF THE CBRN CENTRES OF EXCELLENCE OF THE EUROPEAN UNION

Article 21 of the Treaty of the European Union establishes as targetable objectives, certain lines that must be observed when implementing its external action.[5] The European Union carries out foreign cooperation projects with third countries, not exclusively neighbors, to reach such objectives: achievement of

[3] CoE Reference no. Project 3. *Knowledge development and transfer of best practice on biosafety/biosecurity/biorisk management:* <www.cbrn-coe.eu/Projects/TabId/130/ArtMID/543/ArticleID/47/Knowledge-development-and-transfer-of-best-practice-on-biosafetybiosecuritybiorisk-management.aspx>.

[4] CoE Reference no. Project 35. *Management of hazardous chemical an biological waste in North and West Africa.* <www.cbrn-coe.eu/Projects/TabId/130/ArtMID/543/ArticleID/71/Management-of-hazardous-chemical-and-biological-waste-in-North-and-West-Africa.aspx>.

[5] Treaty on European Union, article 21.2c): Consolidated Versions of the Treaty on European Union and the Treaty on the Functioning of the European Union (2012/C 326/01), *OJ* C 326, 26.10.2012, pp. 28-29.

socio-political stability, solid recovery skills after a crisis, making development sustainable... As we have mentioned, chemical, biological, radiological or nuclear (i.e. CBRN) incidents have the potential to cause crisis, disturb the environment, affect human health and create extreme instability in any region where they may occur. In order to prevent such risks, the European Union started to work on the idea of setting up a high-level framework for cooperation and coordination amongst institutions that, based on technical cooperation projects, would contribute to the stability and maintenance of international peace and security.

The Centres of Excellence (CoE) find their origin in the frame of the Instrument for Stability (IfS),[6] which is an initiative of the European Commission that strived to maintain stability at the boarders of the European Union. This instrument was substituted in 2014 by the Instrument contributing to the Peace and Stability (IfPS), adopted by the European Parliament and the Council of the European Union.[7] Within the frame of the first Instrument (IfS), the Centres of Excellence were assigned a budget of 100 million Euros to be executed in a three year period (2010-2013), making them the most significant single measure of the long-term component of the Instrument for Stability.[8] The resource allocation has continued since the new Instrument (IfSP) started to be implemented and the funding for CoE projects comes from it.[9]

The *raison d'être* of the CoE is strengthening the institutional capacities of countries outside the EU in terms of mitigation of chemical, biological and nuclear risks (also referred to as CBRN or CBN risks)[10]. They involve all interested parties since the very first stage in order to promote specialized knowledge and capacity

[6] Regulation (EC) No. 1717/2006 of the European Parliament and the Council of 15 November 2006 establishing an Instrument for Stability. OJL 327/1 24.11.2006: <http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52009PC0195&from=EN>.

[7] Regulation (EU) No. 230/2014 of the European Parliament and the Council of 11 March 2014 establishing an Instrument for Stability. OJL 77/1 15.3.2014. <http://ec.europa.eu/dgs/fpi/documents/140311_icsp_reg_230_2014_en.pdf>.

[8] Pinxten, K. "Can the EU's centres of excellence initiative contribute effectively to mitigating chemical, biological, radiological and nuclear risks from outside the EU?", Interview by Rosmarie Carotti for *Special Report 17/2014*. February 2015. <www.eca.europa.eu/Lists/ECADocuments/INTERVIEW_PINXTEN_2015/Interview_Pinxten_01_2015.pdf>.

[9] <www.cbrn-coe.eu/1.html>.

[10] The "R" in CBRN stands for "radiological". Although most of the times the materials discussed are either nuclear, chemical or biological, the official name of the CBRN Risk Mitigation CoE includes the "R" of radiological risks.

development of the potentially affected countries.[11]

They build up a net of experts and partners that aim to reinforce regional security, always taking into account three main principles: local security control systems, knowledge management and long term sustainability.[12] In other words, they work towards the creation of partnerships with States outside the European Union to promote that local institutions are capable of controlling their CBRN policies, plans and project proposals.[13]

The CoE, due to their uniqueness, are a key instrument to reach a coherent system of capacity building, a correct development of regional policies and the strengthening of international cooperation among interested parties at both, national and regional levels.

Many agencies play a significant role within the CoE initiative.[14] While it is coordinated by the Europan External Action Service (EEAS) and under the aegis of the European Commission's Directorate General for Development and Cooperation - Europe Aid (DG DEVCO), the initiative is executed by the Joint Research Centre and the United Nations Interregional Crime and Justice Research Institute (UNICRI). There are groups of experts as well, coming from European NGO's that supply advice and that aim to obtaining institutional support.

The CoE have been created to protect the European Union and certain third States from the threats arising from the lack of nuclear control, proper treatment of chemicals, illegal trade of substances, etc.[15] They are located in eight different regions of the world, and although the first Centres of Excellence were located in neighboring countries of the EU, (at the Caucasus and South East Europe, for instance), nowadays there are CoE in South East Asia, Central Asia, Western and Central Africa or the Middle East. Recently, in 2015, Qatar[16] and the Kingdom of

[11] European Court of Auditors, *Special Report. Can the EU's Centres of Excellence initiative contribute effectively to mitigating chemical, biological, radiological and nuclear risks from outside the EU?*, Luxembourg, Publications Office of the European Union, 2014. p. 5: <www.eca.europa.eu/Lists/ECADocuments/SR14_17/SR14_17_EN.pdf>.

[12] <www.cbrn-coe.eu/1.html>.

[13] The approach based on a top to bottom perspective is avoided, and a relationship of horizontal cooperation, with the association between parties as a guiding principle is promoted <www.cbrn-coe.eu/1.html>.

[14] <www.cbrn-coe.eu/Contacts.aspx>.

[15] Pinxten, K.. "Can the EU's centres of excellence initiative contribute effectively to mitigating chemical, biological, radiological and nuclear risks from outside the EU?... *cit.*".

[16] CBRN-CoE News, "Qatar joins the CoE initiative", Doha, Qatar. 22 April 2015 <www.cbrn-coe.eu/News/TabId/123/ArtMID/519/ArticleID/37/Qatar-joins-the-CoE-initiative.aspx>.

Saudi Arabia[17] have also joined the CoE initiative after negotiating the terms of entrance. They are both members of the Gulf Cooperation Council Countries region, whose Secretariat is in Abu Dhabi, United Arab States.

Each one of the eight regions hosts a Secretariat from where projects are coordinated and implemented in all the involved countries. Each partner country has, in turn, a National Focal Point acting on behalf of them and creating a national team of experts in CBRN matters.

All the projects implemented at all eight regions deal with the prevention, preparation and response to any kind of nuclear, biological or chemical (NBC) crisis, regardless of the geographical area or the type of risk. There are three categories of risks, all of them foreseen in article 5 of the Regulation stablishing the Instrument contributing to Peace and Stability (IfPS): accidental, natural and intentional. Through technical cooperation, the CoE aim to prevent any kind of incident.[18]

The European Commission works directly with partner States taking into account the specific needs of the country in particular and the region as a whole. Analyses regarding CBRN issues are carried out in order to identify the requirements of each project so that they provide a real benefit for the region.

There are currently more than 40 projects in 52 partner countries and projects differ greatly from each other due to the different contexts in which they are implemented. These may go from improving gaps in national legislation regarding CBRN issues, to combating illicit trafficking of hazardous materials, to planning recovery measures after a crisis.[19]

To translate the general provisions of the Centers of Excellence into a particular case, we have chosen the example of Morocco, for its geographical, strategic and historical relationship with the European Union.

III. THE CBRN CENTRE OF EXCELLENCE IN MOROCCO

Morocco joined the CBRN Risk Mitigation Centre of Excellence initiative in

[17] CBRN-CoE News, "The Kingdom of Saudi Arabia joins the CoE initiative", Riyadh, Saudi Arabia. 30th January 2015 <www.cbrn-coe.eu/News/TabId/123/ArtMID/519/ArticleID/34/The-Kingdom-of-Saudi-Arabia-joins-the-CoE-initiative.aspx>.

[18] Regulation (EU) No. 230/2014 of the European Parliament and the Council of 11 March 2014 establishing an Instrument for Stability. *OJ* L 77/1 15.3.2014.<http://ec.europa.eu/dgs/fpi/documents/140311_icsp_reg_230_2014_en.pdf>.

[19] To see the ongoing and concluded projects: <www.cbrn-coe.eu/Projects.aspx>.

2009 and since then, it has been a member of two of the eight regions where the CoE initiative takes place. From the aforementioned regions, Morocco is part of the African Atlantic Façade and the North Africa regions. Actually it hosts the Secretariat for the African Atlantic Façade, acting as the focal point for all the other member countries of the region. Together with Morocco, there are currently seven other States involved in CoE projects developed at the African Atlantic Façade, those being: Benin, Côte d'Ivoire, Gabon, Liberia, Mauritania, Senegal and Togo.[20]

Regarding the North African region, whose Secretariat is located in Algeria, together with Morocco we find: Algeria, Libya, Niger and Tunisia.[21]

This dichotomy, which makes of Morocco the only country member of two different regions, implies that, depending on the project, Morocco will be partnering a different list of States every time. It also proves up to what point Morocco is an important partner for the European Union, which also answers any possible queries about the reason to select the country for the elaboration of this note.

Hosting a Regional Secretariat means hosting the implementing entities of the Centre of Excellence in the region one represents. In the case of Morocco, on March the 19th of 2013, representatives of the Moroccan Government, the European Union and the United Nations agreed on choosing Rabat as the city to host the Secretariat for the African Atlantic Façade region. This decision was formalized by the signature of a Memorandum of Understanding (MoU) by the representatives of the Government of Morocco and UNICRI.[22]

Aiming to see in more detail how a Centre of Excellence -that happens to be as well a Regional Secretariat- works, we will now proceed to study the functioning and structure of the Centre of Rabat (part A), as well as two of the implemented projects in the frame of the CoE initiative (part B).

1. FUNCTIONING AND STRUCTURE

States decide voluntarily to become members of the CoE initiative, and therefore, the way these Centres work is based on a comprehensive and cooperative system among all the participant countries.

[20] European Court of Auditors, *Special Report... cit.*

[21] *Ibíd.*

[22] UNICRI News, "Opening Regional Secretariat for the African Atlantic Façade", Rabat. 19th March 2013. <www.unicri.it/news/article/Opening_Regional_Secretariat>.

Each region has a Regional Secretariat that acts as a focal point for the rest of member countries of the area. In the case of the African Atlantic Region, the Secretariat is located in Rabat and, its main tasks is supplying assistance at the identification of country needs, preparing regional proposals and implementing specific national action plans. The Secretariat is located at the Headquarters of the Moroccan Civil Protection Office in Rabat.[23]

The Regional Secretariats, apart from being the implementing entities of the CoE initiative, are also the link between the region and the EU member States and CBRN Experts and Facilities. They must coordinate the projects and ensure that a fluid cooperation takes place among partner States. The way they vehicle this relationship is through the CBRN CoE National Focal Points.[24]

National Focal Points are the representatives of the partner countries. Each country nominates a spokesperson that will defend their interests and assume the commitments in name of the country. The National Focal Point also must stablish a National Team of experts on CBRN issues that will be responsible for assessing the countries' specifical needs.[25] The National Team may be composed of experts from different ministries and agencies dealing with CBRN risks. The National Teams are considered to be the key player of the CoE initiative, as they allow the projects to be tailored for each partner country.[26]

After the needs have been identified, by the assessment process, National Teams develop unique National Action Plans that pursue an integrated and effective CBRN policy that is coherent with internationally agreed standards. Actually, International Organizations also play a role in the CoE initiative, as some of them deal with some of the issues that the risk mitigation Centres address. Among these organizations the IAEA, OPCW, UNOCA BWC-ISU, UN SC 1540 Committee or EUROPOL stand out.

Among the tasks it has to fulfill, the Regional Secretariat in Rabat must organize round-tables every six months to follow up the projects, exchange opinions and coordinate future activities. For that reason, all National Points in the region

[23] De Bruijn, M., *Status of implementation of the CoE Regional Secretariats*, UNICRI. <www.clingendael.nl/sites/default/files/Status%20of%20implementation%20of%20the%20CoE%20Regional%20Secretariats%20-%20Marian%20De%20Bruijn.pdf>.

[24] <www.unicri.it/topics/cbrn/coe/>.

[25] <www.cbrn-coe.eu/1.html>.

[26] <www.unicri.it/topics/cbrn/coe/>.

must take part in the biannual round-tables.[27] The first round-table of the African Atlantic Façade took place on December the 13th of 2011.[28]

All these simultaneous communications and relationships must be very well coordinated, to build proper synergies and minimize duplication. Regional Secretariats and National Teams of Experts are, therefore, key players in the CoE initiative.

2. EXAMPLES OF PROJECTS IMPLEMENTED IN THE CoE OF MOROCCO

In order to illustrate how a CoE Project works, two different projects implemented in Morocco have been selected. The first one is CoE Project number 35, "Management of hazardous chemical and biological waste in North and West Africa";[29] the second one is CoE Project number 3, "Knowledge development and transfer of best practice on biosafety/biosecurity/biorisk management".[30]

They differ from each other in the following aspects: whereas the first of them is still on-going, the second one is already concluded. While the previous one is addressed to the African Atlantic Façade (so the Moroccan CoE acts as a Secretariat), the latter is addressed to several regions (so Morocco acts as one more ordinary party State in the project); finally, another difference is that while on the first example the project implementer is an Italian University, in the second example, the implementer is an Spanish Institution.

These differences underscore the versatility of the CoE of Rabat. However, they also show the difficulties the EU might have to face if it wanted to install consistently such centers throughout the world.

It is interesting bearing in mind that, as long as an initiative is implemented by an International Regional Organization, its own interest and geographical priorities are going to impose themselves, even if it does not necessarily mean acting for the so-called "universal interest" in a specific matter.

Under the Reference number 35, the Regional Secretariat located in Morocco,

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[27] Ibid.

[28] *CBRN CoE Newsletter,* Volume 2 – January 2012. p. 8.

[29] CoE Reference no. Project 35. *Management of hazardous chemical an biological waste in North and West Africa.* <www.cbrn-coe.eu/Projects/TabId/130/ArtMID/543/ArticleID/71/Management-of-hazardous-chemical-and-biological-waste-in-North-and-West-Africa.aspx>.

[30] CoE Reference no. Project 3. *Knowledge development and transfer of best practice on biosafety/biosecurity/biorisk management.* <www.cbrn-coe.eu/Projects/TabId/130/ArtMID/543/ArticleID/47/Knowledge-development-and-transfer-of-best-practice-on-biosafetybiosecuritybiorisk-management.aspx>.

coordinates the project "Management of hazardous chemical and biological waste in North and West Africa" for all the members of the African Atlantic Façade and Tunisia. This project, that started to be implemented on January the 1st of 2014, is organized in two different phases: a first one, of one year of duration, focused on gathering all international guidelines and requirements regarding the secure management of hazardous materials as well as the compilation of inventories per country of their stockpiles; and a second one, a year and a half long, addressed to supply technical training and awareness among professional staff and laboratories personnel.[31]

For this 42 months long project (expected to finish on July the 1st 2017), the European Commission has allocated a budget of 3.871.800€.[32]

The main objectives of the on-going project 35 are enhancing best practices in hazardous chemicals and biological waste management in partner countries; building capacities for laboratory employees that deal with hazardous waste materials; raising awareness on the importance of a correct handling of such assets and training the local experts to promote an indigenous training system of capacity building and knowledge management.[33]

The main agency in charge of the implementation is the Spanish "Fundación Internacional para Iberoamérica de Administración y Políticas Públicas" (FIAPP), although the project has other collaborators, such as UNITAR, l'Institut Africain de Gestion Urbaine or Weepnet.[34]

As we are currently mid-way of the project period, it is still difficult to assess whether the estimated results are going to be positive or, rather, not so satisfying. For that reason, we decided to take a second example, this time with an already concluded project.

Project number 3, "Knowledge development and transfer of best practice on biosafety/biosecurity/biorisk management" had an expected duration of 2 years and, again, a wide range of ambitious objectives.[35] This project was implemented

[31] CBRN CoE 35 NEWS. "A propos du P35" <www.cbrncoe35.eu/a-propos-du-p35>.

[32] <www.cbrn-coe.eu/Projects/TabId/130/ArtMID/543/ArticleID/71/Management-of-hazardous-chemical-and-biological-waste-in-North-and-West-Africa.aspx>.

[33] *CBRN CoE Newsletter*, Volume 9 – August 2014. p. 19: <www.fiiapp.org/wp-content/uploads/2015/04/union-europea-nrbq-en.pdf>.

[34] <www.cbrncoe35.eu/ressources>.

[35] CoE Reference no. Project 3. *Knowledge development and transfer of best practice on biosafety/biosecurity/biorisk management.* <www.cbrn-coe.eu/Projects/TabId/130/ArtMID/543/ArticleID/47/Knowledge-

in four different regions, precisely the two in which Morocco takes part (African Atlantic Façade and North Africa), together with South East Asia and South East Europe and the Caucasus regions. The budget assigned for the project almost reached the two million euros (1.920.000€) and had the Italian University of Insubria as its implementer.[36]

Starting on January the 1st 2013 and concluding exactly two years later, CoE project 3, followed the standard cycle of activities that has to take place in order to reach the objectives of the CBRN risk mitigation CoE initiative, which are: the assessment of national needs by the National Team -together with UNICRI-; collection of regional needs by the Regional Secretariat, the European Commission and UNICRI; prioritizing of needs and analysis of requests (at this point, the European Commission allocates the resources and determines which is the appropriate budget); project implementation by the National Teams and the Regional Secretariats; and review and impact assessment by the European Commission together with the Secretariat and the National Teams.[37]

This ambitious project was divided in what we could call three different phases: at a first stage, European Union experts trained selected National Experts on biorisk management systems, biosecurity techniques and biosafety skills. Together with this know-how, they would also train local staff on capacity building methodologies, as knowledge management is how lessons learned get expanded. Consequently, qualified national experts will be expected to continue with the training further on, becoming local trainers for future experts. The next "generation" of staff trained by the first round of National Experts are called National Participants, until they reach the level of being trainers themselves as well.[38]

At a final stage, National Experts and National Participants were provided with a virtual platform that offered them e-learning materials to strengthen their abilities once the project period was over.

development-and-transfer-of-best-practice-on-biosafetybiosecuritybiorisk-management.aspx>.

[36] Insubria Center on International Security, The University of Insubria, Italy. <http://icis-uninsubria.eu/>.

[37] <www.unicri.it/topics/cbrn/coe/>.

[38] ICIS – "Insubria Center on International Security » of the University of Insubria, Italy. *Project Knowledge development and transfer of best practice on bio-safety/bio-security/bio-risk management*, 8th of November 2013. <http://icis-uninsubria.eu/wp-content/uploads/2013/09/Summary-EU-CBRN-CoE-Pr-3_EN_08.10.2013.pdf>.

At the end of the mentioned Cycle of Activities, at the review and quality control phase, project 3 had a positive impact assessment, as it had achieved its main strategic goals: harmonizing international standards among the participant countries of the four regions where it was implemented, reinsure international cooperation and networking, and, most importantly, "training the trainers" in terms of best practice regarding biosafety, biosecurity and biorisk management.[39]

IV. CONCLUSION

The Centres of Excellence were created as a preventive answer to any potential nuclear, biological and chemical crisis that may arise from the lack of coordination and preparedness in terms of CBRN risks at a national level. The segmentation of responsibilities and the absence of sound technical knowledge on how to prepare and prevent those risks could involve dramatic consequences within a region. With that in mind, the European Union decided to set up a framework for technical cooperation amongst all levels of government and international partners.

The Instrument contributing to the Stability and Peace is the European Union's main instrument supporting peace-building activities and security initiatives in partner countries. It came to substitute the previous Instrument for Stability and continued with the same line of action regarding the chemical, biological and nuclear risks (CBRN risks). The Centres of Excellence are an illustrative example of the weight long-term measures are given in the European Union. Allocating resources in two or three year-long projects that aim at building capacities and spreading technical or political knowledge, underline the kind of cooperation that the current EU is investing in.

The main goal of the CBRN CoE has always been to promote regional cooperation to enhance CBRN capabilities at a national level always taking into account the specific needs of the country and its region. Therefore, technical cooperation projects are tailored on an individually considered base. The case of the Rabat Centre of Excellence has proved how the CoE Initiative actually works, acting at the same time as Secretariat of the African Atlantic Façade region and as an ordinary member of the North African Region.

The CoE, also the one in Morocco, aims to ensure the stability of the

[39] <www.cbrn-coe.eu/Projects/TabId/130/ArtMID/543/ArticleID/47/Knowledge-development-and-transfer-of-best-practice-on-biosafetybiosecuritybiorisk-management.aspx>.

country where they implement a project and strive for balance between security and economic interests of the region. As the projects studied as examples show, knowledge management and international cooperation are two key elements of the capacity building system that actually have positive effects in the development of the countries where the projects are implemented.

These positive consequences, prevention of risks, preparedness against intentional, natural or accidental incidents, or capacity to recover after a crisis, are also felt in all the other countries of the region and therefore, contribute as well to the international security and stability. However, an initiative such as the CBRN Risk Mitigation Centres of Excellence of the European Union would fail if it did not count on the solid participation of the partner countries.

In the case of Morocco, its involvement and commitment to the initiative has been constantly shown, and in words of Mr. Mohammed Salami, Head of the CoE African Atlantic Façade, *"The regional and participatory approach of the EU CoE to define and then implement projects truly constitutes a model for our region"*.[40]

To that effect, it would be convenient that all third States actually perceived that the partnership built to prevent CBRN risks is not a condition for other types of cooperation (that they may also need), but rather an end in itself.

As part of the tasks delivered by the representatives of the European Union within the Centres of Excellence, it could be advisable including activities that raised a deeper awareness among partner countries of the fact that the budget allocated by International Organizations for such initiatives is framed in very wide capacity building programmes that aspire to strengthen State structures that will guarantee the rule of Law in those third countries while offering them an instrument of control against any breaches that may arise, also in the field of CBRN risks.

[40] UNICRI News, "53 countries share common strategies and strengthen coordination for enhanced CBRN risk mitigation", Ispra, 13th June 2014. <www.unicri.it/news/article/Ispra_coordination_CBRN_risk_mitigation>.

DOCUMENTATION:

Reunión de Alto Nivel España-Marruecos,
Madrid, 5 de junio de 2015

LA XI REUNIÓN DE ALTO NIVEL HISPANO-MARROQUÍ. ANÁLISIS Y REFLEXIONES SOBRE SU CONTEXTO Y SOBRE LAS MATERIAS DISCUTIDAS EN EL ÁMBITO DEL DIÁLOGO POLÍTICO

Juan Domingo Torrejon Rodríguez[1]

I. INTRODUCCIÓN

Las relaciones entre España y Marruecos son uno de los ejes prioritarios de la política exterior de ambos Estados, a partir de la independencia de Marruecos en 1956, independientemente de si han pasado por momentos en los que ha predominado la cooperación o el conflicto. En el plano institucional, la relación bilateral hispano-marroquí ha contado con diversos instrumentos para fomentar la comunicación mutua entre los Gobiernos de ambos Estados. Uno de ellos es el de la Reunión de Alto Nivel, instrumento previsto en el Tratado de Amistad, Buena Vecindad y Cooperación de 1991. En concreto, analizaremos la XI Reunión de Alto nivel hispano-marroquí, la última celebrada en el momento en el que escribimos estas líneas.

Continuamos así con nuestro seguimiento de las relaciones hispano-marroquíes, a través del análisis y la documentación de las Reuniones de Alto Nivel, al igual que hicimos en el primer número de esta nueva etapa de la Revista *Paix et Sécurité Internationales*. En aquel primer número, y precedidos por un análisis de su contenido y su contexto, publicamos los dos comunicados que se emitieron al finalizar la X

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Reunión de Alto Nivel: Declaración Conjunta «Un marco innovador para desarrollar una asociación estratégica» y la llamada «Declaración de Rabat».[2]

En este número 3 de la Revista *Paix et Sécurité Internationales*, la Sección de Documentación va a incluir, por un lado, dos contribuciones en las que se analizarán el papel que juegan las Reuniones de Alto Nivel en la relación bilateral hispano-marroquí y los asuntos debatidos durante la XI Reunión de Alto Nivel. La primera, cuyo contenido vamos a desarrollar en estas páginas. Y la segunda, de Siham Zebda, titulada «XI Reunión de Alto Nivel hispano-marroquí, julio de 2015: reflexiones sobre la cooperación en economía, seguridad y cultura».

En esta primera contribución, por tanto, y en primer lugar, definiremos qué son y en qué consisten las Reuniones de Alto Nivel. En segundo lugar, analizaremos las circunstancias que llevaron a la celebración de la XI Reunión de Alto Nivel, analizando también uno de sus aspectos, el Diálogo Político.

Por nuestra parte, tan sólo comentaremos brevemente otros aspectos del contenido de la XI Reunión de Alto Nivel, que serán analizados en la siguiente contribución. Finalmente, formularemos algunas consideraciones finales, relativas al estado actual de la relación bilateral, y a los posibles factores que puedan provocar cambios.

II. LAS REUNIONES DE ALTO NIVEL HISPANO-MARROQUÍES: CONCEPTO Y EVOLUCIÓN

El primer paso que debemos dar, a la hora de plantear nuestro análisis del papel que juegan las Reuniones de Alto Nivel en el diálogo bilateral entre España y Marruecos, es el de esbozar los elementos para establecer una definición del concepto de Reunión de Alto Nivel.

No nos consta una definición del concepto de Reunión de Alto Nivel, ni en el ámbito jurídico, ni en el doctrinal o académico. No nos consta que exista un instrumento de Derecho Internacional, de carácter general, en el que se defina qué es una Reunión de Alto Nivel. Existen instrumentos que promueven la negociación, la cooperación y el diálogo entre los Estados, como la Carta de las Naciones Unidas, o la Resolución 2625 (XXV), de la Asamblea General de la ONU, de 24 de octubre de 1970; pero estos instrumentos no determinan, definen, ni regulan todos

[2] Torrejón Rodríguez, J. D., Zebda, S., «Reunión de Alto Nivel España-Marruecos, Rabat, octubre de 2012», *Paix et Sécurité Internationales*, 2013, nº 1, pp. 177-201.

los medios que pueden y deben usarse a tal fin. Tampoco hemos encontrado una conceptualización de este término en el ámbito académico, ni entre los especialistas en Derecho Internacional, ni entre los especialistas en Relaciones Internacionales. De este modo, si queremos hacernos una idea de qué es una Reunión de Alto Nivel, tendremos que recurrir a la práctica llevada a cabo por Estados y Organizaciones Internacionales. Al hacerlo, hemos comprobado que el término de Reunión de Alto Nivel, se utiliza en circunstancias diversas.

En primer lugar, se utiliza el término de Reunión de Alto Nivel para identificar un instrumento diplomático, que es utilizado por varios países para dotar de una cierta institucionalización a una relación exterior. En estos casos, las Reuniones de Alto Nivel presentan una serie de características. Por un lado, y por regla general, se trata de una reunión de carácter bilateral, en la que participan los Jefes de Gobierno de los Estados miembros, acompañados de varios Ministros, y en las que no participan los Jefes de Estado. En todo caso, puede producirse una intervención del Jefe de Estado anfitrión, o que éste reciba al Jefe de Gobierno o a la Delegación visitante, pero no un encuentro de Jefes de Estado[3]. Por otro lado, con estas Reuniones se persigue el objetivo de dotar de una institucionalización a la relación bilateral entre esos países. Por este motivo, este tipo de Reuniones quedan reguladas por un Tratado bilateral, y se prevé su celebración de forma regular.[4]

En segundo lugar, las Reuniones de Alto Nivel son un instrumento utilizado por varias Organizaciones Internacionales, especialmente aquellas integradas en el sistema de Naciones Unidas. En estas reuniones participan ministros de los Estados miembros, pero también personal de las Organizaciones Internacionales, así como especialistas en la materia objeto de la reunión. En tercer lugar, también se utiliza este instrumento en otros tipos de relación previstas en tratados multilaterales.[5]

[3] Si hubiese un encuentro entre Jefes de Estado, o Jefes de Estado y Gobierno, no estaríamos hablando de una Reunión de Alto Nivel, sino de una Cumbre o Reunión den la Cumbre, como las Cumbres Iberoamericanas, celebradas en el marco de la Secretaría General Iberoamericana, tal y como está previsto en el Convenio de Santa Cruz de la Sierra, constitutivo de la Secretaría General Iberoamericana, celebrado en 2003, <http://segib.org/documentos/esp/Convenio%20Santa%20Cruz%20de%20la%20Sierra.pdf>.

[4] Como ejemplos: Ministerio de Relaciones Exteriores de Chile (04.04.2014): «Concluye la Reunión de alto nivel ministerial Chile-Argentina», <http://www.minrel.gob.cl/concluye-reunion-de-alto-nivel-ministerial-chile-argentina/minrel/2014-04-04/184323.html>; Reino de Marruecos (28.05.2015): «12eme réunion de Haut niveau France-Maroc», <http://www.maroc.ma/fr/actualites/ouverture-paris-de-la-12e-reunion-de-haut-niveau-france-maroc>.

[5] Por ejemplo, en el marco de Naciones Unidas: <http://www.un.org/es/ga/68/meetings/>.

En el caso de las Reuniones de Alto Nivel hispano-marroquíes, nos encontramos ante el primero de los tipos de reunión de alto nivel, el desarrollado en un ámbito bilateral interestatal. Sirven para dar un cauce institucional a una relación bilateral; participan los Jefes de Gobierno, algunos Ministros y otro personal adjunto; y en ellas se debaten temáticas globales relativas de la relación bilateral hispano-marroquí.[6]

Las Reuniones de Alto Nivel hispano-marroquíes fueron diseñadas para ser la pieza clave del Diálogo Político entre los Gobiernos de España y Marruecos, tal y como está Previsto en el Artículo 1.1 del Tratado de Amistad, Buena Vecindad y Cooperación entre España y Marruecos de 1991.[7] Para desempeñar esta función las Reuniones de Alto Nivel hispano-marroquíes cumplen varias misiones. Consideramos que una de las misiones principales es la de servir como instrumento para favorecer, encauzar e incluso dotar de un carácter institucionalizado unas relaciones de cooperación y diálogo entre ambos países. También sirven para abordar los temas más relevantes en las relaciones entre ambos países. Pero no todo se queda en el debate y el diálogo bilateral, puesto que también se aprovechan estas Reuniones de Alto Nivel para impulsar iniciativas y adoptar acuerdos, tanto de índole convencional como de Acuerdos no Normativos. Y, en definitiva, gracias a las Reuniones de Alto Nivel, podemos pulsar el estado de la relación bilateral hispano-marroquí, de modo que, las Reunión de Alto Nivel se han convertido en un importante hito en la relación bilateral.

III. CONTEXTO EN EL QUE SE HA CELEBRADO LA XI REUNIÓN DE ALTO NIVEL HISPANO–MARROQUÍ

A la hora de plantear en análisis del contexto en el que se encontraba la relación bilateral hispano-marroquí en el momento en que se celebró la XI Reunión de Alto Nivel (julio de 2015), podemos hacerlo recurriendo a tres dimensiones. Una que podríamos denominar como estructural, una coyuntural, y una relativa a los acontecimientos más recientes en el plano bilateral.

En cuanto a la dimensión estructural, la constituyen los tradicionales vaivenes en la relación bilateral, esa relación con altibajos que han mantenido España y Marruecos desde 1956, alternando fases en las que predomina la cooperación o el

[6] Para los participantes en la XI Reunión de Alto Nivel, puede verse el Comunicado Conjunto, que reproducimos en este número de la Revista *Paix et Sécurité Internationales*., pp. 239 y ss.

[7] *Tratado de Amistad, buena Vecindad y Cooperación entre el Reino de España y el Reino de Marruecos*, *BOE* nº 49, de 26 de febrero de 2013, pp. 6311-6314.

conflicto entre ambos países.[8]

En el marco de esa estructura que alterna fases en las que predomina la cooperación o el conflicto, nos encontramos, en el momento en el que escribimos estas líneas, con una coyuntura política de las relaciones hispano-marroquíes caracterizada por la sintonía y la cooperación entre ambos Estados. Consideramos que esta fase comenzó con la Presidencia del Gobierno de José Luis Rodríguez Zapatero, y ha continuado con la Presidencia de Mariano Rajoy. Esta fase se caracteriza por una mayor europeización de la relación bilateral; y por un esfuerzo en disminuir los puntos de fricción, y por evitar que los diferentes aspectos de la relación bilateral se conviertan en fuente de controversia.

Esta fase etapa actual de la relación bilateral hispano-marroquí ha coincidido con numerosos avances, tanto en el proceso de integración europea, como en el ámbito de cooperación intergubernamental de la Acción Exterior de la Unión, y el refuerzo de la relación entre Marruecos y la UE han terminado por condicionar la relación bilateral hispano-marroquí. La principal consecuencia es doble: que algunos aspectos de la relación bilateral hispano-marroquí son ahora competencia de la UE, o están influenciados por las políticas de la Unión. Esto hace que, en temas potencialmente controvertidos, las decisiones se tomen en el plano de la Unión Europea.[9]

Otra característica de la etapa actual en la relación hispano-marroquí es que hay un esfuerzo por disminuir los puntos de fricción entre ambos Gobiernos, y por evitar que todo aspecto de la relación bilateral acabe siendo fuente de enfrentamiento y controversia. El principal ejemplo, a nuestro juicio, ha sido el cambio de posición del Gobierno español respecto al conflicto del Sáhara Occidental. En las Declaraciones durante el Gobierno Rodríguez Zapatero, como en el de Rajoy, se puede ver un

[8] Para una visión de conjunto de las relaciones hispano-marroquíes, véanse: Torrejón Rodríguez, J. D., «Las relaciones entre España y Marruecos... *cit.*»; Valle Gálvez, A. del, «España-Marruecos: una relación bilateral de alto potencial conflictivo, condicionada por la Unión Europea. Panorama con propuestas», en Valle Gálvez, A. del, Verdú Baeza, J. (Dirs.); Torrejón Rodríguez, J. D., (Coord.): *España y Marruecos en el centenario de la Conferencia de Algeciras* Madrid, Dykinson, 2007, pp. 121-148; Iglesias, M., *Conflicto y cooperación entre España y Marruecos (1956-2008)*, Sevilla, Fundación Pública Andaluza Centro de Estudios Andaluces, 2010; Amirah Fernández, H. «España-Marruecos, sintonía real y mucho por hacer», *Comentario Elcano* 51/2014.

[9] De este modo, son competencia de la UE aspectos como las relaciones en materia de pesca, el comercio de productos agroalimentarios, en materia de inmigración y fronteras. Por otro lado, en cuestiones relativas a libertad de circulación de extranjeros, en España se aplican las normas de la UE al respecto. las cuestiones. Véase, al respecto, Valle Gálvez, A. del, «España-Marruecos: una relación bilateral de alto potencial conflictivo…", *loc. cit.*, pp. 121-148. Véanse también los trabajos incluidos en la obra colectiva Martínez Capdevilla, C.; Brotóns, R., (Dirs.), *Unión Europea-Marruecos: ¿Una vecindad privilegiada?*, Madrid, Academia Europea de Ciencias y Artes, 2012.

acercamiento del gobierno Español a las tesis marroquíes, y, en concreto, a dar una solución al conflicto basada en la integración del Territorio en Marruecos con un régimen autonómico.[10] Por otro lado, parece que en Marruecos se ha producido una vuelta a la posición que tuvo Hassan II, a finales de su reinado, sobre los Territorios españoles del Norte de África. De modo que Marruecos no abandona la reclamación, pero no la considera, al menos pública y oficialmente, como algo prioritario. Y así, en rueda de prensa, coincidiendo con la celebración de la XI Reunión de Alto Nivel, Abdelilah Benkirán, Primer Ministro marroquí, afirmaba que las cuestiones territoriales quedan pospuestas[11].

La principal manifestación del actual estado de la relación bilateral hispano-marroquí es el que la XI Reunión de Alto Nivel se haya celebrado no mucho después de la Declaración de Zona Económica Exclusiva realizada por España en torno a las Islas Canarias[12]. Estamos convencidos de que, en otros tiempos, esta declaración española habría deteriorado seriamente la relación bilateral.

Esta coyuntura de mejora de la relación bilateral se da, asimismo, en un determinado contexto internacional, marcado por una serie de hechos y acontecimientos.

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[10] Véase, al respecto, López García, B. «El Sáhara y las relaciones hispano-marroquíes», *Revista de Investigaciones Políticas y Sociológicas*, Vol. 12, 2013, n º 2, p. 78. La nueva actitud de los Gobiernos españoles Así ha quedado reflejado en varias declaraciones de las Reuniones de Alto Nivel, a partir de 2005, en las que se incluyen referencias al conflicto en la que se apoya una «solución política justa y duradera», se apoya la propuesta marroquí como base para futuras negociaciones. Así se hace en las Declaraciones al término de la VII (20005), VIII (2007), IX (2008), Valle Gálvez, A. del, Torrejón Rodríguez, J. D, *España-Marruecos: Tratados, Declaraciones... cit.* pp. 317, 321, 332-333 y 340 respectivamente. Por otro lado, durante los Gobiernos de Rodríguez Zapatero, determinadas iniciativas se pueden entender o interpretar como un acercamiento o apoyo a la postura marroquí. Por ejemplo, el papel jugado por el Ministro de Exteriores, Miguel Ángel Moratinos, en el nombramiento del controvertido Peter van Waldsum como Enviado Personal del Secretario General de Naciones Unidas para el Sáhara Occidental; recordemos de P. van Waldsum fue cesado por declarar públicamente su apoyo a una solución al conflicto basada en la concesión de un régimen autonómico al Sáhara Occidental en el marco de la soberanía marroquí (sobre la controvertida gestión de P. van Waldsum Vid. Torrejón Rodríguez, J. D., *La Unión Europea y la cuestión del Sáhara Occidental. La posición del Parlamento Europeo*, Madrid, Ed. Reus, 2014, pp. 129-130). También se interpretó como favorable a Marruecos la actitud mantenida por el Gobierno español ante los sucesos en El Aaiún de octubre de 2010.

[11] «Benkirán pospone a "más adelante" la discusión con España sobre el futuro de Ceuta y Melilla», c*eutaactualidad.com*, 5 de junio de 2015 <http://www.ceutaactualidad.com/articulo/politica/benkiran-pospone-mas-adelante-discusion-espana-futuro-ceuta-y-melilla/20150605190406008767.html>. Para la posición de Marruecos durante la etapa final del reinado de Hassan II, véase González Campos, J. D., «Las pretensiones de Marruecos sobre los territorios de España en el Norte de África», 1956-2002, en en Valle Gálvez, A. del, Verdú Baeza, J. (Dirs.); Torrejón Rodríguez, J. D., (Coord.): *op. cit.* pp. 110-114.

[12] Planelles, M. «España y Marruecos chocan en las aguas del Sáhara Occidental», *El Pais.com*, 7 de mayo de 2015 <http://politica.elpais.com/politica/2015/05/07/actualidad/1431023217_650833.html>.

Por un lado, la crisis económica mundial, que ha tenido un especial impacto en la economía española. Este país puede ver condicionada su política exterior por las necesidades presupuestarias, y por su pérdida de peso en el seno de la Unión Europea. En este caso, la crisis económica ha tenido algunos efectos, que influyen en la relación hispano-marroquí. En primer lugar, se ha producido una bajada en remesas de emigrantes marroquíes en España, por estar en paro (se calcula que el 57 % de emigrantes marroquíes en España está en paro). Aun así, España es actualmente el primer socio comercial de Marruecos, puesto que tradicionalmente había venido ocupando Francia. Ahora bien, España es el segundo inversor extranjero en Marruecos (17%), por debajo de Francia (49%). En 2013, además, Marruecos se convierte en segundo socio comercial de España, por detrás de EE.UU.[13]

Por otro lado, la relación bilateral hispano-marroquí viene determinada por Contexto regional marcado por las «Primaveras Árabes», el ascenso del islamismo –radical o no–, y las crisis en el Sahel. Se puede ver a Marruecos como un país capacitado para afrontar estas amenazas, y crear así una necesidad de cooperación con Marruecos para enfrentar los riesgos que este contexto regional origina, en materia de lucha contra las redes criminales transnacionales o contra el terrorismo yihadista. En este contexto, entre 2013 y 2014, se han desarrollado diversas operaciones conjuntas hispano-marroquíes contra el terrorismo: *Operación Cesto* (junio-septiembre de 2013), *Operación Azteca* (marzo de 2014), *Operación Gala* (junio de 2014), *Operación Kibera* (agosto de 2014 y diciembre 2014) y *Operación Farewell* (septiembre de 2014). Asimismo, se ha celebrado la Reunión de la 8ª Comisión Militar Mixta Hispano-Marroquí en Madrid, el 26 abril de 2014.[14]

Uno de los aspectos que, desde los años noventa, venía caracterizando la relación hispano-marroquí, tiene que ver con las migraciones. Durante los últimos años se han producido cambios en el rol que venía jugando Marruecos en lo referente a los movimientos migratorios, y, en particular, de aquellos en situación irregular; a los

[13] Sobre los aspectos económicos de la relación bilateral, y cómo se han visto afectados por la crisis económica, véase Escribano, G., «Nuevo discurso para las relaciones económicas entre Marruecos y España», *Real Instituto Elcano*, 13.07.2015; Escribano, G. y Sánchez Aranda, F., «Por la renovación del discurso hispano-marroquí», *Política Exterior*, 2015, Vol. 29, nº 166, pp. 74-84.

[14] Véase, al respecto Echeverría Jesús, C. «Oriente Medio, Oriente Próximo y el Norte de África: epicentro de incertidumbres», en Instituto Español de Estudios Estratégicos, *Panorama Estratégico 2015*, Madrid, Ministerio de Defensa, 2015, pp.69-97; Amirah Fernández, H., «España frente a los retos en el Magreb y Oriente Medio en 2015», *ARI* 12/2015; Reinares F. y García-Calvo, C., «Cooperación antiterrorista entre España y Marruecos», *ARI* 18/2015: Reinares F., «Evolución reciente del terrorismo en el Magreb», *ARI* 46/2015;

que hay que añadir un creciente número de demandantes de asilo y refugio. Por un lado, Marruecos ha pasado de ser un país de origen a ser un país de tránsito, e incluso de destino. Por otro lado, Marruecos ya no forma parte de una de las principales rutas, que ahora pasan por Libia, Italia y los Balcanes.[15]

Finalmente, debemos hablar de los cambios que se han producido en la Acción Exterior de la UE. En los últimos años, se nos aparece una UE más preocupada por lo que sucede en el Este de Europa que por lo que sucede en el Sur. En particular, debemos hacer mención a la situación de enfrentamiento civil en Ucrania y a la crisis en las relaciones UE-Rusia. La principal consecuencia de esta mayor preocupación por el Este, ha sido la paralización de la Unión para el Mediterráneo (UpM), con la que se quería dar un nuevo impulso a las relaciones entre la UE y los países terceros mediterráneos. Pero también puede haber otras consecuencias, si persiste la crisis con Rusia. Este país es el principal proveedor de gas para los países europeos. Si no hay una solución a esta crisis, los países miembros afectados y la UE tendrán que buscar un proveedor alternativo, y una de las opciones que se podría plantear es la de Argelia.[16] De producirse, esto podría alterar ese papel de socio privilegiado que Marruecos ha tenido respecto de la UE.

En definitiva, este contexto bilateral, europeo, regional e internacional condicionar el desarrollo y marca los temas de la agenda bilateral hispano-marroquí, para ser objeto de debate y análisis conjunto durante las Reuniones de Alto Nivel.

IV. EL DIÁLOGO POLÍTICO EN LA XI REUNIÓN DE ALTO NIVEL

Tal y como está previsto en el artículo 1 del Tratado de Amistad, Buena Vecindad y Cooperación entre España y Marruecos, en las Reuniones de Alto Nivel, se abordan diversos aspectos:

[15] La información sobre las rutas migratorias hacia Europa, puede consultarse en la página web de la Agencia Frontex, <http://frontex.europa.eu/trends-and-routes/migratory-routes-map/>.

[16] Sobre la crisis en Ucrania, y en la relación UE-Rusia, y sus efectos en materia de política energética, véase: Echeverría Jesús, C., «Europa y la dependencia de hidrocarburos», *Política Exterior*, 2015, Vol. 29, Nº 165, pp. 114-123; Ortega Carcelén, M., «Reformas en casa, problemas en el vecindario: la Acción Exterior de la Unión Europea en 2014», en Instituto Español de Estudios Estratégicos, *Panorama Estratégico 2015… cit.*, pp. 59-65; Ruíz González, F. J.: «Rusia y la seguridad energética europea», en Instituto Español de Estudios Estratégicos; Comité Español del Consejo Mundial de la Energía; Club Español de la Energía, *Energía y geoestrategia 2015*, Madrid, Ministerio de Defensa, 2015, pp. 173-214. Sobre otras consideraciones relativas a las fuentes de suministro de energía de los Estados europeos, véase Escribano Francés, G.; San Martín González, E., «Managing Energy Interdependency in the Western Mediterranean», *Paix et Sécurité Internationales*, 2014, nº 2, pp. 81-102.

De entre todos ellos, nos interesa especialmente el denominado «Diálogo político».[17] Bajo esta denominación, se pueden entender dos tipos de cuestiones. Por un lado, una serie de instrumentos para la para la comunicación entre los Gobiernos de ambos países, del que las propias Reuniones de Alto Nivel forman parte. Por otro lado, en las Declaraciones Conjuntas adoptadas tras las Reuniones de Alto Nivel, bajo el apartado «Diálogo político» se analiza el estado de las relaciones y se debaten los aspectos políticos de la relación bilateral hispano-marroquí; asimismo, en el marco de esta última concepción del diálogo político, se abordan diversos temas internacionales de interés común para ambos países.

Comenzaremos nuestro análisis por la primera de las dos dimensiones de «Diálogo político», la referente a los instrumentos puestos al servicio de la comunicación entre los Gobiernos de España y Marruecos. El principal de ellos, como ya hemos señalado, lo constituyen las propias Reuniones de Alto Nivel. Pero, en el Tratado de Amistad, Buena Vecindad y Cooperación entre España y Marruecos, hay previstos otros instrumentos, como las reuniones semestrales de los Ministros de Asuntos Exteriores de ambos países, y las consultas regulares entre los Secretarios de Estado, Secretarios Generales y Directores Generales de Asuntos Consulares, Asuntos Culturales, y de Relaciones Económicas y de Cooperación.[18]

Además, a lo largo de los años, se han ido desarrollando otros instrumentos para favorecer el Diálogo Político. Precisamente las Reuniones de Alto Nivel han servido para poner en marcha algunos de ellos. Y así, en la II Reunión de Alto Nivel de 1996, se acordó crear un Comité Permanente de Enlace, que sirviera para una comunicación más intensa entre los Ministerios de Exteriores. A tal fin, este Comité establecía un medio de comunicación telefónica entre ambos Ministerios; además,

[17] Otros aspectos debatidos en el marco de la XI Reunión de Alto Nivel han sido: en primer lugar, las cuestiones económicas y financieras, que suelen ser el tema, con temas relativos a la cooperación al desarrollo y a la cooperación económica bilateral en varios sectores; en segundo lugar, la cooperación en materia, educativa, cultural y científica; en tercer lugar, los temas relativos a trabajo y asuntos sociales; y, en cuarto lugar, la cooperación judicial y consular. Además de para debatir, sirven para alcanzar acuerdos. En la XI Reunión de Alto Nivel se han cerrado los siguientes acuerdos, todos ellos de carácter no normativo: Declaración conjunta de intenciones en relación con los recursos hídricos; Declaración conjunta de intenciones para la cooperación entre la Agencia de la cuenca del Loukkos y la Confederación Hidrográfica del Segura; Declaración conjunta de intenciones en el campo de desarrollo social; Declaración conjunta de intenciones sobre cooperación judicial; Declaración conjunta de intenciones sobre transporte; Programa Turismo 2015-2016. Para un análisis de lo que se ha debatido y acordado en cada uno de estos ámbitos, véase el trabajo de Siham Zebda, que se incluye, a continuación, en este número de la Revista *Paix et Sécurité Internationales*.

[18] Arts. 1.2, 1.3 y 1.4, del *Tratado de Amistad, buena Vecindad y Cooperación entre el Reino de España y el Reino de Marruecos... cit*.

el personal de este Comité Permanente se encarga de centralizar la información relativa a cualquier cuestión que pueda afectar a la relación bilateral, y de coordinar cualquier acción administrativa al respecto. En esta II Reunión de Alto Nivel de 1996 se acordó también crear el Comité «Averroes», cuyo objetivo es el de promover el entendimiento y conocimiento mutuo entre los pueblos español y marroquí, y en el que las personalidades de la sociedad civil de ambos países juegan un importante papel.[19]

En la X Reunión de Alto Nivel, de octubre de 2012, se había puesto en marcha un nuevo instrumento para impulsar y reforzar el Diálogo Político. Los instrumentos para ese Diálogo Político Reforzado están recogidos en la Declaración de Rabat, de 3 de octubre de 2012. En primer lugar, se prevé una mayor frecuencia en los contactos, y un incremento del alcance del diálogo bilateral. A tal fin, están previstas, dos Reuniones anuales de los Ministros Delegados y/o Secretarios de Estado de Asuntos Exteriores; una reunión anual de los Ministros de Interior; consultas Semestrales entre los Directores Políticos de los ministerios de Asuntos Exteriores; y el establecimiento de consultas reforzadas de altos funcionarios de los Ministerios de Asuntos Exteriores y, si es necesario de los departamentos ministeriales competentes.[20] En nuestra opinión, en la XI Reunión se echa de menos que se hubiera hecho alguna referencia a estos nuevos instrumentos: que se indicaran si se han puesto en marcha, las reuniones celebradas, si se han producido avances, o si ha dado resultados[21].

En cuanto al debate sobre temas de interés común, destacamos la relativa ausencia de los temas territoriales en la XI Reunión de Alto Nivel, como suele ser habitual. En particular, no se ha hablado de delimitación de espacios marítimos, tema sí presente en alguna de las Reunión de Alto Nivel anteriores[22], y que posiblemente

[19] Véase el texto de la Declaración conjunta al finalizar la II Reunión de Alto Nivel en Valle Gálvez, A. del; Torrejón Rodríguez, J. D., *España-Marruecos: Tratados, Declaraciones y Documentos... cit.*, pp. 256-257.

[20] Véase el texto de la Declaración de Rabat en Valle Gálvez, A. del; Torrejón Rodríguez, J. D., *España-Marruecos: Tratados, Declaraciones y Documentos... cit.*, pp. 359-362.

[21] En el comunicado tras la III Reunión de Alto Nivel se hizo una valoración sobre el Comité Permanente de Enlace creado en la II Reunión de Alto Nivel (Valle Gálvez, A. del; Torrejón Rodríguez, J. D., *España-Marruecos: Tratados, Declaraciones y Documentos... cit.*, p. 26), y en casi todas las Reuniones de Alto Nivel hay una valoración del papel jugado por el Comité Averroes. Este último, en cambio, sí ha sido objeto de una valoración positiva en el Comunicado de la XI Reunión de Alto Nivel (véase el texto del Comunicado en este número de la Revista *Paix et Sécurité Internationales,* p. 240).

[22] La delimitación de las aguas entre España y Marruecos fue debatida en la VI y VII Reunión de Alto Nivel: Valle Gálvez, A. del; Torrejón Rodríguez, J. D., *España-Marruecos: Tratados, Declaraciones*

sea un efecto de la declaración de Plataforma Continental en Canarias realizada por el Gobierno Español.

En todo caso, sí ha estado presente el conflicto del Sáhara Occidental, en la tradición iniciada por los Gobiernos de Rodríguez Zapatero. En cuanto al contenido del discurso acerca del conflicto, si lo comparamos con el planteado en anteriores Reuniones de Alto Nivel, viene a seguir en la misma línea de acercamiento de España a la postura marroquí acerca del conflicto[23].

Y, en cuanto al debate sobre temas internacionales de interés común, como es habitual, destacan aquellos de índole regional magrebí, euromediterráneo (diálogo mediterráneo) y Oriente Próximo; y sólo ocasionalmente, nos aparecen otros temas, como la reforma de Naciones Unidas o Kosovo.

Las relaciones entre la UE y Marruecos y el Diálogo Mediterráneo son los temas de interés común a los que se suele prestar más atención en las Reuniones de Alto Nivel, con un análisis bastante detallado de la situación en la que se encuentran ambos temas: del funcionamiento de los principales instrumentos del Diálogo Mediterráneo, tales como el Diálogo 5+5, y los diferentes aspectos de la relación bilateral UE-Marruecos, tales como el Proceso de Barcelona, la Unión por el Mediterráneo, la Política Europea de Vecindad, y los diferentes acuerdos alcanzados, como los de pesca o el agroalimentario. De este modo, en el Comunicado conjunto publicado tras la XI Reunión de Alto Nivel, se apoyan el Diálogo 5+5, la profundización en la Política Europea de Vecindad, los progresos de la Iniciativa hispano-marroquí para la Mediación en el Mediterráneo, y un futuro Acuerdo de Libre Comercio entre Marruecos y la UE.

Otro tema de interés en las Reuniones del Alto Nivel lo constituye la situación en el Magreb. Como suele ser tradicional, se hace un llamamiento al proceso de integración regional magrebí, en el marco de la Unión del Magreb Árabe. Pero también hay lugar para preparar una postura conjunta sobre los conflictos abiertos en la región. Aparte del conflicto del Sáhara Occidental, en la XI Reunión de Alto Nivel se ha hecho referencia al conflicto civil en Libia, apoyando una solución basada en el diálogo entre los bandos enfrentados.

Y otros temas habituales, también debatidos en el marco de la XI Reunión de Alto Nivel quedan reflejados en el apoyo a la iniciativa de la Alianza de Civilizaciones,

y Documentos... cit., pp. 295 y 309 respectivamente.

[23] Véase el texto del Comunicado en este número de la Revista *Paix et Sécurité Internationales*, pp. 239 y ss.

en el llamamiento a un refuerzo de las relaciones UE-África, en los apoyos mutuos en materia de lucha contra el terrorismo.

Como principal tema novedoso, en la XI Reunión de Alto Nivel, España y Marruecos han debatido acerca del cambio climático, en el marco de la reforma del Protocolo de Kioto, subrayando España y Marruecos que se debe alcanzar un acuerdo en la cumbre sobre el Cambio climático prevista en París para diciembre de 2015.

Para finalizar nuestro análisis del Diálogo Político en la XI Reunión de Alto Nivel, una de las misiones que cumplen estas reuniones bilaterales es el de formalizar determinados acuerdos entre ambos países. En el caso de la Reunión de Alto Nivel celebrada en junio de 2015, no se ha formalizado una ampliación del marco jurídico bilateral, ya que todos los acuerdos adoptados durante la reunión tienen un carácter no normativo.

Estos acuerdos abarcan los diversos aspectos de la relación bilateral hispano-marroquí. En la Reunión de Alto Nivel de 2015, se han adoptado los siguientes:

- Declaración conjunta de intenciones en relación con los recursos hídricos.
- Declaración conjunta de intenciones para la cooperación entre la Agencia de la cuenca del Loukkos y la Confederación Hidrográfica del Segura.
- Declaración conjunta de intenciones en el campo de desarrollo social.
- Declaración conjunta de intenciones sobre cooperación judicial.
- Declaración conjunta de intenciones sobre transporte.
- Programa Turismo 2015-2016.

V. CONSIDERACIONES FINALES

Tras analizar el contenido político de la XI Reunión de Alto Nivel, y teniendo en cuenta el contexto en el que se ha celebrado, se confirma la importancia de este tipo de instrumentos para dotar a la relación entre los Gobiernos, de unos cauces de comunicación institucionalizados; así como para tomar el pulso a la relación bilateral.

En canto al contenido del Diálogo Político, no hay novedades relevantes, ni en el fondo ni en la forma, y sólo cabe destacar la inclusión, en la agenda bilateral, del cambio climático y del debate acerca de la reforma del Protocolo de Kyoto.

Son más relevantes, en nuestra opinión, las conclusiones que podemos extraer en lo referente a la situación en la que actualmente se encuentra la relación bilateral

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ISSN 2341-0868, Num. 3, janvier-décembre 2015, pp. 213-226

hispano-marroquí. Consideramos que la XI Reunión de Alto Nivel es una prueba de que hay una nueva continuidad en las relaciones hispano-marroquíes, que se inició en 2005, con la celebración de la VII Reunión de Alto Nivel. En la relación bilateral hispano-marroquí se han sucedido diversas etapas. La primera, desde 1956 hasta 1975, en la que hubo un predominio del enfrentamiento entre España y Marruecos. En la segunda etapa, desde 1975, hasta 1994, aunque también hubo momentos difíciles, acabó por convertirse en una etapa en la que predominó la cooperación entre ambos Estados. En la tercera, que terminó en 2005, hubo alternancia de momento de cooperación y momentos de conflicto. Por tanto, podríamos, incluso, estar ante una nueva etapa en la relación bilateral hispano-marroquí, caracterizada por la cooperación y el entendimiento.

Sin embargo, consideramos que nuestra valoración debe confirmarse por la evolución de la relación entre España y Marruecos durante los próximos años. Realizamos esta afirmación porque vemos indicios, a corto y medio plazo, de algunos signos de incertidumbre en la relación bilateral, que podrían alterar este estado de cosas. Estos signos vienen marcados por la posibilidad de cambios en el Gobierno español, así como por los contextos mediterráneo, norteafricano, europeo e internacional.

En lo que se refiere a los posibles cambios en el Gobierno español, vendrán a consecuencia de las Elecciones Generales en España previstas para el 20 de diciembre en España. La incertidumbre, en este caso, no viene de los dos partidos que se han ido sucediendo en el Gobierno español, que actualmente parecen tener una línea similar respecto a las relaciones con Marruecos. Más bien, la incertidumbre puede venir de los dos principales partidos emergentes. Uno de ellos, *Ciudadanos*, está más preocupado por la situación interior en España, y aún no ha presentado lo que serían sus líneas maestras en materia de política exterior; y, en el caso del otro partido emergente, *Podemos*, sí que podría plantear o una actuación diferente respecto a temas que pueden afectar a la relación bilateral hispano-marroquí, tales como la inmigración, el terrorismo yihadista o el conflicto del Sáhara Occidental.

En cuanto al contexto internacional, aparte de la evolución de la situación en el Magreb o en Oriente Próximo, habrá que observar el impacto puede tener en la relación hispano-marroquí la evolución de la Acción Exterior de la UE. Por un lado, si persisten determinadas situaciones como el conflicto en Ucrania, las sanciones a Rusia, la crisis en Siria o la reciente «crisis de los refugiados», o la posible reactivación

del proceso de adhesión de Turquía. De este modo, se podría confirmar esa tendencia de la UE por prestar mayor atención al Este y al Sureste.

Con todo, lo cierto es que, actualmente, las relaciones hispano marroquíes están marcadas por su mejor momento de entendimiento. Y es que los dos países ven la necesidad de cooperar y colaborar, incrementando los medios para el diálogo bilateral, e incluyendo en su relación de cooperación un creciente número de ámbitos materiales.

XI REUNIÓN DE ALTO NIVEL HISPANO-MARROQUÍ, JULIO DE 2105: REFLEXIONES SOBRE LA COOPERACIÓN EN ECONOMÍA, SEGURIDAD Y CULTURA

Siham Zebda[1]

I. INTRODUCCIÓN

En el marco del Tratado de Buena Vecindad, Amistad y Cooperación entre España y Marruecos que entró en vigor en 1994, se celebró la décimo-primera Reunión de Alto Nivel el día 05 de junio de 2015 que tuvo como objetivo buscar nuevas estrategias e iniciativas para reforzar el diálogo político, consolidar las relaciones económicas y afianzar los lazos culturales y humanos entre ambas sociedades.

La última Reunión, de 2015, se ha centrado en los fenómenos que vive la sociedad internacional; el terrorismo y la cuestión migratoria, al mismo tiempo se ha intentado renovar el discurso sobre las relaciones económicas y fomentar la cooperación cultural entre ambas sociedades, entre otros.

II. LA EVOLUCIÓN DE LAS REUNIONES DE ALTO NIVEL

A lo largo de la historia de las Reuniones de Alto Nivel (en adelante, RAN) hubo una evolución notable en la ampliación de los ámbitos que preocupan a ambas partes, se intensificó la cooperación y se crearon nuevos mecanismos de entendimiento.

La I RAN de 1993 tuvo una agenda muy reducida que se basó en la cooperación económica y financiera, la cooperación educativa y cultural y la cooperación jurídica

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y consular, la inmigración, la lucha contra la droga y la negociación de los acuerdos UE-Magreb.

Aunque el Tratado de Amistad, Buena Vecindad y Cooperación establece que la Reunión de alto nivel se celebra anualmente[2], en la práctica no fue así; la II RAN de Madrid no se celebró hasta 1996 y dio un nuevo impulso a las relaciones que unen España y Marruecos intentando eliminar los recelos y prejuicios colectivos entre ambas partes, que impedían un mejor entendimiento. Esta Reunión fue marcada por un lado, por la ampliación de la agenda a la cooperación política, en materia de infraestructura, cooperación para el desarrollo, científica y social y por otro, por la celebración de un considerable número de acuerdos como el Acuerdo de Cooperación económica y financiera entre ambos países.

Las tres siguientes RAN reforzaron las materias anteriores y con solo una novedad en materia de defensa. No obstante, se dio una vuelta y un impulso a las RAN después del incidente de Perejil que marcó un antes y un después. En 2003 se trataban por primera vez temas de gran tensión como la delimitación de los espacios marinos en la fachada atlántica y se creó una Comisión Mixta para concluir un acuerdo de delimitación de los espacios marinos en la fachada atlántica que fue suspendida posteriormente sin ningún resultado. Se mencionaba por primera vez en la historia de las RAN la cuestión del Sahara.

La VI RAN de 2003 tuvo un considerable resultado por una parte, con la firma de un convenio financiero para otorgar a Marruecos 300 millones de euros de crédito al desarrollo económico y social y el canje de 90 millones de euros de deuda en inversiones y, por otra parte, con la conclusión de un acuerdo para repatriar a los menores marroquíes que se encontraban en situación irregular en España.

La europeización y la internacionalización de las relaciones bilaterales comenzó a partir de la VII RAN de 2005, a través de las siguientes cuestiones, entre otros, circulación de personas; inmigración ilegal y cooperación operativa mediante Oficiales de Enlace y Patrullas mixtas de la Gendarmería Real y la Guardia Civil; lucha contra el tráfico de la droga; libre circulación de mercancías; Plan de Acción

[2] «Las Altas Partes Contratantes, deseosas de reforzar y potenciar los lazos que las unen, se proponen establecer un marco de contactos políticos bilaterales más acorde con el nivel de cooperación y concertación al que aspiran. A tal efecto, acuerdan institucionalizar lo siguiente: 1. Reunión anual de Alto Nivel entre los Jefes de Gobierno de ambos países, en España y en Marruecos, alternativamente. Se celebrarán encuentros entre los Ministros y Secretarios de Estado al objeto de preparar adecuadamente la citada Reunión». Artículo 1 del Tratado Amistad, Buena Vecindad y Cooperación de 1994. Valle Gálvez, A. del; Torrejón Rodríguez, J. D. *España y Marruecos: Tratados, Declaraciones y Memorandos de Entendimiento (1991-2013)*. Servicio de Publicaciones de la Universidad de Cádiz, 2013.

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de Vecindad europea; Proyecto MEDA de asistencia a Marruecos para control de fronteras; Reunión Euromediterránea de Transporte; Iniciativa para África de la UE, pesca y agricultura; creación de un espacio de Libertad, Seguridad y Justicia euromediterráneo, una propuesta conjunta hispano-franco-marroquí en el contexto del Proceso de Barcelona.

No obstante, en la VIII RAN de 2007 es donde se planteó la importancia estratégica de la cooperación UE-Marruecos y en la que España se comprometió a ser el interlocutor, destacando todas las dimensiones, política, económica, migratoria, social y cultural, cuestión que profundiza el partenariado euromediterráneo en el marco de la Política Europea de la Vecindad. Se reiteró también el compromiso para una solución política justa y definitiva aceptable en el marco de las Naciones Unidas.

La IX RAN de 2008 fue orientada hacia el futuro para afrontar los desafíos mundiales, abarcar todos los ámbitos de cooperación y crear nuevas oportunidades para la creación del empleo y de las inversiones[3].

Cuatro años después se celebra la X RAN en 2012 en Rabat, que dio un salto en las relaciones bilaterales, por el número de acuerdos y memorandos de entendimiento que se firmaron. Al mismo tiempo se considera particularmente relevante porque en la historia de la RAN era la primera vez que se firmaban dos declaraciones; la Declaración conjunta «Un marco innovador para desarrollar una asociación estratégica» y la llamada Declaración de Rabat.[4]

II. ALGUNOS ASPECTOS TRATADOS EN LA XI RAN

1. COLABORACIÓN ECONÓMICA

El primer ministro marroquí Abdeliláh Benkiran mostró su convicción en la RAN de que "no hay marcha atrás en la relación entre España y Marruecos". Efectivamente hubo muchas iniciativas que confirman esta convicción, hubo una renovación del diálogo económico, pero una renovación tímida[5] por no plasmar el diálogo económico en declaraciones conjuntas de importante impacto económico

[3] Para más información ver: Zebda, S., "Las actuales relaciones hispano-marroquíes en el marco de las reuniones bilaterales de alto nivel", *Ateneo: revista cultural del Ateneo de Cádiz,* 2014, nº 14, pp. 113-121.

[4] Torrejón Rodríguez, J. D.; Zebda, S., "Reunión de Alto Nivel España-Marruecos, Rabat, Octubre 2012", *Paix et sécurité internationales : revue maroco-espagnole de droit international et relations internationales*, 2013, nº 1, pp.177-201.

[5] Escribano, G.; Sánchez Andrada, C., "Por la renovación del discurso hispano-marroquí", *Política exterior,* 2015, Vol. 29, Nº 166.

y por no abordar todos los problemas económicos entre ambas partes, sobre todo, que las relaciones económicas bilaterales están en evolución; más de 17.000 empresas españolas exportaron a Marruecos en 2014, en 2013 el 13% de las compañías exportaron a Marruecos, más que a Francia y solo por detrás de Estados Unidos. Así mismo, España es el primer socio comercial de Marruecos.

FIGURA 1
COMERCIO ENTRE ESPAÑA Y MARRUECOS

Fuente: Escribano, G., Sánchez Andrada, C., «Por la renovación del discurso hispano-marroquí», *Política Exterior,* 2015, Vol. 29, Nº 166.

Ambas partes, conscientes de esta realidad económica y de la evolución del comercio bilateral (ver FIGURA 1) demuestran su interés para intensificar la cooperación económica. De hecho, el único foro bilateral que se celebró es del sector económico y empresarial co-organizado por la Confederación Española de Organizaciones Empresariales (CEOE) y su homóloga marroquí la Confederación

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General de Empresas de Marruecos (CGEM). Es indicador de la importancia económica, empresarial y comercial valorada por ambas partes que se alejan cada vez más del concepto del «colchón de intereses» hacia una «competitividad compartida», «complementariedad dinámica», «mecanismos de anticipación» y «convergencia de preferencias"».

No obstante, a pesar de los esfuerzos de España y Marruecos para incentivar a los empresarios de invertir en Marruecos, siguen existiendo muchos prejuicios en torno a este aspecto. Muchos de los empresarios desconocen que Marruecos es un buen destino para negocios[6], gracias a la cercanía, la mano de obra barata, facilidades para la inversión, entre otros. Es importante también la percepción de la sociedad española sobre la economía marroquí; se desconoce que la principal exportación de Marruecos es de productos automovilísticos y electrónicos y no de productos agroalimentarios como se piensa como el tomate y las fresas.

En esta misma línea se firmó un programa de Acciones Conjuntas para 2015-2016 en materia de turismo que tiene como novedad la creación de un comité de seguimiento que debe dar cabida a una hoja de rutas invitando a la red turística de ambos países y entidades de turismo para trabajar en puntos concretos, poniendo en valor el "know how" que puede ser transferido de España como potencia turística internacional (primera potencia mundial en el índice de Competitividad Turística de Viajes y Turismo elaborado por *World Economic Forum* - WEF, segunda por ingresos y tercera por llegada de turistas) a Marruecos como una industria turística en pleno desarrollo (ocupa el puesto 62 en el ranking del índice de Competitividad Turística de viajes y Turismo de WEF que en 2013 ocupaba el puesto 71 de 140 países)[7]. Sin estas entidades no es posible poner en marcha estas acciones, además las actuaciones diseñadas deben tener en cuenta los intereses concretos de las empresas y de los profesionales que desarrollan sus actividades en el sector turístico, haciendo igualmente una labor de sensibilización de la importancia de la colaboración de estos dos países en su situación geoestratégica como destino turístico del sur de Europa.

2. COOPERACIÓN EN MATERIA DE SEGURIDAD: TERRORISMO E INMIGRACIÓN

El terrorismo fue un tema central de la XI RAN, los dos países mostraron su interés por la lucha contra el terrorismo a través del refuerzo de la cooperación en

[6] Desde nuestro punto de vista, no se debe olvidar que Marruecos aun le hace falta un largo camino para la mejoría de muchos sus servicios.

[7] Para más información consultar los *Reports* de WEF: <http://www.weforum.org/reports>.

esta materia y el apoyo mutuo para frenar este fenómeno como amenaza regional y mundial.

Actualmente la cooperación y la coordinación bilateral están en su auge. Entre 2014 y septiembre de 2015 los cuerpos de policía españoles y marroquíes participaron en nueve operaciones conjuntas de desmantelamiento de células terroristas. No obstante, entre España y Marruecos aún no existe un marco jurídico para la seguridad y para terrorismo que puede superar las legislaciones nacionales de ambos países[8].

Otro tema central de la RAN fue la inmigración irregular, cuestión que preocupa a ambas partes por los incidentes trágicos en el Mediterráneo. Cabe resaltar que la cooperación en este ámbito es excelente, sobre todo, después de la creación de las patrullas mixtas en 2004, el intercambio de agentes de enlace, el intercambio de información y la firma del Acuerdo bilateral de 2012 para la ceración de los Centros de Cooperación Policial Hispano-marroquíes para la prevención y la coordinación de la lucha contra la inmigración ilegal, entre otros. Para este fin el Gobierno español triplicó el gasto en la cooperación policial con Marruecos para incrementar el control de la frontera sur. En 2012 se destinaron 33.637 euros a la cooperación en vigilancia de fronteras y en 2014 llegó a 108.733 euros.

No obstante, este año ha marcado un número muy elevado de tragedias marítimas, de intentos de cruzar las fronteras y de entrada de inmigrantes ilegales.

Por otra parte, Marruecos en 2013 lanzó la política migratoria de regularización de la situación de los inmigrantes ilegales, aunque recibió fuertes críticas, no hay que negar su importancia para regularizar la situación de un número considerable de inmigrantes ilegales en Marruecos.

Esta regularización excepcional ha marcado una etapa importante en la reforma de la política migratoria de Marruecos que pudo regularizar la situación de aproximadamente 18.000 personas, de distintas nacionalidades, la mayoría de ellas son senegaleses y sirios. No obstante, el 9 de febrero de 2015 el Ministro de Interior marroquí anunció el fin de esta regularización aunque la *Commission nacionale de suivi et recours* no ha iniciado el examen de las solicitudes rechazadas por las autoridades

[8] Reinares, F., García-Calvo, C., «Cooperación antiterrorista entre España y Marruecos» [en línea] Madrid: Real Instituto Elcano, 2015, accesible en, <http://www.realinstitutoelcano.org/wps/portal/web/rielcano_es/contenido?WCM_GLOBAL_CONTEXT=/elcano/elcano_es/zonas_es/terrorismo+internacional/ari18-2015-reinares-garciacalvo-cooperacion-antiterrorista-entre-espana-y-marruecos#.VhlC3VeZjY5>.

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marroquíes[9]. Esta comisión fue creada en 2014 y constituida por representantes del ministerio del Interior, de Asuntos Exteriores y de la Cooperación, de marroquíes residentes en el Extranjero y de Asuntos Migratorios y del ministerio de Empleo y Asuntos Sociales, junto a la Delegación Interministerial de Derechos Humanos y actores asociativos. Tiene como objetivo el seguimiento y la vigilancia de la operación de regularización, la presentación de proposiciones para mejorar la puesta en marcha de la operación y también el acompañamiento de inmigrantes que depositan sus expedientes[10]. Por otra parte, la detención masiva de más de 800 inmigrantes ilegales en el monte de Gurugú cerca de Melilla dio un paso para atrás a esta política migratoria.

Se examinó también la posibilidad de negociar un acuerdo de reciprocidad sobre la participación de nacionales en las elecciones locales, cabe destacar que habitan en territorio español más de 770.000 marroquíes que no pudieron participar en las elecciones por falta del acuerdo de reciprocidad, aunque las constituciones de ambos países lo permiten pero sin ese acuerdo no se puede llevar a cabo ese ejercicio.

3. COOPERACIÓN EDUCATIVA Y CULTURAL

España y Marruecos se esfuerzan para fomentar la cooperación educativa y cultural, que desde nuestro punto de vista es un ámbito muy importante para romper los prejuicios que tiene cada sociedad sobre la otra, cuestión que ayuda a mejor entendimiento entre estas dos sociedades.

El español en Marruecos es una lengua relevante, tiene un carácter generacional cada vez más reducido, sobre todo en el norte, –gracias a factores geográficos e históricos– donde se conserva entre la población de mayor de edad[11], frente a una población joven influenciada por la cultura y lengua inglesa y francesa en aumento. Por eso, España fomenta el estudio de la lengua española a través de sus instituciones, proporcionando herramientas favorables, con el apoyo del Gobierno marroquí. Esta cooperación se fomenta a través de la Consejería de Educación de la Embajada de España que se encarga, entre otros, de incrementar las actuaciones en materia

[9] Fédération Internationale des ligues des droits de l'Homme, « Maroc : Entre rafles et régularisations, bilan d'une politique migratoire indécise » [en línea]. 2015, accesible en <https://www.fidh.org/IMG/pdf/rapport_maroc_migration_fr.pdf>.

[10] *Ibídem*.

[11] Ministerio de Educación, Cultura y Deporte. *El mundo estudia español*. [En línea]. 2014. Disponible en: <http://www.mecd.gob.es/dctm/redele/Material-RedEle/el-mundo-estudia-espanol/el-mundo-estudia-espanol2014.pdf?documentId=0901e72b81c71bd2>.

de educación, gestionando la red de los centros de titularidad española que hay en Marruecos. Cabe, señalar que Marruecos es el país que cuenta con mayor número de centros de titularidad española en el mundo: once de veintidós[12]. El Instituto Cervantes, juega un papel importante para difundir el español en el ámbito no educativo. Según las estadísticas del Informe *El mundo estudia español* del Ministerio de Educación, Cultura y Deporte de 2014, hay cinco millones de hispanohablantes en Marruecos, lo que incentiva a ambas partes a seguir colaborando en esta materia. En la XI RAN los dos países han convenido en fomentar la enseñanza del idioma español en los centros escolares de Marruecos. Cabe señalar, además, que el español se estudia a partir de secundaria como lengua opcional.

Por otra parte, España se comprometió a poner en marcha el Proyecto de bachillerato marroquí internacional de opción Español. Se han congratulado por los avances realizados en la aplicación del Programa de Enseñanza de la Lengua Árabe y Cultura Marroquí (LACM) en España que se enmarca en el Convenio Hispano-Marroquí de Cooperación Cultural firmado entre ambas partes en 1980[13], y el cual permite al alumnado marroquí aprender árabe en centros educativos de Educación primaria y secundaria.

No, obstante, en la práctica estos esfuerzos no tienen resultados tangibles según lo demuestra el Barómetro de la imagen de España (BIE) 5ª oleada elaborado por el Observatorio de la Imagen de España del Instituto Elcano[14]. Es un estudio basado en cuestionarios a 400 personas de diez países que se supone que tienen fuertes relaciones bilaterales con España o que son emergentes de especial interés estratégico para España. Es importante señalar que para esta Oleada, a diferencia de la anterior, Marruecos fue elegido como país de estudio, lo que demuestra su importancia para España.

Concretamente en la materia de cooperación educativa y cultural si vemos los resultados que aparecen la FIGURA 2, comprobamos que todavía no hay una evolución importante. Solo el 15% de los encuestados ha estudiado español y es el porcentaje más bajo[15] después de Argelia. En el gráfico siguiente 48,1% no entiende

[12] *Ibídem.*

[13] Valle Gálvez, A. del, Torrejón Rodríguez, J. D. (Eds.), *op. cit.*, pp

[14] Real Instituto Elcano. *5ª Oleada Barómetro Imagen de España.* [En línea]. Diciembre 2014 - enero 2015, accesible en, <http://www.realinstitutoelcano.org/wps/portal/web/rielcano_es/encuesta?WCM_GLOBAL_CONTEXT=/elcano/elcano_es/observatoriomarcaespana/estudios/resultados/barometro-imagen-espana-5>.

[15] Hay que tomar en cuenta que se identifica la región de los 400 encuestados, subrayando que en

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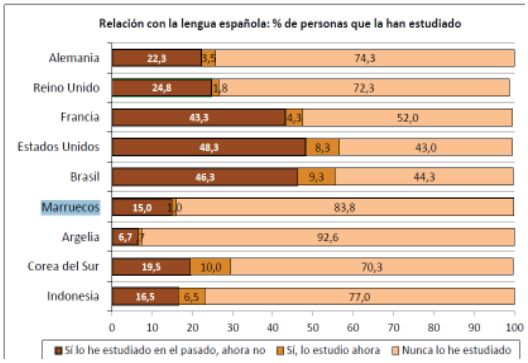
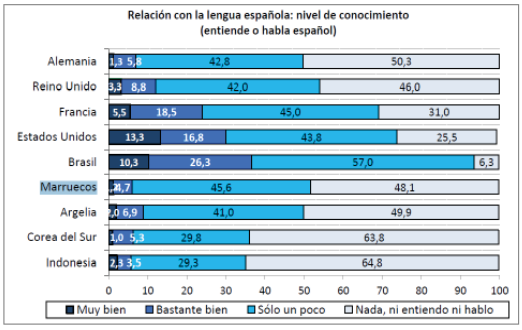
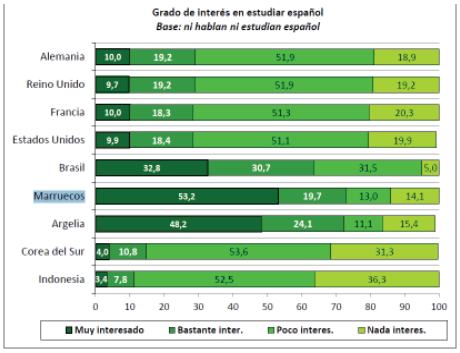
FIGURA 2
ESTUDIO DEL ESPAÑOL EN EL MUNDO







Fuente: REAL INSTITUTO ELCANO. 5ª Oleada Barómetro Imagen de España. Diciembre 2014 - enero 2015.

nada ni habla español. No obstante, resulta llamativo el interés de los encuestados de aprender español y es el porcentaje más alto de los 10 países con un 53,2% muy interesados; 19,2% bastante interesados; un solo 13% poco interesados; y nada más de 14, 1% nada interesado.

Por otra parte, podemos ver un aspecto muy importante que se trató en este estudio y es sobre las relaciones de España con Marruecos, hay un porcentaje de 16% de los entrevistados que opinan que las relaciones de España y Marruecos son malas o muy malas. Es el peor porcentaje de los 10 países, no obstante, 69,9% de los entrevistados piensan que es muy importante mantener buenas relaciones, es el porcentaje más alto. Esto demuestra que los encuestados no están satisfechos con los resultados de las relaciones, aunque piensan que son necesarias.

V. CONSIDERACIONES FINALES

Las relaciones hispano-marroquíes están marcadas por su mejor momento de entendimiento a pesar de los tradicionales conflictos, -como Ceuta y Melilla, el Sáhara- que ambas partes intentan mantener al margen. Ambas partes ven cada vez más la necesidad de cooperar y colaborar de una manera más práctica. Estas relaciones empezaron a regularizarse con el Tratado de Buena Vecindad, Amistad y Cooperación que entró en vigor en 1994 y que puso en marcha las Reuniones de Alto Nivel que se celebraron XI hasta la actualidad. Estas RAN han ido evolucionando ampliando la agenda de actuación, además han permitido y permiten a los dos Estados y a sus dirigentes a poner en marcha iniciativas necesarias para el mejor entendimiento, cercanía y cooperación entre las dos Partes.

No obstante, este nuevo pragmatismo tiene que estar acompañado de una política concreta que tiene que alejase del concepto de "colchón de intereses" y concentrarse más en competitividad compartida. Por otra parte, hay que trabajar sobre la imagen de Marruecos e incentivar a los inversores para penetrar el mercado marroquí que en muchos ámbitos es todavía muy fértil.

En cuanto a la seguridad, ambas partes tienen que ser más conscientes del riesgo de las amenazas como el terrorismo y la inmigración irregular y tienen que tomar medidas suficientes, trabajando codo a codo para evitar cualquier catástrofe que puede amenazar a la paz interna de ambas partes.

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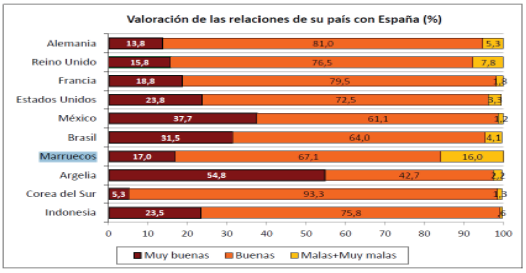
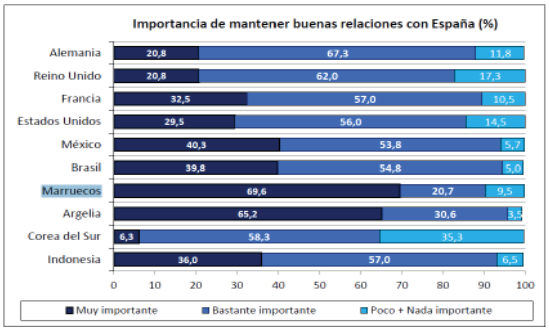
el Norte de Marruecos el español se habla y se estudia más que en el Sur gracias a factores históricos y geográficos.

Paix et Securité Internationales
ISSN 2341-0868, Num. 3, janvier-décembre 2015, pp. 227-237

FIGURA 3
PERCEPCIÓN DE LAS RELACIONES DE TERCEROS PAÍSES CON ESPAÑA





Fuente: REAL INSTITUTO ELCANO. 5ª Oleada Barómetro Imagen de España. Diciembre 2014 - enero 2015.

En materia de la cooperación educativa y cultural hay que hacer más esfuerzos para fomentar el español en Marruecos como herramienta esencial para afianzar los lazos culturales y humanos entre ambas sociedades, cabe resaltar que los conocimientos del español se reducen en las nuevas generaciones.

Por otra parte, los resultados del Informe realizado por el Instituto Elcano son insatisfactorios, aunque en realidad no pueden presentar una verdad absoluta porque fueron solo 400 encuestados en Marruecos sobre la imagen de España, no obstante, hay que tomarlos en consideración.

XI Reunión de Alto Nivel España-Marruecos
Madrid, 5 de junio de 2015
Declaración conjunta

En el marco de la aplicación del Tratado de Amistad, Buena Vecindad y Cooperación entre el Reino de España y el Reino de Marruecos, por invitación de D. Mariano Rajoy, Presidente del Gobierno del Reino de España, D. Abdel-Ilah Benkiran, Jefe de Gobierno del Reino de Marruecos, ha efectuado una visita oficial a Madrid el 5 de junio de 2015, encabezando una importante delegación ministerial, para copresidir los trabajos de la XI Reunión de Alto Nivel hispano-marroquí.

Durante esta visita, el Jefe de Gobierno marroquí fue recibido en audiencia por su Majestad el Rey Felipe VI.

La Reunión de Alto Nivel, que se ha desarrollado en un clima de amistad, aprecio y confianza, ha permitido confirmar el alcance estratégico de nuestra asociación bilateral y reafirmar la ambición común de ambos países de construir una alianza innovadora y a la vanguardia de la asociación euromediterránea.

Ambos países han mostrado su satisfacción por la relación de amistad y estima entre Sus Majestades los Reyes Felipe VI y Mohammed VI, que ya se había manifestado en toda su amplitud durante las visitas oficiales a Marruecos de Su Majestad el Rey Juan Carlos I en julio de 2013 y de su Majestad el Rey Felipe VI el julio de 2014.

Partiendo de tan sólida base, ambos países han convenido en promover nuevas iniciativas conjuntas, con el fin de reforzar el diálogo político bilateral, consolidar su alianza económica y afianzar aún más las actividades de cooperación entre las entidades territoriales, así como los lazos culturales y humanos que unen a la sociedad civil de los dos países.

Diálogo político

España ha reiterado su enorme aprecio por la dinámica de reforma, de apertura y de progreso que ha emprendido Marruecos bajo la égida de Su Majestad el Rey Mohammed VI. España también alaba el modelo democrático marroquí, singular en la región, que se articula en torno a la tolerancia, la apertura y la libertad.

Los dos países se congratulan por el fortalecimiento de las relaciones entre sus instituciones legislativas, plasmado en la celebración en Rabat del tercer Foro

Parlamentario en enero de 2015, tras los celebrados en Madrid en 2013 y Rabat en 2012.

También han destacado el incremento de las visitas recíprocas de periodistas españoles y marroquíes y líderes de opinión de ambos países, así como la repercusión positiva de tales iniciativas para lograr una mejor percepción de la evolución política, económica y social experimentada por los dos países, superándose de esta forma los viejos clichés y estereotipos.

En este mismo sentido, los dos países se felicitan de la encomiable labor desarrollada en el marco del Comité Averroes y se han comprometido a emprender una reflexión conjunta para impulsar el diálogo entre ambas sociedades civiles. Se ha planteado la posibilidad de constituir dos fundaciones.

En cuanto a los retos diplomáticos, Marruecos y España han renovado su compromiso de edificar un espacio euromediterráneo fuerte y solidario y mantener una relación ambiciosa entre África y Europa.

En este sentido, España y Marruecos han reiterado la necesidad de impulsar la Unión del Magreb Árabe como opción geopolítica ineludible.

En lo relativo a la cuestión del Sáhara Occidental, las dos partes se felicitan por la adopción en abril 2015 de la resolución 2218 del Consejo de Seguridad de las Naciones Unidas. En este contexto, España saluda los esfuerzos serios y creíbles de Marruecos. Del mismo modo, las dos partes han recordado la importancia de la reanudación de las negociaciones sobre bases sólidas, de conformidad con las resoluciones y los parámetros claramente definidos por el Consejo de Seguridad y han subrayado el espíritu de compromiso y de realismo para llegar a una solución política de consenso y mutuamente aceptable.

Las dos partes han reconocido que una solución de este contencioso de larga duración y el refuerzo de la cooperación entre los estados miembros de la Unión del Magreb Árabe contribuirá a la estabilidad y a la seguridad en la región.

En relación con Libia, España y Marruecos han subrayado la necesidad de encontrar una solución política en el marco de la mediación que lleva a cabo el Sr. Bernardino León, Representante Especial del Secretario General de las Naciones Unidas. España muestra su satisfacción por la iniciativa emprendida por Marruecos de acoger el diálogo inter-libio.

Por lo que se refiere al Mediterráneo, Marruecos y España se han comprometido a impulsar el diálogo UE-UMA (Unión del Magreb Árabe), así como la iniciativa

5+5, cuya reunión periódica de Ministros de Asuntos Exteriores se celebrará próximamente en Marruecos. Del mismo modo, y recordando el XX aniversario en 2015 de la declaración de Barcelona, los dos países han confirmado su compromiso a favor de la Unión por el Mediterráneo, como marco idóneo para forjar una alianza fuerte y solidaria entre ambas orillas. En este contexto, las dos partes se felicitan del lanzamiento de la Universidad euro-mediterránea de Fez.

En cuanto a la Política Europea de Vecindad, Marruecos celebra la loable iniciativa de España, que organizó en abril de 2015 en Barcelona en la sede de la UpM una reunión de Ministros de Asuntos Exteriores de la UE con sus homólogos de los países de la Vecindad Sur, con el fin de reflexionar sobre el futuro de esta política. Los dos países han abogado por configurar una nueva PEV que aplique en particular el concepto de diferenciación.

En este mismo espíritu, España ha reiterado su apoyo a una aplicación óptima del Estatuto Avanzado del que goza Marruecos ante la Unión Europea. Ambas partes celebran el progreso alcanzado en este ámbito, en especial en materia de la Asociación de Movilidad, la cooperación transfronteriza (Atlántico Medio) y el Plan de Acción 2013-2017 sobre convergencia reglamentaria. Ambos países recuerdan la importancia de concluir un Acuerdo para una Zona de Libre Comercio Amplia (ALECA) entre la UE y Marruecos, que debe integrar en especial las dimensiones de "desarrollo" y "acompañamiento". Las dos partes subrayan igualmente su voluntad de reforzar la cooperación conjunta en materia de proyectos de hermanamiento institucional en el marco de la asociación Marruecos-UE.

Con respecto a África, ambas partes han manifestado su aspiración común a favor del desarrollo y la estabilidad del continente africano. Desde esta óptica, Marruecos y España, como centros logísticos entre ambos continentes, han decidido examinar todas las oportunidades que surjan en el marco de la alianza entre África y la UE, sobre todo en materia de conexiones logísticas.

España se congratula por la presencia de Marruecos, en calidad de observador asociado, en las Cumbres Iberoamericanas, testimonio de la fuerza y vigor de las afinidades culturales entre Marruecos y el espacio iberoamericano.

Las dos partes han constatado con satisfacción que la iniciativa hispano-marroquí de mediación en el Mediterráneo evoluciona positivamente y consolida la posición de ambas como agentes de paz y promotores de la estabilidad en la zona.

En el marco del diálogo intercultural e interreligioso, ambos países se han

comprometido a reforzar su colaboración para la preparación del próximo Foro de la Alianza de las Civilizaciones, que se celebrará en Azerbaiyán en 2016, y han subrayado la utilidad de esta iniciativa en pro de la tolerancia y el respeto entre las culturas y religiones. Han saludado la iniciativa de España de organizar una reunión de representantes de la sociedad civil sobre el diálogo intercultural e interreligioso en Barcelona el 23 de julio.

Los dos países han puesto de manifiesto la importancia que conceden a la protección y el fomento de los derechos humanos en el ámbito de las Naciones Unidas y han examinado las iniciativas conjuntas que podrían emprender a este respecto.

En cuanto a la cuestión del cambio climático, Marruecos y España han subrayado la importancia de alcanzar, en la COP 21, prevista en París para diciembre de 2015, un acuerdo ambicioso sobre esta materia. España felicita a Marruecos por su decisión de acoger la COP 22 en 2016.

España felicita a Marruecos por haber sido elegido copresidente del Foro Mundial contra el Terrorismo y celebra su iniciativa de constituir en Nueva York un Grupo de Amigos de la Lucha contra el Terrorismo en el seno de las Naciones Unidas.

Por su parte, Marruecos aplaude que España organice, en julio de 2015 en Madrid, una sesión abierta del Comité contra el Terrorismo de las Naciones Unidas dedicada al fenómeno de los combatientes extranjeros.

A este respecto, España ha manifestado su apoyo a la estrategia de Marruecos en la lucha contra el terrorismo, centrada en reforzar la seguridad, promover el desarrollo económico incluyente y fomentar la tolerancia religiosa.

Ambas partes se congratulan, además, de su colaboración en materia de lucha contra el terrorismo nuclear y se comprometen a reforzar su cooperación por medio de acciones concretas, como el ejercicio de seguridad del transporte de material nuclear y radioactivo que ha tenido lugar este año junto al OIEA. Asimismo, se felicitan por la contribución de Marruecos y España como presidentes del Grupo de Trabajo (IGTN/NSS) en la preparación de un plan de acción que se adoptará en la próxima Cumbre de Seguridad Nuclear.

Asociación económica

España y Marruecos celebran la destacada evolución de su asociación económica y destacan, con satisfacción, la integración cada vez mayor de las cadenas

de producción de ambas economías. Con un crecimiento anual cercano al 15% de media en los últimos cinco años, los intercambios comerciales han experimentado un aumento notable. España es desde 2014 el primer socio comercial de Marruecos.

Ambas partes se han comprometido a favorecer un marco económico que propicie un mayor número de intercambios comerciales, flujos de inversión y empresas conjuntas, especialmente en los sectores emergentes, tales como las energías renovables, el automovilístico, el agroalimentario y el gas natural licuado.

Ambas partes subrayan la importancia de la cooperación entre las instancias gubernamentales, así como la implicación de los agentes económicos para mejorar la gestión de las cuestiones relacionadas con las inversiones y el comercio bilateral.

En este contexto, acuerdan fortalecer su alianza en el sector del automóvil, a través del intercambio de experiencias.

En el ámbito digital, ambas partes han destacado la importancia de promover buenas prácticas en materia de administración electrónica.

En cuanto a la investigación científica y tecnológica, las dos partes se felicitan por el trabajo conjunto de los investigadores españoles y marroquíes tras la firma de un memorando de entendimiento general en Rabat el 21 de septiembre de 2014.

Además, se felicitan de la regularidad de la cooperación financiera bilateral, fruto del memorando de entendimiento suscrito en diciembre de 2008, que ha permitido financiar la implantación de un sistema informático de gestión del plan de transporte y de circulación de los trenes del Reino de Marruecos por 4'3M€ y la puesta en servicio de las instalaciones de seguridad y de señalización en la estación de Casa Port por 3'3M€ en beneficio de la ONCF. Además, esta cooperación permitirá financiar el proyecto de señalización de la línea ferroviaria Casa-Tánger Med de 73'8M€ en beneficio de la ONCF y el proyecto de abastecimiento en agua potable por bombeo solar de 6'59M€ en beneficio de la ONEE.

España y Marruecos expresan su voluntad de continuar la cooperación en materia de energética, especialmente en el marco de la creación de las plataformas de cooperación mediterránea sobre gas natural, energías renovables y eficiencia energética.

En lo relativo a las interconexiones eléctricas, las dos partes se han comprometido a continuar los contactos en el grupo de trabajo que deberá celebrar su segunda reunión en breve en Rabat. España ha recordado la importancia del grado de utilización y del aumento de las interconexiones entre España y el resto de Europa.

En el ámbito turístico, ambas partes han manifestado su satisfacción por la consecución íntegra del programa de acción firmado en 2012 y acuerdan celebrar uno nuevo para el periodo 2015-2016 que se centrará, en concreto, en la promoción turística, las estadísticas y la formación.

En definitiva, ambos gobiernos saludan la celebración del Encuentro Empresarial Hispano-Marroquí, celebrado este mismo día en Madrid e instan a los agentes económicos a consolidar sus relaciones comerciales y las operaciones de inversión directa.

Ambos han manifestado su deseo de promocionar el Consejo Empresarial Hispano-Marroquí como foro de concertación empresarial.

Las dos partes se han felicitado por el acuerdo recientemente alcanzado por las dos administraciones fiscales competentes sobre la interpretación conjunta del artículo 12 del Acuerdo para evitar la doble imposición, que dotará a los operadores económicos de mayor seguridad jurídica.

Cooperación en materia de agricultura, pesca, medio ambiente y agua

Ambas partes han convenido en reforzar el diálogo entre los profesionales de ambos países y establecer un plan de acción de cooperación y transferencia tecnológica en los ámbitos de la agricultura y la ganadería.

En materia de agua, las dos partes saludan la adopción de dos declaraciones de intenciones, una relativa a la evaluación, planificación, gestión y protección de los recursos hídricos y otra relativa a la cooperación entre la Agencia de la Cuenca Hidráulica del Loukkos, en Marruecos, y la Confederación Hidrográfica del Segura, en España. Asimismo, se congratulan de la adopción de la Estrategia del Agua del Mediterráneo Occidental en el marco de una iniciativa 5+5.

El acuerdo de pesca entre la UE y Marruecos ha permitido retomar las actividades pesqueras de la flota española, lo que es prueba de la consolidación de las relaciones de cooperación en la materia entre ambos países.

Infraestructura y transportes

España y Marruecos se felicitan de la labor realizada en el ámbito de las infraestructuras y transportes encaminada a mejorar las conexiones entre ambos países, y saludan, la firma de una declaración de intenciones en el ámbito de los transportes e infraestructuras de transporte.

De la misma manera, los dos países alaban el esfuerzo realizado en el marco del Grupo de los Ministros de Transporte del Mediterráneo Occidental (GTMO 5+5).

Ambas partes han ratificado su interés en lograr la ejecución óptima del acuerdo relativo al transporte internacional por carretera de viajeros y mercancías, firmado en 2012, que hace especial hincapié en los contingentes y los tipos de autorización a estos efectos.

En el ámbito del transporte ferroviario, han manifestado su interés en actualizar el convenio de colaboración vigente entre la ONCF, ADIF y RENFE.

España y Marruecos se comprometen, asimismo, a mantener la cooperación en materia de salvamento y control del tráfico marítimo, así como la coordinación entre los centros de Tarifa y Tánger.

Ambas partes han manifestado su voluntad de contribuir a crear la marca Estrecho de Gibraltar en el sector portuario, con el fin de fortalecer su papel fundamental en el trasporte marítimo internacional.

En materia de seguridad aérea, ambas partes han reafirmado su voluntad de colaborar con las autoridades de la UE con el objetivo de desplegar los sistemas de navegación por satélite EGNOS y Galileo en el África septentrional.

En el campo de la logística, la parte marroquí ha expresado el deseo de desarrollar con España un marco de cooperación para el desarrollo de zonas logísticas de formación especializadas en actividades logísticas y en estructuración de la logística urbana.

Ambos países se congratulan de la mejora de las conexiones aéreas y marítimas entre Marruecos y las Islas Canarias.

En lo que se refiere al proyecto de enlace fijo a través del Estrecho de Gibraltar, ambas partes se congratulan por el nombramiento de los miembros del Comité Conjunto y han instado a que se celebre la 43ª reunión del mismo antes de que finalice el año 2015.

Migración y empleo

España saluda la nueva política migratoria de Marruecos lanzada en septiembre de 2013, en la que destaca en particular la operación excepcional de regularización de emigrantes en situación irregular y su inserción en el tejido económico y social del país. España continuará apoyando los esfuerzos de Marruecos conducentes a la puesta en marcha de su nueva política migratoria.

Igualmente, los dos países se han declarado muy preocupados por la recurrencia de los trágicos incidentes sucedidos en el Mediterráneo. En este sentido, manifiestan su compromiso de reforzar aún más su colaboración en la lucha contra la inmigración irregular, la trata de seres humanos y las redes criminales de traficantes y recuerdan su colaboración con la OIM en el programa de retorno voluntario de inmigrantes a sus países de procedencia.

Asimismo, han subrayado la completa coincidencia de sus puntos de vista en el seno de diversos foros multilaterales, señalando en particular el Proceso de Rabat, del que fueron promotores en 2006.

En cuanto a la comunidad marroquí establecida en España, las dos partes han examinado la manera de favorecer su contribución al acercamiento y al crecimiento económico de ambos países así como a relanzar su papel de dinamizador de los intercambios humanos y económicos.

Los dos países consideran necesario establecer una gestión global, armoniosa y eficaz de las migraciones. En este mismo espíritu, la integración de los inmigrantes y de sus familias constituye un reto y al mismo tiempo una oportunidad para ambos países. Los trabajadores temporales y estacionales recibirán una atención especial. Las dos partes han reconocido la importancia de gestionar de manera flexible y apropiada las cuestiones relacionadas con el reagrupamiento familiar en conformidad con su respectiva legislación nacional.

Marruecos y España han examinado la posibilidad de negociar un acuerdo de reciprocidad sobre la participación de los nacionales de ambos países en las elecciones municipales.

Ambas partes se han congratulado del éxito de la Operación paso del Estrecho - Marhaba, que se desarrolla en condiciones satisfactorias cada estación estival y que constituye un modelo de cooperación norte-sur en materia de circulación de personas.

Las dos partes se felicitaron por la excelente cooperación en materia de protección civil y de gestión de crisis.

España y Marruecos han expresado su voluntad de colaborar en la prevención y gestión de riesgos laborales y en el refuerzo de las capacidades institucionales en este campo y han acordado desarrollar su cooperación en materia del estatuto de los trabajadores autónomos.

Asimismo, España está dispuesta a colaborar con la Agencia nacional marroquí

de promoción del empleo y de competencias (ANAPEC) en lo relativo a la formación para el empleo.

Seguridad y justicia

Ambos país se han congratulado por la ejemplar cooperación en materia de seguridad, que presenta un balance extremadamente positivo, gracias a la confianza mutua y la estrecha colaboración entre los servicios de seguridad. Han celebrado los resultados obtenidos en la lucha contra el terrorismo, el tráfico de estupefacientes y la inmigración clandestina.

En relación con la lucha contra el tráfico de estupefacientes, ambas partes han convenido reforzar y continuar la colaboración eficaz en materia de lucha contra el tráfico de estupefacientes por las vías terrestre, marítima y aérea a través del estrecho de Gibraltar, subrayando la eficacia del Plan Telos, que constituye un modelo de coordinación de estrategias de vigilancia de fronteras y de lucha contra el tráfico de estupefacientes por vía aérea.

Ambas partes han instado a que se celebren las reuniones de las comisiones mixtas previstas en los convenios bilaterales en materia de justicia civil y penal y a que se retome la actividad del equipo conjunto encargado de la evaluación de los convenios bilaterales.

Cooperación al desarrollo y cuestiones sociales

España y Marruecos se felicitaron por la firma, en junio de 2014, del marco de asociación país (2014-2016) por un monto total de 150 millones de Euros, 50 millones de subvenciones de la administración central, las CCAA, los entes locales y las universidades y 100 de préstamos concesionales u otras modalidades de crédito.

España y Marruecos han celebrado la firma en junio de 2014 del Marco de Asociación País y han manifestado su voluntad de dar un nuevo impulso a la puesta en marcha del Programa «ADL» II en materia de justicia.

Asimismo, en el marco del proceso de regionalización avanzada emprendido por Marruecos, España ha comunicado su interés en apoyar el desarrollo de las capacidades de la administración local marroquí, reforzando su colaboración con la Dirección General de entidades locales del Ministerio del Interior.

Ambas partes han expresado su deseo de incrementar su colaboración en los campos de la educación no formal y de la formación profesional. En este sentido,

la parte española ha sugerido la integración de la Escuela Taller de Tetuán en la red marroquí de centros de formación y aprendizaje.

En el campo de la salud, la cooperación española se ha comprometido a apoyar la creación de un modelo de sanidad primaria en Marruecos y la formación de especialistas en medicina familiar y comunitaria. Ambas partes han señalado con satisfacción el apoyo de la cooperación española al plan de reducción de la mortalidad materna e infantil puesto en marcha por el gobierno marroquí.

En general, ambas partes han celebrado la contribución del Programa Masar al fortalecimiento de las capacidades de la sociedad civil marroquí.

Ambas partes se han comprometido también a continuar colaborando en el ámbito de la protección de la infancia, la familia y la igualdad y han celebrado la firma de una declaración de intenciones sobre estas materias.

Cooperación educativa, cultural y en materia de comunicación

Ambas partes han convenido en reforzar aún más su cooperación en los ámbitos de la educación, la enseñanza superior y la investigación, la cultura y la comunicación.

Se han congratulado por los avances realizados en la aplicación del Programa de Enseñanza de la Lengua Árabe y Cultura Marroquí (LACM) en España, tomando como ejemplo el éxito de la experiencia de España en materia de enseñanza de la lengua y la cultura españolas a los niños de la comunidad española en el extranjero. La parte española se ha comprometido a introducir la enseñanza de la lengua árabe y de la historia y geografía marroquí en los centros escolares españoles en Marruecos.

Asimismo, los dos países han convenido en fomentar la enseñanza del idioma español en los centros escolares de Marruecos. A estos efectos, la parte española ha manifestado su voluntad de colaborar en la puesta en marcha del proyecto de bachillerato marroquí internacional opción «español», emprendido por el ministerio de Educación Nacional y de la Formación Profesional.

Ambas partes reconocieron la importancia de que Marruecos empiece a examinar las peticiones de homologación solicitadas por los titulados del Instituto "Juan de la Cierva" de Tetuán con el fin de homologar los distintos niveles de formación profesional en vigor en España y en Marruecos, después de la publicación de los textos realizada por Marruecos a este respecto. También se comprometieron a estudiar la posibilidad de generalizar el reconocimiento de títulos emitidos por dicho instituto relativos a las distintas especialidades que reúnan los requisitos necesarios.

Ambas partes han convenido en reforzar su asociación en el campo de la enseñanza superior y de la investigación científica a través de nuevos programas de cooperación interuniversitarios y del fomento de la cultura árabe y española en las instituciones de enseñanza superior de los dos países.

En el plano cultural, se han congratulado de las acciones realizadas, en particular en los ámbitos de las artes plásticas, del teatro, las bibliotecas, los archivos y el patrimonio. En este aspecto, se han comprometido a fomentar el intercambio de buenas prácticas, de profesionales de industrias culturales y de jóvenes artistas, a colaborar en materia de lucha contra la piratería cultural y las falsificaciones y a reforzar la cooperación en materia de investigación, restauración y gestión y puesta en valor del patrimonio cultural de los dos países.

Ambas Partes han manifestado su satisfacción por la reciente publicación, en edición bilingüe en español y árabe, del informe sobre la lengua española en Marruecos.

En materia de comunicación, han acordado reforzar aún más su cooperación en el ámbito de lo audiovisual y de las profesiones relacionadas con el mismo, del cine, de la prensa escrita, de la formación y de los derechos de autor.

Ampliación del marco jurídico

Ambas partes se congratulan por la ampliación del marco jurídico que regula sus relaciones bilaterales de cooperación mediante la firma de los siguientes documentos:

- Declaración conjunta de intenciones en relación con los recursos hídricos.
- Declaración conjunta de intenciones para la cooperación entre la Agencia de la cuenca del Loukkos y la Confederación Hidrográfica del Segura.
- Declaración conjunta de intenciones en el campo de desarrollo social.
- Declaración conjunta de intenciones sobre cooperación judicial.
- Declaración conjunta de intenciones sobre transporte.
- Programa Turismo 2015-2016.

Ambas partes han acordado hacer un seguimiento a nivel de los dos jefes de Gobierno y de los Ministerios de Asuntos Exteriores y de Cooperación.

Ambas partes han decidido celebrar su próxima reunión de alto nivel en Marruecos en la fecha que se concretará posteriormente.

11ÈME RHN MAROC - ESPAGNE
MADRID, 5 JUIN 2015
DÉCLARATION CONJOINTE

Dans le cadre de la mise en oeuvre du Traité d'Amitié, de Bon Voisinage et de Coopération entre le Royaume d'Espagne et le Royaume du Maroc, et à l'invitation de M. Mariano Rajoy, Président du Gouvernement du Royaume d'Espagne, M. Abdel-Ilah Benkiran, Chef du Gouvernement du Royaume du Maroc, a effectué une visite officielle à Madrid le 5 juin 2015, à la tête d'une importante délégation ministérielle, pour co-présider les travaux de la XIème Réunion de Haut Niveau hispano-marocaine.

Durant cette visite, le Chef du Gouvernement marocain a été reçu en audience par Sa Majesté le Roi Felipe VI.

La Réunion de Haut Niveau, qui s'est déroulée dans un climat d'amitié, d'estime et de confiance, a permis de conforter la portée stratégique du partenariat bilatéral et de réaffirmer l'ambition commune des deux pays à bâtir un partenariat novateur et qui soit à l'avant-garde du partenariat euro-méditerranéen.

Les deux parties se sont particulièrement félicitées, à cette occasion, de la relation d'estime et de grande considération entre Sa Majesté le Roi Felipe VI et Sa Majesté le Roi Mohammed VI, comme cela a été célébré à l'occasion des visites officielles au Maroc de Sa Majesté le Roi Juan Carlos I en juillet 2013 et de Sa Majesté le Roi Felipe VI en juillet 2014.

Forts de ces atouts, les deux pays ont convenu de promouvoir de nouvelles initiatives conjointes, dans l'objectif de renforcer le dialogue politique bilatéral, de consolider le partenariat économique et de raffermir encore davantage les actions de coopération entre les entités territoriales, ainsi que les liens culturels et humains entre leurs deux sociétés civiles.

Dialogue politique

L'Espagne a réitéré, à cette occasion, sa grande appréciation pour la dynamique de réforme, d'ouverture et de progrès que le Maroc mène sous la conduite de Sa Majesté le Roi Mohammed VI. Elle a également salué le modèle démocratique marocain, singulier dans la région, qui s'articule sur l'ouverture, la tolérance et la liberté.

Les deux parties ont également salué le renforcement des relations entre les institutions législatives des deux pays, à travers la tenue du 3ème Forum Parlementaire à Rabat en janvier 2015, après les sessions de Madrid en 2013 et Rabat en 2012.

Elles ont également noté, avec appréciation, l'accroissement des visites échangées entre les journalistes marocains et espagnols et les leaders d'opinion des deux pays et l'impact positif de telles initiatives sur une meilleure perception des évolutions politiques, économiques et sociétales que vit chacun des deux pays et à dépasser, ce faisant, les vieux clichés et les messages stéréotypés.

Dans le même sens, les deux parties se sont félicitées du travail remarquable accompli dans le cadre du Comité Averroès et se sont engagées à lancer une réflexion conjointe en vue d'insuffler un nouvel élan au dialogue entre les sociétés civiles des deux pays. L'idée de mettre en place deux fondations avait été évoquée.

Concernant les enjeux diplomatiques, le Maroc et l'Espagne ont renouvelé leur engagement en faveur de l'édification d'un espace euro-méditerranéen fort et solidaire et à la mise en oeuvre d'une relation ambitieuse entre l'Afrique et l'Europe.

Dans ce cadre, l'Espagne et le Maroc ont réitéré la nécessité de relancer l'Union du Maghreb Arabe, en tant que choix géopolitique inéluctable.

En ce qui concerne la question du Sahara Occidental, les deux parties se félicitent de l'adoption, en avril 2015, de la résolution 2218 du Conseil de Sécurité des Nations Unies. Dans ce contexte, l'Espagne salue les efforts sérieux et crédibles du Maroc. Egalement, les deux parties ont rappelé l'importance de la reprise des négociations sur des bases solides, conformément aux résolutions et aux paramètres clairement définis par le Conseil de sécurité, et ont mis l'accent sur l'esprit de compromis et de réalisme pour arriver à une solution politique consensuelle et mutuellement acceptable.

Les deux parties ont reconnu qu'une solution de ce contentieux de longue date et le renforcement de la coopération entre les Etats membres de l'Union du Maghreb arabe contribueront à la stabilité et à la sécurité dans la région.

S'agissant de la Libye, l'Espagne et le Maroc ont souligné la nécessité de trouver une solution politique dans le cadre de la médiation conduite par le Représentant spécial du Secrétaire général des Nations unies, M. Bernardino Leon. L'Espagne s'est félicitée de l'initiative prise par le Maroc d'abriter le dialogue inter-libyen.

A l'échelle de la Méditerranée, le Maroc et l'Espagne se sont engagés à relancer le Dialogue UE-UMA, ainsi que l'Initiative 5+5, dont la réunion périodique des

Ministres des Affaires Etrangères se tiendra prochainement au Maroc. Egalement, rappelant le XX anniversaire en 2015 de la Déclaration de Barcelone, les deux parties ont renouvelé leur plein engagement en faveur de l'Union pour la Méditerranée, en tant que cadre idoine pour un partenariat fort et solidaire entre les deux rives de la Méditerranée. Dans ce contexto, les deux parties se félicitent du lancement de l'Université euro-méditerranéenne de Fès.

Concernant la Politique Européenne de Voisinage, le Maroc s'est félicité de la louable initiative de l'Espagne qui avait abrité, à Barcelone au siège de l'UpM en avril 2015, une réunion des Ministres des Affaires Etrangères de l'UE avec leurs homologues des pays du Voisinage Sud, pour lancer une réflexion sur le devenir de cette Politique. Les deux parties ont plaidé en faveur d'une nouvelle PEV qui mettrait notamment en oeuvre le concept de la différenciation.

Dans le même esprit, l'Espagne a réitéré son engagement en faveur d'une mise en oeuvre optimale du Statut Avancé, dont jouit le Maroc auprès de l'Union européenne. Les deux parties se sont félicitées des avancées réalisées dans ce domaine, notamment le Partenariat Mobilité, la coopération transfrontalière (Mid Atlantique) et le Plan d'Action 2013-2017 relatif à la convergence réglementaire. Elles ont rappelé l'importance de conclure un ALECA UE-Maroc qui intégrera notamment les dimensions 'développement' et 'accompagnement'. Les deux parties soulignent également leur volonté de renforcer la coopération conjointe en matière de projets de jumelage institutionnel dans le cadre du partenariat Maroc-UE.

Concernant l'Afrique, les deux parties ont marqué leur commune ambition en faveur du développement et de la stabilité du continent africain. Dans cette perspective, le Maroc et l'Espagne, en tant que hubs logistiques entre les deux continents, ont convenu d'explorer toutes les opportunités ouvertes dans le cadre du partenariat Afrique-UE, notamment en matière de connectivité logistique.

L'Espagne s'est félicitée de la présence du Maroc en qualité d'observateur associé lors des Sommets Ibéro-Américains, ce qui témoigne de la force et de la vigueur des affinités culturelles et linguistiques entre le Maroc et l'espace ibéro américain.

Les deux parties ont constaté, avec satisfaction, que l'Initiative Hispano-marocaine de Médiation en Méditerranée, évolue positivement et renforce leur position comme des acteurs de paix et des promoteurs de la stabilité en Méditerranée.

Dans le cadre du dialogue interculturel et interreligieux, elles se sont engagées à renforcer leur concertation en vue de la préparation du prochain Forum de l'Alliance

des Civilisations, prévu en Azerbaïdjan en 2016, et ont souligné l'utilité de cette initiative en faveur de la tolérance et du respect entre les cultures et les religions. Elles ont salué l'initiative de l'Espagne d'organiser une réunion des représentants de la société civile sur le dialogue interculturel et interreligieux à Barcelone le 23 juillet.

Elles ont également souligné l'importance qu'elles accordent à la protection et à la promotion des droits de l'homme au niveau du système des Nations Unies et ont examiné les initiatives conjointes qu'ils pourraient mener dans ce sens.

Concernant la question du changement climatique, le Maroc et l'Espagne ont souligné l'importance de parvenir, lors de la COP 21, prévu à Paris en décembre 2015, à un accord ambitieux sur le changement climatique. L'Espagne a félicité le Maroc pour sa décision d'accueillir la COP 22 en 2016.

L'Espagne a félicité le Maroc pour son élection à la co-présidence du Forum Global contre le Terrorisme et a salué son initiative de mettre en place au sein des Nations Unies à New York d'un Groupe des Amis de la Lutte contre le Terrorisme.

De son côté, le Maroc a salué l'organisation par l'Espagne, en juillet 2015 à Madrid, d'une session ouverte du Comité Contre le Terrorisme des Nations Unies (CTC) dédiée au phénomène des Combattants Etrangers.

A cet égard, l'Espagne a exprimé son soutien à la stratégie du Maroc dans la lutte contre le terrorisme, laquelle articule renforcement de la sécurité, développement économique inclusif et promotion de la tolérance religieuse.

Les deux parties se sont, par ailleurs, réjouies de leur collaboration en matière de lutte contre le terrorisme nucléaire et se sont engagées à renforcer leur coopération à travers des actions concrètes, comme l'exercice sur le transport sûr des matières nucléaires et radioactives, qui a lieu cette année, en partenariat avec l'AIEA. De même, elles se sont félicitées de la contribution du Maroc et de l'Espagne en tant que Présidents du Groupe de Travail (IGTN/NSS), pour préparer un plan d'action qui sera adopté lors du prochain Sommet sur la Sécurité Nucléaire.

Partenariat économique

L'Espagne et le Maroc se sont félicités, à cette occasion, de l'évolution remarquable de leur partenariat économique et ont relevé, avec satisfaction, l'intégration de plus en plus grande entre les chaînes de valeur des deux économies. Avec une croissance annuelle moyenne de près de 15% au cours des cinq dernières années, les échanges commerciaux ont connu une augmentation remarquable. L'Espagne est, depuis

2014, le premier partenaire commercial du Maroc.

Les deux parties se sont engagées à favoriser l'émergence d'un cadre économique propice à plus d'échanges commerciaux, de flux d'investissement et de joint-ventures, particulièrement dans les secteurs émergents, tels que les énergies renouvelables, l'automobile, l'agro-alimentaire et le gaz naturel liquéfié.

Les deux parties ont souligné l'importance de la coopération entre les instances gouvernementales, ainsi que l'implication des opérateurs économiques, pour une meilleure gestion des dossiers liés aux investissements et au commerce bilatéral.

Dans ce cadre, elles sont convenues de renforcer leur partenariat dans le secteur automobile, à travers l'échange d'expériences.

Dans le domaine du numérique, les deux parties ont souligné l'importance de promouvoir les meilleurs pratiques en matière d'e-Gov.

Par rapport à la recherche scientifique et technologique, les deux parties se sont félicitées du travail conjoint des chercheurs espagnols et marocains suite à la signature d'un mémorandum d'entente général à Rabat le 21 septembre 2014.

Elles se sont, par ailleurs, félicitées de la régularité de la coopération financière bilatérale, mise en oeuvre par le mémorandum d'entente de décembre 2008 qui a permis le financement de l´implantation d´un Système Informatique de Gestion du Plan de Transport et de Circulation des Trains du Royaume du Maroc de 4,3 M€ et la mise en service des Installations de Sécurité et de Signalisation en Gare de Casa Port de 3,3 M€ au profit de l´ONCF. En plus, cette coopération permettra de financer le projet de signalisation de la ligne ferroviaire Casa- Tanger Med de 73,8M€ au profit de l´ONCF et le projet d'alimentation en eau potable par pompage solaire de 6,59 M€ au profit de l´ONEE.

L'Espagne et le Maroc expriment leur volonté de poursuivre la coopération dans le domaine de l'énergie, notamment dans le cadre de la création de plateformes de coopération méditerranéenne en matière de gaz naturel, d'énergies renouvelables et d'efficacité énergétique.

En ce qui concerne les interconnexions électriques, les deux parties se sont engagées à continuer leurs échanges à travers le groupe de travail qui devra tenir sa deuxième réunion incessamment à Rabat. L'Espagne a rappelé l'importance du degré d'utilisation et de l'augmentation du niveau d'interconnexion entre l'Espagne et le reste de l'Europe.

Dans le domaine touristique, les deux parties ont manifesté leur satisfaction après

la réalisation de la totalité du programme d'action signé en 2012 et ont convenu de conclure un nouveau programme pour la période 2015-2016, qui portera notamment sur la promotion touristique, les statistiques et la formation.

En définitive, les deux gouvernements se sont félicités de la « Rencontre Entrepreneuriale hispano-marocaine » réunie le même jour à Madrid, et ont appelé les opérateurs économiques à consolider leurs relations commerciales et les opérations d'investissements directs.

Elles ont exprimé leur souhait de promouvoir le Conseil d'affaires hispano-marocain en une instance de concertation entrepreneuriale.

Les deux parties se sont félicitées pour l'accord récemment atteint par les deux administrations fiscales compétentes sur l'interprétation conjointe de l'article 12 de l'Accord de non double imposition, qui permettra de doter les opérateurs économiques d'une plus grande sécurité juridique.

Coopération en matière d'agriculture, pêche, environnement et eau

Les deux parties ont convenu de renforcer le dialogue entre les professionnels des deux pays et d'établir un plan d'action de coopération et de transfert de technologie dans les domaines de l'agriculture et de l'élevage.

En matière d'eau, les deux parties se sont félicitées de la conclusion de deux déclarations d'intentions, l'une portant sur l'évaluation, la planification, la gestion et la protection des ressources en eau et l'autre sur la coopération entre l'agence du bassin hydraulique du Loukkos du Maroc et la confédération hydrographique de Segura d'Espagne. Ils se félicitent également de l'adoption de la Stratégie de l'Eau en Méditerranée Occidentale dans le cadre de l'initiative 5+5.

L´accord de pêche, entre l´UE et le Maroc a permis de reprendre les activités de pêche de la flotte espagnole, ce qui constitue la consolidation des relations de coopération en matière de pêche entre les deux pays.

Equipement et transports

L'Espagne et le Maroc se réjouissent des efforts réalisés dans le domaine des infrastructures et des transports visant à améliorer les connexions entre les deux pays et ont salué à cette occasion la signature d'une Déclaration d'intentions dans le domaine des Transports et des Infrastructures de Transport.

De même, les deux pays se sont félicités des efforts réalisés dans le cadre du

Groupe Transport de la Méditerranée Occidentale (GTMO 5+5).

Les deux parties ont réaffirmé leur intérêt pour une mise en oeuvre optimale de l'Accord sur le transport routier international de voyageurs et de marchandises, signé en 2012. L'accent y est particulièrement mis sur les quotas et les types d'autorisation pour le transport de voyageurs et de marchandises.

Dans le domaine du transport ferroviaire, elles ont relevé l'intérêt d'actualiser la Convention de collaboration existante entre l'ONCF, ADIF et RENFE.

L'Espagne et le Maroc se sont également engagés à poursuivre leur coopération en matière de sauvetage et de contrôle du trafic maritime ; ainsi que la coordination entre les centres de Tarifa et de Tanger.

Les deux parties manifestent leur volonté de contribuer à produire la marque Détroit de Gibraltar dans le secteur des ports, afin de renforcer son rôle-clé dans le transport maritime international.

En matière de sécurité aérienne, les deux parties ont réaffirmé leur volonté de collaborer avec les autorités de l'UE dans l'objectif d'étendre les systèmes de navigation par satellite EGNOS et Galileo en Afrique du Nord.

Dans le domaine de la logistique, la partie marocaine a émis le souhait de développer avec l'Espagne un cadre de coopération pour le développement des zones logistiques de formation spécifiques aux métiers de la logistique et à la structuration de la logistique urbaine.

Les deux pays se sont félicités de l'amélioration de la connectivité aérienne et maritime entre le Maroc et les îles Canaries.

En ce qui concerne le projet de liaison fixe à travers le Détroit de Gibraltar, les deux parties se sont félicitées de la désignation des membres du Comité Mixte et ont appelé à la tenue, avant que la fin 2015, de la 43éme réunion du Comité Mixte.

Migration et emploi

L'Espagne a salué la nouvelle politique migratoire lancée par le Maroc, en septembre 2013, marquée notamment par l'opération exceptionnelle de régularisation de migrants en situation irrégulière et leur insertion dans le tissu économique et social du pays. L'Espagne continuera à soutenir les efforts du Maroc visant à la mise en oeuvre de sa nouvelle politique migratoire.

Egalement, les deux pays se sont déclarés très préoccupés par la récurrence des incidents tragiques qui surviennent en Méditerranée. A cet égard, ils ont exprimé

leur engagement à renforcer encore davantage leur collaboration dans la lutte contre l'immigration irrégulière, la traite d'êtres humains et les réseaux criminels de trafiquants. Ils ont évoqué leur collaboration avec l'OIM dans le programme de retour volontaire des immigrés vers leurs pays d'origine.

De même, ils ont souligné la parfaite convergence de vues au sein de différents forums multilatéraux, en soulignant notamment le Processus de Rabat, dont ils étaient les promoteurs en 2006.

Concernant la communauté marocaine établie en Espagne, les deux parties ont examiné les possibilités visant à favoriser sa contribution au rapprochement et à la croissance économique des deux pays et à relancer son rôle comme dynamiseur des échanges humains et économiques.

Les deux pays considèrent nécessaire d'établir une gestion globale, harmonieuse et efficace des migrations. Dans le même esprit, l´intégration des migrants et de leurs familles est un enjeu et au même temps une opportunité pour les deux pays. Une attention particulière sera accordée aux travailleurs temporaires et saisonniers. Les deux parties ont reconnu l'importance de gérer de manière flexible et appropriée les questions liées au regroupement familial en conformité avec leur respective législation nationale.

Le Maroc et l'Espagne ont examiné la possibilité de négocier un accord de réciprocité sur la participation des ressortissants des deux pays aux élections municipales.

Les deux parties se sont félicitées de la réussite de l'Opération transit du Détroit - Marhaba, qui se déroule chaque saison estivale dans des conditions satisfaisantes et qui constitue un modèle de coopération Nord-Sud en matière de circulation de personnes.

Les deux pays se sont félicités de l'excellente coopération dans le domaine de la protection civile et la gestion de crises.

L'Espagne et le Maroc ont exprimé leur volonté de collaborer dans la prévention et la gestion des risques de travail et le renforcement des capacités institutionnelles dans ce domaine et ont convenu de développer leur coopération en matière de déploiement du statut de l'auto-entrepreneur.

De même, l´Espagne est prête à collaborer avec l'Agence nationale marocaine pour l'emploi et la concurrence (ANAPEC) dans le domaine de la formation pour l´emploi.

Sécurité et Justice

Les deux pays se sont félicités de la coopération exemplaire en matière de sécurité qui enregistre un bilan extrêmement positif, grâce à la confiance mutuelle et à l'étroite collaboration entre les services de sécurité. Ils se sont félicités des résultats obtenus en matière de lutte contre le terrorisme, le trafic de drogue et l'immigration clandestine.

Concernant la lutte contre le trafic de drogue, les deux parties ont convenu de renforcer et de poursuivre la collaboration efficace en matière de lutte contre le trafic de drogues, par voies terrestre, maritime et aérienne à travers le détroit de Gibraltar, soulignant l'efficacité du Plan Telos, qui constitue un modèle en matière de coordination des stratégies de surveillance des frontières et de lutte contre le trafic de drogue par voie aérienne.

Les deux parties ont appelé à la tenue des Commissions Mixtes prévues dans les Conventions bilatérales en matière de justice civile et pénale et de reprendre l'activité de l'équipe conjointe chargée de l'évaluation des Conventions bilatérales.

Coopération au développement et questions sociales

L'Espagne et le Maroc se sont félicités de la signature, en juin 2014, du Cadre Partenariat Pays (2014-2016) portant sur une enveloppe de 150 millions d´euros, dont 50 sous forme de dons de l'administration centrale, des communautés autonomes, des municipalités et des universités et 100 sous forme de prêts concessionnels et d'autres modalités de crédit.

Elles ont exprimé leur volonté de donner un nouvel élan à la mise en place du Programme « ADL » II en matière de Justice.

De même, dans le cadre du processus de régionalisation avancée mise en place par le Maroc, l'Espagne a fait part de son intérêt à soutenir le développement des capacités de l'Administration locale marocaine, en renforçant sa collaboration avec la Direction Générale des Collectivités Locales du Ministère de l'Intérieur.

Les deux parties ont exprimé leur souhait d'accroître leur collaboration dans les domaines de l'éducation non formelle et de la formation professionnelle. A cet égard, la partie espagnole a suggéré l'intégration de l'École-Atelier de Tétouan dans le réseau des centres marocains de Formation par l'Apprentissage.

Dans le domaine de la santé, la coopération espagnole s'est engagée à accompagner la création d'un modèle de santé primaire au Maroc et à soutenir la

formation de spécialistes en Médecine Familiale et Communautaire. Les deux parties ont noté avec satisfaction l'appui de la coopération espagnole au Plan de réduction de la mortalité maternelle et infantile mis en place par le Gouvernement marocain.

En règle générale, les deux parties ont salué la contribution du programme MASAR dans le renforcement des capacités de la société civile marocaine.

Les deux parties se sont également engagées à poursuivre leur collaboration en matière de Protection de l'enfance, de la famille, et de l'Egalité. Elles se sont réjouies de la signature d'une Déclaration d'Intention couvrant ces domaines.

Coopération éducative, culturelle et communication

Les deux parties ont convenu de renforcer davantage leur coopération dans les domaines de l'éducation, de l'enseignement supérieur et la recherche, de la culture et de la communication.

Elles se sont félicitées des progrès réalisés dans l'application du Programme d'Enseignement de la Langue Arabe et de la Culture Marocaine (LACM) en Espagne, tenant comme exemple l'expérience réussie de l'Espagne en matière d'Enseignement de la langue et de la culture espagnoles aux enfants issus de la communauté espagnole à l'étranger. La partie espagnole s'est engagée à introduire l'enseignement de la langue arabe et de l'Histoire-Géographie Marocaine dans les établissements scolaires espagnols au Maroc.

De même, les deux pays ont convenu d'encourager l'Enseignement de la langue espagnole dans les établissements scolaires du Maroc. A cet effet, la partie espagnole a exprimé sa volonté de collaborer à la mise en marche du projet de baccalauréat marocain international option « espagnol », entamé par le Ministère de l'Education Nationale et de la Formation Professionnelle.

Les deux parties ont reconnu l'importance qu´ils accordent à ce que le Maroc commence à examiner les demandes d'équivalence adressées par les lauréats du Lycée « Juan de la Cierva » de Tétouan en vue de leur octroyer l'équivalence par rapport aux différents niveaux de la formation professionnelle en vigueur au Maroc, et ce juste après la publication des textes pris par le Maroc à ce sujet. Ils se sont également engagés à étudier la possibilité de généraliser l'équivalence des diplômes délivrés par ledit institut concernant les nouvelles filières remplissant les exigences nécessaires.

Les deux parties ont convenu de renforcer leur partenariat dans le domaine de l'enseignement supérieur et de la recherche scientifique à travers de nouveaux

programmes de coopération interuniversitaires et le développement de la culture arabe et espagnole dans les établissements d'enseignement supérieur des deux pays.

Au niveau culturel, les deux parties se sont félicitées des actions réalisées, notamment dans les domaines des arts plastiques, du théâtre, du livre, des bibliothèques, des archives et du patrimoine. Elles se sont, à cet égard, engagées à encourager l'échange de bonnes pratiques, de professionnels des industries culturelles, de jeunes artistes; à collaborer en matière de lutte contre la piraterie culturelle et les falsifications et à renforcer la coopération en matière de recherche, de conservation, de restauration et de gestion et mise en valeur du Patrimoine Culturel des deux pays.

Les deux parties ont exprimé leur satisfaction pour la récente publication, en édition bilingue en espagnol et arabe, du rapport sur la langue espagnole au Maroc.

En matière de communication, les deux parties ont convenu de renforcer davantage la coopération dans les domaines de l'audiovisuel et des métiers de l'audiovisuel, du cinéma, de la presse écrite, de la formation et des droits d'auteur.

Elargissement du Cadre Juridique

Les deux parties se félicitent de l'élargissement du cadre juridique qui régit leurs relations bilatérales de coopération en signant les documents suivants :

- Déclaration conjointe d'intentions en matière d'Eau.
- Déclaration conjointe d'intentions pour la coopération entre l'Agence du Bassin du Loukkos et la Confédération Hydrographique du Segura.
- Déclaration conjointe d'intentions dans le domaine du développement social.
- Déclaration conjointe d'intentions sur la Coopération judiciaire.
- Déclaration conjointe d'intentions sur le Transport.
- Programme Tourisme 2015-2016.

Les deux parties ont convenu de réaliser un suivi au niveau des deux Chefs du Gouvernement et des Ministères des Affaires Etrangères et de la Coopération.

Les deux parties ont décidé de tenir leur prochaine Réunion de Haut Niveau au Maroc, à une date qui sera fixée ultérieurement.

11th Spain-Morocco High-Level Meeting
Madrid, 5 June 2015
Joint Declaration

Within the framework of the Treaty of Friendship, Good Neighbourliness and Cooperation between the Kingdom of Spain and the Kingdom of Morocco, and following an official invitation from Mr. Mariano Rajoy, President of the Government of the Kingdom of Spain, Mr. Abdelilah Benkirane, Head of Government of the Kingdom of Morocco, made an official visit to Madrid on 5 June 2015, together with an important delegation of ministers, for the purpose of jointly presiding over the work at the 11th High-Level Meeting between Spain and Morocco.

During the course of this visit, the Head of Government of Morocco was also received in audience by His Majesty King Felipe VI.

The High-Level Meeting, which took place within an atmosphere of friendship, mutual appreciation and trust, allowed the strategic scope of the bilateral partnership between Morocco and Spain to be confirmed and the ambition shared by the two countries to build an innovative and cutting-edge alliance within the Euro-Mediterranean region to be reaffirmed.

The two countries expressed their satisfaction at the friendly and respectful relations between Their Majesties King Felipe VI and Mohammed VI, which were likewise demonstrated during the official visits to Morocco by His Majesty King Juan Carlos I in July 2013 and His Majesty King Felipe VI in July 2014.

Based on such solid foundations, the two countries agreed to promote new joint initiatives aimed at strengthening bilateral political dialogue, consolidating their economic partnership and further supporting acts of cooperation between regional entities, as well as boosting the cultural and human ties that exist between civil society in the two countries.

Political Dialogue

Spain reiterated its enormous appreciation for the dynamic process of reform, openness and progress undertaken by Morocco under the aegis of His Majesty King Mohammed VI. Spain also praises the democratic model adopted by Morocco - the only one of its kind in the region - that is based on tolerance, openness and freedom.

The two countries welcome the strength of relations between their legislative

institutions; embodied in the 3rd Parliamentary Forum held in Rabat in January 2015, following those held in Madrid in 2013 and Rabat in 2012.

They also highlighted the increase in reciprocal visits by Spanish and Moroccan journalists and opinion leaders from the two countries, as well as the positive repercussions from such initiatives on obtaining a better perception of political, economic and social trends in the two countries, thereby overcoming old clichés and stereotypes.

In this regard, the two countries welcome the commendable work undertaken within the framework of the Averroes Committee and are committed to conducting a joint analysis aimed at fostering dialogue between civil society in the two countries. A proposal was made to create two foundations.

As regards the diplomatic challenges, Morocco and Spain renewed their commitment to building a strong Euro-Mediterranean space based on solidarity and maintaining ambitious relations between Africa and Europe.

In this regard, Spain and Morocco reiterated the need to promote the Arab Maghreb Union as an unavoidable geopolitical option.

As regards issues in the Western Sahara, the two countries welcome the adoption of Resolution 2218 of the United Nations Security Council in April 2015. Against this backdrop, Spain welcomes the serious and credible efforts being made by Morocco. Similarly, the two countries reiterated the importance of resuming negotiations based on solid foundations in accordance with the resolutions and parameters clearly defined by the Security Council, and underlined the spirit of commitment and realism targeted at reaching a mutually acceptable political solution based on consensus.

The two countries acknowledged that a solution to this lasting dispute and increased cooperation between the Member States of the Arab Maghreb Union will contribute to stability and security in the region.

As regards Libya, Spain and Morocco underlined the need to find a political solution through the mediation efforts being made by Mr. Bernardino León, Special Representative of the Secretary General of the United Nations. Spain welcomes the initiative launched by Morocco to host inter-Libyan dialogue.

As regards the Mediterranean, both Morocco and Spain are committed to promoting EU-AMU (Arab Maghreb Union) dialogue, as well as the 5+5 Initiative, the regular Foreign Affairs Ministers meeting of which will soon be held in Morocco.

Similarly, and in light of the 20th anniversary of the Barcelona Declaration in 2015, the two countries confirmed their commitment to the Union for the Mediterranean as the ideal framework for forging a strong alliance based on solidarity between the two shores of the Mediterranean. Within this context, the two countries welcome the launch of the Euro-Mediterranean University of Fez.

As regards the European Neighbourhood Policy, Morocco welcomes the commendable initiative by Spain to organise a meeting between EU Foreign Affairs Ministers and their counterparts from the Southern Neighbourhood countries at the Union for the Mediterranean headquarters in Barcelona in April 2015 to reflect on the future of this policy. The two countries called for the configuration of a new European Neighbourhood Policy; particularly one capable of applying the concept of differentiation.

In this same spirit, Spain reiterated its support for optimum application of the Advanced Status enjoyed by Morocco with the European Union. The two countries welcome the progress made in this regard, especially in terms of the Mobility Partnership, cross-border cooperation (Mid-Atlantic) and the Action Plan 2013-2017 on regulatory convergence. The two countries highlighted the importance of concluding an Agreement for a Comprehensive Free Trade Zone between the EU and Morocco, which should especially tackle such issues as "development" and "flanking". The two countries also highlighted their desire to strengthen joint cooperation on institutional twinning projects within the framework of the Morocco-EU partnership.

As regards Africa, the two countries expressed a joint aspiration in pursuit of development and stability in Africa. From this perspective, Morocco and Spain - as logistics centres between the two continents - decided to examine all opportunities arising from the alliance framework between Africa and the EU, especially in terms of logistics connections.

Spain welcomes the presence by Morocco as an observer partner at the Ibero-American Summits; a testament to the strength and vitality of cultural ties between Morocco and the Ibero-American space.

The two countries expressed satisfaction with the Spanish-Moroccan Initiative on Mediation in the Mediterranean and the positive development thereof as it consolidates the position of the two countries as agents for peace and promoters of stability in the region.

Within the framework of intercultural and interreligious dialogue, the two countries committed to strengthening their collaboration on preparing the next Forum of the Alliance of Civilizations, due to be held in Azerbaijan in 2016, and underlined the usefulness of this initiative in pursuit of tolerance and respect between cultures and religions. They welcomed the initiative by Spain to organise a meeting of representatives from civil society on intercultural and interreligious dialogue in Barcelona on 23 July.

The two countries highlighted the importance they assign to the protection and promotion of human rights within the scope of the United Nations and examined the joint initiatives they could launch in this regard.

As regards the matter of climate change, Morocco and Spain underlined the importance of reaching an ambitious agreement on this issue at the COP 21 due to be held in Paris in December 2015. Spain congratulates Morocco on its decision to host the COP 22 in 2016.

Spain congratulates Morocco on having been chosen as Joint Chair of the Global Counterterrorism Forum and welcomes its initiative to build a Group of Friends of the Fight against Terrorism within the scope of the United Nations in New York.

In turn, Morocco applauds Spain for its organisation in July 2015 in Madrid of an open session of the United Nations Counterterrorism Committee focusing on the phenomenon of foreign combatants.

In this regard, Spain expressed its support for the Moroccan counter-terrorism strategy, focusing on increased security, the promotion of inclusive economic development and fostering religious tolerance.

The two countries also welcome their collaboration in terms of the fight against nuclear terrorism and are committed to strengthening their cooperation through specific actions, such as the exercise on security during the transportation of nuclear and radioactive material that took place earlier this year alongside the IAEA. Furthermore, they welcome the contribution from Morocco and Spain as Chairs of the Task Force (IGTN/NSS) in drawing up an action plan that will be adopted at the next Nuclear Security Summit.

Economic Partnership

Spain and Morocco welcome the outstanding development of their economic partnership and express satisfaction with the increasingly better integration of

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production chains in the two economies. With average annual growth of close on 15% over the last five years, trade exchanges between the two countries have improved considerably. Spain has been Morocco's leading trade partner since 2014.

The two countries are committed to fostering an economic framework capable of leading to increased trade exchanges, investment flows and joint companies, especially in emerging sectors such as renewable energies, the automotive industry, the agri-food industry and liquefied natural gas.

The two countries underlined the importance of cooperation between government agencies, as well as involvement by economic stakeholders in improving the management of issues related to investment and bilateral trade.

Within this context, they agreed to strengthen their alliance in the automotive sector through an exchange of experiences.

As regards digital issues, the two countries highlighted the importance of promoting best practices in terms of e-Government.

As regards scientific and technological research, the two countries welcome the joint efforts being made by Spanish and Moroccan researchers since the signing of a general memorandum of understanding in Rabat on 21 September 2014.

Furthermore, they welcome the regular nature of bilateral financial cooperation stemming from the memorandum of understanding signed in December 2008, which has enabled finance to be provided to implementing a computerised management system for the railway transport and traffic plan of the Kingdom of Morocco worth 4.3 million euros and the opening of security and signalling installations at the Casa Port station worth 3.3 million euros for the ONCF. Furthermore, this cooperation will enable finance to be provided to the Casa-Tangier Med railway line signalling project worth 73.8 million euros for the ONCF and the solar-powered pump drinking water supply project worth 6.59 million euros for the ONEE.

Spain and Morocco expressed their desire to maintain cooperation in terms of energy, especially within the framework of creating Mediterranean cooperation platforms on natural gas, renewable energies and energy efficiency.

As regards electricity interconnections, the two countries are committed to maintaining contact through the task force due to hold its second meeting in Rabat shortly. Spain recalled the importance of using and increasing interconnections between Spain and the rest of Europe.

As regards tourism, the two countries expressed satisfaction with the full

implementation of the action programme signed in 2012 and agreed to launch a new programme for the period 2015-2016 specifically aimed at the promotion of tourism, statistics and training.

In short, the two governments welcome the Spain-Morocco Business Meeting that was also held today in Madrid and urge economic stakeholders to consolidate their trade relations and direct investment operations.

The two countries expressed their desire to promote the Spain-Morocco Business Council as a forum for future business agreements.

The two countries welcome the agreement reached recently by the two tax administration services responsible for the joint interpretation of Article 12 of the double taxation treaty, which will provide economic operators with greater legal certainty.

Cooperation on Agriculture, Fisheries, the Environment and Water

The two countries agreed to step up dialogue between professionals in both countries and establish an action plan on cooperation and technological transfer in the fields of agriculture and livestock-raising.

In terms of water, the two countries welcome the adoption of two statements of intent: one on the assessment, planning, management and protection of water resources and another on cooperation between the Loukkos River Authority in Morocco and the Segura River Authority in Spain. Furthermore, they welcomed the adoption of the Western Mediterranean Water Strategy within the framework of the 5+5 Initiative.

The fisheries agreement between the EU and Morocco has enabled the resumption of fishing activity by the Spanish fleet, demonstrating the consolidation of cooperation in this regard between the two countries.

Infrastructure and Transport

Spain and Morocco welcome the efforts made in the field of infrastructure and transport, aimed at improving connections between the two countries, and welcome the signing of a statement of intent on transport and transport infrastructures.

Similarly, the two countries praise the effort made within the framework of the Group of Western Mediterranean Transport Ministers (GTMO 5+5).

The two countries ratified their interest in achieving optimum implementation of the agreement on international passenger and freight transport by road that was

signed in 2012 and particularly focuses on the quotas and types of authorisation to this effect.

In the field of railway transport, they expressed their interest in updating the current partnership agreement between ONCF, ADIF and RENFE.

Spain and Morocco are also committed to maintaining cooperation in terms of maritime rescue and maritime traffic control, as well as coordination between the centres in Tarifa and Tangier.

The two countries expressed their interest in helping create a Strait of Gibraltar brand in the port sector with a view to strengthening its fundamental role in international maritime transport.

As regards aviation security, the two countries reaffirmed their desire to collaborate with EU authorities in order to deploy the EGNOS and Galileo satellite navigation systems in northern Africa.

In the field of logistics, Morocco expressed its interest in developing a framework of cooperation with Spain for the development of logistics training areas specialised in logistics activities and urban logistics structuring.

The two countries welcome the improved air and sea connections between Morocco and the Canary Islands.

As regards the project for a fixed link across the Strait of Gibraltar, the two countries welcome the appointment of members to the Joint Committee and called for the 43rd meeting thereof to be held before the end of 2015.

Migration and Employment

Spain welcomes the new migration policy implemented by Morocco in September 2013, and particularly highlights the exceptional illegal immigrant legalisation operation and their insertion into the economic and social fabric of the country. Spain will continue supporting the efforts made by Morocco towards implementing its new migration policy.

Similarly, the two countries have expressed deep concern over the recurrence of tragic incidents in the Mediterranean. In this regard, they expressed their commitment to further strengthen their collaboration in the fight against illegal immigration, people trafficking and criminal trafficking networks, and highlighted their collaboration with the IOM on the voluntary return programme for immigrants wishing to travel back to their countries of origin.

Furthermore, they underlined their full agreement within the framework of various multilateral forums, particularly highlighting the Rabat Process that they have been supporting since 2006.

As regards the Moroccan community residing in Spain, the two countries examined ways to boost their contribution to closer ties and economic growth in both countries, as well as ways to re-launch their role as a catalyst for human and economic exchanges.

The two countries believe it is necessary to establish global, harmonised and effective management of migration. In this same spirit, the integration of immigrants and their families represents a major challenge and significant opportunities for the two countries. Special attention will be paid to part-time and seasonal workers. The two countries recognised the importance of managing issues related to family reunification in a flexible and appropriate manner in accordance with the corresponding national legislation.

Morocco and Spain examined the possibility of negotiating a reciprocal agreement on participation by citizens from the two countries in municipal elections.

The two countries welcomed the success of Operation Crossing the Straits of Gibraltar - Marhaba, which takes place satisfactorily every summer and represents a model for north-south cooperation in terms of people movement.

The two countries welcome the excellent cooperation in terms of civil protection and crisis management.

Spain and Morocco expressed their desire to collaborate on work-related accident prevention and risk management, as well as on strengthening institutional capabilities in this regard, and agreed to develop their cooperation in terms of the self-employed workers' statute.

Furthermore, Spain is willing to collaborate with the Moroccan national employment and competitiveness agency (ANAPEC) on training for employment.

Security and Justice

The two countries welcomed the exemplary cooperation in terms of security and the extremely positive results in this regard thanks to mutual trust and close collaboration between the respective security services. They welcomed the results obtained in the fight against terrorism and drug trafficking, and clandestine immigration.

As regards the fight against drug trafficking, the two countries agreed to step up

and continue effective collaboration in terms of the fight against drug trafficking by land, sea and air across the Strait of Gibraltar, underlining the effectiveness of the Telos Plan, which constitutes a model for coordinating border control strategies and the fight against drug trafficking by air.

The two countries encouraged the mixed commissions set up under the bilateral agreements on civil and criminal justice issues to hold meetings and called for a resumption of activity by the joint team responsible for assessing the bilateral agreements.

Development Cooperation and Social Issues

Spain and Morocco welcome the signing of the Country Partnership Framework (2014-2016) in June 2014 for a total amount of 150 million euros - 50 million euros in subsidies from central government, the regional governments, local authorities and universities, and 100 million euros as concessional loans and other types of credit.

Spain and Morocco welcomed the signing in June 2014 of the Country Partnership Framework and expressed their desire to add new momentum to the efforts aimed at implementing the "ADL" II Programme on justice.

Furthermore, within the framework of the advanced regionalisation process undertaken by Morocco, Spain expressed its interest in supporting the development of capabilities within Moroccan local authorities by strengthening their collaboration with the Directorate-General of Local Authorities of the Ministry of Home Affairs.

The two countries expressed their desire to increase collaboration in the fields of non-formal education and professional training. In this regard, Spain suggested that the Tetuan Workshop School be integrated into the Moroccan network of training and learning centres.

In the field of health, the Spanish Agency for International Development Cooperation has committed to supporting the creation of a primary healthcare model in Morocco and to training specialists in family and community medicine. The two countries expressed satisfaction with the support from the Spanish Agency for International Development Cooperation for the plan to reduce maternal and infant mortality launched by the Government of Morocco.

Generally-speaking, the two countries welcomed the contribution made by the Masar Programme to strengthen capabilities within Moroccan civil society.

The two countries also committed to continued collaboration in the field of child protection, family affairs and equality, and welcomed the signing of a statement of intent on these issues.

Cooperation on Education, Culture and Communication

The two countries agreed to further strengthen their cooperation in terms of education, higher education and research, culture and communication.

They welcomed the progress made in applying the Arabic Language and Moroccan Culture Education Programme (Spanish acronym: LACM) in Spain, based on Spain's success in teaching Spanish language and culture to children in the Spanish community overseas. Spain committed to introducing Arabic and Moroccan history and geography into the syllabuses used at Spanish education centres in Morocco.

Furthermore, the two countries agreed to foster the teaching of Spanish language at education centres in Morocco. To this effect, Spain expressed its desire to collaborate on implementing the project undertaken by the National Education and Professional Training Ministry aimed at creating a "Spanish" option for the international Moroccan baccalaureate.

The two countries acknowledged the importance of Morocco starting to examine the official recognition requests being made by graduates from the "Juan de la Cierva" Institute in Tetuan in order for the various levels of vocational training currently in force in Spain and Morocco to be officially recognised following publication of the texts produced by Morocco in this regard. They also committed to studying the possibility of standardised recognition of qualifications issued by said institute regarding the various specialities if they meet the necessary requirements.

The two countries agreed to strengthen their relations in the field of higher education and scientific research through new inter-university cooperation programmes and programmes to foster Arab and Spanish culture at higher education centres in the two countries.

They also welcomed the steps taken in terms of culture, particularly the areas of visual arts, theatre, libraries, archives and heritage. In this regard, they committed to fostering the exchange of best practices, professionals from cultural industries and young artists, collaborating on the fight against cultural piracy and forgery, and strengthening cooperation in terms of research, restoration and the management

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and development of cultural heritage in the two countries.

The two countries expressed their satisfaction at the recent publication in bilingual Spanish-Arabic format of the report on the Spanish language in Morocco.

In terms of communication, they agreed to further strengthen their cooperation in terms of audio-visual activities and professionals working in this field, the cinema, written press, training and copyright.

Expansion of the Legal Framework

The two countries welcome the expansion of the legal framework governing bilateral cooperation relations by signing the following documents:

- Joint Statement of Intent on Water Resources
- Joint Statement of Intent on Cooperation between the Loukkos River Authority and the Segura River Authority
- Joint Statement of Intent on Social Development
- Joint Statement of Intent on Legal Cooperation
- Joint Statement of Intent on Transport
- Tourism Programme 2015-2016

The two countries agreed that the two Heads of Government and Foreign Affairs and Cooperation Ministers would follow-up on these issues.

The two countries decided to hold their next high-level meeting in Morocco at a date that will be confirmed subsequently.

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PAIX ET SÉCURITÉ INTERNATIONALES

03
2015

REVUE MAROCO–ESPAGNOLE DE DROIT INTERNATIONAL ET RELATIONS INTERNATIONALES
NOUVELLE SÉRIE - VERSION ÉLECTRONIQUE

SOMMAIRE / Janvier -Décembre 2015 / Nº 3

ÉTUDES

NOTES

DOCUMENTATION

Moroccan Association of International Relations and International Law MAIRIL
OEM Observatoire d'Etudes Méditerranéennes
CÁTEDRA JEAN MONNET INMIGRACIÓN Y FRONTERAS DERECHO DE LA UNIÓN EUROPEA
SERIE ESTUDIOS INTERNACIONALES Y EUROPEOS DE CÁDIZ
fueca fundación universidad-empresa de la provincia de cádiz