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Interview with Professor Luis Tome

Future of NATO: Significant Insights from 2021Meeting of NATO Ministries of Foreign Affairs

by Dr Rahman Dag

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"ADVANCING DIVERSITY"

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World News

By Ebru Birinci

Coronavirus Update

By mid-March, the coronavirus death toll passed 2.7 million, and total cases increased to 123 million. Already it has been more than one year since the

emergence of the first coronavirus case in Wuhan, China. Many governments have already begun to vaccinate their citizens, starting from the elderly and those having severe health conditions. The vaccination policies vary due to particular reasons. In Russia, where the earliest coronavirus vaccine, Sputnik-V, was approved, everybody can get vaccination upon request, yet only around 4 million people, less than 3% of the Russian population, are vaccinated. In Israel, on the other hand, all Israelis over age 14 could have coronavirus vaccination. About 4.5 millions of 9.8 million of the total Israeli population have received two doses of vaccine. One of the leading vaccine exporters, the European Union, is experiencing a vaccine crisis because of the insufficient supply within its territories.

The EU has taken a step to prevent the inequality in vaccine supply among wealthy and poorer member states and accepted a vaccine-purchasing strategy. However, discontent increased when the UK, where the government ordered the AstraZeneca's Covid-19 vaccine to complete the British order before sending vaccines abroad, was faster than the EU in vaccination. The US prepares to use the Defense Production Act (DPA), giving the federal government broad authority, which would be used to accelerate vaccine production and distribution. Using the DPA, the American government can authorize the halt of export of US-made vaccines.

The Crypto-Currency Age Begins

The 2008 financial crisis changed the financial market irreversibly, and one of the most important events that followed the crisis was the invention of a decentralized cryptocurrency, "Bitcoin."

The coronavirus pandemic has fundamentally influenced the financial markets, raising the bitcoin and other crypto currencies' popularities as investment assets or immediate payment tools. The increased inflation, skyrocketed prices of real estate properties, technological developments accelerated by the lock-down-driven increased need have undergirded an ample investment flow to cryptocurrencies, notably Bitcoin.

In 2020 March, Bitcoin could not avoid the downfall that several markets and national currencies have experienced; its price dropped to $4,100 from around $9,000. Nevertheless, the global financial picture that the coronavirus pandemic created brought about more interest in cryptocurrencies.

In December 2020, Bitcoin broke its $19,700 record of 2017 and hit $20,000. Its 2020 performance boosted the interests not only from the individuals but also institutions and international companies.

Undoubtedly, TESLA's $1.5 billion cost Bitcoin purchase in early February 2021 has been among the most significant moves that triggered the last surge. On February 21, 2021, Bitcoin hit $58,300, reaching over the $1 trillion market cap, yet dropped to $42,000 in the following two weeks. While many Bitcoin supporters argue that this kind of drop is natural corrections and bitcoin will eventually keep its race upwards, this volatility in its prices delivers ground for its critics, including national central banks and several financial institutions. Besides, critics over the high consumption of electricity in crypto-mining, accusations over bitcoin usage for illegal actions, and taxation problems are other points that increase concerns.

On the other hand, money laundering is not a new phenomenon that emerged in the crypto market. It has long been a global financial system problem, enabling private transactions that cannot be tracked down.

The introduction of cryptocurrencies into the global financial market brought about many questions, many conflicts among the old economic order rule-makers and revisionist players of the current financial order. These tensions are prone to have a global effect financially, which has to be carefully examined for comprehending the current implications of the financial market's crypto-globalization.

The investors in the crypto market also consider the country where the coins are mined before they invest. For example, the American investors, who suffered from Chinese regulations, do not want to invest in cryptocurrencies mined in China.

The expanding volume of the crypto market can also make it a potential arena for the ongoing American-Chinese economic war.

Looking for JCPOA?

Since Joe Biden, who promised to undo Donald Trump's foreign policy decisions during the election campaign, has come into power, he has taken many steps in this direction. However, the JCPOA, from which Donald Trump withdrew the US, does not seem to be an easy foreign policy

strategy. Biden seems to be willing to back the nuclear deal with Iran. Jake Sullivan, current national security advisor, and Bill Burns, the CIA director, were involved in negotiations with Iran for the nuclear deal. However, Iranian-American relations changed dramatically since Trump's accession to power. The Iranian side decided to enrich uranium, which was called off by JCPOA, following the US's withdrawal from the agreement. Biden stipulates that Iran must fully comply with the agreement and stop its nuclear activities before the US can rejoin the agreement. Nevertheless, the US was the first one that left the agreement. Thus it is expected that the US should return to the agreement before Iran makes the next step to reconstruct a common understanding.

Furthermore, another argument voiced in the US for making a new deal with Iran is to avoid previous mistakes, which are assumed to have rendered Iran a more aggressive actor in the region. The US recently expressed that it would welcome an invitation to talks. As for Iran, it urges the US to end the economic sanctions against Iran "instead of sophistry & putting the onus on Iran." Iranian supreme leader Khamanei endorsed this argument in his Persian New Year speech on March 21, calling on the US and the allies to lift all sanctions before Iran returns to full compliance with the agreement.

Power Politics Endangers Cooperation against Climate Change

As governments successively promise to reduce their carbon emissions and achieve carbon neutrality in the coming decades, international collaboration gains more importance than ever. After Biden acceded to power in the US, China has been at the centre of climate concerns since it is the biggest energy consumer globally, as Biden has already begun to draw more attention to China's activities. However, China's energy consumption and greenhouse gas

emission are not the only climate-related concerns in the West. China's leading role in the renewable energy sector, especially in solar energy, the fastest-growing energy source- is raising security concerns in the West. The role of state-linked Huawei as one of the largest suppliers of solar inverters has been disturbing in the West for the energy security concerns since 2019.

In 2019, eleven US senators wrote a letter to the US Energy secretary to ban the sale of all Huawei solar panels in the US. On the other hand, in Europe, following the news about the Chinese solar industry's use of forced labor, it is argued that the cost of fighting climate change should not be human rights. Given that the solar power panels, one of the most important green energy sources, planted in the European Union are mostly produced in China's Xinjiang region, where China is accused of violating the human rights of Muslim minorities.

Although these concerns are valid enough, competitive approaches at military and economic levels in world politics would slow down the international cooperation to transition to a global green economy.

The Military Coup in Myanmar

People in Myanmar, who experienced the development of democratic institutions to some extent for about ten years, have experienced a backward step with the military coup on February 1, 2021. Aung San Suu Kyi, the most popular political leader, is in detention, and thousands are protesting the new military rule, which is set to continue for a year. The unrest and killings since the coup turned to an ethnic conflict between the army led by the major ethnic group and other ethnicities.

In November 2020, the NLD, under the leadership of Aung San Suu Kyi, who won the Nobel Peace Prize for her efforts against the 50 years-long military rule, won more than 80% of the vote in the elections. Although the majority assuredly supports NLD, the election was not entirely free and fair, as some regions could not vote at all. Hence the military argued that there was fraud in the election. The commander in chief Min Aung Hlaing gave the coup order. The Myanmar military has 25% of seats in Parliament, and it is deeply involved in the economy and politics, acting as an authority over the government. However, Aung San Suu Kyi, jeopardizing her image among human rights defenders, did not criticize the crackdown on the Rohingya where the Muslim minority lives. The crackdown was said to be a counterterrorism offensive.

However, the international community named it a genocide campaign. Hence, it is not so clear why the military needed to stage this coup.

The possible scenarios are an attempt in the government for political reform and Min Aung Hlaing's effort to become president after his retirement and eliminate potential enforcements for his criminal acts during his service.

Navalny Sentenced After His Return to Russia

Alexei Navalny, the most influential opposition leader in Russia, got arrested immediately after returning to Russia from Germany on January 17, 2021, 5 months after his poisoning by a nerve agent. He called Russians to meet him at the airport on his arrival. Many ran to the airport to meet him, and millions watched his arrival online.

Navalny's detention during passport control and later detention for violating the probation conditions of his suspended sentence from the 2014 conviction, thousands protested Kremlin on the streets. The imprisonment and police response to the protesters brought international criticism to Kremlin. Russia regards Western support to Navalny and criticism towards Kremlin as meddling in its domestic affairs. The EU has decided to impose additional sanctions to already existing sanctions because of Navalny's poisoning. The EU-Russia relations continue to worsen, although there is not a single attitude in Europe towards Russia. The EU foreign affairs chief Joseph Borrell visited Russia right after Navalny's arrest, yet it did not help the relations. Furthermore, Russian foreign minister Lavrov's call the EU an "unreliable partner" during the press conference caused more reaction from the European side both to Russia and Borrell.

Armenia Facing Government Crisis

Armenia's governmental crisis has only deepened after the Armenian forces' defeat in the war with Azerbaijan. Since then, prime minister Pashinyan has faced harsh criticism from the public, and thousands protested Pashinyan and called for his resignation. The failure to deploy Russian Iskander missiles during the war with Azerbaijan acts as a tension between the army and the government.

A political opponent of Pashinyan criticized him for this failure. Finally, on February 25, the Armenian military leadership called Pashinyan to resign. Instead of resigning, Pashinyan wanted to dismiss the Armenian army leader. However, Pashinyan seems to be politically isolated, given that the Armenian president sides with the army against Pashinyan. The civil opposition alliance continues to operate against Pashinyan and is demanding early elections from the Armenian President Armen Sarkisyan. Although Pashinyan has lost his popularity and criticized by a significant number of Armenians, the army's call for his resignation is considered a coup attempt by many analysts. Pashinyan supporters are, on the other hand, come to the street to support him and civilian power, as said Pashinyan.

The Libyan Unity Government Formed

The Libyan Parliament endorsed the government of national unity, which would replace the UN-backed Government of National Accord (GNA), based in Tripoli.

The UN-initiated national unity government has an interim authority until the presidential and legislative elections are held on December 24, 2021. The last election was held in 2014 and caused the current division in the country. The talks between Khalifa Haftar forces and the Sarraj government developed more following Haftar's defeat in June 2020.

The international community welcomed the national unity government's formation and saw it as an outstanding opportunity to end the decade-long civil war and achieve stability and prosperity in Libya. Abdul Hamid Debeibeh, the prime minister of the unity government, received support from Egypt, which backed Haftar against the Tripoli forces. This constructive atmosphere echoed in the relations of regional rivals like Turkey, Egypt, Qatar, Saudi Arabia, and the UAE.

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A Discussion on the Regulation of Violence in International Relations

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The problems of regulation in international relations (IR) have been discussed in foundational studies, such as those of N. Machiavelli, G. Grotius, F. Suarez, T. Hobbes, C. Montesquieu, I. Kant. Montesquieu, exploring the spirit of the law, asked about the regulators operating in areas higher than the laws of the state, about "the relations of justice that preceded the positive law that established them."[1] In the XX and XXI centuries, this topic was developed more intensively in political philosophy (K. Schmitt, J. Maritain, J. Rawls, A. S. Panarin, F. Fukuyama), political science, and sociology of international relations (R. Aron, N. Luhmann, I. Wallerstein, H. Bull, P. A. Tsygankov, A. Etzioni).

The purpose of the article is to substantiate the significance of the *hierarchy* of regulators of violence by identifying the main regulation formats. From the standpoint of functional and system analysis, the authors examine the optimality of the hierarchy format established by the great powers to develop other formats: international law and world politics. This facilitates the emergence of a paradigmatic explanation of the "load-bearing structures" of IR, in which the regulators of violence are formatted.[2]

To put it in N. Luhmann's terms, the desire to use selective agreements between states (authoritative collective agreements) to limit contingencies (withdrawals from agreements, violation of agreements) leads to an understanding of the possibilities of interaction between power balances and hierarchy. A hierarchical system of IR regulators has been emerging. Many IR concepts are based on the regulation of violence, expressed through "balance of power," "restrictions on the resort to force," "mutually balancing coalitions," "restrictions on concentrated power," "binding institutions"[3], "levelling vulnerability"[4]. But balances do not abolish hierarchies; they can be thoroughly combined with the latter, integrating into hierarchical structures at such levels of regulation of the balance of forces:

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[1] *Aron R.* Etapy razvitiya sotsiologicheskoy mysli (Main Currents in Sociological Thought). M.: Progress, 1993. p. 65. [In Russian]

[2] Gibridizatsiya mirovoy i vneshney politiki v svete sotsiologii mezhdunarodnykh otnosheniy (Hybridization of world and foreign policy in the light of the sociology of international relations) Ed. P. A. Tsygankov. M.: Goryachaya liniya-Telekom, 2017. p. 19. [In Russian]

[3] *Inkenberry J.* After Victory. After Victory: Institutions, Strategic Restraint, and the Rebuilding of Order after Major Wars. Princeton, NJ, 2001. P. 24.

[4] *Kirton J.* Model' upravleniya «Gruppoy dvadtsati» (G20 governance model). Vestnik mezhdunarodnykh organizatsiy. 2013. No. 3. p. 5–30. [In Russian]

1) "agreements of the great powers";
2) lower the level of "conventions of international law";
3) even lower is the level of "bilateral and multilateral agreements of other states" (world politics).

The research hypothesis is as follows: it is precisely this hierarchy that can act as a guarantee of a relatively stable state of the IR. Moreover, inner hierarchies are possible within these levels. For example, at the first level, a hierarchical superstructure, “the balance of forces of nuclear superpowers” appeared; at the third level, there are hierarchical dependencies: regional powers - satellite states - "falling" states - unrecognized states.

We consider "load-bearing structures" (formats) of regulation as subordinate subsystems of the hierarchy in the IR. The hierarchy of regulatory formats allows them to complement and insure each other, although they differ in terms of the modes of selective agreements and restrictions on contingencies. Of particular importance is the supreme power format of regulation, which we conditionally call "authoritative agreements of powers." For Hobbes, "the international sphere was ... the sphere of purely political relations between sovereigns: having no natural-eternal law above themselves, states formed a new order of regulated war."[5] Control was exercised by a limited circle of rulers. The world order, according to S. Shakhalilov, is "rules established by the victors"[6], which refers us to examples of authoritative selective agreements (the Westphalian Peace, the "Concert of European Powers", the Yalta-Potsdam Order), as well as examples of contingencies, for example, within the framework of the Versailles-Washington peace and the Washington-Malta world order after the Cold War.”

An essential role in the stability of the Yalta-Potsdam world order was played by the balances of the "authoritative agreements of the great powers" format (mostly the nuclear parity of the superpowers), which stimulated the coordination of national and common interests in world politics with the help of international legal acts. The confrontation and interaction between NATO and the Warsaw Pact, bilateral agreements between the US and the USSR maintained the balance of power between the superpowers and their alliances. And this made it possible to preserve the hierarchy of formats as an acceptable "framework" for the functioning of international law and world politics. The doctrines of "detente" and "shuttle diplomacy" by G. Kissinger, the theory of G. Tunkin about "peaceful coexistence of two world systems" helped to reduce the severity of the confrontation between the USA and the USSR.

The balances of power are the result of authoritative selective agreements that contain contingents. This led to the establishment of rules, primarily by the most potent powers (superpowers), based on the applied violence

[5] *Filippov A.F.* Sotsiologiya i kosmos. Suverenitet gosudarstva i suverennost' sotsial'nogo (Sociology and space. State sovereignty and social sovereignty). Sotsiologos. 1. M., 1991. p. 263. [In Russian]
[6] *Shahalilov S. S.* Mirovoy poryadok: problemy transformatsii (World Order: Problems of Transformation). Mezhdunarodnaya zhizn'.. 2016. No. 9. P. 113. [In Russian]

results and the capacities of "deferred" violence. This ensured the formation of normative structures that quickly emerged concerning situations and were more stable than other formats (agreements of powers, or "world order").

The Peace of Westphalia gave actual examples of the "world order" as a setting for authoritative selective reconciliation, establishing the status of sovereign states and their mutual responsibility for maintaining peace and regulating wars. The Congress of Vienna refined the authoritative selective negotiation system provided by treaties and delayed violence from the five powers. The Crimean War shook this format; nevertheless, it survived.

The Treaty of Versailles, conversely, undermined the "spirit of Westphalia," increasing anarchy, destroying the system of "deferred violence" in Europe. D. Lloyd George wrote in 1923: "Only one thing can be said with certainty about these treaties: they will plunge the cause of the European world into an even more precarious and unstable position. A world plucked out by triumphant force from a defeated enemy is never a good world."[7] It was not possible to establish a hierarchy of formats for regulating violence since the "world order" format (authoritative selective agreements) was disavowed by the contradictory actions of the USA, Great Britain, and France. At the level of the "world order," the balance of powers was demolished, the collective security system turned out to be not authoritative, the functioning of the "international law" format was undermined, and the national egoism of states was curbed in the "world politics" format. The Yalta-Potsdam world order as a whole restored the principles of Westphalia until the end of the 1980s.

After World War II, international relations were well-organized with coalitions of states that took into account changing national interests. Under the aegis of the balance of the superpowers, international relations came to a state of equilibrium. Players in the international arena made a clear choice of alliances, clearly defining their interests. The Non-Aligned Movement was active. The international relations remained anarchic, but clear coalitions maintained the balance of power before getting to "war of all against all." The strategic contract of the United States with European countries promised economic tutelage, non-use of military force and protection from attacks by third countries, and joining the OECD.[8] The Marshall Plan, as an economic aid program, helped to draw most of the protected states into NATO. Those, in turn, agreed not to create alliances between themselves opposing the United States. International relations were consolidated by international legal substitutes (OECD, Bretton Woods system, IMF, World Bank). Doing so, the United States created a system of selective coordination, formed an Atlantic centre ("pole") of power, coordinated with the centre of power formed by the USSR.

[7] *Lloyd George D.* Yevropeyskiy khaos (European chaos). M.: Yurayt, 2019. p. 7. [In Russian]
[8] *North D., Wallis J., Weingast B.*. Nasiliye i sotsial'nyye poryadki. Kontseptual'nyye ramki dlya interpretatsii pis'mennoy istorii chelovechestva (Violence and Social Orders. A conceptual framework for the interpretation of written human history). M.: Gaidar Institute, 2011. p. 237. [In Russian]

It is not easy to achieve authoritative selective agreements, despite the narrow circle of great powers, but they establish a hierarchy that gives relative predictability and durability of international regulations. Indeed, contingents at the level of this format are becoming the most painful, for example, the introduction of Soviet troops into Afghanistan, and in the 2010s, the US withdrawal from the ABM and INF treaties and the agreement of Group of 5+1 on Iran. The structure of the "world order" "includes the existence of centres power, the number of which forms one or another configuration (polarity), and the measure of hierarchy in the distribution of military, economic, cultural and ideological power." The structure of the "world order" "includes the existence of centres of power, the number of which forms one or another configuration (polarity), and the measure of hierarchy in the distribution of military, economic, cultural and ideological power." The "world order" format is *a subsystem of authoritative selective agreements between world leaders (with a strong potential for deferred violence) that support global and, to a certain extent, regional balances of powers (threats) to prevent and resolve large-scale and most dangerous contingents leading to armed conflicts*. This format establishes a hierarchy of legitimate supranational violence by leading powers relative to other states.

The regulation of violence at the level of the world order reflects not only military confrontations but also the economic confrontation of powers, their cultural and informational mutual influence. In financial and economic terms, the balance of power in the Yalta-Potsdam format was "undermined" by the Bretton Woods institutions and then the Jamaican Accords, which influenced the reserve currency supply under the control of the US Federal Reserve System. Nevertheless, in the post-war period, the two superpowers created conditions for authoritative selective agreements and for limiting dangerous contingents. The world community was kept from slipping into a large-scale war.

At the end of the 20th century and in the 21st century, the balance of the superpowers and the hierarchy was undermined. Hybridization of the "defence system as a system of leading states" took place. The negative consequences can be explained using different theory-methods. Institutionalists note that with the end of the confrontation between the USSR and the United States in the post-Soviet space and outside it, innovations of Western countries (open-access institutions) were introduced. However, there was no critical material and methodological support for innovations. Several states had not yet approached the thresholds allowing for Western-style reforms, taking into account their socio-cultural codes and controlling violence, which generated destructive disorder.

Previously, the hierarchy of the bipolar world order held back such hasty innovations. With the destruction of bipolar world order, for example, in Russia, Moldova, Armenia, Ukraine, reforms led to the shutdown of deferred violence mechanisms. With the elimination of the "load-bearing structure" (authoritative agreements of powers), the politicization of

international law intensified, in particular, with the help of the principle of the priority of human rights over the sovereignty of states, the engagement of political rights to the detriment of economic and social ones. Such destabilizers as global financial crises, "colour revolutions", and the migration crisis of 2015 appeared. The world community turned out to be incapable of authoritative selective agreements regarding the threats of a pandemic.

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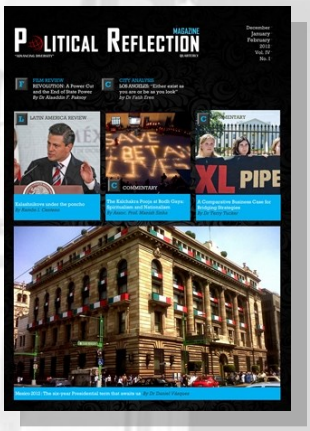

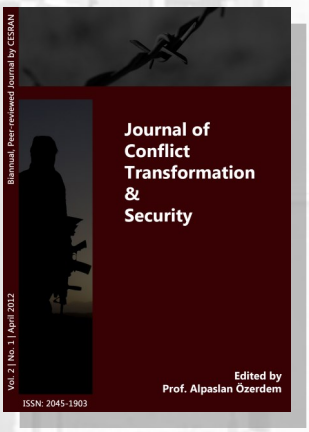

Shifting the Clausewitzian Paradigm from Battlefield to Political Arena

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Introduction

War and politics are closely interrelated. If it is assumed, as in the case of Clausewitz's famous principle, that "war is a mere continuation of policy by other means... is not merely a political act, but also a true political instrument, a continuation of political commerce, a carrying out of the same by other means" (Von Clausewitz, 1976), then it should be acknowledged that war is a political act. But Foucault inverts Clausewitz's traditional conception of war and says that politics is the continuation of war by other means (Foucault, 2006: 165). Here the emphasis of the discussion on war moves on politics. So, how to limit conflict within the political arena? The question shifts from the concept of armed conflict (i.e., war) to that of political conflict, in which nations confront each other with alternate means such as sanctions, coercive diplomatic efforts, economic warfare, or as a prelude to war (Carisch et al., 2017).

International Dialogue in a Nutshell

Heuser considers Napoleon as the game-changer; until then, the paradigm of war was justified only if it led to peace (Hauser, 2010). The first effort to promote collective security through international cooperation1 is the Concert of Europe (1815), which established a set of principles, rules and practices to maintain a balance between the major powers after the Napoleonic Wars in the 19th century and so avoid war (Rapoport, 1995: 498–500), which is called as a multi-polar international system. This system collapsed after a century, with the beginning of the Great War, but, in the meanwhile, gave birth to several significant international instruments: First Geneva Convention of 1864, which set forth the rules for the protection of the victims of armed conflicts, and the Hague Conventions of 1899 and 1907, which provided the rules of war and the peaceful settlement of international disputes (Northedge, 1986: 10).

When Clausewitz, who had fought in the Napoleonic Wars, writes his famous book On War, Europe already experimented with economic sanctions with Napoleon's Continental System of 1806–1814, directed against British trade (Hauser, 2010: 229). The international community, as it is known today, was not yet born, nor had rules, but that would soon come. Attempts to avoid armed conflicts through diplomatic efforts, including sanctions, were sought by the international society within the

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[1] For the purposes of this essay, the definitions "political dialogue", "international dialogue" and "international cooperation" are equivalent.

League of Nations (LN) during its short life (1920-1946). The inability of the LN to impose and/or enforce sanctions on aggressive countries was the cause of his failure and one of the main reasons for the outbreak of the Second World War in 1939 (Baer, 1976: 3). The League failed to resolve the major political disputes and, finally, failed in its primary purpose, the prevention of another world war (Northedge, 1986: 276–278).

The idea of an international governmental organisation (IGO) to prevent future wars or to limit hostilities through diplomacy, sanctions, and other political means will be resumed after World War II, with the foundation of the United Nations (UN) in 1945 (Marsili, 2020: 15). Chapter VII of the UN Charter describes the means that can be adopted by the Security Council to resolve disputes, including economic, diplomatic, and military sanctions, leaving the use of the military as a means of last resort.

From the Vienna Congress onwards, the international community opened a political channel to avoids armed conflicts. The European Concert, established in 1815, can be considered a proto-IGO, a concept that will be later developed into permanent bodies to facilitate the dialogue between the powers.

A Set of Rules for the International Community: The Law of Nations

To be effective, the international community needs common rules accepted by all its members. The relationships among the international community are regulated by public international law. Natural law provides the basis of the law of nations (*ius gentium* or *jus gentium*), a set of rules that has its source in the *naturalis ratio* and is observed equally among all *gentes* ("peoples" or "nations") as customary law, in "reasoned compliance with standards of international conduct" (Bederman, 2004: 85). Customary law emerges from traditional practice, establishing an instant *opinio iuris* (Simma and Alston, 1988). International law is made up of two components: general practice and "accepted as law" (*opinio juris*). Part of these norms is recognised as fundamental principles of international law from which no derogation is permitted (*jus cogens* or *ius cogens*). The prohibition of genocide, maritime piracy, slaving, torture, refoulement and wars of aggression and territorial aggrandisement are generally considered *jus cogens* (Bassiouni, 1996: 68).

Bouvier explains that, according to Vattel, international law is generally divided into two branches: the natural law of nations, consisting of the rules of justice applicable to the conduct of states, and the positive law of nations (Bouvier, 1948). The latter consists of the voluntary law of nations, derived from the presumed consent of nations, arising out of their general usage; the conventional law of nations, derived from the express consent of nations, as evidenced in treaties and other international compacts; the customary law of nations, derived from the express consent of nations, as evidenced in treaties and other international compacts between themselves (Bouvier, 1948).

Natural law is embodied in positive international law, especially in the law of war, through the 1907 Hague Conventions. The Martens Clause, introduced into the preamble to the 1899 Hague Convention II, later modified in the 1907 Conventions (Hague IV), refers to the "principles of the law of nations, as they result from the usages established among civilised people, from the laws of humanity, and the dictates of the public conscience" (Ticehurst, 1997).

The Legality of War in Natural Law

Clausewitz understands war almost as a 'natural occurrence', not as something that can be avoided. The problem of the justification of war arises, from a philosophical and political point of view, in the modern era. In the contemporary era, it evolves in the drafting of positive international law, and in the establishment of IGOs, in response to the conflictuality between the nations. Therefore, we pass from a Hobbesian state of homo homini lupus,[2] in which the law of the jungle prevails, to the search for legal means aimed to resolve and prevent disputes between nations, and by doing so, politics would have the floor.

The justification for resorting to war finds its foundation in natural philosophy. Natural right (ius naturale) intersects the natural law theory (lex naturalis), which justifies the supremacy of the strongest – to some philosophers, jurists and scholars, the term natural law is equivalent to natural rights, or natural justice (Shellens, 1959), while others differentiate between natural law and natural right (Strauss, 1968). According to the natural law theory, certain rights are inherent by virtue of human nature endowed by nature, God, or a transcendent source and are universal (Strauss, 1968). These binding rules of moral behaviours originate from nature's or God's creation of reality and mankind.

In *Leviathan* (1651), Hobbes defines natural law as "a precept, or general rule, found out by reason, by which a man is forbidden to do that which is destructive of his life, or takes away the means of preserving the same; and to omit that by which one thinks it may best be preserved" (Hobbes, 1651: 100). The author believes that in the state of nature, nothing can be considered just or unjust, and every man must be considered to have a right to all things (Hobbes, 1651: XIII.13). According to the British philosopher, there are nineteen Laws of nature; the first two are expounded in chapter XIV of *Leviathan* ("of the first and second natural laws; and of contracts"), the others in chapter XV ("of other laws of nature"). The first law of nature provides states that every man may seek and use all helps and advantages of war (Hobbes, 1651: 86 et seq.). The second law gives a man the right to self-defence (Hobbes, 1651: 86 et seq.). The third law of nature provides the motivation to rebel against the authority: "whatsoever is not unjust is just" (Hobbes, 1651: 97).

[2] Latin proverb meaning "Man is wolf to man", quoted by Hobbes in the "Epistola Dedicatoria" to *William Cavendish* – 3rd Earl of Devonshire, in the premise to the *De Cive* [1642], p. 73.

The Significance of Political Dialogue and International Cooperation

The concern of how to maintain the international political order as a tool to avoid wars comes from afar. In the Anarchical Society, Hedley Bull traces the story of international relations and explores the issue of the order in world politics. He recalls the deep concerns expressed by Samuel von Pufendorf in De statu imperii germanici, published in 1667 under the pseudonym Severino di Monzambano, about the lack of a strong central power as had been in times of the Holy Roman Empire. However, the French political philosopher Voltaire (1759) describes his times by saying that there was no holy, nor Roman, nor an empire – which would prevent armed conflicts between nations (Marsili, 2020: 17).

In the Law of Nature and of Nations [De jure naturae et gentium, libri octo, 1672] Pufendorf resumes the theories of Grotius and the doctrines of Hobbes and develops the just war theory and ideas on the law of nations (jus gentium). He argues that the state of nature is of peace, not of war as assumed by Hobbes. But, as peace is weak and uncertain, it should be preserved as good of all mankind (Marsili, 2020: 17).

Pufendorf owes much to the thought of Grotius, which can be considered the 'founding father' of the idea of an international society of states, governed not by force or warfare but by law (Marsili, 2020: 17). In De jure belli ac pacis Grotius proposes the adoption of international law, based on natural law, which should be binding on all nations. In Book 1 he deepens the conception of war and of natural justice; he argues that there are three "just causes" for war – self-defence, reparation of injury, and punishment – and tries to fix some rules that should govern the conduct of hostilities.

When the Dutch jurist develops his idea, the ancient system that, until then, had governed international relations within Europe has ceased to be effective (Marsili, 2020: 17). Europe was suffering long wars of religion, including the Eighty Years' War (1568–1648) and the Thirty Years' War (1618–1648), that ended with the Peace of Westphalia in 1648. The Peace of Westphalia strips some powers from the Emperor – doing miss, in fact, a central authority able to mediate and prevent armed conflicts – and establishes a new political order that will lead to the modern international system (Croxton and Tischer, 2002).[3]

Grotius also heavily influenced the work of Vattel on states' rights and obligations and on the development of the 'just war theory', that the Swiss philosopher and jurist illustrates in his masterpiece *The Law of Nations* (1758).

In *Perpetual Peace* (1795, § 354, ff.), Kant accepts a Hobbesian account of the reality of relations among sovereign states ("Hugo Grotius, Pufendorf, Vattel, and others [...], are always piously cited in justification of a war of aggression [...]"). Here, in order to ensure lasting peace, it is necessary that

[3] For a snapshot, see the e-poster History of International Relations at a Glance (Marsili, 2020).

nations establish a system of rules that avoid the outbreak of armed conflict. To achieve this goal, Kant (1795: p. 12, § 354, ff) suggests founding the law of nations on a federation of states, or on what we can currently define an International Governmental Organizations (IGOs) like the UN (Marsili, 2020: 15). The aim is to protect international law and to defend it against threats to international peace and security (Marsili, 2010: 18).

In the space of two centuries, war, as a lawful and natural means to settle the disputes between nations, has given way to political dialogue; in the 16th century, when Machiavelli writes his political treatise The Prince, military and political action were both considered legitimate means to achieve political goals.

Conclusions

If it is true, according to a naturalistic or Darwinian approach, that war is nothing more than the continuation of politics by other means; it is also true that the Clausewitzian paradigm has changed much during the 19th and 20th centuries. Clausewitz was probably anchored to pre-Napoleonic concepts, and this prevented him from seeing the changes taking place. The debate has gradually shifted to politics as a means to prevent or limit wars. Although the political dialogue is not a guarantee to avoid wars, at least it serves as a facilitator of peace; arms became the means of last resort to achieve peace, which should be a common desire for all nations.

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Interview with Professor Luis Tome
Future of NATO: Significant Insights from 2021 Meeting of NATO Ministries of Foreign Affairs

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Question: Before asking questions, I would kindly like you to evaluate the last meeting of the NATO Ministries of Foreign Affairs and its statement. Is there anything that attracts your attention most?

Luis Tome: First of all, it is crucial to consider the context in which this meeting took place: the first visit to Europe by a senior official of the Biden Administration, Secretary of State A. Blinken; after the publication of the US "Interim National Security Strategic Guidance"; and after A. Blinken himself had visited Japan and South Korea and met the Chinese counterpart in Alaska. Therefore, since it's clear that the priority region for US foreign and security policy remains the Asia-Pacific, it was important for the Biden Administration to give a strong political signal to its European Allies of renewed American commitment to NATO and European security. This meeting also took place at a time of rising tensions in international politics, particularly between the US and the China-Russia axis, but also between the European Union and China. Another factor in marking this meeting are the wounds in transatlantic relations coming from the time of the Trump Administration as also other tensions between the European NATO countries.

In this context, it was crucial that this meeting of NATO Ministries of Foreign Affairs conveyed to the world that the Atlantic Alliance is Back, as President Biden had stated, and an image of NATO cohesion. And I think that is exactly what the final statement that came out of the meeting does. It underlines the relevance of Article 5 and, therefore, the unambiguous commitment of the US to NATO's central collective defence clause - a crucial guarantee for the European Allies. It is also relevant that the statement emphasises the sharing of democratic values, that NATO guarantees the protection of our values, and it is an essential pillar of the rules-based international order. The reference to Russia's aggressive actions, while there is no mention to China, is equally significant. Finally, I also highlight the fact that, according to the statement, NATO will continue to adapt, namely by strengthening its political dimension. Strangely, the statement says nothing about what was one of the main results of the meeting: the maintenance of American forces in Afghanistan beyond 1 May this year and the continuation of the NATO mission – remembering that

there are now a higher number of other Allied troops in Afghanistan than American.

Question: Current international politics have been emphasising the economic burden of NATO's expenditure. The main concern in this issue is that the US has been paying for European Security for a half-century, and within these years, the European countries economically and politically flourished but still want the US to cover a major share of the Alliance. First of all, do you think that this concern has a point?

Luis Tome: This is an old recurrent question, and every American administration since the end of the Cold War has insisted on burden-sharing. However, it is wrong to look at the issue from a purely economic perspective, or that only Europeans have economic benefits and while Americans pay for European and international security. What really matters is the strengthening of the European pillar for the benefit of the Transatlantic Alliance as a whole and a better balance with the American pillar. It is very important that the European Allies assume greater responsibilities and a greater share of costs in NATO. Otherwise, there may be excessive European dependence on the US and thus an undesirable transformation of the Alliance into a pure American protectorate over Europe, or into a mere instrument of US foreign and security policy. An excessive capabilities gap could also lead to interoperability problems among Allied forces. Or make NATO irrelevant to the United States. On the other hand, among the European Allies, namely among the countries which are also members of the EU, there are many redundancies and useless duplications. Just as there are in Europe-NATO, in general, excessive shares in personnel costs and the maintenance of certain physical and bureaucratic infrastructure, leaving less room in defence budgets for research and development compared to the US. So, there are several other problems and dilemmas to be solved in Europe beyond the simple increase of defence budgets and cost-sharing in NATO.

This is also why I have some reservations about blind targets set in terms of percentages, such as the commitment established in NATO of a minimum of 2% of GDP on total defence spending. The main objective must be that the European Allies develop and possess better military capabilities, not simply to spend more for the sake of spending. And this capacity-building should be done on the basis of an assessment of the threats and their capabilities, priority investment needs according to identified gaps, force packages, planning and programming of capabilities, missions and operations, etc., combining national circumstances and specificities with the priorities, doctrines, policies and strategies defined by NATO as a whole. Rather than spending more, what matters is to spend wisely.

I also add three other aspects. First, it is paradoxical that Washington insists on "burden-sharing" while opposing Europe's "strategic autonomy" - the reinforcement of European military capabilities can hardly be dissociated from an increase in European ambitions and responsibilities. Second, NATO's main problem is not military capabilities but cohesion and

political articulation. Finally, in the face of many risks and threats (from terrorism to organised crime, pandemics, fragile states, emerging and disruptive technologies or cyber threats), the military is not the exclusive or even the main security instrument. Therefore, Euro-Atlantic security and the security of all Allies is not promoted only by increasing military budgets and capabilities.

Question: In association with the previous question, what would you say if somebody argues that European countries are reluctant to increase their defence budget sparing for NATO because the European countries do not unanimously support American policies, especially in Afghanistan, and the US has been instrumentalising NATO for its world politics and dominance?

Luis Tome: That does not make any sense. The NATO Allies have different security perceptions, priorities and strategic cultures. Moreover, NATO members are democratic countries, and therefore governments have to be sensitive to their electorates and public opinions. States define their defence budgets for a variety of reasons, but primarily according to their view of the security context and national interest. No country fails to increase its defence budget because it disagrees with the policies and strategies of its Allies. On the contrary, it even tends to increase its military spending in situations where it loses confidence in its Allies and/or perceives that its security and defence depends more on itself. A cause-effect relationship cannot be established, but interestingly, defence budgets have been increasing in Europe-NATO for seven consecutive years - that is, including during the period of the Trump Administration when disagreements between the US and its European allies escalated.

Question: In recent years, the US has been militarily investing in Poland under the name of NATO, while the EU has been in doubt of American endowment to the European security against Russia. If these phrases or comments sound true to you, would you agree with the idea that American and European perceptions of security threat level are gradually differentiated?

Luis Tome: Yes, indeed. With the end of the Soviet Union, the "common enemy" that gave rise to NATO and the anti-USSR *containment* strategy disappeared. Therefore, since the end of the Cold War, it has been more problematic to justify NATO's *raison d'étre* and to define priority threats assumed equally by all Allies and establish common and coherent policies and strategies. Transatlantic divergences have been building up not only over Russia but also over terrorism, the "rogue states" or the "axis of evil", Iraq, Iran, North Korea, etc. The problem is that different perceptions of security and priority threats also add up between European countries. East European Allies regard Russia as their biggest threat, while Southern NATO members are mainly worried about the spill-over effects from instability and conflict in the Middle East and Africa, such as terrorism, organised international crime or irregular migration. And as we have seen in recent years, differences between NATO Allies have widened from Syria to Libya,

from the Eastern Mediterranean to nuclear Iran, from the Sahel region to Afghanistan. China is also emerging as another potential focus of major transatlantic and intra-European controversy and disagreement. Hence, it is crucial to strengthen the political dimension of the Atlantic Alliance for cooperation and articulation among NATO countries and with external partners.

Question: Since the end of the cold war, NATO has operated outside of NATO territories despite being constituted as a defence alliance and started with Eastern Europe to Afghanistan and Libya. These interventions are legitimised with the concept of humanitarian intervention or preventive wars. It is argued that the world has been experiencing the same conditions in Syria as there is a humanitarian reason, and the Syrian regime causes mobilisation of armed terrorist groups from all ranges and source of irregular immigration that turning European borders upside down. Under these circumstances, why do you think that NATO is still not acting offensively to end the humanitarian crisis and make regime change? Is it just because of Russian military involvement in the Syrian crisis before the US or NATO?

Luis Tome: The question is understandable, but the cases are quite different in their circumstances. There is conflict, violent repression and humanitarian tragedy in Syria, just as there is unfortunately in many other places - and we may also ask why NATO does not intervene in Yemen, Venezuela or Myanmar. Well, neither NATO nor any country or international organisation can intervene militarily in all places or in the same way. Of course, when NATO intervenes militarily and invokes certain principles such as the "right of humanitarian intervention" or R2P in one place and not in others, one may question the reasons or interests behind this "selection". But there are many reasons and explanations. One obvious explanation is that NATO's decisions require consensus - which obviously does not exist with regard to Syria. In other cases, it is a question of power and common sense: for example, would it be reasonable for NATO to make an intervention against Russia over Chechnya or against China over Xinjiang, similar to the one it made against Serbia over Kosovo? Obviously not. Moreover, an intervention may be appropriate in one place and be totally unsuitable in another - so careful consideration is needed to avoid aggravating the security situation rather than helping to resolve it. The reality is that each case varies according to its specific circumstances. This is why, for example, even in Libya, NATO intervened in 2011 but has not intervened in the Libyan "second civil war" that broke out in 2014. Regarding Syria, there are many reasons why NATO does not intervene as it did in Afghanistan or Libya, but this difference is not related to Russia's military intervention. Moreover, it should be remembered that before the Russian intervention in Syria at the end of 2015, the US and several NATO countries were already bombing positions of jihadist groups in Syria and had special forces operating in Syrian territory as part of the international coalition against ISIS. And that even before that, in 2013, President Obama

wanted to bomb forces of the Bashar al-Assad regime and that the US Congress prevented him from doing so for fear that this would precisely favour jihadist groups. The point is that a NATO intervention in Syria similar to the one it carried out in Libya in 2011 would be completely counterproductive and inappropriate. Such a consensus in NATO would be impossible, primarily because of the very different the US and Turkey, and also several other European powers, view their interests and threats in Syria. The complex Syrian geopolitical chess explains that not even the UN has a peace enforcement mission nor a mandate for another international organisation to act, unlike what happened in Afghanistan (where NATO-led ISAF under a UN mandate) or in Libya (where NATO answered the United Nations' call to the international community to protect the Libyan people). Therefore, it is not Russia but the specific Syrian cocktail and the disagreements within the Atlantic Alliance that explain NATO's non-intervention in Syria.

Question: It is no secret anymore that there are several disagreements among NATO members. The US is against Germany's agreement to buy gas from Russia via a new pipeline. Turkey and Greece are in a tense disagreement in the Aegean Sea regarding East Mediterranean energy resources. Eastern European countries want the deployment of missiles, but western European countries are against it. Not to mention disagreement on the financial burden of NATO. Do you really think that NATO could survive from all these potentially conflictual issues?

Luis Tome: NATO was, is and always will be what its members make of it. NATO's long history shows an unusual capacity to overcome crises and disagreements. But past success is no guarantee of future success. The current divergences are many and quite deep, and NATO has in recent years entered a real existential crisis. It will survive if the major Allied countries are predisposed to overcome divergences and commit themselves to the transatlantic Alliance. At the end of the day, if certain tensions are not overcome or aggravated, NATO may survive the exit or expulsion of some of its current members, but it would never survive without the US. So if Donald Trump had been re-elected, it is likely that we would be discussing the end of NATO. With the Biden Administration, the transatlantic Alliance is in a much better position to repair damage and resolve certain differences. On the other hand, NATO's adaptive capacity is the reason for its success and longevity. And in the face of a geopolitical, geostrategic and security context that has changed rapidly and dramatically, it is vital to re-adapt NATO so that it remains effective and relevant for the security and defence of its members, above all, by strengthening its political dimension.

Question: As you know, most of the NATO members are also members of the European Union, and the EU has its own agenda of or at least thinking about European Army separate from the NATO as a part of its defence and security policy. What are your projections on this matter?

Luis Tome: In theory, the Common Security and Defence Policy (CSDP) and the EU's capabilities are complementary to NATO, strengthening the European pillar of the transatlantic alliance. For obvious reasons, starting with its current 21 common member states, the EU is NATO's main strategic partner and vice versa. But despite the NATO-EU agreements and mutual cooperation, there are several dilemmas that need to be acknowledged and addressed. The CSDP makes the EU a more complete international player, but also more autonomous - of course, autonomous from the US and NATO, which displeases Washington. At times, there seems to be more competition than complementarity, and certain dilemmas are likely to intensify as the range of missions both want to undertake widens: the EU aspiring to undertake higher-intensity missions and operations, and NATO launching certain types of lower-intensity operations. Another dilemma concerns the balance between NATO and the EU for the 21 common countries, including the provision of means (always scarce) for missions and operations of both organisations. Conversely, some problems are magnified by the non-coincidence of membership between NATO-Europe and the European Union, especially Turkey. Meanwhile, Brexit has created a new geopolitical framework in Europe, with huge repercussions on the EU, transatlantic relations and NATO. The EU no longer has one of the two Permanent Members of the UNSC and holder of nuclear weapons (alongside France), which implies new balances within the EU - the former European "G3" gave way to the "G2", with greater prominence of the Germany-France axis. With the UK out, the EU is left without the strongest defender of the "Atlantic" vision and NATO-EU complementarity, which favours the EU's tendency to "strategic autonomy". And there are now seven European countries that are members of NATO and not of the EU, with Turkey and now also the UK as two big powers in this situation - raising new issues in NATO-EU cooperation and EU access to NATO assets and capabilities for its "autonomous" missions. In addition, there are disputes and disagreements between the EU and the UK, as we have seen over trade issues, financial services, the Irish border or the export/import of anti-COVID-19 vaccines. The dilemmas are many, and NATO and the EU have to be skilful and pragmatic to overcome the disagreements. But I am relatively optimistic! NATO and the EU have been cooperating side by side in crisis management, capability development and political consultations, as well as in providing support to their common partners in the East and South. Concerted NATO-EU effort is needed to build trust and make fuller use of existing arrangements and identified areas of cooperation.

Question: Rising rightist or leftist populist political groups in Europe and the US indicate that they would be quite influential in their own national politics in the near future. Do you think that this could complicate NATO's stance regarding democracy and freedom?

Luis Tome: Of course it can. The spread of nationalism, populism, authoritarianism and extremisms threatens the liberal international order and the security environment. And if national egoisms, populisms,

autocratic tendencies and "illiberal democracies" flourish in NATO member countries, as is already happening, then it makes it very complicated for the transatlantic Alliance to be the bulwark for the defence and promotion of freedom, democracy and liberal order. Fortunately, there seems to be a sense of urgency within NATO today to put democratic values back at the heart of the transatlantic Alliance's action. But we must recognise that the virus of nationalism and populism is difficult to fight even within NATO countries.

Question: There are too many significant points to cover in an interview, but as a closing question, I would like to have your comments on an issue that is the most important one regarding NATO's future.

Luis Tome: The decisive factor for the evolution and future of NATO is the strengthening of its political dimension, namely dialogue, articulation, cooperation and political cohesion among Allied countries. Organisations are what their members make of them, and NATO is no exception. NATO is a military alliance, but it is also the main political forum of the transatlantic community of shared values and interests. Without political cohesion among Allies, powerful deterrent and defence capabilities have less value. Without constructive political dialogue, differences between member countries cannot be overcome or minimised. Without political cooperation, it is not possible to formulate common and coherent strategies. Without political articulation, the transatlantic Alliance will face many difficulties in projecting security and stability in its periphery, whether to the East or to the South; effectively confronting the many risks and threats; managing crises and conflicts; establishing fruitful partnerships with external partners; or dealing with major rivals such as Russia and China. Without political cohesion, it will not be possible for NATO to make the necessary re-adaptation to a geopolitical and security context in great transformation. Nor to be the pillar of democracy and liberal order that the Allies want and preach NATO to be. NATO's military dimension remains robust, but the Alliance's political dimension and political role are undervalued and underused. NATO's future success depends on the ability of the Allies to leverage the political dimension of the transatlantic alliance.

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Beyond Formal Dinners: EU-India Security Cooperation in an Age of Chinese Belligerence

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In January 2021, Emmanuel Bonne, Diplomatic Advisor to French President Macron, met with India's National Security Advisor Ajit Doval. Reflecting on the meeting soon after, Bonne noted the uncompromising French support for India's stance on the question of Kashmir and her ongoing border conflict with China in the Himalayas (TNN, 2021).

Bonne's remarks indicate an increased, unprecedented level of closeness between India and Europe in general and France in particular. The rise of China and the growing insularity of modern US foreign policy- a core feature of Trumpist foreign policy that is expected to manifest in many ways even under President Biden- have pushed both parties to close ranks further.

However, it would be premature to assume that India and the EU are bound together by shared concerns about China's growth. Perceptions of China vary across Europe, and while defence cooperation and diplomatic synergy between India and the EU remains strong, the complex relationship between Brussels and Beijing at the time of writing is expected to act as a potential irritant.

2020 saw growing Sino-Indian tensions. While the late 2010s witnessed major upheavals in bilateral ties during border skirmishes like the 2017 Doklam Incident, the Galwan Valley clashes in June 2020, and the PLA forces' unprovoked aggression seem to have pushed relations past the point of no return, as India's External Affairs Minister S Jaishankar implied in January 2021 (Sinha, 2021). The post-Galwan period has seen India consequently become increasingly belligerent towards China. In December 2020, the Indian and Vietnamese navies conducted PASSEX exercises in the South China Sea in a signal of intent to Beijing (Baibhawi, 2020). New Delhi has also conducted a crackdown against Chinese apps and digital assets in the country (Phartiyal, 2020) and posited herself as an increasingly involved player within regional and global alliances aimed at curtailing Chinese expansionism such as QUAD.

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Amid these developments, India has found allies in major EU member-states, especially in France. As early as March 2020, the Indian and French navies conducted a joint patrol spanning the Indian Ocean, from Reunion Island to the Malacca Straits, signalling the growing perception within

South Block of France as an increasingly reliable strategic partner (Peri, 2020). France was also among the first countries that its armed forces' supported India immediately following the Galwan Valley clashes (Pubby, 2020). In September 2020, in the light of diplomatic tensions between New Delhi and Beijing, France even provided the Indian Air Force with a fleet of Rafale fighter jets (Sharma, 2020).

Why France is doing this is evident. The rapid growth of China's political and economic dominance across Africa as a result of the Belt and Road Initiative delegitimises French geopolitical influence and the *Francafrique* doctrine. Furthermore, as China develops a blue-water navy and expands its reach across the Indo-Pacific and the Greater IOR, the safety of French overseas territories such as Mayotte, Reunion and New Caledonia, and the military bases they house come into question. India, with its soft power and economic presence in Africa, and a strong navy to project power in the IOR, is thus key in Paris' eyes to contain China's rise.

Yet while EU states like France remain closely allied with India versus China, certain European powers have in recent years sought to bolster ties with the latter or at least preserve the status quo. Germany is one such power. Despite having formally set forth its maritime policy for the Indo-Pacific in September 2020, which could clash with China, Germany has simultaneously drawn closer to Beijing (Fulda, 2020). Chancellor Merkel's decision to allow Huawei to construct 5G networks in Germany (ANI, 2020), Berlin's significant role in lobbying the EU Parliament to agree to the signing of the recent EU-China trade deal that would give China greater access to European financial and IT markets (Fallon, 2021) and Merkel's comments in January 2021 suggesting German neutrality amid what some commentators see as a New Cold War between Washington and Beijing are indicators (di Santolo, 2021). Being a major driver of EU politics, Berlin's recent actions act as an irritant in India's ties with the EU as far as China is concerned.

The reason for Germany's growing closeness with China is also increasingly clear when read in the background of Europe's contemporary ties with the USA. Berlin's relationship with Beijing is forecast to change by the end of 2021, which will consequently stabilise the EU's relationship with India on the China question. The unpredictability of US foreign policy under President Trump, and in particular the exposure of the openly hostile dimension of the supposedly enduring transatlantic relationship, pushed European powers like Germany to strengthen ties with other global powers such as China at the risk of jeopardising ties with the US. Indeed, closer ties with China may be leveraged by Germany against President Biden in return for favours, such as greater US security commitment to Europe and more favourable trade agreements. Additionally, unlike the US or even France, Germany has less at stake in the Indo-Pacific, which China views as within her sphere of influence. Yet these growing bilateral ties, while aimed at pressurising the US, may also hamper EU-India security and diplomatic cooperation vis-à-vis China. This is a policy that is expected to continue even after the German federal election in September 2021, with the pro-

China CDU candidate Armin Laschet potentially expected to determine to a large extent EU policy towards China, with consequences for India (Gehrke, 2021).

The recession that several European countries are currently undergoing has also provided Beijing with new opportunities to expand her influence on the continent, which may also affect European decision-making in China and consequently affect the degree to which the EU cooperates with India on shared security concerns in Asia. Amid the COVID-19 pandemic, China has bolstered economic ties with some of the weakest economies in the EU, such as Italy and Greece. In both countries, China has aggressively pushed for the expansion of the BRI and the acquisition of economic assets- a trend also witnessed in some Eastern European member-states. In time, this may translate into greater political influence and be used as a means to influence decision-making on the EU's security cooperation with India.

Despite this, it would be remiss to believe that EU and India, despite exceptions like France, do not see eye-to-eye on China simply due to the ambivalence of major stakeholders like Germany. Portuguese foreign minister Augusto Silva's public statement about the pressing need for the EU to balance its ties with China by strengthening the strategic partnership with India is an indication that EU member-states are hardly willing to sacrifice their ties with New Delhi in favour of a burgeoning relationship with China (Brzozowski, 2021). 2020 also saw the Netherlands harden her position towards Beijing, stepping up diplomatic ties with Taiwan in April, acting to prevent strategically significant Dutch computer-hardware manufacturing firm Smart Photonics from shifting operations to China in June (Baazil, 2020), and by November, setting forth a maritime policy for the Indo-Pacific which emphasised the need for the Hague to work more closely with key regional allies, including India (Strangio, 2020). Similarly, Greece's provision of her refuelling facilities for India-bound Rafale jets sent by France amid growing tensions between New Delhi and Beijing may be read as an indicator of closer ties between the EU member-state and India against a backdrop of an increasingly belligerent China (Antonopoulos, 2021). Factors such as these suggest that EU cooperation with India on the China question will be a norm rather than an exception.

The EU-India strategic relationship has, therefore, in the backdrop of growing Chinese expansionism and the arrival of a new administration in Washington, gained greater importance. While multi-faceted, the broad trajectory of both parties' foreign policy suggests the wariness of China and provides room for cooperation in the future.

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European Union's Uncertain Future

The State of Romanian-Russian Relations and the Importance of a Bilateral Dialogue

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Stating that the relation between the European Union and Russia is currently blocked by the Ukrainian Crisis means to ignore the conditions related difference between the two entities. Russia is a country having an individual political and strategic identity. Although it launched the project of the Euro-Asiatic Union, Moscow maintains full control of its internal politics and strategically speaking, it is completely independent. In exchange, the European Union's political identity, from a strategic point of view, depends on NATO, on a relatively complicated relation (given that there are NATO member states which are not members of the European Union, such as Turkey and European Union States which are not NATO members, such as Finland or Cyprus). Whereas within its relationship with the Russian Federation, the European Union has the advantage of its demographic, economic and technologic dimension, Russia has the superior advantage of strategic coherence. Subsequently, four elements must be taken into account in order to answer the following question: where is the European Union situated at the beginning of the 21st century?

1. The European Union must apprehend the security-related issues as a geographic and conceptual continuum. From a geographic point of view, this is applied from the closest frontier from the Balkans up to the Caucasians, all along with Central Asia and until the Middle East. From a conceptual point of view, it includes issues ranging from political corruption, criminality, ethnic conflicts, local terrorist attacks within and at the outskirts of the Union to the global terrorism of post-modern World War I. Europe is no longer a safe place; the concept of an "inclusive Europe", which is much more operational beyond its stretched frontiers or at least as things used to be so far, must become a fundamental principle of the social conception related to security.
2. Security cooperation between the European Union and Russia is perceived as implausible not so long ago, as attempting means to create a differentiation space between the European Union and the United States of America and that was initially rejected by the Union due to the same reasons, now starts to take shape as part of triangular cooperation, but not quite as an alliance for the future.
3. The continuation of the expansion of the Union to the East and South (which happened in 2004-2007-2013).
4. The institutional reconstruction of the European Union to the extent

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to which it can cope with the challenges of the 21st century, see the migration crisis originating from civil wars in Africa and the Middle East, which demonstrates the Union's weakness and lack of cohesion to cope with it.

Due to these reasons, the Ukrainian Crisis must not be taken as a single cause for the diminishing of the bilateral relations. It is just an "accident to pass", in a report that has many favourable premises as well as many challenges. Consequently, an analysis of the relations between them, which sets an exclusive highlight on the Ukrainian situation, risks getting stuck in insignificant details and not observing the future potential.

Complementarity

Above all, the relations between the European Union and the Russian Federation are huge favourable premises ensued from the complementarity of the two entities. The European Union is a union of intensely populated States, subject to great pressures of irregular immigration, whilst Russia occupies a huge surface and has a relatively reduced population, in decrease. At the same time, the European Union has an extremely high technological level and life standard, whilst Russia is still scarce in both aspects. Between the two entities, the need for infrastructural investments creates exceptional business opportunities in fields such as energy, industry or agriculture.

Similarities

Although it is recent that Europe and Russia sometimes interpret special political and military parts antagonistic, there is a certainty: the Russian culture is a component of the European culture. Byzantine Christianity, the modernization that started with the reign of Peter the Great, even the forced modernization from the communist period tied Russia to Europe, at the level of material and spiritual civilization. With its specific traits, the great country that stretches on two continents is part of the European civilization, which pushed up to the Pacific. The circumstance is best visible nowadays in Siberia: the silent battle that Russia declares against China in Oriental Siberia is the battle of the European civilization against the Asiatic civilization.

Promising perspectives

There are a few strategic fields of activity in which a potential closeness between Moscow and Brussels and could open exceptional horizons to both parties. For example, the energy field, in which Europe can ensure its necessary resources for its own economic development and Russia can obtain a sustainable and profitable outlet. Agriculture is suitable ground that could create a synergy between the European Union and the Russian Federation. Given the European experience in agriculture and food security on the one hand and the underdeveloped potential of Russian agriculture, good relations between two actors could grow up in this aspect. Moreover, the new concept of Food Security, which, apart from the aspects related to agricultural production, also touches aspects related to a political decision,

commerce, economic policies, poverty and food waste, may also become a field of cooperation between the two entities.

Contradictions

The main impediment in which a more substantial closeness is needed between the two players in the strategic condition of the European Union. Taking into account that it does not have its own military and thus in an ambiguous position towards NATO, the European Union is subject to external turbulences. The Ukrainian Crisis is just an episode of this complex relationship between the European political organization and the Euro-Atlantic military one. Tensions and pressures outside Europe (especially from Washington) imposed unwanted behaviours during the crises from the former Yugoslavia – especially during the bombardments in 1999 – or Iraq. Not once, the strategic dependency on the United States of America imposed Europe to waive the promotion of its direct interests. It is supposed that this disturbing factor shall continue, even though the European Union indicates that it is in search of a better-defined strategic identity.

Nevertheless, although the European Union was less dependent on the United States of America, the second perturbing factor would appear in its relation with the Russian Federation: the difference between the two entities in terms of dimensions. A Europe that would integrate Russia would inevitably be a Europe led by Russia (the greatest country with the greatest number of inhabitants and with the most powerful army), which the European Union cannot accept, irrespective of the economic advantages that would result from this synergy. The standard life differences in favour of the Union and the technological and financial handicap of Moscow are quite obvious; the European prejudice related to Russia are factors that must be dealt with since they contradict its leadership position. The opinion of the Russian population cannot be neglected if a potential closeness costs Moscow certain concession towards the European model. The European Union benefits from a quite bad image in most of the Russian population, and it is not easy to anticipate the reaction of the majority if Brussels demands certain reforms into the Russian society.

Romania's role in the new reality European Union – Russia

There is a certain contradiction between the position of Romania from the eastern frontier of the European Union and the very poor relations between Bucharest and Moscow. The causes of these poor relations are complex, and it is not realistic to hope for a sudden and complete change. Neither before the Ukrainian crisis was the bilateral Romanian – Russian relations brighter in political or economic aspects. It is only at the level of cultural changes that we can speak of a beginning of debacle, although the premises of success are not gathered as long as the projects of the Romanian Cultural Institute prevail on the occidental cultural market.

Before the Ukrainian Crisis, nevertheless, Romania did not represent a disturbing factor in the relations between the European Union and Russia. We must also include the internal political factor: the new presidency of

Romania seems less adventurous at the level of anti-Russian statements, and the domestic political relations changed for the better as opposed to the previous period. We can assess that if the situation in Ukraine turns normal at the level of great European powers, a normalization process can be triggered in the relations with Russia, Romania's position shall get in line with these tendencies.

This shall not mean, nevertheless, that the Bucharest program related to the consolidation of defence and military collaboration with the United States of America (anti-missile shield, F16 defence procurement, other military projects) will cease. Romania's necessity for defence determines the continuation of such collaboration. NATO frame is large enough to cover a bilateral military collaboration between Romania and the United States of America, irrespective of the potential normalization of the relations between Russia and the European Union.

This is the reason why an analysis of the Romanian role in the relations between the European Union and Russia must take such conditions into account, as well as the fact that Bucharest is far from being a leading force of the Union. For example, it can be assessed that Romania does not oppose such normalization of the relations between Europe and Russia if it is decided by the great European powers. But it is not realistic to believe that a potential transformation of the Romanian – Russian bilateral relations can transform Romania into a champion of the closeness between Russian and the European Union, for the simple reason that Romania does not have the power to convince other members of the European Union.

Regarding the future relations, Romania has a special position within the EU due to 1) its reduced dependency on the energy imports from Russia, 2) the absence of industrial and agricultural export resources on the Russian market, 3) the existence of a collision of strategic interests related to the Republic of Moldova, and 4) the existence of a residual layer of anti-Russian feelings in the country.

Yet, the importance of a good relationship with the Russian Federation can be neglected for any capital, especially for one geographically situated close to Russia, such as Bucharest. This is the reason why a favourable moment to get back to the normal course of the bilateral Romanian – Russian relations is expected after the relaxation of the relations at the European Union level (following positive evolutions in Ukraine). The softening of the tone regarding offensive oratory and the continuation of the normal cultural relations can contribute to this normalization.

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The Primacy of EU Law over French Law: EU Law Takes Precedence over National Law?

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Introduction

This article focuses on France's reaction towards the supremacy of European Union (EU) law. It first explains the French court systems, and then it concentrates on whether the French courts have given superiority to EU law over their own law, particularly the French Constitution.

This article is a continuation of my previous three articles on the principle of EU law's supremacy over national law. The first one dealt with how and why the notion of the superiority of EU law has been developed by the European Court of Justice (ECJ) (Dorani, 2020a). The second one focused on whether the United Kingdom has accepted the supremacy of EU law (Dorani, 2020b). The third article concentrated on how the German courts have responded to the principle of the primacy of EU Law (Dorani, 2021).

France and its Different Court Systems

France is a monist state, meaning international law and internal law are part of one integrating system. Therefore, international law becomes part of the national law as soon as the former is ratified (UKEssays, 2018). Article 55 of the French Constitution 1958 implies the supremacy of international treaties over French law on the basis of reciprocity, as it provides 'Treaties or agreements which have been ratified or approved ...have higher authority than that of statutes, provided that the agreement or treaty in question is applied by other parts'. Reciprocity, incidentally, means France will accept the primacy of EU law over French law to the extent other Member States accept it.

There are two different court systems in France: Cour de Cassation (CC), the supreme judicial court, which deals with civil and criminal matters; and the Conseil d'Etat (CE), the Supreme Administrative Court, which has the task of reviewing the legality of administrative actions.

There is also the Constitutional Court, known as Conseil Constitutionnel Court. Unlike the German Constitutional Court, the French Constitutional Court's decisions are not binding on CC and CE. The Constitutional Court deals with the constitutional review of French law. But this court cannot be seized by private litigants but by the government and Members of Parliament (Alter, 2000: 127-8). Thus, it carries out a constitutional review in limited circumstances. Constitutional issues raised by the incompatibility of EU law with French law, repeatedly held by the Constitutional Court

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(*Conseil Constitutionnel decision*, 1976), were the CC and the CE's duty to resolve. Therefore, the main courts that this article considers are the CC and the CE, as they are the ones that deal with the issue of the primacy of EU law over national law.

The main legal issue in France was not whether EU law took precedence over the national law but whether the national courts were constitutionally competent to enforce EU law over the national law (Alter, 2000: 135). The CC held in *Vabre* (1975), in which a French Statute passed in 1966 was in conflict with Article 90 (ex 95) of the EU Treaty, that it had such a competence.

The CC and the Supremacy of EU Law

In *Vabre*, basing 'its decision on Article 55 of the Constitution as well as on the specific nature of Community law' (Horspool: 2003, 173), the CC held that the EU article took priority over the French Statute. Adolphe Touffait – the procureur General, who has a similar position to that of Advocate General in the ECJ – enormously influenced the decision by advising the CC to base its decision purely on the special legal order of the EU (Manin 1991: 505). Although the CC did not rely on the nature of the Treaty of Rome alone, it made clear that the EU legal order was directly applicable to the French nationals and binding on the French courts. Concerning the argument of reciprocity, as raised by the French authority, the court held that Article 227 (ex 170) empowered the Member States to bring an action against another Member State in breach of EU law. Since there was a procedure to remedy 'any lack of reciprocity, this could not constitute a legal ground for not applying the treaty' (Hartley, 1999: 243). By acknowledging the special nature of EU law and therefore giving it precedence over the French law, the CC expressly accepted the primacy of EU law, including the ruling of the ECJ in *Costa* (1964) (Dorani, 2020a).

On the other hand, the CE was not prepared to accept the special nature of EU law and constantly made decisions in conflict with EU law.

The CE and its Refusal of the Supremacy of EU Law

The CE, during the sixties, seventies and late eighties, never held that EU law was superior over French law, particularly statutes, by either claiming that it lacked the authority to question the legality of a statute or by adopting the doctrine of *Acte Clair*, meaning if a provision of the law was clear, there was no need to send it to a higher court to ask for clarity but to simply apply the provision (UKEssays, 2018). The CE adopted Acte Clair's doctrine to avoid sending cases to the ECJ under the preliminary ruling. Although in *the Conseil d'Etat* decision of 19 June 1964 the EU law was far from clear, the CE held that the EU law was clear and there was no need for a preliminary ruling. Some saw this as an abuse of Acte Clair's doctrine because the EU later stated that the EU law was indeed unclear. Further, the CE challenged 'one of the ECJ's main interpretative roles' by interpreting the EU law (Alter, 2000: 139-42).

In *Semoules* (1970), upholding the French Statute, the CE refused to claim that it had the competence to question the validity of the French legislation in breach of EU law. It lacked competence because it was the judge for the acts of 'executive, but it was not the judge for statute law' (Manin, 1991: 505). The CE's timidity to review a statute might have been the result of two authorities: the law of 16 and 24 August 1790, which expressly forbade the courts to obstruct or suspend decrees of a legislative body or any involvement in the exercise of legislative power. This law, incidentally, had been passed by the revolutionary legislator and had never been repealed (Manin: 1991, 501); and the *Arrighi* decision (1936) in which it had refused the authority to examine the validity of a statute.[1] However, its *Semoules* decision put the CE in a 'complete contradiction with the rulings of the ECJ', which had held that the national court should set aside the national law of any nature in conflict with EU law (Dorani, 2020a)

During the seventies and the early eighties, there was both a political and judicial dislike towards the notion of EU supremacy established by the ECJ, in particular the decisions of *International Handelsgesellschaft* (1970) and *Simmenthal* (1978), as well as the direct effect of directives (Dorani, 2020a; Dorani, 2021; Alter, 2000: 155).

Not only the CE that challenged the European law but also the Constitutional Court as well as the French parliament.

The Constitutional Court and the French Parliament

The Constitutional Court expressly stated that the Treaty of Rome 1957 was just like any other treaty and, therefore, the EU should not encroach on French sovereignty (*Conseil Constitutionnel decision*, 1976). It, like the CE, refused its authority to apply Article 55 to enforce EU supremacy over national law, arguing it was the task of the CC and the CE (Pollard: 1990, 270). Karen Alter (2000: 151) argued, however, that the Constitutional Court's refusal to review indicated that to give supremacy to EU law was not constitutional review, but it was simply 'applying the EC Treaty'.

The National Assembly showed its rebellion, too, by passing a law to nullify those EU provisions and the ECJ's rulings that intrude its prerogative. It soon used this power to declare null an act of government, calling it unconstitutional (Alter, 2000: 152-3). It enacted another act incompatible with the ECJ's decision in 'its Opinion 1/78' (Douglas, 2002: 265). Further, the French parliament refused to implement a directive since it was 'a misappropriation of the procedure of the directive and a veritable usurpation of the legislative powers of the Member States' (Alter, 2000: 152). Michel Debre, the former Gaullist Prime Minister, accused the ECJ of having 'pathological megalomania...declaring what [was] and [was] not European law based on a pure invention of law' (Alter, 2000: 156), and, therefore, the government and the courts should declare the ECJ's decisions non-binding in France. Both he and the CE criticised the ruling of *Vabre*, and the former prepared a bill to pass to declare it illegal, but the Senate blocked it (Alter, 2000: 157)

Influenced by these political decisions, the CE made judgments that purposely contradicted the ECJ's jurisprudence. For example, it rejected the direct effect of directives in *Cohn-Bendit* (1980).

The CE and the Direct Effect of Directives

The CE held that an individual could not invoke the 64/221 directive to challenge administrative decisions since there was no direct effect of a non-implemented directive. The judgment was a 'clear and deliberate act of defiance' (Hartley, 1999: 245), as two days before the judgment, the deportation order claimed to have been in breach of the directive was revoked by the Interior Minister, anyway, and hence there was no legal need for the judgment. The CE struck a blow 'at the foundation of the community' (Hartley, 1999: 245) by going against the wishes of the ECJ since the CE was perfectly aware that the ECJ had already established that directives were capable of direct effect (*Van Duyn*, 1974; Dorani, 2020a). Paul Joan Geroge Kapteyn, a European court judge, called the decision a 'political inspired attack on the ECJ....[breaking deliberately] the very system of judicial cooperation of courts in a Community Context... [and it was] a declaration of war' (Alter: 2000, 154); a war in which the CE demonstrated that the ECJ would pay if it acted outside the power given to it by the Treaty.

However, it was argued that the CE did not deny all legal effects to directives in *Cohn-Bendit* and made it clear that the national authorities were obliged to implement directives to give effect to the will of directives. Further, it opened many legal routs 'for obtaining the application of a directive within the French administrative system' (Tatham, 1991: 910). For example, if a French measure improperly implemented a directive, or if a measure was in violation of a directive implemented, the CE would hold it invalid, as it did in two cases.[2] According to Allan F. T. Tatham (1991: 910), for both of these cases, the authority was *Cohn-Bendit*.

Nevertheless, one wonders why the CE did not annul the national law in *Cohn-Bendit* since it violated the directive, too? However, the CE's rebellious approach towards both directly effective law and directives remained unchanged until the late eighties. It was in 1989 that it reversed its position and impliedly gave a positive response to the supremacy of EU law in *Nicolo* (1990).

The CE and its Implied Acceptance of the Supremacy of EU Law

In *Nicolo*, the alleged incompatible Statute was found to be compatible with EU law. By assessing the compatibility of the Statute with the EU Treaty for the first time, and by simply not holding that if such conflict existed, the CE impliedly recognised the EU supremacy. Further, the CE went against its assertion that it would not review the constitutionality of statute law, as by comparing the respective provisions, it 'indirectly' reviewed the constitutionality of the French Statute. Though it still did not recognise the special legal order of the EU, as it found the jurisdiction to assess the compatibility between EU law and national law under Article 55 of the Constitution rather than EU law itself. Whatever the legal authority for the

decision might have been, it was considered to 'present an incontrovertible advance' towards accepting the primacy of EU law (Manin, 1991: 501, 508-9, 519).

Alter (2000: 160-4) provided some reasons for the CE's sudden change of its jurisprudence in *Nicolo*, which could briefly be summarised as follows: a) the Constitutional Court changed its position by approving *Vabre*; b) the idea that the Constitutional Court decided one way and the CE another way was criticised as it produced uncertainty; c) the uncertainty enabled the Parisian Lawyers to successfully appeal to have cases concerning French competition law heard by the CC, as competition law was made at the EU level; d) the government put pressure on the CE to change its position to the extent the government appointed Marceau Long as the new Vice-President of the CE, who had a reputation for favouring the EU; e) and, France was twice condemned by the ECJ. Thus the CE had remained in isolation and had to change its *Semoules* position.

A year later, the CE expressly acknowledged the supremacy of EU law, including directives.

Express Acceptance of EU Law: The Reversal of *Cohn-Bendit*

The CE gave priority to a provision of EU regulation over a French statute (*Re Boisdet*, 1991). It firmly reversed its case law laid down in 1968 in *Semoules* since it both 'gave priority to an EU regulation over a subsequent national law and examined their compatibility' (Cohen, 1994: 139). Unlike in *Nicolo*, in *Re Boisdet*, neither did the CE refer to the French Constitution nor the Treaty to support its decision (Cohen, 1994: 149). This failure might suggest that the CE was willing to 'harmonise its case law with the case law of the [ECJ] established in Simmenthal', that is, 'every national judge...[was] obliged to apply the whole European legislation .... in the event of contradiction with [national law], whether the law [was] previous or subsequent to the [EU] law' (Cohen, 1994: 149). Its harmonisation with the ECJ's case law could be further witnessed in another two cases concerning EU directives (*Rathmans and Arizona Tobacco Products*: 1993).

In those cases, sections 6 and 10 of French law were incompatible with an EU directive. The court held that the sections in breach of the directive were void, and the applicants were awarded damages under state liability. These cases indicated three crucial changes in the CE's position. Firstly, the EU directive took priority over a statute, even in *Rothmons* the Statute was adopted later to the directive. (Incidentally, the directive concerned had been adopted in 1972 and, therefore, the effect of the directive 'operated via the [French] law and the decree.') Secondly, *Bandit* was no longer an authority in France. Thirdly, the CE awarded damages for losses incurred as a result of the French law in breach of the EU directive to the claimants (Hartley, 1999: 244, 256). This was consistent with the principle of State liability under *Francovich* (1991), which had suggested that the CE moved another step forward to harmonise its case law with the case law of the ECJ by embracing the principle of state liability.

In order to fully embrace the supremacy of EU law, the CE needed to give precedence to EU law over French Constitution. But it was not prepared to do this.

EU Law and the French Constitution

In 1998, the CE, in rejecting to review whether the Constitution complied with international law,[3] held in *Sarran* (1998) that 'international treaties do not derive a position superior to that of the Constitution within the national legal order from Article 55 of the constitution', which suggested that the Constitution remained supreme within French legal system (Richards, 2000: 192). Many academics claimed that Article 55 could not be interpreted to accord supremacy to treaties over the French Constitution since Article 55 implied supremacy of international treaties over 'lois' (Statute) rather than over 'lois constitutionnelles' (Richards, 2000: 194). Thus the French Constitutional law was excluded. This indicated that France gave supremacy to EU law on the basis of its Constitution as opposed to international law, i.e. EU law. This position was surely in conflict with the ECJ's ruling of *Internationale handelsgesellschaft*, in which it had held that EU law was superior to even constitutional law of the Member States (Dorani, 2020a).

However, the fact that Article 54 provided that the Constitution must be amended before an incompatible treaty was ratified (as was the case for the Maastricht Treaty, below) indicated that 'it [was] international law which [had] supremacy over the Constitution as it [was] the latter that [was] changed to conform with the former and not the reverse' (Richards, 2000: 196). Nonetheless, some French writers argued to the contrary, as the Constitution was amended to make sure there was no clause contrary to it, and hence it was the Constitution that was supreme (Richards, 2000: 196).

There had not been a direct conflict between EU law and the French Constitution, C. Richards wrote in 2000. He, nevertheless, pointed out that there were areas that a conflict might occur, including 'fundamental rights, rights of asylum and the principle of the independence of Judiciary' (Richards, 2000: 198; Dorani, 2019). If such a conflict occurred, the CE might follow *Sarran*. Another solution offered by a Constitutional Court's report was to amend the Constitution (Richards: 2000, 198). The answer provided by the report was an indication that the Constitutional Court regarded the EU law even supreme to the Constitution. Furthermore, during the period the Lisbon Treaty was being made, it was suggested that France should do a 'constitutional review', but France never did it (UKEssays, 2018).

All in all, in light of the ruling in *Sarran*, one could claim that EU law had 'supremacy only with regard to legal norms below the Constitution' (Richards: 2000, 198). This ruling of the CE raised doubts about whether France really was monist since it, too, held that it would not accept the supremacy of EU law over the French Constitution.

Conclusion

There seems to be no issue regarding the CC's acceptance of the supremacy of EU law, as it consistently held that it had the jurisdiction to review the comparability of the French law with the EU law, and, therefore, constantly gave precedence to the EU law (*Vabre*, 1975).

Whereas the CE and the Constitutional Court were initially reluctant to review French law's comparability with EU provisions due to their jurisdiction limitations, and consequently refused to accept the supremacy of EU law, particularly directives (*Semoules*, 1970; *Cohn- Bendit*, 1980). However, towards the end of the nineties, their views changed, and both accepted the supremacy of directly effective EU law as well as directives (*Nicolo*, 1990; *Re Boisdet*, 1991; *Rothmans and Arizona Tobacco Products*, 1993). Further, the Constitutional Court amended the Constitution so that sovereignty could be transferred in the new areas. Article 88 (1-4) was added, which expressly mentioned France's membership of the EU being subject to the principle of reciprocity. The reasoning for the amendment was owing to the EU's 'permanent international organisations having legal personality and powers of decisions' (Steiner, 2003: 79), which was similar to that of the ECJ in *Costa* – an indication that the Constitutional Court accepted the ECJ's jurisprudence.

Thus, by the middle of the nineties, all French courts embraced EU law's superiority over French law. But the questions that remained unanswered were whether EU law was superior to the French Constitution? If so, whether the French courts accorded supremacy to EU law on the authority of the ECJ's jurisprudence or on the basis of the French Constitution? These questions were partly left unanswered because of the lack of clear statements in the CE's judgments.

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[1] Whereas, the CC followed its decision of 1931 in which it had stated that the court should assume that 'the legislature did not intend to contravene international law unless the law specifically said otherwise (Alter, 2000,136).

[2] *Confederation nationale des societies de protection des anima de France et des pays d' expression francaise case. administrative* (1984); *Federation francaise des societs de protection de la nature case administrative* (1985).

[3] Articles 2, 25, and 26 of the International Covenant on Civil and Political Rights, Article 14 of the European Convention on Human Rights, and Article 3 of the first protocol to the Convention (Richrds, 2000: 192).

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