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**CHRISTIAN DIMENSIONS OF VIOLENCE:
THE SÉLÉKA/ANTI-BALAKA MILITIAS AND THE LORD'S
RESISTANCE ARMY IN THE CENTRAL AFRICAN REPUBLIC¹**

Ana Raluca Alecu*, Andrei Miroiu**

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Abstract

Beginning in 2013, the Central African Republic has been engulfed in a civil war pitting successive governments against a substantial number of armed groups who also compete against each other for control over territory, population and resources. Some of these groups are claiming to be defenders of religious groups in the country, with the Séléka militias fighting for the Muslim communities and the anti-Balaka groups claiming Christian roots and inclinations. Other religiously inspired armed groups such as the Lord's Resistance Army are also present in the country. The following study is an attempt to understand how the "religious" label can be applied to such armed groups and whether it can influence their behavior, thus bringing into light a valuable, albeit lesser known example on how AGs and religion are connected in contemporary Africa.

¹ This article is based on a paper presented at the "The African Political Systems and the Challenge of Globalization" conference, Babeş-Bolyai University, Cluj-Napoca, 5-6 November 2020. The article was elaborated within the Human Capital Operational Program 2014-2020, co-financed by the European Social Fund, under the project POCU/380/6/13/124708 no. 37141/23.05.2019, with the title "Researcher-Entrepreneur on Labour Market in the Fields of Intelligent Specialization (CERT-ANTREP)", coordinated by the National University of Political Studies and Public Administration.

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Religiously-inspired armed groups (AGs) are ubiquitous on the scene of contemporary conflicts, with Central Africa² no exception to that rule. While the attention of many researchers has been drawn mostly to events to the north of the region, with jihadist groups very active in areas stretching from Libya and Algeria towards Mali and Chad³, the events of the last decade in the Central African Republic (CAR) point to a different relevance of the discussion concerning the link between AGs and religion in contemporary affairs. Particularly the fact that in the CAR the radical Islamist angle is virtually absent, while Christian and Christian allied militias dominate vast regions of the country points to the relevance and interest of studying AGs in this otherwise neglected African nation.

This article is a modest attempt at using insights from recent research and classification of AGs coming from strategic studies in order to participate in the larger conversation concerning violence and religion in the CAR and to understanding how the self-proclaimed religious dimension of these groups can shed a light on their behaviour, and thus on the link between AGs and religion in contemporary Africa. The authors are well aware of the difficulties of such an attempt, being confronted with the scarcity of data about events and processes in the CAR, as well as the lack of substantial scholarly research on the topic. However, this is (mostly) a theoretical attempt and should be treated as such.

The classification of AGs understood as basic social units fundamentally interested in establishing, defending and contesting social order sees them as divided according to two major criteria. The first is

² By Central Africa we understand in this essay the vast area stretching from South Sudan and the Central African Republic towards the Great African Lakes and comprising the two Congos, Uganda, Rwanda and Burundi.

³ Richard Philippe Chelin, "From the Islamic State of Algeria to the Economic Caliphate of the Sahel: The Transformation of Al Qaeda in the Islamic Maghreb", *Terrorism and Political Violence*, 32(6), 2020, pp. 1186-1205.

permanence or impermanence, but this is not relevant for the present article, as all CAR AGs are permanent armed groups in the sense in which they do not plan to dissolve until their goals are achieved. The second criterion divides AGs by the purpose for which they exercise violence. In this regard, they can firstly be economic exploitative AGs, a category mostly or solely interested in extracting resources from the target communities and in rearranging some patterns of economic distribution. Secondly, they can be political-ideological AGs, fundamentally interested in rearranging the patterns of a society in accordance to a set of ethical and perhaps ontological beliefs about how a given society is supposed to evolve. If the source of these beliefs is one or more supernatural beings, we can consider religiously-motivated AGs as belonging to this group. One should note that if this classification is adopted, there is no need to distinguish between state and non-state AGs.⁴

As this article is being written, one of the cycles of violence that has engulfed the African nation since its independence⁵ seems to be completed. Aided by its allies (Russia and Rwanda), the regime of Faustin-Archange Touadéra - with claims to legitimacy due to having international recognition and being validated at the polls - is keeping its military opponents at bay.⁶ For the first time in nine years the government in Bangui controls more territory of the country than opposing armed groups and has a substantial military superiority over its opponents, largely due to the involvement of better trained and equipped foreign military forces. This military superiority, it would seem, is also used in ways similar to warfare waged by non-state AGs, with civilians assassinated at will by the

⁴ See a larger discussion in Andrei Miroiu, *Political Theory of Armed Groups: Social Order and Armed Groups*, Springer, 2020.

⁵ Abdurrahim Sıradağ, "Explaining the Conflict in Central African Republic: Causes and Dynamics", *Epiphany. Journal of Transdisciplinary Studies*, 9(3), 2016, pp. 86-103.

⁶ While condemning violence against its own peaceful citizens, see UN News, "Central African Republic: Rights experts concerned over 'Russian advisers' and close contacts with UN peacekeepers", <<https://news.un.org/en/story/2021/03/1088802>> , accessed on 11 June 2021.

foreign forces that upend the Touadéra regime.⁷ In terms of our research interests, the cycle is also approaching its end: the military opposition of the regime consists of a coalition grouping, amongst other smaller AGs, the very opponents during the bloody 2013-2019 civil war in the country, the Muslim Séléka and the Christian anti-Balaka militias. These two loose AGs have joined forces in late 2020 in common hatred of the Touadéra regime, thus ending years of bloodshed that has threatened at times to turn into religiously-inspired genocide. This alliance dedicated to the pursuit of a violent overthrow of the current regime is mirrored by societal trends, with people of both confessions now seeking security from violence in common Christian-Muslim shelters.⁸

Has this alliance made questionable the use of the religious label for understanding the activities of AGs in the CAR? One may be inclined to see things in this framework, although there are, of course, arguments to the contrary. Firstly, there is no reason to think that the coalition is a lasting one. It may very well collapse, either upon success or defeat and sectarian violence would thus return to areas of the country controlled by these militias.⁹ Secondly, the alliance says something about current political conditions in the CAR, but does not account for the multitude of acts of

⁷ Tim Lister, Sebastian Shukla and Clarissa Ward, "‘It Was Our Children They Killed’. Russian Mercenaries Implicated in the Torture and Killing of Civilians in Central African Republic", <<https://edition.cnn.com/2021/06/15/africa/central-african-republic-russian-mercenaries-cmd-intl/index.html>> , accessed on 16 June 2021.

⁸ Fredrick Nzwili, "Christians and Muslims in Central African Republic Share Shelter as Renewed Fighting Displaces Thousands" <<https://ifyc.org/article/christians-and-muslims-central-african-republic-share-shelter-renewed-fighting-displaces>> , accessed on 11 June 2021.

⁹ This is a distinct possibility, as violence along religious lines continues, albeit in a more muted form, see Amnesty International, "Central African Republic: Amnesty Investigation Reveals Full Horror of Conflict and Election Violence" <<https://www.amnesty.org/en/latest/news/2021/02/central-african-republic-amnesty-investigation-reveals-full-horror/>>, accessed on 11 June 2021.

violence committed in the name of religion by these groups in the previous six or seven years.¹⁰

Indeed, these acts of violence have been thoroughly documented ever since the Séléka AGs overthrew the regime of (Christian) president François Bozizé in early 2013 and installed the first Muslim president of the nation, Michel Djotodia. They have been responded in kind by Christian AGs usually called anti-Balaka and initially formed in rural areas by members of local militias that used to operate against cattle-thieves and roving bandits¹¹ and in urban areas by youths feeling threatened of being ruled by a religious minority imposing its will through violence. These anti-banditry local militias are a long-term reality in the CAR and generally in Central Africa, spanning all faiths and many rural communities.¹² A well known case, for instance, are the (Muslim) Peul/Fulani archer company, guarding their cattle-herding communities for a number of decades now while still using traditional weapons against firearms bearing robbers.¹³

Sectarian violence has continued unabated for the years stretching from mid-2013 until the signing of a series of peace agreements between the central government and a number of these groups starting in 2019, though the AGs did not disarm after the ceasefire, turn of events rightfully seen as worrisome by religious figures in the country.¹⁴ The forms of this

¹⁰ On these violences, as well as for a forceful argument for the religious nature of the conflict, see J. Mathieu, "La Centrafrique : Guerre civile, conflit religieux, ou génocide ?" <<http://www.geolinks.fr/continent/afrique/afrique-centrale/la-centrafrique-guerre-civile-conflit-religieux-ou-genocide/>>, accessed on 30 October 2020.

¹¹ For the role of cattle-thieving in contemporary Africa, see Lawrence E. Cline, "War on the Hoof: Regional Security in Africa and Livestock Conflicts", *Small Wars & Insurgencies*, 31(1), 2020, pp. 87-105.

¹² Henry Kam Kah, "Anti-Balaka/Séléka, Regionalisation and Separatism in the History of the Central African Republic", *Conflict Studies Quarterly*, 9, 2014, p. 36.

¹³ Teddy Seguin, "Les archers peuls de Centrafrique", <<https://natureencible.pagesperso-orange.fr/archercentrafrique.html>>, accessed on 11 June 2021.

¹⁴ Lucie Sarr, "Les évêques centrafricains s'inquiètent de l'omniprésence des groupes armés", <<https://www.la-croix.com/Religion/evêques-centrafricains-sinquietent-lomnipresence-groupes-armes-2020-09-07-1201112677>>, accessed on 30 October 2020.

violence should be mentioned here, as they are reminiscent of acts of religiously-inspired violence everywhere.

Both groups have been involved in the assassination and mass-murder of their religious opponents.¹⁵ Execution by firearms, machetes as well as bombings of homes or shelters of those of the opposing (religious) camp have been frequent. Religious cleansing has been perpetrated extensively in the CAR. According to some estimates, at the height of their power in late 2013 and early 2014 the anti-Balaka forced out 99% of the Muslim population of the capital Bangui.¹⁶ Churches as well as mosques have been burned throughout the country.¹⁷ In particularly gruesome acts of violence, mobs hacked to death members of other religious communities, burned them and even engaged in acts of cannibalism.¹⁸ These systematic acts of sectarian violence led to hundreds of thousands of people being displaced from their homes, with most seeking refuge either in other parts of the country but many crossing the borders with the Democratic Republic of the Congo and Cameroon.¹⁹ With northern and eastern Congo being engulfed in its own series of conflicts (though mostly motivated by social

¹⁵ "In this renewed episode of religious hatred, thousands of civilians have lost their lives; villages have been burned to the ground and half-a-million civilians have been forced to leave their homes escaping from the fierce eye of blind faith" wrote Toby Cadman, "Religious War in Central African Republic", <<https://www.aljazeera.com/opinions/2015/7/1/religious-war-in-central-african-republic>> , accessed on 11 June 2021.

¹⁶ Audu Bulama Bukarti, "Ethno-Religious Violence in the Central African Republic", <<https://institute.global/policy/ethno-religious-violence-central-african-republic>>, accessed on 11 June 2021.

¹⁷ Ewelina Ochab, "The Religious War In The Central African Republic Continues", <<https://www.forbes.com/sites/ewelinaochab/2018/05/09/the-religious-war-in-central-african-republic-continues/>>, accessed on 11 June 2021.

¹⁸ "CAR Cannibal: Why I Ate Man's Leg", <<https://www.bbc.com/news/world-africa-25708024>> , accessed on 10 June 2021.

¹⁹ For 2021 conditions of refugees living in the Democratic Republic of the Congo see "Central African Refugees in the DRC Living in Dire Conditions" <https://www.africanews.com/2021/05/21/central-african-refugees-in-the-drc-living-in-dire-conditions> , accessed on 22 June 2021.

and economic concerns, not religion),²⁰ conditions on the ground in the CAR must have been dire indeed to force many to move south.

International organisations, unable to stop many of these acts of violence even though a peacekeeping mission was established and sent early on in the country, feared for some time a Rwandan-magnitude genocide. Initial French military ventures in the country, while somehow successful in preventing mass-scale violence, were unable to completely stop localised massacres.²¹ Indeed, even Pope Francis's November 2015 visit to the beleaguered country failed to make a serious impact on violence between religious communities, although it did help consolidate interfaith dialogue.²² Some sources continue to see in the continuation of the interfaith dialogue a chance for substantial improvement of the security situation in the CAR. As relations at the top level (between Catholics, Protestants and Muslim) have been cordial for quite some time, this chance for peace should, according to some, come from the improvement of the dialogue and cooperation at local levels, particularly between priests, pastors and imams.²³

²⁰ For recent violence in northern Congo, even in urban areas, see Judith Verweijen, Christoph Vogel, and Josaphat Musamba Bussy, "Rebels and the City: Urban Dimensions of Armed Mobilization in the Eastern Congo", <<https://biblio.ugent.be/publication/8668061/file/8668067>>, accessed on 15 February 2021.

²¹ Indeed, some choices made by the French military commanders may have indeed prolonged sectarian violence, "The decision of the French-led military operation – codenamed 'Sangaris' – to disband the Séléka rebels without paying much attention to the anti-Balaka has been a fatal mistake. This not only paved the way for this new group of rebels to heighten their deadly campaign against the Muslim population, but it has also heightened tensions between Christians and Muslims" (Mouhamadou Kane, "Interreligious Violence in the Central African Republic: An Analysis of the Causes and Implications", *African Security Review*, 23(3), 2014, p. 315).

²² Vatican News, "CAR's Cardinal Nzapalainga: Hopes and Challenges of Peacemaking", <<https://www.vaticannews.va/en/africa/news/2021-05/car-s-cardinal-nzapalainga-the-peacemaker-hopes-and-challenges.html>>, accessed on 11 June 2021.

²³ Laura Collins, "Central African Republic: A Role for Religious Leaders in Calming Conflict?", *United States Institute of Peace*, <<https://www.usip.org/publications/2020/12/central-african-republic-role-religious-leaders-calming-conflict>>, accessed on 11 June 2021.

One should note that a number of researchers refuse to see any utility for the religious label in an analysis of CAR-based armed groups. Some see the overlapping conflicts as originating from the bad governance and social exclusion that characterised the country since its early days as an independent nation.²⁴ Certain patterns of social exclusion, with substantial economic consequences, are even inherited from the colonial and pre-colonial times, with Muslim individuals from the north of the country being systematically regarded as foreigners, as immigrants from Chad and Sudan and not really fitting in Central African society. This continuous discrimination explains partially the 2012-2013 revolt of the Seleka's and their attempt to install a Muslim president, Michel Djotodia.²⁵

Others argue that, as the conflict has progressed, survival of the AGs through pilfering local communities has become more important than the defence of their own religious turf.²⁶ Indeed, as the conflict became endemic in the country, many fighters simply stayed with their AGs because they had no place left to call home. Once the initial religious goals

²⁴ "L'exclusion sociale de certaines couches de la société, la discrimination des régions du nord du pays, la mauvaise gouvernance et la corruption sont à l'origine de cette crise. En réalité, la République centrafricaine (RCA), qui connaît des coups d'État à répétition, peine depuis plus d'une trentaine d'années à se doter d'un État stable avec des institutions et des politiques démocratiques." (Barwendé Sané, "Anatomie du conflit centrafricain", *Relations* 776, 2015, p. 9).

²⁵ "The Vakaga region in the northeast of the country, the stronghold of Séléka alliance, is an enclave stigmatized by its Islamic religion and by the enslaving past of its inhabitants. This population was forgotten by the state, which for decades has left them outside their meagre investment, therefore its citizens maintained close ties with Chad and Sudan. The institutional slovenliness, the cultural proximity to countries in conflict, the porous borders and the abundance of mercenaries settled down in this region allowed the armed groups to operate freely. At the same time, the detachment of this population to Central Africans from the South of the country only increased" wrote Trinidad Deiros in "Central African Republic: The Invention of a Religious Conflict", *Opinion Papers (Instituto Español de Estudios Estratégicos)*, 67, 2014, p. 5.

²⁶ Karim Lemond "En Centrafrique, la religion n'est plus un prétexte aux violences", <<https://www.la-croix.com/Monde/Afrique/En-Centrafrigue-religion-nest-pretexte-violences-2017-08-11-1200869121>>, accessed on 30 October 2020.

had been achieved (partially, of course), some of the AG members would not quit them simply because there was no other viable solution for them.²⁷

Other sources, though, complicate matters from a strictly confessional point of view. Members of the anti-Balaka AGs, supposed to be steadfast Christians, stick to substantial animist beliefs and practices, with a good number of them sporting charms that are supposed to ward off enemy bullets. In mystical ceremonies, drugs are taken for the same purpose.²⁸ Drugs were also taken by their opponents, the fighters of the Séléka AGs. In their case, opiates were used to alleviate fears before going into combat or into missions of assassinations.²⁹ It can be thus safely said that both Christianity and Islam are blended with local religions, animist and traditional beliefs, making thus difficult to place them among the ranks of consecrated denomination, be it Christian or Muslim. The situation is further complicated on the Christian side by the lack of self-identification of AGs with the doctrine of a specific Christian denomination, although estimates - albeit not very new - place the Christian population at 89,8 %, with 51,4 % Protestant and 28,9 % Roman Catholic, while the Muslim population can be estimated at around 10%.³⁰

Yet religious-based violence was undoubtedly a characteristic of many of these groups. The anti-Balaka not only targeted Séléka or former Séléka fighters, but waged a sometimes systematic campaign against Muslim citizens. The gender or the age of their victims mattered not, and mutilations and assassinations of the Muslims were frequently happening at the hand of young anti-Balaka fighters. To them, all Muslims were

²⁷ Swiss Peace, "La religion n'est pas la cause du conflit en République centrafricaine", <<https://www.swisspeace.ch/apropos/die-zentralafrikanische-republik-kein-religioeser-konflikt/?lang=fr>>, accessed on 30 October 2020.

²⁸ "Anti-Balaka militia in Borab are adorned with such objects as bullets, tin cans, locks and chains which they believe are charms or fetishes with special power that will keep them safe from the bullets of the enemy" (Kam Kah, *op. cit.*, p. 40), see also *Ibidem*, p. 37.

²⁹ Deiros, Trinidad. "Central African Republic: The Invention of a Religious Conflict.", p. 8.

³⁰ According to Pew Research Center, "Table: Christian Population as Percentages of Total Population by Country", < <https://www.pewforum.org/2011/12/19/table-christian-population-as-percentages-of-total-population-by-country/>> and Gouvernement de la République Centrafricaine, <<http://www.minplan-rca.org/pays/>>, accessed on 22 June 2021.

foreigners that were to be killed or forcibly deported, as they had no place in a Christian society. As mentioned, mosques and other places of worship were deliberately targeted, burned or defaced with graffiti. Even Muslims sheltered in camps or departing the anti-Balaka-dominated areas were considered legitimate targets and were routinely attacked.³¹ Once partial victory was achieved by the anti-Balaka and most Muslims expelled from areas such as the capital Bangui, religious violence did not stop. Indeed, it was turned towards elderly members of the community suspected of being involved in magic and witchcraft. Some were assaulted, some were killed while the lucky ones were dragged in front of special sorcery tribunals, where judges were more lenient than angry mobs.³²

The picture of religious-inspired AGs in the CAR would not be complete without briefly discussing a rather smaller, but famous such group, now dwelling in the remote southeast of the country at some distance from the main centres of power and violence. The Lord's Resistance Army (LRA) is now but a pale shadow of itself, but an excellent example of how complicated is to ascribe a religious dimension even to a self-proclaimed Christian AG, fighting "in the name of God" to impose a theocracy, on the conceptual base of the Ten Commandments. While some would question even the assumption that a Christian group can perpetrate attacks on civilians given its professed beliefs, and while it is clear that for now its power and influence are fading, in 2020, for instance, it mounted some 42 attacks in the CAR, in the DRC, South Sudan and Sudan, killing 31 and kidnapping 192 persons.³³ This is a far cry from its former glory days in the early 2010s, when the US president, prompted by a social media

³¹ Yannick Weyns *et al.*, *Mapping Conflict Motives: The Central African Republic*, International Peace Information Service, 2014, pp. 53-54.

³² Marco Simoncelli, Davide Lemmi, "In Pictures: The Witch Hunts of Bangui" <<https://www.aljazeera.com/gallery/2020/3/24/in-pictures-the-witch-hunts-of-bangui>>, accessed on 16 June 2021.

³³ France 24, "Uganda's Brutal Lord's Resistance Army, Past and Present", <<https://www.france24.com/en/live-news/20210506-uganda-s-brutal-lord-s-resistance-army-past-and-present>>, accessed on 11 June 2021.

campaign, sent hundreds of special forces to the African Great Lakes area to destroy the LRA and capture or kill its feared leader, Joseph Kony.³⁴ Yet somehow LRA continues to be a notorious actor in CAR's religious violence cauldron, even if only for its celebrity and eccentricity. However, one can also point out to the fact that the CAR AGs seem to have taken a page from LRA's playbook, recruiting mass numbers of child soldiers, with sources mentioning up to 10,000 soldiers serving in different AGs operating in the country.³⁵

Beginning in the late 1980s as one of the many opposition groups fighting against Uganda's strongman Yoweri Museveni, the LRA was steeped into a spiritual mode from early on, in a duality blending Old Testament beliefs with the traditional faith of the Acholi nation,³⁶ the ethnic group from which both historical leaders, Alice Lakwena and Joseph Kony as well as most of the initial fighters hailed.³⁷ This mythology was particularly severe in regards to using violence, especially fatal violence against other humans. It required first and foremost a substantial process of cleansing for the warriors, who have to do a special penance to mollify the vengeful spiritual forces and beings unleashed by the act of killing itself. These rituals were quite important for the survival of the family of the warrior itself, as the ghosts created by the process of killing would haunt not only its perpetrator, but also his family for multiple generations.

In addition to that, the Acholi tradition also involved a careful deliberation about the just nature of warfare. Legitimate war could only be

³⁴ The mission lasted for 6 years and is said to have incurred a bill of 800 million \$ for the US government, see Helene Cooper, "A Mission to Capture or Kill Joseph Kony Ends, Without Capturing or Killing", <<https://www.nytimes.com/2017/05/15/world/africa/joseph-kony-mission-ends.html>>, accessed on 11 June 2021.

³⁵ Victor H. Mlambo, Siphesihle Mpanza, Daniel N. Mlambo, "Armed Conflict and the Increasing Use of Child Soldiers in the Central African Republic, Democratic Republic of Congo, and South Sudan: Implications for Regional Security", *Journal of Public Affairs*, 19(2), 2019.

³⁶ Victor Letha, Holly Porter, "Dirty Things: Spiritual Pollution and Life After the Lord's Resistance Army", *Journal of Eastern African Studies* 11(4), 2017, pp. 590-608.

³⁷ Sverker Finnström, "Wars of the Past and War in the Present: The Lord's Resistance Movement/Army in Uganda", *Africa*, 76(2), 2006, pp. 200-220.

waged once its just character was established, after which the war chiefs had to obtain the blessing of the elders of their communities, a ritual act involving touching the body with special wooden branches.³⁸ One might still insist on how a Christian AG - albeit involved in a "legitimate war" - can commit killings, thus openly breaching the "Thou shalt not kill" commandment. Some might argue that the very fact the LRA is a heterodox Christian AG, and not one that would see its members adhere to a specific Christian denomination (be it Protestant or Catholic), would make the observance of the Christian doctrine loose. Still, the picture becomes grimer if we consider what are generally called "The Christmas Massacres", during which, between 25 and 27 December 2008, the LRA conducted raids in churches and villages in northern Democratic Republic of Congo, killing over 400 people, fellow Christians included.³⁹

Yet these traditional ways of looking at warfare were changed, as argued by Finnström, through the increased mechanisation of warfare, including the adoption of weaponry that made remote killing possible, thus breaking the connection between the killer and his victim. Museveni's systematic counterinsurgency against the LRA in particular and the Acholi in particular, with all its brutal aspects, furthered the weakening of links between the armed group and the original community. Its fighters veered towards Kony, seen as a military and spiritual leader,⁴⁰ as well as its brand of militant Old Testament Christianity, through which it sought to openly govern Uganda according to the Decalogue. Extreme violence, mutilations, assassinations and its well-known tactic of recruiting children to serve as soldiers in its ranks were, at least in Kony's view, not incompatible with its

³⁸ *Ibidem*.

³⁹ Other sources mentioned higher figures at the time, see Human Rights Watch, "DR Congo: LRA Slaughters 620 in 'Christmas Massacres'", <<https://www.hrw.org/news/2009/01/17/dr-congo-lra-slaughters-620-christmas-massacres>>, accessed on 22 June 2021.

⁴⁰ Christopher R. Day, " 'Survival Mode': Rebel Resilience and the Lord's Resistance Army", *Terrorism and Political Violence*, 31(5), 2019, pp. 966-986.

religious message.⁴¹ And perhaps a literal reading of some passages of the Old Testament might actually support such a viewpoint, if one may venture to say so.

In time, the necessities of sheer survival against a determined campaign of Ugandan military forces have shifted the LRA towards a more pragmatic stance. While the religious foundation is still important, but increasingly remote in terms of actual implementation, the group has had to be innovative in regards to procuring weapons, food, money and lodgings. Initially, they relied on help from the Sudanese government, acting as a proxy against South Sudanese independence fighters.⁴² This is particularly interesting from a religious point of view, as Khartoum was at the time (in the 1990s and early 2000s) firmly in the grip of Hassan al-Turabi, a hardline Islamist with a history of protecting figures such as the exiled Osama bin Laden.⁴³

As this state support withered with time (though some LRA camps persisted in South Sudan until the present day), the AG had to increasingly look for subsistence by other means. One of these was, just like the case of many AGs operating in the area to the north of Africa's Great Lakes, poaching. The killing of rhinoceros, elephants, big cats and other rare animals is a well-documented phenomenon in the study of African AGs, who use the animals either as food, or, more lucratively, as "cash crops".⁴⁴ Sources attest these instances of LRA poaching rare animals, including

⁴¹ James Bevan, "The Myth of Madness: Cold Rationality and 'Resource' Plunder by the Lord's Resistance Army", *Civil Wars*, 9(4), 2007, p. 345.

⁴² *Ibidem*.

⁴³ Magnus Taylor, "Hassan al-Turabi's Islamist Legacy in Sudan", <<https://www.crisisgroup.org/africa/horn-africa/sudan/hassan-al-turabi-s-islamist-legacy-sudan>>, accessed on 14 June 2021.

⁴⁴ Amongst many sources see Jack Losh, "Central Africa's Rangers Are as Threatened as the Animals They Guard", *Foreign Policy*, October 6, 2019, <<https://foreignpolicy.com/2019/10/06/central-africas-rangers-are-as-endangered-as-the-animals-they-guard>>, accessed on 15 June 2021.

giraffes, in the easternmost regions of the CAR.⁴⁵ In the Garamba National Park of the CAR, they hunt elephants for ivory. If they follow patterns established since the 1980s by other Sudan-based AGs, they could sell these to networks of merchants transporting them to Kenya's ports for shipping towards their main markets in East Asia.⁴⁶ Showcasing how similar are the actions of governmental AGs with those of rebel AGs, soldiers of Ugandan armed forces sent to eastern Congo and the CAR to attack the LRA engaged in similar practices regarding poaching and illegal sale of timber in order to line up their pockets, sometimes using military vehicles for the transportation of the merchandise.⁴⁷

As these activities take more and more time and physical resources of the armed group, it is increasingly unsure how relevant is the current application of the religious label to the Lord's Resistance Army. In combination with its thorough defeat in Uganda (resulting in the inability to recruit within its ranks, by force or not, members of the Acholi community), its expelling from the northeastern DRC and its insignificant role in the politics of the CAR, it is probably more accurate to think of present-day LRA as an economic exploitative armed groups, solely concerned with its own survival.

This brief discussion of religious armed groups in the Central African Republic has highlighted how difficult it is to understand the activities of local rebel or pro-government militias according to one possible classification of AGs based on the reasons for which they use violence. Religious impulses and violence committed in the name of religion were certainly hallmarks of the Séléka and the anti-Balaka militias

⁴⁵ UN News, "Central Africa's Iconic Mammals Threatened by Poachers, Armed Groups – UN Environment Wing", <<https://news.un.org/en/story/2018/01/1000801>>, accessed on 15 June 2021.

⁴⁶ Gervais Ondoua Ondoua *et al.*, *An Assessment of Poaching and Wildlife Trafficking in the Garamba-Bili-Chinko Transboundary Landscape*, *Traffic Report*, December 2017 p. 4-5.

⁴⁷ Kristof Titeca, "Illegal Ivory Trade as Transnational Organized Crime? An Empirical Study into Ivory Traders in Uganda", *The British Journal of Criminology*, 59(1), 2019, pp. 24-44.

as well as the Lord's Resistance Army at some point of their history - and particularly during the initial phase of their existence. However, their initial formation as defence groups (against governmental injustice, repression, or roving bandits) also points to structural, economic and political reasons which explain their formation. Once initial goals had been met or utterly missed (as in the case of the LRA), the AGs were forced to think more and more about survival and became more akin to economic exploitative groups. Some (such as the Séléka and the anti-Balaka) were able to discover common political goals, becoming allies in a civil war against a government they see as illegitimate, thus reinforcing the political side of their motivations for using violence. All these evolutions mapped here point to the fact that when analysing individual AGs, particularly those still in existence, one needs to tread carefully between theory and facts and remove the rigidity from conceptualisations and classifications.

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THE END OF FRANÇAUFRIQUE? A STUDY CASE ON BENIN'S 2016 PRESIDENTIAL ELECTIONS

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Abstract

The elections that took place in 2016 in Benin are very significant in defining the new framework of the French-African relations per se. The so-called candidate of Françafrique, Lionel Zinsou, lost the elections mainly because he promoted during the electoral campaign a vision still devoted to maintaining close connections with the former colonial power, France. On the other side, Patrice Talon fiercely advocated for a new and strong position both in what regards the domestic affairs as well as externally, portraying himself as «le candidat de la rupture». In the end, this way of positioning during the electoral campaign brought him the victory in elections, besides France's support towards the other candidate. Taking into consideration all these elements, the main purpose of the paper is that of analysing the impact of the 2016 elections 'result on redefining and maybe even ending the French-African relations, long time known as Françafrique. In this approach, the analysis will mainly focus on the electoral campaign itself and especially on the way in which the colonial past and the reference to France have been used by the candidates as means of winning votes from the electorate and to positioning to one another during that period of time.

Keywords: Benin, presidential elections, electoral campaign, colonial history, Françafrique

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Introduction

The French-African relations bear a deep and complex history of interaction spanning from the colonial era until today. Their unique way of developing as well as their intensity have been known for a long period of time as *Françafrique*. But in the last years, the political events that took place in several former African colonies have brought up a new reality in which France seems to lose its grip on its former partners and clients.

The so-called French candidates involved election process organized in those African states are starting to lose especially because they are directly or indirectly linked to the former metropolis. Moreover, the anti-colonialist or anti-French discourse is starting to gain support among the people and increasingly becomes a driving-factor of change.

This is also the case of Benin, a former French colony with strong post-colonial links but also known for the outstanding positive democratic transition during the last decades. As many political analysts have considered in the last years, “Benin’s success comes with a number of electoral innovations that are challenging the *status quo* and could have important implications for the rest of the continent in the future.”¹

It is clear that these implications are relevant for the internal democratic process but can also have an impact on Benin’s relations with the former colonial power. The 2016 elections brought to light exactly this new dynamic in the evolution of French-African relations which we assume to call and depict in this paper as the end of *Françafrique*.

The main research question of the paper is “Are the 2016 elections ‘results in Benin a sign of the end of *Françafrique*?’”. Further on, the subsequent questions are “Which were the means used by the candidates during the electoral campaign in order to gain votes?” and “Was the relation with France a cornerstone in influencing the electorate to distance from the so-called *Françafrique* candidate?”.

¹ Vera Songwe, “Benin’s Landmark Elections: An Experiment in Political Transitions”, <<https://www.brookings.edu/blog/africa-in-focus/2016/03/22/benins-landmark-elections-an-experiment-in-political-transitions/>>, accessed on 30 April 2021.

In finding an answer to all these research questions, the first part of this paper will mainly focus on defining very briefly the concept of *Françafrique* and then on establishing the main elements that need to be considered in analyzing this phenomenon. Secondly, we will look into the evolution of the electoral campaign and will analyze synthetically its results. We will mainly focus on the major moments of the electoral campaign and on the strategies used by the candidates during that period, paying a particular attention to the way in which the relation with France and the *Françafrique* have been used mostly as means of gaining electoral support.

Definitions and analysis elements

The term of *Françafrique* has known a long yet tumultuous and controversial history throughout the decades. Since the purpose of this paper is rather a more empirical than a strictly theoretical one, we will very briefly present the definition and evolution of the term of *Françafrique*. In what regards the appearance and evolution of the term, it is of utmost importance to notice from the very beginning that it has been accepted and used throughout decades both by the French and African leaders bearing for a long time a similar significance and being associated to a particular way of interaction between France and its former African colonies.

From a historical point of view, the term was first coined by Ivory Coast's first president, Félix Houphouët-Boigny in 1955" to encapsulate the close and amicable ties between his own country and the former colonial power, France, referring to the specificity in which the Franco-African relationship have proliferated" ². This definition has been used for the next decades both by the French and the African side and it captured very well that unique post-colonial network from the African continent. For the former French colonies, it meant that then protector still existed and that

² Maja Bovcon, "Françafrique and Regime Theory", *European Journal of International Relations*, 19(1), 2013, 5-26.

the traditional way of living coordinated by the former patron-state was still in place, together with its help and protection³.

For France it meant that it still kept its grip on the African states and it maintained its supremacy in that area. This translated into privileged access to the African states' resources and a significant influence also in their domestic affairs. This has been the reality for a long time after decolonization. Still, a change occurred starting with the 1990's when the new political, economic and institutional arrangements showed and brought a different perception of the concept.

In this context, the term received a negative connotation, especially following the publication of François-Xavier Verschave's well-known book, *La Françafrique, le plus long scandale de la République*. He defined the concept as "the secret criminality in the upper echelons of French politics and economy, where a kind of underground Republic is hidden from view"⁴. From this moment on, the negative meaning of the term seemed to prevail for next decades and this had a great impact on the evolution of the African states⁵. As we will try to demonstrate in the sections of the paper its especially this way of seeing the *Françafrique* that brought changes in the African societies and that brought it finally to an end, as it is the case of Benin 2016's elections.

Having these elements as starting premises, in the next sections we will try to find an answer raised even from the title: "The end of *Françafrique*?". In this regard we will pay particular attention firstly to the

³ Historically, *Françafrique* also meant a system of centre-periphery clientelism, as shown in Sergiu Mișcoiu, Louis-Marie Kakdeu, "Authoritarian Clientelism: The Case of the President's 'Creatures' in Cameroon" in *Acta Politica*, 1(56), 2021.

⁴ François-Xavier Verschave, *La Françafrique, le plus long scandale de la République*, Paris, Stock, 2003.

⁵ Also see Sergiu Mișcoiu, "Introduction. Du récit des conflits au conflit des récits : Raconter les politiques conflictuelles en Afrique" in Simona Jișa, Sergiu Mișcoiu, Modibo Diarra (eds.), *Raconter les politiques conflictuelles en Afrique. Regards croisés*, Paris, Editions du Cerf, 2021, pp. 7-19; Sergiu Mișcoiu "Afrique et politique", in Simona Jișa, Sergiu Mișcoiu, Buata B. Malela (eds.), *Littérature et politique en Afrique francophone. Approche transdisciplinaire*, Paris, Editions du Cerf, 2018, pp. 345-348.

evolution of Benin's democratic transition and to the context in which the elections took place in 2016.

Then, in a second part we will analyze the messages and strategies used by the two main candidates: Zinsou and Patrice Talon. The primary objective is to see how the term and significations of *Françafrique* have been used by the candidates during their electoral campaign. Moreover, we will look into the history of each of the two candidates trying to identify connections with France and the way in which the local society has perceived them. Their background and especially the manner in which they used it during the campaign will be analyzed in this paper. Also, we will focus on assessing the influence that the association with France had on perceiving them and then how it reflected in the electorate's response. At the same time, we will focus on the results of the presidential elections and we will try to explain why the victory of Patrice Talon has been seen as a triumph of a new and strong Benin and also why the society fought so fiercely to detach from what they have negatively perceived as the *Françafrique* type of relations and on the meaning that this had on them, as well.

The case of 2016 Benin elections

Benin has been for a long-time part of the French Colonial System and remained even after the end of the decolonization process as one of its most devoted allies in the Western Africa. Moreover, the country has known various periods of political instability and was ruled by various regimes including a Marxist-Leninist one before the beginning of the 1990s⁶. After these times of rapid change and uncertainty, Benin has undergone some important steps, extremely relevant for its future evolution. Therefore, this period of turmoil ended when the country initiated a reform of the constitution which established, for the first time, a

⁶ Sergiu Mişcoiu, Hygin Kakaï, Kokou Folly Hetcheli (eds.), *Recul démocratique et néo-présidentialisme en Afrique centrale et occidentale*, Iaşi, Institutul European, 2015.

multiparty system, in 1990.⁷ After this moment, from a political point of view, a new era began by starting a strong democratic process that took several years. At the end of it, the results were immensely profound and proved to be defining for its future political evolution as well as for its relations with France. It is important to notice that “with a total of 20 leadership transitions (defined as a change in the ruler/president of the country) overall since Benin’s independence, the last five have been contested multi-party elections.”⁸ Hence, after this sequence, we can see that Benin stood for a long period of time as one of the West African states hardly involved in the democratic transition process throughout the last decades: “Many scholars consider electoral turnover of the executive a key indicator of democracy, and Benin’s success in peacefully electing successive new presidents without interruption is a sign that Benin is among Africa’s greatest democratic successes”.⁹

Strongly devoted to this process was not just the former leader, president Boni Yayi (who finally was not able to extend his term as president of the Republic) but also the civil society (and mainly the young people) which continuously manifested in favor of organizing the elections. This is why even if “both Kérékou and Boni Yayi considered attempting a third term (...) were blocked by popular opposition to such plans. Although Benin’s democracy has room for growth, its ability to regularly and peacefully replace its presidents is a role-model for many of its neighbors.”¹⁰ All these elements created a favorable framework to assist in 2016 to a scrutiny which finally proved to have a significant impact not

⁷ Mark Duerksen, “The Testing of Benin’s Democracy”, <<https://africacenter.org/spotlight/the-testing-of-benin-democracy/>>, accessed on 1 May 2021.

⁸ Songwe, *op. cit.*

⁹ Tyson Roberts, “Here’s Why Benin’s Election Was a Step Forward for African Democratic Consolidation. And Why it Wasn’t.” in *Washington Post*, <<https://www.washingtonpost.com/news/monkey-cage/wp/2016/03/22/heres-why-benins-election-was-a-step-forward-for-african-democratic-consolidation-and-why-it-wasnt/>> accessed on 30 April 2021.

¹⁰ *Ibidem.*

only at local level but also for the evolution of the French-Beninese relations. The elections from 2016 are a crucial moment for both France and Benin and for what has been commonly known as *Françafrique*.

Before describing the electoral campaign and then assessing the results of the elections, there are some considerations that need to be made regarding the general framework in which the elections took place. First of all, as we have already mention in the first part of this section, the simple fact that the electoral process began just on time (at the end of the term of President Thomas Boni Yayi) is a significant step in the democratic evolution of the country. Secondly, the background of some candidates is rather uncommon for the ordinary political landscape of Benin. In the past, most of the candidates came from the public sector and were mainly leaders who are well-known for having strong connections with the former colonial power.¹¹ For example, Patrice Talon (who finally won the elections) comes from the private sector and is a business man. He never occupied a public function before. Moreover, an important element which needs to be taken into consideration when analyzing the Beninese elections of 2016 is also the amendment from the Constitution, made in 1995 which allowed the Beninese diaspora to vote, for the first time in history.¹² This had also an important effect on the results of the elections held in 2016.

All these elements are very relevant in assessing the state of democratic transition in the Beninese case. The emergence of new leaders, as it is the case of Patrice Talon, with a different background and having the private sector as a main supporter behind, reflects an important change in the evolution of the democratic practices in Benin. Before presenting the results of the elections and their impact on the evolution of the relations between France and Benin, a particular attention will be paid to the main arguments used by the candidates during the electoral campaign.

¹¹ Songwe, *op. cit.*

¹² *Ibidem.*

The most strong and aggressive discourse was that of Patrice Talon, who from the beginning positioned himself as completely independent from any French influence. Moreover, he promoted strongly his story of life and his journey in becoming a successful businessman, trying to become a model for the younger Beninese population. "Talon had portrayed himself as a big-spender and a self-made man in his campaign, turning up for the first-round vote in a Porsche, white open-necked shirt, a fitted suit and sunglasses".¹³ This had an important impact on the electorate especially because it was an out of the ordinary candidate if compared to the last elections that took place in Benin. At the same time, his life story, promoted as a model of success, set an example for the younger generations that a better future is not just possible but truly achievable: "From humble beginnings in the coastal town of Ouidah, he rose to become one of the most powerful men in Beninese business and bankrolled Boni Yayi's successful 2006 and 2011 presidential campaigns".¹⁴

This evolution brought enthusiasm and hope to the young electorate that strongly believed that Patrice Talon will have a powerful presidential agenda centered on growth and job creation in the years to come. Besides promoting himself as a role-model, Patrice Talon fiercely promoted a denigrating discourse towards his contender. Moreover, he constantly promoted himself as "*le candidat de la rupture*".¹⁵ It is more than clear from this point of view that this way of portraying himself as a "new" candidate, fully detached from the colonial past has been a sound and very powerful part of his general message during the electoral campaign: that a new President and a new country project is strongly needed and that he is the image of a new generation of leaders for Benin. While building a strong

¹³ France 24, "Businessman 'Wins Benin's Presidential Election'", <<https://www.france24.com/en/Benin-presidential-elections-mark-victory-Talon>>, accessed on 29 April 2021.

¹⁴ *Ibidem*.

¹⁵ Martin Mateso, «Bénin : Patrice Talon enfin président après une longue traversée du désert», <https://www.francetvinfo.fr/monde/afrique/benin/benin-patrice-talon-enfin-president-apres-une-longue-traversee-du-desert_3060941.html>, 27 April 2021.

image of himself as being an authentic, local contender, Talon criticized Lionel Zinsou for his foreign education and constantly named him as being the *Françafrique* candidate: "Talon repeatedly attacked Zinsou's dual French nationality during the election campaign, billing himself as the "authentic Beninese candidate".¹⁶ It is clear that Zinsou's mission during this campaign was even harder in this context as he had to fight against all these critiques: "Zinsou struggled to overcome the perception that having spent a large part of his ministerial career abroad, he is an outsider in his country".¹⁷ All these aspects brought him in a constantly defending position since he spent the first part of his life outside Benin, being born in France, educated in the United Kingdom and working for the French Government for a long period of time. This is why he permanently fought to overcome this image of foreigner during the electoral campaign and to come closer to the local population trying to avoid being perceived as the candidate of France. Moreover, Patrice Talon used every occasion he had to strongly criticize Lionel Zinsou for all the decisions made during his term as Prime-Minister of Benin. At the same time, he always tried to promote an unfavorable image of Zinsou claiming he was a stranger, who does not have an accurate and deep knowledge of the political and social realities of Benin." Talon harped on the record of Boni Yayi, whom he said had created "a banana republic" that had become "the laughing stock of the world", as well as questioning Zinsou's knowledge of Benin."¹⁸ Also, he never refrained himself from directly attacking Zinsou, denigrating him and his campaign. This is why Zinsou's agenda and proposals for the future have been an important target of Patrice Talon's critiques during the electoral campaign: "He also launched a string of personal attacks against Zinsou,

¹⁶ Deutsche Welle, "Businessman Talon Wins Benin Presidential Race as Zinsou Concedes Defeat", <<https://www.dw.com/en/businessman-talon-wins-benin-presidential-race-as-zinsou-concedes-defeat/a-19131175>>, accessed on 27 April 2021.

¹⁷ *Ibidem*.

¹⁸ France 24, *op. cit.*

accusing him of acting like "a governor in a land of savages".¹⁹ Also, during the televised debate he accused Zinsou as being part of a neocolonial system and as being responsible, together with President Boni Yayi for the disastrous economic situation of Benin and that he is also responsible for helping Yayi to transform Benin into "a rogue state"²⁰.

Considering all these elements, it is clear that Zinsou's dual nationality (French and Beninese), alongside his educational and political background offered Talon a promising field to exercise his arguments and to build a powerful anti-French and generally anti-colonialist discourse. Moreover, it seems that Zinsou himself praised the former metropolis and its essential role in assuring the economic stability of the former African colonies, being convinced that "CFA Franc countries were better off with French involvement than without. That they *needed* France more than France needed them."²¹ This can be considered an important disadvantage and setback for Zinsou's credibility as local leader and future president of Benin. Nevertheless, it is important to mention at this point that Talon himself has a history of connections with France even if he neglected to remind these elements during the 2016 campaign. He actually financially supported the two campaigns of President Thomas Boni Yayi and "when (...) was accused of attempting to poison President Boni Yayi in 2012 – he has subsequently been pardoned – he fled to France for safety".²² Although this situation was well-known, he dismissed any direct link to the former colonial state and he criticized fiercely his opponent by claiming that he is actually the candidate of France.

Another significant element of the 2016 elections in Benin is strongly connected to the multiparty system and also to the collation forming process in order to win the electoral scrutiny of the country. As we

¹⁹ *Ibidem*.

²⁰ Mateso, *op. cit.*

²¹ Simon Allison, "Analysis: Benin's Election is a Setback for la Francafrique", in *Daily Maverick*, <<https://www.dailymaverick.co.za/article/2016-03-22-analysis-benins-election-is-a-setback-for-la-francafrique/>>, accessed on 30 April 2021.

²² Allison, *op. cit.*

have already seen in this case, "rather than winning with the support of a strong party, Talon, like Boni Yayi, won with support from the business sector (Yayi Boni had many business supporters from a decade heading the West African Development Bank) and a coalition of supportive smaller parties."²³ Taking into consideration all these aspects, the last part of the paper will be centered on the results of the elections. In this part, we will highlight especially the driving factors that enabled this result to become possible in Benin in 2016.

Assessment of elections' results

The results of the elections illustrated clearly that the strategy of Patrice Talon, together with the pressure from the younger generations were essential in securing the victory of the so-called local candidate, in the person of Patrice Talon. While in the first round, the two main candidates positioned themselves follows: "Lionel Zinsou: 28,43% and Patrice Talon: 24, 73%"²⁴, in the second round Patrice Talon registered a full, strong victory winning 65. 37% of the total number of votes while Lionel Zinsou gained only 34.63% of the ballots and has publicly conceded even before finding out the official final results of the vote process.²⁵ Patrice Talon's decisive and, at first glance, even surprising win has been generally perceived by the main political analysts as a major setback for what has been commonly known for decades as *Françafrique*. The candidate Zinsou has been permanently associated with France and has been perceived as the former colonial power's candidate.

On a general note, we can see that Zinsou's electoral campaign had two major problems. First of all, "he fell victim to Benin's healthy multiparty democracy, which has seen regular changes in president and

²³ Songwe, *op. cit.*

²⁴ France 24, "Benin Heading for Presidential Run-Off Vote", <<https://www.france24.com/en/20160308-benin-second-round-presidential-election-zinsou-talon>>, accessed on 1 May 2021.

²⁵ Songwe, *op. cit.*

ruling party since the reintroduction of multiparty democracy in 1991".²⁶ It seemed that, rather atypical for a former African colony the candidate who has not been supported by the main party, won the elections. In this context, we can easily notice that we assisted to an important change, result strongly motivated by the democratic evolution of the African countries and mainly by the insertion of a new, multi-party system.

Secondly, "Zinsou simply couldn't shake off accusations that he was hand-picked by France for Benin's top job. Opposition politicians claimed he was "parachuted in" from Paris, or that he was an impostor".²⁷ Spending most of his life outside Benin and in key political positions within the French Administration he fought during the whole campaign to overcome the image of a stranger: "He has spent most of his working life in the French government, and much of that at a very senior level, most notably as speech writer for foreign minister Laurent Fabius. With this background, it's hard to imagine him not toeing the French government line."²⁸

All these elements have been crucial in the evolution of the electoral campaign in 2016. The background of the candidates, alongside their proposals of actions as future presidents and with the perception of the society (mainly regarding their connections with the former colonial power) have created a special framework in which the elections took place in Benin. The results of the elections reflected the limits of the current French influence in Benin and also the perception of the electorate towards the relation with France. Patrice Talon used very carefully the strong ties of his contender with France and built an image of a stranger who has spent most of his life serving the former colonial power while he remained in his native country and become a real model of Beninese success.

²⁶ Alisson, *op. cit.*

²⁷ *Ibidem.*

²⁸ *Ibidem.*

Conclusion

As we have seen throughout the paper, the case of Benin stands out as a landmark from at least two significant perspectives. First of all, it stays as a successful example of democratic transition in Africa, especially for its neighboring countries.

At the same time, it shows the implications of this process on the relations of France with a former African colony. The new Beninese president Patrice Talon portrayed himself during the campaign as the main anti- *Françafrique* (although he had some old connections in the past) and used a strong anti-French discourse in presenting his electoral program during the pre-elections period.

While presenting himself as a role-model for the younger generations and an example of success, he constantly criticized Zinsou and made him look like an "outsider" in the Beninese politics. This image of "foreigner" has been a major setback for Lionel Zinsou during the whole electoral campaign as he has been associated permanently with the former colonial power and has been strongly tied to the *Françafrique* politics and relations from the past.

This way of resorting to the past and using it in order to "demonize" the other candidate has been a significant instrument of electoral campaign used by Patrice Talon who ultimately won the elections. In conclusion, it becomes more and more clearer that the connection with the past and especially with the former *Françafrique* practices remains a sensitive subject for the African societies in the last years. This is why the *Françafrique* associated candidates are starting to lose elections and this is definitely a significant downgrade for the current French-African relations.

Considering all these elements, we can easily notice that Benin's 2016 elections are an important reflection of the current status of the French-African relations. From a symbolic perspective, the elections can be considered as an end of the *Françafrique* relations. Nevertheless, we have to pay attention to the fact that Patrice Talon also shares some ties with the French leaders even if not so strong as in the case of Lionel Zinsou.

Therefore, the case of Benin's 2016 elections proves to be very significant in analyzing both the democratic transition of the former African colonies and the means through which they relate nowadays to France. What we have called as the end of *Françafrique* it is definitely not a complete shutdown of the past or even of the postcolonial practices but it is definitely a major setback in the evolution of France's relation with its former African colonies.

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**NATIONAL LIBERATION MOVEMENTS AND THEIR
VOCATION FOR PARTY POLITICS IN SOUTHERN AFRICA.
THE CASE OF THE AFRICAN NATIONAL CONGRESS AND
ZIMBABWE AFRICAN NATIONAL UNION**

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Abstract

The paper aims to shed light on the particularities of two national liberation movements - turned political parties and how they embraced their new role after the liberation struggle had ended and majority rule had been obtained. South Africa's ANC and Zimbabwe's ZANU-PF are analyzed in an attempt to ultimately underline why democracy was approached distinctively by the two. We also bring some arguments as to why South Africa failed to stop ZANU-PF's descent into autocracy, amidst internal and international pressures to intervene. After a short historical background of the two NLMs, we discuss the links between them, the particular political and social conditions which shaped their behaviours and the commonalities and differences in said behaviours. We argue that, as long as the democratic principles identified with ZANU-PF's struggle for the empowerment of a new elite, the former were pursued; when the two no longer overlapped, stronghold politics and policies took primacy. We also argue that faced with similar contestation as ZANU-PF, the ANC might choose to sacrifice democracy for the sake of regime survival.

Keywords: party-politics, international relations, regional influence, democracy, colonialism, discourse

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Introduction

In the following parts, we will delve into two of Southern Africa's most prominent national liberation movements (NLMs), the African National Congress (ANC) and The Zimbabwe African National Union-Patriotic Front (ZANU-PF), trying to follow their transformations into political parties. We do so by providing some historical background, after which we approach their ties and mutually recognized interests. We then shift to their identities and political parties, which, arguably, have steered South Africa and Zimbabwe towards different approaches to democracy. We dedicate a distinct part to how the ANC's leadership has engaged Zimbabwe's social crisis, which is coupled with the resurgence of anti-colonial narratives in the latter state and with overall Sub-Saharan NLM solidarity. A later part of the paper reinforces the claim that, if faced with similar circumstances – such as a struggle for regime survival, the ANC might behave similarly to ZANU-PF. In the final part, we assess the different intraparty power transfers, as distinct ways of ensuring or mimicking internal democracy.

This work is mainly descriptive and analytical. It follows seemingly distinctive subjects, united by some common denominators, the most important of which is the plethora of transformations taking place in the identities and political practices of the two aforementioned entities. Democracy, while key to our endeavour, is for the most part tangentially or implicitly tackled, as we did not intend to make a comparative assessment of the levels of democratization in South Africa and Zimbabwe at any given point in time.

From a temporal perspective, our research mainly focuses on the period 1994-2014, but information regarding events that exceed the two-decade span is used mostly to establish context.

Context

National liberation movements (NLMs) are distinct entities that challenged the domestic social order in several states across the globe, during or in the aftermath of the decolonization process¹. In Southern Africa, and particularly in Zimbabwe and South Africa, the major objectives of these types of movements were to restructure the political landscape and to empower the historically oppressed majority population.² While the intricate histories of the two movements demand an extensive account, for the purpose of providing context, we have attempted to briefly present major events for the sake of context. We are, however, the first to admit that the summary below is intended to be taken as a comprehensive account.

The ANC was founded in 1912 in Bloemfontein and is the oldest liberation movement in Africa. At its onset, it comprised tribal chiefs, people's representatives, church organisations, and other prominent individuals, united by the objective to bring Africans together and to enable them to defend their rights and freedoms. In 1948, the National Party unexpectedly came to power in South Africa and apartheid was created, as an extreme form of institutionalized racial segregation. The ANC's resistance to the apartheid regime was initially modelled after the Indian independence movement and was limited to non-violent defiance campaigns. After the Shapeville Massacre³, an ideological reorientation took place and the organization's military wing was created in 1960. Through its military wing, a plethora of guerrilla actions were pursued, including the targeting and sabotaging of government facilities or targeted killings. The ANC was labelled a terrorist organization, banned and forced to operate underground and from other countries. The liberation

¹ See, *inter alia*, Sergiu Mişcoiu, Hygin Kakaï, Kokou Folly Hetcheli (eds.), *Recul démocratique et néo-présidentialisme en Afrique centrale et occidentale*, Iași, Institutul European, 2015.

² In Zimbabwe, securing the country's independence can also be noted as a major objective.

³ An dramatic incident in which police fired at a group of black protesters, killing and injuring approximately 250 people.

movement gradually shifted its narratives to a more conciliatory tone. This, alongside pressures from inside and outside the country, made the government lift its ban on the ANC in 1990. A settlement was negotiated to end apartheid and in the 1994 elections, the ANC obtained a landslide win alongside the Congress of South African Trade Unions (COSATU) and the South African Communist Party (SACP).

ZANU was formed on 8 August 1963, drawing members from Zimbabwe's Shona and Ndebele tribes. In 1976 - Robert Mugabe's side of ZANU, which was unwilling to abandon the armed struggle and embrace détente, formed ZANU-PF alongside some members of the Zimbabwe African People's Union (ZAPU)⁴, the party from which ZANU had initially split. Like the ANC, it used guerilla tactics and ensued violent campaigns. The signing of the Lancaster House Agreement in December 1979 was followed by a transition to majority rule and by Zimbabwe's independence the following year. ZANU-PF won the 1980 elections and merged with ZAPU in 1986. Since 1980, ZANU-PF has managed to stay in power in Zimbabwe.⁵ Its first serious signs of political contestation appeared in the early 2000s, while it attempted to grant more powers to the executive presidency through constitutional changes. In a pushback against opponents from politics, the legislative, civil society and the media, ZANU-PF gradually became more authoritarian and more violent, plunging Zimbabwe into a series of crises and attracting international criticism.

Since 1994, South Africa's democracy has expanded – albeit progress has not been linear, and periods of reversal can be identified, while Zimbabwe's democratic space has gradually contracted. If we were to provide a transversal comparison, one might say that every single year, especially since the late 1990s, South Africa's democratic scores were higher than those of Zimbabwe, regardless of who conducted the studies and made rankings and indexes.

⁴ Militant socialist party formed in 1961, that campaigned for majority rule in Zimbabwe.

⁵ From February 2009 to July 2013 a government of national unity was in place, ZANU-PF sharing power with the former opposition parties, MDC-T and MDC-M.

Of blood ties, ruptures and shared interests

The ANC and ZANU-PF share a historical connection that goes beyond their common historical trajectories of liberation-movements-turned-parties. Mavivi Myakayaka, ANC's Chief of International Affairs and Policy during the Thabo Mbeki's presidency, once stated, in sharp criticism of those who urged South Africa to adopt a firmer stance on Zimbabwe: "*We can't do that as the ANC. We have historical ties ... These are our comrades we fought with in the struggle ... Our relations have been sealed in blood*"⁶. The aforementioned stance has since been reinforced in both narrative and action by the ANC on a multitude of occasions.

However, as some commentators⁷ argue, the 'blood ties' uniting the two rethreaded liberation movements don't necessarily run as deep as other critics envisage⁸, nor was the pair's relationship overwhelmingly harmonious, especially since the end of apartheid in South Africa. Following Zimbabwe's economic turmoil that debuted in the late 1990s, and the increasing undemocratic practices perpetuated by the government under Robert Mugabe, the rapports between the ANC and ZANU-PF faced sizable internal and external constraints.⁹ Even before the Zimbabwean social crisis ensued, fuelled by the growing rise of South Africa to regional hegemony, some authors argue that "*by the end of Mandela's term in office*

⁶ Mavivi Myakayaka quoted in Chris Alden and Maxi Schoeman, "The Hegemon that Wasn't: South Africa's Foreign Policy Towards Zimbabwe", in *Strategic Review for Southern Africa*, 25 (1), 2003, p. 2.

⁷ Martin Adelman, "Quiet Diplomacy : The Reasons Behind Mbeki's Zimbabwe Policy", in *Africa Spectrum*, 39 (2), 2004, pp. 256-257.

⁸ Alec Russel, *Bring Me My Machine Gun: The Battle for the Soul of South Africa from Mandela to Zuma*, New York, Public Affairs, 2009, pp. 416-417.

⁹ The internal constraints emanated from ANC elites and national partners alarmed by South Africa's quiet diplomatic stance in the face of degrading conditions in Zimbabwe. They were both fueled and seconded by the international community's expectations that South Africa, acting as a regional hegemon, engage Zimbabwe's government swiftly and decisively.

*relations between him and Mugabe were frosty, and there was a virtual 'cold war' between Pretoria and Harare".*¹⁰

Nevertheless, we claim that the two NLMs have never had an openly cold relationship, not even as political forces from the developed North pushed for the ANC's denouncement of ZANU-PF's increasingly illiberal practices. We argue that there was always a central, mutually-recognized interest uniting the two, one that goes beyond ideology and relates to the imperatives of survival (and national political hegemony): the ANC sought to retain its central position in national politics, in the same way that ZANU-PF did. While the main concern for parties is survival, large parties move beyond struggling to exist and fight to secure and subsequently maintain, a central role in national politics and, where possible, the international arena. Thus, we can argue that the ANC fully understood the importance of party supremacy, not only that of survival and, consequently, what ZANU-PF strived for. The violent campaigns against the opposition and their supporters, the seizure of media outlets, the submission of the judiciary, the public vilification of civil society, and the blatant disregard for private property were all employed by ZANU-PF so its members could cling on to power amid an economic collapse brought about by their own kleptocracy and poor resource management. While the ANC chose not to engage their internal political opponents in the same way that ZANU-PF did, arguably, there was no need for any such engagement, granted the former successfully erected and fortified its bastion in national politics. Faced with the same choice: to cede power or suspend a plethora of democratic practices in order to keep it, there is no telling how the ANC might react. Of course, several other reasons could be invoked, such as the security uncertainty posed by a power void in Zimbabwe, ANC's insufficient leverage to further regime change therein, or its unwillingness to even openly solicit change due to regional perceptions of sovereignty.

¹⁰ Christopher Landsberg, "The Impossible Neutrality? South Africa's Policy in the Congo War," in F. John Clark, (ed.), *The African Stakes of the Congo War*, Palgrave, 2002, p. 177.

The success of liberation movements has inspired heroic narratives about the parties they directly descended from¹¹. The aforementioned fact is mostly true for South Africa and is reflected in the election results therein after 1990. The ANC is the first choice of an overwhelming number of South Africans, winning five consecutive elections throughout the period analysed herein. While ANC was re-elected with increasing majorities in 1999 and later, in 2004, a slight fall is visible in the last three elections, from 69% in 2004 to 65.9% in 2009, 62.1% in 2014 and 57.5% in 2019. The same narratives of colonial heroism erected a pedestal for ZANU-PF, and have since replicated in Zimbabwe; subsequently, even in times of political crisis, the party could withstand pressures for democratic change, partly based on its historical significance for the majority population. ZANU-PF won every presidential election since 1980,¹² and all elections for Parliament, except that of 2008, when it lost the majority in the House of Assembly and was forced to form an inconvenient, but 'lucrative' unity government with the opposition, after Thabo Mbeki, the ANC's president was called to mediate by the South African Development Community (SADC).

Of changes in identities and practices

Once majority rule had been attained, it became apparent that Southern Africa's decolonization process was going to be very different from the national liberation that had taken place earlier. The NLMs were visibly more complex than their predecessors from the first period of

¹¹For a wider analysis of the heroic narratives in Sub-Saharan Africa, see Sergiu Mișcoiu, "Afrique et politique" in Simona Jișa, Sergiu Mișcoiu, Buata B. Malela (eds.), *Littérature et politique en Afrique francophone. Approche transdisciplinaire*, Paris, Editions du Cerf, 2018, pp. 345-348; Sergiu Mișcoiu, "Du récit conflictuel au conflit des récits" in Simona Jișa, Sergiu Mișcoiu, Modibo Diarra (eds.), *Raconter les politiques conflictuelles en Afrique. Regards croisés*, Paris, Editions du Cerf, 2021, pp. 7-19.

¹² Even amid accusations from opposing parties, politically-fueled violence and the conflicting accounts of international observers. In 2008 Mugabe's opponent in the run-off withdrew. ZANU-PF lost the majority in the House of Assembly in the same year, even if it gained the most votes out of the participating parties.

decolonization. They were endowed with qualities that made them special, such as sophisticated ideologies, class representativeness, and an overall “*commitment to high-minded principles*”.¹³ The promise of real transformation replaced flag independence, as these movements tried to keep away from any form of “*postcolonial national bourgeoisie*”.¹⁴ There was a consensus that the age of militant, low politics had ended in Southern Africa with the demise of apartheid and ANC’s ascension to power.

However, the liberation movements in South Africa and Zimbabwe have, to varying degrees, mislaid their moral compasses somewhere along the way, especially after they managed to seize political power. Failing to fulfil the initial promise: a mixture of socialism, nationalism, and liberalism, both discussed liberation movements became party-states, pursuing self-interested gain, in the detriment of the initial promise of ‘democracy for all’. The ideal of democratization was not abandoned, rather it was shelved, as other issues seized the attention of intraparty elites. One could make the argument that the NLMs in Angola or Mozambique followed similar paths.

In their attempt to fight the highly unequal structures in their respective countries, these liberation movements quickly went from improving their societies through democratization and development, to securing governmental positions that would facilitate the apparition and empowerment of black elites. By building the bureaucratic apparatus based on party loyalty rather than merit or competence, the parties became solely responsible for allocating resources¹⁵. The party’s elites, friends and loyalists were favoured, while all others were left to divide any leftovers amongst themselves. The ‘democratic revolution’ had come, privileges had shifted, but economic disparities remained to a large extent in both South Africa and Zimbabwe. Moreover, the general picture only changed in that

¹³ Roger Southall, *Liberation Movements in Power: Party and State in Southern Africa*, Boydell & Brewer, 2013, p. 4.

¹⁴ *Ibidem*, p. 274.

¹⁵ This was also the case in Cameroon, see Sergiu Mişcoiu, Louis-Marie Kakdeu, “Authoritarian Clientelism: The Case of the President’s ‘Creatures’ in Cameroon” in *Acta Politica*, 2021, 1(56), accessed on 28 April 2021.

it allowed for the emergence of new racially constructed elites. In addition, the awaited effective redistribution of wealth, which was to aid the masses, never materialized. Although it may seem redundant, we must note that the above-presented shifts, by no means represent a particularity of the two discussed states or of Sub-Saharan Africa as a region: countless parties from different places have become pieces of machinery, vehicles “*for the upward mobility of party elites and for material accumulation justified ideologically by reference to the historical rightness of transformation*”.¹⁶

Identifying common and distinct traits in the behaviours of these NLMs across Southern Africa, while complicated, is possible. However, finding which movement is the originator of which type of practices becomes even more difficult to trace. ZANU-PF is admittedly guilty of fostering hostile relations with the Zimbabwean private sector - a situation that culminated in 2008, when the country fell into the most profound economic and political crisis in history. ANC seems to fully understand the importance of having a good working relationship between the private and public sectors, *videlicet* between the administration and the business environment.

ANC was from the onset of its days as a political party a more complex entity compared to ZANU-PF. While the latter had a mostly rural, tribal base,¹⁷ the former secured the support of the middle and working classes in both rural and urban areas. ANC's identity was also a mixture of three separate ideologies: one of the far-left type, social democracy, and liberalism. These three distinct strands of doctrine somehow succeeded to strike a balance within the party, albeit the structured equilibrium was fragile. By comparison, Mugabe's party remained latched to left-wing African nationalism, which it used discursively to legitimate its predatory political practices against the former elites and to shrug off any

¹⁶ Southall, *op cit.*, p. 247.

¹⁷ In places where the importance of land redistribution outweighs that of ambiguous concepts such as democracy, ZANU-PF has traditionally captured more votes than any political opponent.

international call for democratization by labelling it neo-colonialism. In South Africa, ANC managed to transform nationalism into a unifying force through the use of inclusive narratives which made racial reconciliation possible. In Zimbabwe reconciliation was also advertised in the 1980s, to ensure the minority population that they would not be punished for the crimes against blacks. However, ZANU-PF has done very little to alleviate racial tensions. In the context of the white-owned commercial farm invasions orchestrated by his government since the early 2000s, Mugabe tried to legitimize said actions by labelling them as historical retribution favouring *“rightful indigenous, black owners who lost [the farms] in circumstances of colonial pillage”*.¹⁸

As NLMs gradually became disciplined parties, with clear hierarchies, some never managed to create any form of leadership accountability, as the case of Zimbabwe’s ZANU-PF demonstrates. Mistakes and abusive behaviours were covered up, and, in the case of Zimbabwe, there was little to no criticism of Robert Mugabe and his inner circle inside ZANU-PF until the period leading to his ousting. Of course, opposing parties did provide some domestic critique, and the international arena was not blind to blatantly abusive practices; however, Zimbabwe was, for a long time, immune to criticism from other members of the SADC and other African-based institutions, mostly due to an unwritten rule that discourages open criticism amongst partners. Furthermore, as an elder of the region and a champion of majority empowerment since the liberation struggle, Mugabe was widely respected among regional peers, subsequently, he was rarely openly criticized by the former.

Of quiet diplomacy and the resurrection of anti-colonial narratives

Zimbabwe’s economic meltdown was followed by the unearthing of the various governmental practices that led to the disaster. In turn, this

¹⁸ Robert G. Mugabe, Statement on the occasion of the World Summit on Sustainable Development (WSSD), Johannesburg, 2 September, 2002, <www.un.org/events/wssd/statements/zimbabweE.htm>, accessed on 19 March 2021.

gave birth to the increasingly oppressive manifestations of ZANU-PF in its attempt to stay in power amid contestation. During this entire period, ANC has been constantly pushed to intervene decisively in Zimbabwe. Its preferred method of approaching ZANU-PF has been quiet diplomacy – a form of interaction that discourages open criticism towards ZANU-PF, its leaders and its practices¹⁹.

ANC's public reasoning behind quiet diplomacy was mostly related to stability and security at its borders. R. W. Johnson brings compelling evidence that there was an overlooked motive behind South Africa's diplomatic approach to the Zimbabwean crisis.²⁰ After Mugabe had been defeated in the constitutional referendum of 2000, Southern Africa's NLMs started holding very secret summit meetings – with no press and no later *communiqués*.²¹ Johnson writes that:

*“NLMs -- whatever venial sins they may commit - are [regarded as] the righteous; they not merely represent the masses but in a sense they are the masses, and as such they cannot ... be wrong ... No further group can succeed them, for that would mean that the ... forces of racism and colonialism ... had regrouped and launched a counter-attack. Thus it follows that having won, an NLM should stay in power”.*²²

This firm belief of being the only legitimate representatives of the people is what connected all Southern African NLMs. As Zimbabwe's situation was worsening, the said 'theology' started to waiver; thus, it needed resurrection. Johnson further claims that as decline manifests itself in multiple countries, implicitly diminishing the powers of NLMs, old

¹⁹ For a detailed account of quiet diplomacy see Dan Petrica, “Quiet Diplomacy: South Africa's Way of Dealing with Zimbabwe During the Presidency of Thabo Mbeki”, in *Studia UBB Europaea*, 61(4), 2016.

²⁰ See R. W. Johnson, “The Final Struggle is to Stay in Power”, in *Focus*, 25, 2002, <<http://hsf.org.za/resource-centre/focus/issue-25-first-quarter-2002/the-final-struggle-is-to-stay-in-power>>.

²¹ *Ibidem*, p. 9.

²² *Ibidem*.

enemies – such as imperialism, apartheid, or colonialism - need to be unearthed.²³ This phenomenon is best understood through the lens of Discourse Theory, which we've decided to briefly tackle - particularly in what it says about the construction of *social antagonism and the creation of identity*.²⁴ In Zimbabwe, social antagonism was numbed down to avoid racially motivated contestation and violence, but it abruptly became evident that the former discourse needed to be empowered. Through simplification, an extraordinarily vivid and cosmopolite society was shaped to fit the image of a dualist block, marked by a unique source of tension - race. Where the tension is pre-existing, the reanimation of the dualist block is possible with more ease. In simple words, one can create an enemy to have against whom to wage war. As society is a vast network, comprising the body of all individuals, these individual identities take shape according to specific issues. Simplification allowed for race, racial discrimination, historical retribution, and numerous other subjects belonging to this lexical spectrum to be the ones that create distinct camps – such as imperialists versus nationalists. We have argued that simplification had been used in both South Africa and Zimbabwe, first by the colonial discourse and later, by its reminiscences, the apartheid and the white minority rule discourses. Simplification had been reanimated by NLM's after the Zimbabwean crisis and masterfully deployed by Mugabe in his country. The colonialists had been dead and buried but could be brought back with the aid of carefully crafted discourse. As most of the population in Zimbabwe could not be attached to imperialist or neo-colonial narratives, the government simply had to pose in anti-imperialists/colonialists. It was not even a situation that implied posing because, at heart, indubitably Zimbabwe's government been 'anti-all-the-above' in sentiment; thus, their efforts only entailed tailoring and putting

²³ *Ibidem*.

²⁴ For a more detailed account see Dan Petrica., "Discursive Struggle and Social Change in South Africa in The Mid 1990's", in *Annals of the University of Oradea: International Relations and European Studies*, VIII, 2016.

on the old clothes that had gathered dust since 1980. We support the claim that ZANU-PF knew very well that if you revive the anti-whites/anti-farmers/anti-British discourses, then you revive the need for Mugabe. Being involved in a new struggle against the North that wanted to breach sovereignty also legitimized a fight by any means necessary to protect what had been gained in the previous liberation struggle.

A possibility to be considered is that Mugabe had been so convincing in deploying his rhetoric that the ANC's leadership indeed perceived the situation in Zimbabwe as a fight against neo-colonialism. Regardless if the ANC was convinced or not, one can observe that they played along for quite an extended period; in the early 2000's they remained unmoved by the violent outbreaks in Zimbabwe that included assaults, torture, and killings, and by the continuous hunt that ZANU-PF had orchestrated against the opposition.

Furthermore, while South Africa could seemingly exert a great degree of leverage on Zimbabwe if we were to invoke the classical traits that enable one country to wield political power over another,²⁵ Zimbabwe managed to punch above its weight and determine South Africa to treat it, on occasions, as an equal partner. Thus, it becomes unclear whether South Africa ever had the necessary leverage over Zimbabwe to affect the latter's domestic policies in such a way as to ignite the spark of the rapid democratization the North was waiting for. The critics of the nexus of power theories come with a twist to the classical interpretations that delineate where power stems from in interstate relations. Bischoff, for example, argues that:

²⁵ The size of its economy, the size of its territory and population, the availability of essential resources – most notably gas or oil, the overall size of the industry, its strategic position, its military strength, its track-record of dealing with issues relevant to global power-houses and key players, and, of course – the capacity of its government to interact with others.

*“the legacy of apartheid and liberation politics had given rise to a balance of power based more on history and ideology than on formal power, inhibiting Pretoria from playing the role of a local hegemon and enabling Zimbabwe to pose a rival source of influence”.*²⁶

Of paths, shortcuts and shortcomings

Furthermore, we claim that similar historical trajectories on crucial issues or when dealing with key events do not necessarily lead to similar outcomes; instead, they shape similar visions of a path that needs to be followed. The history of colonialism and white minority rule has given birth to solidarity amongst blacks, to NLMs - and the solidarity between them, to democratic regimes, and to a complex land redistribution issue that remains unresolved in a number of former colonies in Sub-Saharan Africa, thereby festering constant conflicts between ethnic groups. Zimbabwe's land seizures can be viewed as a milestone on a wider timeline, one which South Africa could still reach at a later time. One needs to keep in mind that Zimbabwe has made some efforts to solve the land issue without conflict, on a willing buyer, willing seller basis, but to no avail. As South Africa struggles to redistribute land according to the willingness to trade of its citizens, in the absence of both internal and external funding, the dangers of it reaching a tipping point and of incorporating Mugabe's way of handling things remain very high. Zimbabwe has had more than a decade of majority rule on South Africa. As Zimbabwe faced some issues before its neighbours, it allowed the latter to learn from its experiences and add 'best practices' to its governance toolkit. In this case, forcefully grabbing land from whites can hardly be described as 'best' practice. Still, it is a pragmatic practice that ultimately quenches the majority population's thirst for a land to which they are entitled as a form of historical retribution. On the question of NLM's the same applies.

²⁶ Paul-Henry Bischoff, "External and Domestic Sources of Foreign Policy Ambiguity: South African Foreign Policy and the Projection of Pluralist Middle Power", *Politikon*, 30(2), 2003, p. 189.

ZANU-PF has held power for three decades until genuine contestation emerged. ANC, however, has had no real political contestation. If a counter-hegemonic political discourse were to appear nationally, as a result of mismanagement, or a major crisis, we reiterate that ANC might have difficulties in choosing the high road over the example laid in front of them by ZANU-PF.

Of elders and liberation pedigrees

One commentator argues that the 'big man syndrome' draws its energies from colonialism's nature, being tributary to the struggles that took place during the liberation days,²⁷ as several African governments are structured around poignant leaders, who starkly resemble past authoritarians envisaging a lifelong presidency. But while the reluctance of presidents to leave office can, from time to time, be shrugged off by the party, the party is undoubtedly reluctant to leave power. Thus, we can speak of a 'big party syndrome'. The party capable of ensuring succession will, from time to time, call back its government and replace it with fresh blood, either as an attempt to mimic internal democracy or due to real power-clashes amongst its members. For example, Sam Nujoma of Namibia refused to pursue a fourth term and, in 2005, handed power to Hifikepunye Pohamba, a prominent member of the same SWAPO party. Nonetheless, Nujoma served as president for 15 years, amid contestation that the Namibian constitution had been tailored to allow his third term. For a long time, ZANU-PF could not act to remove Mugabe because he was the NLM's virtual owner and the face of liberation. He was the party's 'face value', and the insurance ZANU-PF can stay in power because their electorate trusted the father of the liberation more than the political platform offered.²⁸ As foreign powers couldn't tackle Mugabe successfully, and the people did not act convincingly against him in elections, the party

²⁷ See Alec Russell, *Big Men Little People: Encounters in Africa*, London, MacMillan, 2000.

²⁸ See Patrick Chabal, Jean-Pascal Daloz, *Africa Works: Disorder as Political Instrument*, The International African Institute, 1999.

did, in light of a saturation fuelled by unsatisfactory succession talks. Robert Mugabe had repeatedly refused to name his successor, even removing possible candidates, such as Vice-president Joice Mujuru back in 2014. Mujuru was barred by the ruling ZANU-PF from its strong central committee after a fallout with the president amid accusations of assassination plots.²⁹ Starting with 2017, even his wife and political partner, Grace, had urged him to choose who will lead the party. Grace Mugabe was actively seeking the leadership of ZANU-PF and the country for herself, after she had previously stated about upcoming elections, in power-hungry morbidity: *“If God decides to take him, then we would rather field him as a corpse.”*³⁰ Robert Mugabe finally resigned after a coup d'état orchestrated by military forces supporting one of his political opponents inside ZANU-PF and a subsequent loss of party support.

In 1994, Mandela set the tone for ANC leadership, by stepping down after his first term in office. Since then, Thabo Mbeki and Jacob Zuma have stepped down amid pressures from the ANC.

Conclusions

We have argued that several contrasts can be identified in the behaviours and practices of the two NLMs-turned-political-parties, which are a result of differences in (1) identities (2) perceptions (3) social and political climates – to the structuring of which they massively contributed, and (4) timelines – or, perhaps, milestones of a common, overarching timeline.

²⁹ BBC News, “Zimbabwe's Zanu-PF Ousts Joyce Mujuru from Top Party Post”, 26 November 2014, <<https://www.bbc.com/news/world-africa-30208133>>, accessed on 21 May 2021.

³⁰ Associated Press Foreign Staff, “Mugabe's Wife Says He Could Run in Election «as a Corpse»”, *The Telegraph*, 17 February 2017, <www.telegraph.co.uk/news/2017/02/17/mugabes-wife-says-could-run-election-corpse/>, accessed on 19 March 2021.

The ANC was since its onset a more complex entity, with an expressed preference for ethnic reconciliation after South Africa embraced majority rule. For ZANU-PF, reconciliation never truly materialized.

While both the aforementioned parties embraced democratic principles, their support for democratic consolidation was mostly a by-product of the creation of new elites and the expansion of the said elites' power, rather than a *sui genesis* effort. This, too, is far more visible in Zimbabwe.

Granted that ZANU-PF has more than a decade of status-quo construction and image erosion, it was quick to pursue autocratic practices once it realized it needed to either fight off contestation or renounce its privileged position on the national political stage. We have also argued that the ANC surely understands ZANU-PF's struggle for maintaining political supremacy, and that, faced with similar circumstances, the former might resort to the same anti-democratic practices furthered by the latter from the late 1990s onwards.

When investigating why the ANC did not do more to limit ZANU-PF's antidemocratic practices, amid pressures emanating from South Africa's territory and the international arena, we've argued that both solidarity and sovereignty impeded them. Furthermore, we are unsure if the ANC had the leverage to decisively intervene, or the will to do so amid a convincing anti-colonialist narrative deployed by Mugabe.

Although the limited events presented in this paper relate mainly to the two decades between 1994-2014, the current situation in Sub-Saharan Africa reveals that, even under new ZANU-PF leadership, some practices related to and views of democracy have remained unchanged.

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ÜBERLEGUNGEN UND PERSPEKTIVEN ZUR NEUEN
CHINESISCHEN ORDNUNG IN DER DEMOKRATISCHEN
REPUBLIK KONGO

REFLECTIONS AND PERSPECTIVES ON THE NEW CHINESE
ORDER IN THE DEMOCRATIC REPUBLIC OF CONGO

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Abstract

Nowadays, more than ever, China plays a major role in economic activities in Africa. China competes aggressively with the West for control of the continent's strategic mineral resources. The great red actor considers that the imposition of Western democratic values on Africa is one of the main causes of political instability and economic stagnation, which is why he has chosen to adopt a different attitude which is has proven to be prolific in the context of globalization. The cooperation of the Democratic Republic of Congo (DRC) with China is currently considered by the Congolese people as a safety valve, an insurance against risks. Essentially, the DRC tops the list of China's strategic partners in Africa, and the DRC aims to attract China to help build infrastructure. This cooperation bears the signature of Joseph Kabila (president of the country from 2001 to 2018), his speech being a central point of this research. While the two countries boast of an exemplary model of win-win cooperation, this article aims to

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explore whether it is really a win-win collaboration or rather China is trying to invent a new order using a cosmetized neocolonialism.

Keywords: Africa, Democratic Republic of Congo, China, globalization, mineral resources, neocolonialism, global order

Einführung

China übernimmt im vollen Aufstieg die Rolle der Hauptfigur in den wirtschaftlichen Aktivitäten von Afrika. China konkurriert mit dem Westen, um die Kontrolle des strategischen Mineralstoffes des ganzen Kontinents übernehmen zu können.¹ Diese große Macht bedenkt, dass die Durchsetzung der demokratischen westlichen Werten über Afrika eine von den Hauptursachen der politischen Instabilität und wirtschaftlichen Stagnation ist, deswegen entschloss sich China eine sonstige Sichtweise anzuwenden, die als fruchtbar in der Zusammenhang der Globalisation bewiesen wurde. Die Zusammenarbeit der Demokratischen Republik Kongo mit China (DRK) wird heutzutage von der kongolesischen Bevölkerung wie ein Sicherheitsventil angesehen, das wie eine Versicherung gegen alle Gefahren zuständig ist. Im Grunde genommen, DRK befindet sich ganz oben in der Liste der strategischen Partner Chinas in Africa, und DR Kongo nimmt sich vor China anzuziehen, um der Konstruktion der Infrastruktur beizutragen. Diese Zusammenarbeit trägt die Bezeichnung von Joseph Kabila (der Präsident des Landes von 2001 bis 2018), dessen Redebeitrag als ein zentraler Orientierungswert in dieser Forschung gilt. Unter der Annahme, dass beide Länder über ein beispielhaftes Modell der *win-win* Zusammenarbeit verfügen, soll in dieser Arbeit untersucht werden, ob dies wirklich eine solche Beziehung ist, oder China hat Schritt für Schritt neue Ordnungen festgestellt, die sich in

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¹ Andreea Bianca Urs, „Du conflit au terrorisme en RD Congo“, in *Studia Europaea*, Nr. 1, Bd. 65, 2020, S. 55-73.

Neokolonialismus einordnen. Um diese Hypothese ermitteln zu können, werde ich die theoretischen Elementen von Kwame Nkrumah näher untersuchen, dessen Theorie sich um die Konzeption des Neokolonialismus dreht. Zuzüglich werde ich auch die von Experten gebotenen Hinweisen analysieren, die sich in diesem Bereich befinden. Zu diesen Experten gehört Nuah M. Makungu, dessen Zwecke die Interessen und Bedürfnisse beider Länder abzuklären sind. Die aktuelle Forschung ist in drei Teilen gegliedert: das erste Teil stellt das historische Umfeld dar, das eine sehr wichtige Rolle in dieser Forschung hat. Das zweite Teil präsentiert den theoretischen Grund und das dritte Teil versucht die folgende Frage zu beantworten: Erfindet China eine neue Ordnung in der DRK?

I. Die Chronologie der Sino- Kongolesischen Beziehungen

Die Sino- Afrikanische Beziehung beginnt schon früh, im Jahr 1965, wenn sich China als Beschützer der Unterdrückten erklärt. Was Chinas Anwesenheit in Afrika betrifft, man kann sowohl die wirtschaftliche als auch die kulturelle Infiltration bemerken. Das Ende *Françafrique* hat für die afrikanische Regierung erlaubt, dass sie ihre kommerziellen Partnerschaften mit den neuen Schwellenländer erweitert. Afrika leitete von dem zweiseitigen Handel zu dem vielseitigen über. Das ist eine Strategie, die der Wirtschaft und ihren Entwicklungen ein neues Leben einhaucht. Als China der größte kommerzielle Partner in Afrika geriet, kam dies als eine Beeinträchtigung für Frankreich². Zwischen 2000-2017 lief China einheitliche Geldsummen³ zu den afrikanischen Ländern, mit dem Zweck dass die große Projekte der baulichen Infrastruktur zu finanzieren. Als Beispiel kann man an die Tatsache denken, dass die äthiopische

² Vgl. Sergiu Mișcoiu, „The New Wave of Presidential Authoritarianism in Francophone Sub-Saharan Africa“ in *Transylvanian Review*, Nr. 1, Bd. 27, 2018, S. 19-30.

³ Wirtschaftliche Zusammenfassung von Westafrika, Nr. 272, 2018, <<https://www.tresor.economie.gouv.fr/Articles/ef62f1f7-5c99-42e0-bb69-2115e8c6992e/files/818e1243-5d97-47dc-9454-c1a9e2315162>>, Zugriff am 15.05.2021.

Hochfläche auf dem „Eisendrache“ liegt- das ist eine Eisenbahnlinie zwischen Äthiopie - Djibouti, die in 2018 eröffnet wurde und kostete 4 Milliarden Dollar, das einem 15- jährigen Darlehen entspricht.⁴ Ein anderes Projekt ist die Hauptverkehrsstraße Nr.1 in Kongo – Brazaville, die als einen „Traumweg“ von der örtlichen Bevölkerung bewertet wurde und war im Jahr 2016 fertiggestellt. Eine gesamte Vermögensanlage von 2,82 Milliarden Dollar und 536 Kilometer stellt das größte Projekt der Kooperation zwischen China und Kongo dar. Dies verkürzte die Reisedauer von einer Woche auf 6 Stunden. Der Präsident Sassou N'guessou lobte die chinesische Hersteller, weil sie „die Träume der mehreren kongolesischen Generationen verwirklichen“ und gab noch dazu „China hilft uns wahrhaft bei den Wirtschaftsentwicklungen“.⁵

China wird berühmt in DRK im Jahr 1973 nach dem Besuch von Mobutu Sese Seko: der Palast N'sele, Gbandolite, „Palais du peuple“, das Stadion der Märtyrer aus Kinshasa sind die Hauptgründe der Freundschaft zwischen Mobutu und Mao Zedong. Schon seit 1974 bis 1990 unterstützte China die Regierung von Kongo durch kleine erzieherische Investitionen, Wissen, Kultur und gesellschaftliche Tätigkeiten. In dieser Periode bot China eine finanzielle Betreuung in Höhe von 3 Millionen Euro. Während dem ersten kongolesischen Krieg (1996-1977), China unterstützt beide Teile, die im Konflikt betroffen sind, sowohl die Rebellion von LD Kabila als auch die alten Strukturen seines Freundes, Mobutu. Ein Jahr später, als der zweite kongolesische Krieg ausbrach, schickte China an L.D.- Kabila eine seriöse Rüstung, der sich in einem Krieg mit Rwanda und Uganda befand.⁶

⁴ Wirtschaftliche Zusammenfassung von Westafrika, Nr. 272, 2018, <<https://www.tresor.economie.gouv.fr/Articles/ef62f1f7-5c99-42e0-bb69-2115e8c6992e/files/818e1243-5d97-47dc-9454-c1a9e2315162>>, Zugriff am 15.05.2021.

⁵ Yunsong, Wang : *La coopération Chine-Afrique en matière d'infrastructures se renforce*, 2018, <<http://french.people.com.cn/Economie/n3/2018/0828/c31355-9494762.html>>, Zugriff am 10.06.2021.

⁶ Vgl. Makungu, Nuah M., „Is the Democratic Republic of Congo (DRC) Being Globalized by China?“ in *Quarterly Journal of Chinese Studies*, Nr. 2(1), 2013, S. 94.

Von 2005 verstärkt sich die Position von China durch diplomatische Dinsten, Gruppen der fürstlichen und fossilen Betriebsstoffe, Gruppen der Telekommunikation, Gründung von kleinen Unternehmen und bergbauliche Gruppen. Die Wahlen von 2006 führen zu der Erneuerung der Sino- Kongolesischen Beziehungen⁷. Der Sieger Joseph Kabila glaubt, dass China ein neues nachahmenswertes Model ist. Kabila bediente China ständig als wäre eine Möglichkeit, die zum Wachstum der betrieblichen Kapazität des Landes beiträgt; als wäre eine Quelle der Finanzierung für die Entwicklung der Infrastruktur und die Festigung der Partnerschaften zwischen den öffentlichen- und Privatwirtschaften, im Bereich der Informationen und der technologischen Vermögensanlagen. Das Programm *La Modernité* des ehemaligen Präsidenten basiert sich ganz auf das chinesische Model. Diese Kooperation ist von diplomatischen und starken Beziehungen begleitet: Joseph Kabila unternahm drei Reisen nach China (2002, 2005 und 2008), von denen zwei zur Unterzeichnung eines Abkommens über technische und wirtschaftliche Zusammenarbeit sowie eines Abkommens über militärische Zusammenarbeit führten. Es war auch eine gemischte wirtschaftliche Kommission gegründet; die Botschaft von China, die eine von den größten fremden Delegationen aus Kinshasa ist (ca. 100 Personen im Expansionsprozess) und MONUC ist die erste Mission der Erhaltung des Friedens, an der die chinesische Armee als „ein Zwischenhändler eines Regiments von Ingenieure“ teilnimmt, dessen Sitz in Bukavu (Südkivu) ist.⁸ In demselben Zeitraum profitierte Kongo China Telecom eine regierungsamtliche Anleihe von 32 Millionen Dollar, leistet von China an DRK, mit dem Zweck eine Entwicklung des kongolesischen Netzwerks GSM auf ein nationales Niveau zu heben.⁹ Die chinesischen

⁷ Andreea Bianca Urs, „Revivre la guerre de Kivu par le prisme littéraire de Jean Bofane“, in Simona Jişa; Sergiu Mişcoiu; Diarra Modibo (Hg.) : *Raconter les politiques conflictuelles en Afrique. Regards croisés*, Paris, Cerf, 2021, S. 203-221, hier S. 209.

⁸ Vgl. Thierry Vircoulon, „La Chine, nouvel acteur de la reconstruction congolaise“, in *Afrique contemporaine*, Nr. 3, Bd. 227, 2008, S. 110.

⁹ Ebd., S. 109.

Importe aus DRK sind sehr schnell gestiegen, aber das Wachstum der Importe von 2008 stiegen, verdanken dem erhöhten Importen von Kobalt. Anhand der Absprache , die am 17. September 2008 zwischen Kinshasa und Beijing, der chinesischen unternehmerischen Arbeitsgemeinschaft, bzw. zwischen Gecamines (*Générale des Carrières des Mines*) unterschrieben wurde, gründeten sie eine *Joint Venture* (JV), die Sicominex genannt wurde.¹⁰

Die sino – kongolesische Kooperation hat eine tiefe traditionelle Freundschaft am Grund, umfassende gemeinsame Interessen, Streben nach Frieden, Entwicklung und Recht. Diese Freundschaft überlebte die zahlreiche Geschichten des Lebens und hilt durch trotz der äußeren Faktoren. Zum Beispiel die Pandemie Covid- 19 verhinderte den Prozess nicht; das Jahr 2020 war furchtbar für beide Länder. Was den zweiseitigen Handel betrifft, erreichte das Niveau des komerziellen Austausch zwischen China und DRK eine Summe von 6,978 Milliarde Dollars in den ersten zehn Monaten des Jahres 2020.¹¹ Dieser Betrag ist mit 34,4% mehr, im Vergleich zu derselben Periode des vorherigen Jahres. Die zwei Länder haben einander unterstützt in dem Kampf gegen das Virus, der Präsident Tshilombo Tshisekedi benachrichtigte zweimal ermütigende Nachrichten an China und es lieferte sanitärische Materialien und experte Mannschaften, um sie im Kampf gegen das Virus zu unterstützen. Im demselben Interview, der Botschafter meldete den Fortschritt der graziösen Konstruktion des künstlerischen Kulturzentrums für Zentralafrika aus Kinshasa. Die Chinesen überwandten alle Schwierigkeiten, um sicherzugehen, dass die zentrale Projekte der Infrastruktur, die sich im Ablauf befinden, bzw. die bergbauliche Produktionen zu der Planung

¹⁰ Makungu, S. 93.

¹¹ Oscar Bisimwa, „Kinshasa-Zhu Jing. La Chine espère approfondir davantage ses relations avec la RDC“, <<https://congoformes.com/2021/01/06/kinshasa-zgu-jing-la-chine-espere-approfondir-davantage-ses-relations-avec-la-rdc/>>, Zugriff am 20.05.2021.

entsprechend funktionieren. Diese tragen zu der Verminderung der Pandemie über die kongolesische Wirtschaft bei.¹²

Die präsidentielle Wahl von 30 Dezember 2018 endete das Zeitalter von Kabila, da er die erste pazifistische Alternanz aus der Geschichte DRK war. Die politische Alternanz stellt einen Moment der Geschichte für das Land dar, die kongolesische Bevölkerung war der Zeuge einer zivilisierten leistungsfähige Übertragung zwischen zwei lebendigen Präsidenten¹³. Joseph Kabila übertrug in 24 Januar 2019 die Kraft von Felix Antoine Tshisekedi - ein pro-westlicher Päsident -in einer pazifistischen Art. Theoretisch, endet diese Wahl das Regime von Kabila, das 18 Jahre dauerte; ein Regime, das über die brutale Niederschlagung des Gegensatzes gekannt wurde. Gemäß Human Rights Watch, wurden fast 300 Personen getötet, während den friedlichen Manifestationen zwischen 2015-2018.¹⁴ Als DRK ein wichtiger Partner Chinas in Afrika beschrieben wurde, deklarierte der Botschafter Zhu Jing, dass sich eine strategische Partnerschaft der Kooperation Art „Gewinn-Gewinn“ zwischen die zwei Länder befindet. Diese Art der Kooperation sitzt fort ab den letzten präsidentiellen Wahlen, sich in einer stabilen und gesünder Art zu entwickeln. Der erste offizielle Besuch im Jahr 2021 aus DRK wurde von Wang Yi gemacht – staatlicher Berater und chinesischer Minister der äußeren Geschäfte. Mit dieser Gelegenheit, meldete der chinesische Diplomat die Stornierung der Schulden DRK, beziffert auf 28 Millionen Dollar und finanzielle Unterstützung aus China in Höhe von 17 Millionen Dollar, inbegriffen 15 Millionen für die Unterstützung des Entwicklungsprojektes und 2 Millionen für die Unterstützung des präsidentiellen Auftrags der Vereinigung von Afrika.¹⁵

¹² Ebd.

¹³ Andreea Bianca Urs, „Petit requiem pour la démocratie congolaise“ in *Studia Europaea*, Nr. 2, Bd. 65, 2020, S. 195-217.

¹⁴ Ebd., S. 198.

¹⁵ Actualité CD, “Félix Tshisekedi s’est entretenu avec Wang Yi: la Chine promet 2 millions USD pour accompagner la présidence congolaise de l’UA“, 2021, <<https://actualite.cd/2021/01/06/felix-tshisekedi-sest-entretenu-avec-wang-yi-la-chine->

II. Von Globalisation bis Neokolonialismus- eine Begriffsbildung

Man spricht und schreibt vieles um der Globalisation, aber was repräsentiert sie genau und wie konkretisiert sie sich eigentlich? Die Globalisation enthält eine überwältigende Arbeit, weil die Dinste, Waren und die Leute nicht alleine von einem Punkt in den Anderen verkehren. Laut Hugon¹⁶ stammt der Begriff *Globalisation* aus Wechselwirkungen von fünf Prozessen: globale Finanzierung, die globalische Organisation der Produktion, der freie Verkehr der Waren, die Migration und Verkehr der Personen und der Informationen in einem realen Zeitraum. Die Globalisation kann als eine Hegemonie der starken Nationalitäten über die weniger mächtigen Nationalitäten interpretiert werden, ein Prozess, der zu Ereignissen führen kann, die durch das neokoloniale Gitter interpretiert werden können.

Laut des Wörterbuchs der Begriff *Neokolonialismus* stellt „eine Politik dar, die von gewissen entwickelten Ländern gefolgt ist, um deren Dominanz über von der Dritten Welt unabhängige Staaten, in in neuen Formen zu etablieren“¹⁷. Dieses Konzept ist oft verwendet, um das Interesse Chinas in Afrika zu beschreiben. Kwame Nkrumah, ein unabhängigkeitsfreundlicher und panafrikanistischer Staatsmann, der Ghana zur Selbstständigkeit führte, behauptet, der Neokolonialismus sei in seiner letzten Form der Imperialismus und vielleicht der gefährlichste. Das bedeutet Kraft ohne Verantwortung, für diejenigen die das ausüben und dem Betroffenen bedeutet Ausbeutung ohne Reparatur. Der Inbegriff des Neokolonialismus bedeutet tatsächlich, dass der ihm untergeordnete Staat, der theoretisch selbstständig ist, stellt alle äußere Zeichen der internationale Souveränität dar. In der Wirklichkeit ist sein

promet-2-millions-usd-pour?fbclid=IwAR0lsxYQjrgOQh4NhDr_eL0rzlk85qdqQeYrgVtEjOOI1mcQg7eyqL1Zy0>, Zugriff am 17.05.2021.

¹⁶ Philippe Hugon, „L’Afrique dans la mondialisation“, in *ESPRIT*, Nr. 317, 2005, S. 158-165.

¹⁷ Begriffswörterbuch der rumänischen Sprache, DEX online <<https://dexonline.ro/definitie/neocolonialism>>, Zugriff am 17.01.2021.

wirtschaftliches System und seine Politik von Außen gelenkt¹⁸. Der Neokolonialismus kann ebenso als Senkung der Souveränität der afrikanischen Staaten interpretiert werden, durch asymmetrische wirtschaftliche Beziehungen, Handel und unfaire Vermögensanlagen zwischen verschiedenen Teilen. Von den Lenkungen von Nkumah, Marc Langan ausgehend, wird man beauskunftet wie China den Handel in einer wirksamen Art verwendet hatte, um die afrikanischen Eliten und Regierungen zu kooptieren; die merkantilistischen chinesischen Interessen zu fördern und die chinesischen Unternehmen in Beeinträchtigung des sozialen Lebens bzw. die Beschäftigungen der Afrikaner zu schützen.¹⁹

Die Sino- Afrikanische Beziehungen sind vielsichtig und vertreiben auf mehrere Niveaus. Wenige Kritiker zögern um zu betonen, dass hinter dem Begriff „strategische Partnerschaft“ eine gut herausfindete Tatsache steckt und zwar, dass viele afrikanische Naturressourcen für eine längere Periode entnommen werden und um Hegemonie auf dem Kontinent zu erreichen, insbesondere gegenüber den Konkurrenten im Westen.²⁰ Die schnelle Bewegung der Veränderungen, bezüglich der Sino- Afrikanische Beziehungen, hat ebenso viele Debatten verursacht, in den wissenschaftlichen Kreisen von Afrika, Europa und die USA.²¹ Anhand mehrerer vorhandener Analysen, zeichneten sich drei unterschiedlichen Denkweisen ab, die folgenderweise beschrieben werden können:

¹⁸ Vgl. Sarah Merabti, Sergiu Mișcoiu, „Post-conflict State (Re)construction: The Involvement of Civil Society in the Burundian Democratic Processes“, in *Studia Europaea*, Nr. 3, 2015, S. 19-38.

¹⁹ Vgl. Marc Langan, „Neo-Colonialism and Nkrumah: Recovering a Critical Concept“, in Marc Langan (Hg.), *NeoColonialism and the Poverty of 'Development' in Africa*. Newcastle, Palgarve Macmillan, 2017, S. 1-32.

²⁰ Vgl. Sergiu Mișcoiu, Louis-Marie Kakdeu, *Authoritarian Clientelism: The Case of the President's 'Creatures' in Cameroon* in *Acta Politica*, Nr. 1, Bd. 56, 2021, S. 1-29.

²¹ Vgl. Mathilde Leyendecker, Sergiu Mișcoiu, *Passé militaire, trajets militants : La poursuite politique de la lutte armée par les indépendantistes en Casamance*, in Michel Catala (Hg.), *L'Europe et l'Afrique - Conflits nationaux et coopérations régionales, des indépendances à nos jours*, Rennes, Presses Universitaires des Rennes, 2020, S. 117-130.

„Entwicklungspartner, wirtschaftlicher und kolonisierter Anwarter“²². Die erste Denkweise „Entwicklungspartner“ behauptet, dass der Eingriff von China in Afrika ist eine Art der langfristigen Engagement- Strategie, worin die spezifischen Bedurfnisse des Kontinents bevorzugt und der Wunsch, dass kooperative Partnerschaften in fortschrittlichen Landern entwickeln zu konnen.²³

Die zweite Denkweise „wirtschaftlicher Konkurrent“ behauptet, dass China in Ubernahme der Ressourcen vollig angestellt ist, ohne die Bedurfnisse und die ortlichen Beschaftigungen zu beachten, die mit der Entwicklung, Umwelt und Menschenrechte gebunden sind. Aus dieser Perspektive, China ist gleichwertig mit seinen westlichen Homogenitaten. Die dritte Denkweise „Kolonisierung“ behauptet, dass die westliche traditionelle Orientierung des Kontinents bald durch afrikanische Eliten ersetzt wird, uber die Exazerbation der Partnerschaften „unter dem Zeichen der Solidaritat von Suden“. Das ist ein Prozess, der letztendlich zu einer politischen Kontrolle uber afrikanische Gebiete fuhren wird.²⁴

Wenn man vor den gleichen Rationalitat, wie Chris Alden ausgeht, werden die drei dominanten Linien in Falle der DRK getestet, da das Land aus dem Herzen Afrikas einen einzelartigen Fall darstellt, um Chinas *win-win* Kooperationspolitik zu testen. Um die Position von China sowohl als Entwicklungspartner als auch wirtschaftlicher Konkurrent analysiert werden zu konnen, braucht man die Informationen aus den bergbaulichen Bereiche, Handlung bzw. aus den zwischenmenschlichen und kulturellen Beziehungen zu verwenden.

²² Chris Alden, *China in Africa: Partner. Competitor or Hegemon?*, London, Zed Books, 2007, S. 6.

²³ Sergiu Mișcoiu, Hygin Kakaï, Kokou Folly Hetcheli (Hg.), *Recul démocratique et néo-présidentialisme en Afrique centrale et occidentale*, Iași, Institutul European, 2015, S. 340.

²⁴ Alden, *op. cit.*

III. Erfindet China eine neue Ordnung in der Demokratischen Republik Kongo?

3.1. *China als Entwicklungspartner*

Man kann in den vorherigen Absätze bemerken, dass der große Gigant in den letzten Jahren sich bemerkenswert verstärkt, in Falle der Verwicklung in DRK. Selbstverständlich handelte es sich nicht um eine Absender- Empfänger Beziehung, spezifischer Partnerschaft mit den Ländern von Westen.²⁵ China überwand diese Phase und konzentriert sich auf direkte Handlungen und Vermögensanlagen. Diese Tatsache kann als ein Schlüssel für Eintritt in kongolesischen Universum angesehen werden. Die Hauptidee ist den folgenden Aspekt zu verstehen: China legt keine Bedingungen in Bezug auf Demokratie, verantwortungsvolle Staatsführung oder Menschenrechte fest, daher scheint es ein echtes Modell zu sein, dem Zusammenschluss von Führern zu folgen, die nicht aufhören, Regeln aufzuerlegen. Die Faszination des kongolesischen Volkes für China hängt eng mit der Art und Weise zusammen, wie es ihm in relativ kurzer Zeit gelungen ist, eine große Anzahl von Menschen aus der Armut zu befreien und ihre Städte zu modernisieren, wodurch immer mehr Vertrauen geschaffen wird.

China schlägt im vollen Aufstieg ein leistungsfähiges Modell vor - kvazi inspirierend- für denen, die bewusst sind um ihre Zukunft zu kämpfen. Diese Vision war von demvorherigen Präsident Joseph Kabila stark disseminiert. In DRK ist das politische Leben nicht von einer dominanten Idee geführt, sondern von der Berichterstattung an das Staatsoberhaupt. Das Gleiche gilt für die Großmächte, je nach Staatsoberhaupt. In dieser Hinsicht, kann man behaupten, dass die Sino-kongolesische Zusammenarbeit das Zeichen von Joseph Kabila trägt. Er als neugewählt, sagt die Folgende:

²⁵ Vgl. Sergiu Mişcoiu, Louis-Marie Kakdeu, „Le clientélisme politique au Cameroun contemporain : une enquête sur le fonctionnement des réseaux du pouvoir“ in *Al-Misbahia Revue de la Faculté des Lettre et des Sciences Humaines Saï-s-Fès*, Nr. 1, Bd. 13, 2019, S. 7-28.

*Für mich Kongo ist das morgige China: von 2011 werde ich an die asiatische Länder schauen, insbesondere auf „Drache“. Kongo wird uns überraschen, weil ihn schneller als erwartet rückgewonnen wird.*²⁶

Mit mehreren Versprechungen des Wiederaufbaus wird die Zusammenarbeit mit China als Chance für das Land gesehen, in dem alles wieder aufgebaut werden muss. Die Kongolesen entwickelten eine völlig romantisierete Sichtweise gegenüber den Chinesen, trotzdem werden sie nicht als Konkurrent angesehen. Die Bewunderung der kongolesischen Bevölkerung gegenüber den Chinesen wurde anhand der Perspektive erstellt, in der China sowohl ein Muster des guten Praktikums, als auch eine Quelle der Hoffnung ist. Die Handelsbeziehungen bilden einen vorteilhaften Kontext für die Propaganda dieser Vision. Zuerst sind die Produkte „made in China“ allgegenwärtig in der Hauptstadt Kinshasa: Fahrräder, T-Shirts, Haarsträhnen, Schmücke, schnurlose Telefone, Medikamente, elektronische Uhren, Videokamera, Fernseher, Gürtel, Küchenutensilien, landwirtschaftliche Werkzeuge, Röcke, Hosen, Unterwäsche, sogar auch ausgedrückte Hemden mit dem neusten Trend geeignet zum afrikanischem Still.²⁷

Die kleine Unternehmen sind in der Familie zwischen den Generationen ausgerichtet, und die Waren sind in Container abgesendet, um die Geldverschwendung zu verhindern. Kleine chinesische Privatunternehmer gerieten als wesentlicher Handelspartner in der städtischen Landschaft von Kinshasa, aufgrund der kleinen Preisen ihrer Waren. Fallstudien, Feldstudien und Interviews von Nuah M. Makungu²⁸ veranschaulichen, wie die chinesischen sozialen Netzwerke und Diaspora ganz am Erfolg chinesischer Kleinhändler aus Zando und an der

²⁶ Amsantrittsrede 16.11.2006 des vorherigen Präsidenten Joseph Kabila.

²⁷ Vgl. Mathilde Leyendecker, Sergiu Mișcoiu, „The Flag Still Stands! The Political Reconversion of the Internally Exiled Independentists of Casamance“, in *Studia Europaea*, Nr. 2, 2019, S. 193-201.

²⁸ Makungu, S. 94.

Bereicherung und Entwicklung Chinas in der Demokratischen Republik Kongo beteiligt sind. Die kleine chinesische Händler stellen nicht jeder Zeit kongolesische Arbeitskräfte an. Die jungen legalen und illegalen chinesischen Zuwanderer bilden eine zugreifbare Arbeitskraft, die auch für die Eigentümer der Geschäfte Zando ausgeschöpft sind. Die chinesischen Arbeiter arbeiten sieben Tage in der Woche, bis 12 Arbeitsstunden, indem die Einheimischen nur sechs Stunden pro Woche und nicht mehr als acht Stunden am Tag. Die starke Netzwerke aus der chinesischen Diaspora bieten günstige Arbeitskräfte an. Die Preise ihrer Waren sind zu niedrig, was die lokale Produktion zerstört.²⁹

Zweitens, die häufigen zwischenmenschlichen Interaktionen helfen bei Verminderung der Missverständnisse zwischen den Menschen. Die Chinesen wirken täglich mit den Kongolesen mit- ungefähr 10.000 chinesische Arbeiter befinden sich in DRK.³⁰ Kleine Händler leben jeden Tag mit dem kongolesischen Volk zusammen und teilen Armut, Elend und und Unzufriedenheit, so dass die tägliche Interaktion zwischen Menschen hilft, sich zu versöhnen.

Als Schlussfolgerung kann man behaupten, dass China ein irrealer Entwicklungspartner ist. Die Investitionen in verschiedene Sektoren sind kurzfristig; ein mittel- oder langfristiger Plan existiert aber nicht. Sie wirken lokal als Arzneimittel, das die Auswirkungen lindert, aber die Wunde nicht heilt. Die Entwicklung von DRK ist für China nicht prioritär, im Gegenteil, die Erhaltung des Status quo ist wünschenswert.

3.2 China als wirtschaftlicher Konkurrent

Im Vergleich zu dem Land, das bald die weltweit führende Macht erfolgen wird, die DRK hat einen minderen Partner. Wie können die schwächsten mit den stärksten verhandeln? DRK, die sich in der Mitte

²⁹ Makunku, S. 98.

³⁰ Serge Michel, Michel Beuret, *La Chinafrique. Peking à la conquête du continent noir*, Paris, Bernard Grasset, 2011, S. 348.

Afrikas befindet, ist potenziell das reichste Land auf der Welt, aufgrund der Mineral- Lagerstätte, aber paradoxerweise ist eines der ärmsten Länder der Welt, dessen Einwohner verdienen durchschnittlich einen Dollar pro Tag.³¹ Das östliche Ende des Landes ist seit 1994 Schauplatz wiederholter Gewalt. Derzeit gibt es 130 bewaffnete Gruppen, die ein hohes Maß an Informalität aufrechterhalten. Die rebellischen bewaffneten Gruppen haben ihre eigenen Regeln, einige von denen haben ihren eigenen mafiösen Kreis erstellt, um interessierte Unternehmen mit Rohstoffen zu versorgen. Von der Hauptstadt bzw. dem Staat entfernt, können „die bergbaulichen Verträge mit den Rebellen direkt unterschrieben werden“³².

China proklamiert ein Abkommen Art „Gewinn- Gewinn“, das folgenderweise abgekürzt werden kann „du gibst mir die Mineralien, die ich dringend brauche und ich baue die Infrastruktur für dich“.³³ Aber mit welchem Preis? Laut Unicef, haben in 2014 fast 40 000 Kinder in den Bergwerke im Süden der DRK gearbeitet. Sie haben bis 12 Stunden pro Tag für 1 oder 2 Dollar gearbeitet und sie sollten schwierige Bedingungen und Missbräuche durch Untergebene von Bergbauunternehmen ertragen.³⁴ Zurzeit, wächst ihre Zahl ständig. Es funktioniert ebenso im Falle der handwerklichen Bergwerken; die Kinder sind verpflichtet am Rand der Straße zu verkaufen, aber sie sind nicht in der Lage mit den zugelassenen fremden Käufer zu verhandeln.

Lassen Sie uns auf formeller Ebene das Sicominés-Abkommen betrachten, das unter informelle Bedingungen unterzeichnet wurde. China versprach, dass es 3 500 km Landstraßen, 3 200 km Bahnstrecke, 32 Krankenhäuser, 145 Gesundheitszentren und 2 Universitäten aufbauen wird- insgesamt für 9 Millionen (später auf 6,5 Millionen Dollar

³¹ Vgl. Dominique Kenge Mukinayi, Sergiu Mişcoiu, „Rétroactes sur le conflit congolais (RDC) et regards sur ses causes“, in *Studia Europaea*, Nr. 2, 2020, S. 105-132.

³² Urs, S. 60.

³³ Claude Kabemba, „China-Democratic Republic of Congo Relations: From a Beneficial to a Developmental Cooperation“ in *African Studies Quarterly*, Nr. 3-4, Bd. 16, 2016, S. 74.

³⁴ „This is What We Die For. Human Rights Abuses in the Democratic Republic of Congo“, Amnesty International, 2016.

reduziert).³⁵ Der Internationale Währungsfonds (DWF) hat eine Gelegenheit für DRK erstellt, um eine Entwicklungsvereinbarung neu vorzuhandeln, aber DRK scheiterte. So erhielt China uneingeschränkten Zugang zu Kobalt.

Das größte Problem betrifft nicht China, sondern DRK, der nicht in der Lage ist ihre Interessen zu ernennen und zu schützen, es konzipiert seine Zukunft weder politisch, noch wirtschaftlich. Die Demokratische Republik Kongo belegt derzeit den 170. Platz von 179 in der Rangfolge von *Transparency International 2020* des Wahrnehmungshinweises von Korruption, zwei Plätze (168) weniger als in der Rangfolge von 2019. Die Korruption ist das Haupthindernis auf dem Weg der Entwicklung des Landes, das lässt viel Raum für positive und negative fremde Einflüsse.³⁶

Am Ende, lehnt man ab diesen Zusammenschluss im Falle der Sino-kongolesische Beziehungen. China ist kein wirtschaftlicher Konkurrent für DRK. Die Handelsbeziehungen zwischen den beiden Ländern finden im Kontext eines geschwächten kongolesischen Staates statt, der nicht in der Lage ist, die Chancen, die China bieten kann, voll auszunützen. Seine Interventionen berücksichtigen nicht die lokalen kongolesischen Bedürfnisse und Besonderheiten.

3.3 China als Hegemon

Chinas Ansatz bietet der kongolesischen Regierung einen wirtschaftlichen Handlungsspielraum und große Politik, aber bietet auch den Chinesen die Möglichkeit, überall Tentakel zu pflanzen. Im Laufe der Jahre ist China in allen Lebensbereichen allgegenwärtig geworden, nicht nur im Bergbau und im Handel: „Textilien (Congotex Betrieb), Gesundheit

³⁵ Desk Eco, "Accord Chine-RDC : 32% pour la Gécamines et 68% pour le consortium d'entreprises chinoises (Document)", <<https://deskeco.com/accord-chine-rdc-32-pour-la-gecamines-et-68-pour-le-consortium-dentreprises-chinoises-document/>>, Zugriff am 19.05.2021.

³⁶ Transparency International France, „Hinweise auf Korruptionswahrnehmung Transparency International“, 2020, <<https://transparency-france.org/publications/indices-de-perception-de-corruption/#.YBk1LugzbiU>>, Zugriff am 30.04.2021.

(das Krankenhaus im Stadtbezirk Ndjili), städtische Müllabfuhr (Lukunga Kläranlage von Kinshasa), Schulen (die Beförderung der chinesischen Sprache), Telekommunikationen, Handel, aber auch Gefängnisse (die Mehrheit von anwesenden Fremden im zentralen Gefängnis aus Kinshasa sind Chinesen)³⁷. Die Sino- Afrikanische Kollaboration scheint auf institutioneller Ebene tadellos zu sein, und die zwei Länder prahlen, dass es ihnen gelungen ist, die Globalisierung zum Nutzen beider Parteien neu zu erfinden und zu korrigieren.³⁸ China ist über die klassischen Konstrukte der westlichen Festlegung auf dem afrikanischen Kontinent hinausgegangen und hat die Beziehungen in Bezug auf historische Assoziationen und Solidaritätsbeziehungen festgelegt, die beide darauf abzielen, seine Rolle von der anderer externer Mächte zu unterscheiden. Dieser Durchgang konkretisiert sich durch Absprachen, die unter informellen Bedingungen unterschrieben wurden, durch informelle Absprachen auf hoher Ebene und Gleichgültigkeit gegenüber den Arbeitsbedingungen.

In DRK drehen sich die meisten Fragen um die Ressourcen und das Interesse des Landes an externen Akteuren. DRK ist ein geologisches Paradies, das 60% aus der Kobaltproduktion der Welt versichert. Es ist auch als Mineral der Zukunft genannt, und ist der wesentliche Bestandteil beim Bau von Handybatterien und Elektroautos. Kongolesische Ressourcen sind für Chinas Wirtschaft von entscheidender Bedeutung, insbesondere Kobalt. Laut Bloomberg stammen 99% des Kobaltes, das nach China gelangt, aus dem Kongo; China saugt 80% der kongolesischen Kobaltproduktion auf und ist das einzige Land³⁹, das diese verarbeiten

³⁷ Vircoulon, S. 117.

³⁸ Actualité CD, "RDC : Tumba Nzeza loue « la mondialisation revue et corrigée par la Chine et l'Afrique au profit de deux parties", 2021, <<https://actualite.cd/2021/01/06/rdc-tumba-nzeza-loue-la-mondialisation-revue-et-corrigee-par-la-chine-et-lafrique-au>>, Zugriff am 20.06.2021.

³⁹ Tracy Alloway, „China's Supply-Chain Scramble Now Comes With Added Commodities“, 2016, <<https://www.bloomberg.com/news/articles/2016-05-31/china-s-supply-chainscramble-now-comes-with-added-commodities>>, Zugriff am 21.05.2021.

kann. Es wird in Form von grünem Pulver extrahiert. Die Konzentration des Kobaltproduktes zwischen DRK und China deutet auf ein Risiko für die globale Versorgung hin, weil globale Branchenriesen wie Apple, Samsung, Volkswagen oder Tesla auf Lieferungen aus einem afrikanischen Land angewiesen sind, das zunehmend an China gebunden ist.

Am Ende ist es China gelungen eine neue Ordnung in DRK zu erfinden, durch Annäherung an die Menschen und mit neuen Mitteln. Afrika wird wieder von China kolonisiert, aber es ist erwähnenswert, dass es einige Sachen angeboten hat, im Gegensatz zu Westen: materielle Güter für den täglichen Verbrauch zugänglich, Verständnis und wirtschaftliche Unterstützung ohne Bedingungen. In DRK ist China Synonym mit „Zugang zum einen besseren Leben“ für die Armen- ein Zugang, der bisher nur für die reichen Leute erreichbar war. Gleichzeitig ist die DRK für China einer der afrikanischen Bereiche, in denen ihre Rolle international gestärkt werden kann.

Schlussfolgerungen

Im letzten Jahrzehnt war China fast im ganzen Kontinent massiv beteiligt. Die externe und aggressive Politik Chinas in Afrika hat allen nachgewiesen, dass dieser Kontinent ein riesiges Potenzial verbirgt. In Partnerschaft mit der DRK übte China einen gut gemeinten gepflasterten Neokolonialismus aus. China kann nicht verlangen, dass es mit der DRK eine *win-win* Beziehung hat, sobald diese seine Interesse nicht veranschaulichen kann. Obwohl die beiden Länder sich rühmen, die Regeln der Globalisierung neu erfunden und korrigiert zu haben, bleiben die Verhältnisse ungleichmäßig. Ob China ein echter Entwicklungspartner sein möchte, sollte es aufhören, ihre Beschäftigungen in Reden zu verbergen, und anfangen, die wirklichen Bedürfnisse ihrer Partner mit Respekt zu behandeln. Die Brechlichkeit des kongolesischen Staates stellt den größten Vorteil Chinas dar: die Geldanlagen entsprechen nicht dem

tatsächlichen Bedürfnisse der Kongolesen, während sie uneingeschränkten Zugang zu den Bodenschätzen haben.

Afrika ist als ein Gebiet angesehen, das die Stärkung der internationalen Rolle Chinas erlaubt, ohne aus der Perspektive der Rechtsstaatlichkeit und der Menschenrechte in Frage gestellt zu werden. China nahm den Erfolg des kongolesischen Gebiet an: gute Kooperation mit dem Staatsoberhaupt. Im Kabila Zeitabschnitt, die Geldanlagen waren eng mit der Infrastruktur verbunden (der Transport, die Energie), ähnlich mit dem Programm „fünf Baustellen“ (*cinq chantiers*). China bleibt auch nach den Präsidentschaftswahlen offiziell auf dem Spiel, obwohl Felix Tshisekedi eine pro-westliche Vision hat.

Weder der Westen, noch China sind voll und ganz dafür verantwortlich, dass sich DRK nicht stabilisiert und keine wirtschaftlichen, systematischen, vorteilhaften und kohärenten Beziehungen aufrechterhält. Die realen Veränderungen sollten innerhalb des kongolesischen Stattes stattfinden, und danach weltweit erweitert werden. Der Mangel an ideologischer Orientierung und die Korruption ihrer Gesellschaft ermöglichen es, den Staat von internen und externen Kräften zu erfassen, die zusammenarbeiten. Um ein festes Programm zu haben, ungeachtet ob dieses ein traditioneller spendabler Partner ist (Belgium, Frankreich, UE, USA) oder der sogenannte aufstrebende Partner (China, Indien, Brasilien, Südafrika), DRK muss mit allen Partnern konkurrieren. Die Abkehr von ausländischen Einflüssen und eine vollständige Umstrukturierung sind notwendig, damit wirklich von ihren Reichtümern einen Nutzen ziehen kann.

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THE STATE OF HUMAN RIGHTS IN THE AFRICAN POST-COLONIAL POLITICS

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Abstract

The aim of this study is to identify and critically assess the effects of appropriation of foreign political ideologies and practices in African political systems. This paper argues that there should be no leader, whatever his worth; look on his own personal problems to be exploited for the benefits of western's Politics. Which will enable the African systems to develop, secondly, argues that Human Rights should be looked at to be an apportioned – responsibility, shared by both the former colonial powers and the current post-colonial political elites, rather than seeing Human rights promotion as yet another excuse to interfere or control other sovereign nations. The study will involve qualitative research involving reviewing other authors' literature, identifying current affairs, and critical assessing the ways in which neo-colonialism affects the different societies in transition from a colonial past to independence. The study is based on the fact that colonized countries, during the Cold War, suffered political oppression, economic exploitation, and social degradation, while alignment either with the capitalist or communist ideology failed. Currently there is a felt pressure to adopt a neoliberal ideology in order to access to have access to aid and investment. The study concludes with recommendations to third world leaders, to look at the people they lead as their responsibility, since no leader, whatever his/her worth, can replace the will of people. This results in a felt need to embrace democracy and such democratic values

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as: strong institutions, an independent judiciary and the separation of powers, individual and minority rights, and civil rights.

Keywords: postcolonial politics, appropriation of foreign politics, human rights, principled values of democracy, the inability of African leaders

1.0.1 Introduction

This Study discusses about the post-colonial politics and how different political systems have disregarded the human rights of their people. The study also looks at the dimensions of human rights and how such rights have been violated, as well as attempting to identify the perpetrators. The third World, mostly Africa has historically been a region with widespread human rights violations manifested in several forms including neo-colonialism, and through numerous postcolonial political activities¹. During the colonial times' Africa's human and material resources were largely exploited for the benefit of outside powers. This left Africa in poverty which reflects an acute deprivation of the resources, capabilities, choices, security there by making these countries unable to enjoy their sovereignty even after attaining independence. The list of human rights violations in the 21st century seems inexhaustible. For example, The Lord's Rebel Army (LRA), in the Democratic Republic of Congo, rebel groups forced hundreds of children to serve as child soldiers², a similar case happened in Uganda during the NRA bush war led by Museveni from 1981-1986. The International Labor Organization estimates that 21 million are victims of forced labor. Arbitrary detention and torture were used in many countries. During the just concluded elections I Uganda, 2020/21 there exhibited a lot of brutality by the men in the Military, journalists brutalized and some have been sent to jail for reporting about anti-government protests.

¹ Sergiu Mişcoiu, "Afrique et politique" in Simona Jişa, Sergiu Mişcoiu, Buata B. Malela (eds.), *Littérature et politique en Afrique francophone. Approche transdisciplinaire*, Paris, Editions du Cerf, 2018, pp. 345-348.

² Andreea Bianca Urs, "Du conflit au terrorisme en RD Congo", *Studia UBB. Europaea*, 65(1), 2020, pp. 55-73.

Concept of Human Rights

In this first section we intend to assess if the claim for the universality of human rights is not in fact a tool for political influence used by imperial state in order to interfere or control other sovereign nations? We will answer the question by analysing the school of thoughts, on neo-colonialism and critical analysis of historical perspective of human rights.

According to John Locke: "Human being has inalienable rights, granted at birth and cannot be taken away, what he referred to tabularize: life, liberty, and property"³, was aligned with West liberal democracy as stipulated human rights declarations⁴. Though relativism: beliefs, values, and therefore these rights should be understood as products of culture. The implementation of human rights could be culturally relative, just as these rights are relatively universal⁵. It is much noted that "the Universal Declaration of Human rights ignored colonialism which involved the brutal and systematic denial of most human rights to the most colonized world"⁶. This unpacked on state failure and resulting refugee movements due to States' inability to attain a functional balance, both in terms of societal satisfaction and juridical viability; coupled with the inability of the State to distribute resources equitably between the various ethnic nationalities, which leads the social conflicts and civil wars.

According to Mao Tse-Tung, "the evil system of colonialism and imperialism arose the trade in negroes. And it will surely come to its end with the complete emancipation of black people". Again, according to Birden Güngören Bulgan, the crucial point is about integrating human rights as an inner process and not to use them as a tool for intervention in other countries,

³ Stanford Encyclopedia of Philosophy, "Locke's Political Philosophy", <<https://plato.stanford.edu/entries/locke-political/>>.

⁴ United Nations, "The Universal Declaration of Human Rights", <<https://www.un.org/en/universal-declaration-human-rights/>>.

⁵ Jack Donnelly, *Universal Human Rights in Theory and Practice*, New York: Cornell University Press, 2013, p. 14.

⁶ *Ibidem*, p.75.

which we observe in today's world.⁷ In other words; the claims of human rights are the contrast of human rights in practices. And the above statements made by Mao Tse- Tung and Birden Güngören Bulgan, demonstrate how liberalism systematically fails to live up to its own claims of universality and uses colonial violence and racism, both materially as well as ideologically, in order to paper over that ingrained contraction at the core of its Calculations. The controversy over the Universality of human rights based on reality is the only crack between the success of exercising human rights (HR) and the failure to exercise the universality of human rights, whether at a regional or national level.

Neo-colonialism as the biggest threat to African political systems

Neo-colonialism is a process by which colonial masters continue to exploit their newly independent countries through indirect domination⁸ which could be in an economic, political, or social way and they completely take control of African territories⁹. In the past, it was possible to convert a country upon which a neo-colonial regime had been imposed into a colonial territory¹⁰ but today this process is no longer feasible because old-fashioned colonialism is not entirely abolished. The neo-colonialism of today represents imperialism in its final and perhaps its most dangerous stage in a way that once a territory has become nominally independent, it is no longer possible to reverse the process as it was in the last century and existing colonies may linger on but no new colonies will be created. Colonialism being the main instrument of imperialism today, we have neo-colonialism and the essence of this is that the State which is subject to it is in theory independent of all the outward trappings of international sovereignty hence in reality its economic system and political policy is directed from outside¹¹.

⁷ Birden Güngören Bulgan, "Critics of Human Rights from a Historical Perspective", *Filozofia Publiczna i Edukacja Demokratyczna*, 4(1), 2015, p.182.

⁸ Kwame Nkrumah, *Neo-Colonialism: The Highest Stage of Imperialism*, London: Heinemann, 1965.

⁹ Noah Echa Attah, "The Historical Conjuncture of Neo-Colonialism and Underdevelopment in Nigeria", *Journal of African Studies and Development*, 5(5), 2013, pp. 70-79.

¹⁰ Nkrumah, *op. cit.*

¹¹ *Ibidem.*

1.0.2 Discussion

How the word Neo-colonialism enters in African political philosophy?

Neo-colonialism in its historical perspective was proclaimed by Kwame, in his book *Neo-colonialism* which was the last Stage of imperialism (1965) where he was supported by a movement of anti-colonialist groups from African countries, voted a "Resolution on Neo-colonialism "at all African People's Conferences (AAPC). Nkrumah argued that the result of neo-colonialism is that; foreign capital is used for exploitation rather than development. And while the state appears to be independent. And has total control over its dealings. It is in fact controlled by outsiders economically and politically. And the loss of control of the machinery of the state to the neo-colonialists, is the basis of Nkrumah's discourse in his book entitled *Colonialism and Neo-colonialism* (1964). Since then, neo-colonialism is an important concept in the history of ideas and has entered the vocabulary of African political philosophy¹². An illustration of colonial masters: The commentators look closely to define neo-colonialism as "the control of less developed countries by developed countries through indirect means." Neo-colonialism can as well be similar to a village builder (mason) who only knows where he puts the unburnt or sun-dried bricks in his village so that he delays the construction as a form of pure monopoly since he will be called back to replace it with burnt brick and as doing so his labour increases and in this manner, he earns more pay.

One would ask, how did the inability of both African leaders, and intellectuals play a smooth adoption of foreign political ideologies, and practices to be exploited for the benefits of Western imperialists, as a result of the weakness of the African political system? To answer the above question, I can engage Frantz Fanon; "The national bourgeoisie is perfectly clear on their objectives, that are determined to bar the way to this unity, this coordinated

¹² Stephen Ocheni, Basil C. Nwankwo, "Analysis of Colonialism and its Impact in Africa", *Cross - Cultural Communication*, 8(3), 2012, pp. 46-54.

effort by 250 million people to triumph over stupidity, hunger, and inhumanity. This is why we must understand that African unity can only be achieved under pressure and through leadership by the people with total disregard for the interest of the bourgeoisie"¹³.

A lot of Fanon's economic critics, are aligned with nationalism proponents. On how they failed to revolutionize African wealth after independence. Which is more clearly visible than Rabindranath Tagore¹⁴. Fanon demonstrates that not only did they cease to exercise their role as revolutionists to egalitarian of country resources, reform economic mode of exploitation, but also to break it right after independence in the sense that African colonies were used as both sites to procure the raw materials at the same time dumped the finished goods for example unequal exchange through instituting a system of economic exploitation in which African raw materials particularly cash crops and minerals, were expropriated and exported to the sole benefit of the colonizing power.

The extraction and export of minerals could not serve to develop African industries because minerals taken from African soil by Western corporations were shipped to Europe or America where they were turned into manufactured goods which were then resold to African consumers at value-added prices which has led to the fact that Africans remains industrially backward and deficient as a result of economic dependence. In a similar way, they acted as intermediaries or the middlemen through whom economical exploitation was channelized, and who later got the share to the loot.

The failure to organize a truly national economy and community for example foreign aid is noted as evidence that has been given in the form of loans, with high-interest rates and reimbursement of these loans contributed to the underdevelopment of African economies since the collection of interest drained African peoples.

¹³ Frantz Fanon, *The Wretched of the Earth*, Paris, François Maspero, 1961.

¹⁴ Economic & Political Weekly, "What Kind of Nationalism Do We Need Today? Exploring Tagore on Nationalism", <<https://www.epw.in/engage/article/what-kind-nationalism-do-we-need-today-exploring>>.

During the Cold War¹⁵, the increasing level of American and Russian aid intervention in the affairs of independent African states were designed to keep African countries within the capitalist or socialist/communist camp. Fanon argues that the ruling class has not taken any such revolutionary steps in order to dismantle this relationship rather the collaboration continued with the colonial power to ensure that the interests of both would be met after the declaration of formal political independence and this led to degeneration and perversion of nationalist discourse which later became racist and tribalistic which resulted into the inability of the State to distribute resources equitably between the various ethnic nationalities and this created internal conflict and nationwide therefore under the middle-class leadership remained as a workable model of Westerners.

My argument would be that, most African politicians who have access to power and economy with their primitive techniques of playing politics or their politicking ways who serve to their own benefits rather than the public services in fact, they use the public services to extend generosity to people whose royalty supports their needs. In most African countries where governments collect taxes and donors give aid through the states, this creates an opportunity for intellectuals or those so-called elites to use this aid selectively to build their political systems rather than to invest in building public services and institutions this is a critical fact to many African countries. I secondly engage Achille Mbembe in his view, after the colonial era the West did not consider that Africans were capable of organizing themselves socially, economically and politically. The reason is simply because Africans were believed to be intellectually poor and ignorant to the level of irrationality. Since Africans are different in race, language, and culture from the West, they do not possess the power, vigour, quality, and the intellectual analytical abilities that characterize Western philosophical and also this perception of the African primitiveness which is used by colonizers to justify the conquest and

¹⁵ Martin McCauley, *Origins of the Cold War*, London, Longman.

the colonization of Africa is still predominant in the discourses of some Westerner¹⁶.

I argue that, as a matter of fact, local elites with the West have to perpetuate the exploitation of the people in Africa. The reason is simply that most elites got educated by the West and they are not committed to national interest and development, rather their aim is to ensure the continued reproduction of foreign domination of the African economic space. The objective of foreign capitalism therefore to continue to co-opt the weak and nascent local bourgeoisie into its operations.

The protection of stolen money by both African leaders and local elites where by some are kept in foreign banks while others are to support those with power or those subjected to the power to the use of personal benefits through corruption and this approves of the statement of Nkrumah "The result of colonialism is that foreign capital is used for the exploitation rather than for the development of the less developed parts of the world and Investment under neo-colonialism increases rather than decreases the gap between the rich and the poor countries of the world".¹⁷

Due to the fact that most of the African regimes are dictatorial, there is a need to use foreign aids to equip the police and military to limit, harass, and dehumanize opposition. African leaders also needed financial aid from the European countries to enrich and prosper as well as increasing their wealth in order to win legitimacy, favour, and acceptance in the eyes of society¹⁸.

These financial aids attracted African leaders (politicians) as a means of gaining, continuing, and controlling the power they hold. I strongly believe that it is a disaster when political power becomes the most profitable economic activity in the country especially in African societies which are ethnically regionalized and then it is definite that every ethnic group would compete to

¹⁶ Achille Mbembe, *On the Postcolony*, Berkeley, University of California Press, 2001.

¹⁷ Nkrumah, *op. cit.*

¹⁸ Sergiu Mişcoiu, Louis-Marie Kakdeu, "Authoritarian Clientelism: The Case of the President's 'Creatures' in Cameroon", *Acta Politica*, 56(1), 1-29.

access foreign aid which makes a struggle into political power as the matter of life and death.

In Political Science, we have gradual socialization which means in case a hostile group is captured from the group which was in power for a long time definitely you get a civil war because most African politics rotate with ethnicity that's why political power is like a blanket once you lose it you feel cold. It is through this political weakness that African leaders look at their personal problems and the Westerners exploit them (weakness) as their benefits and in the same way, I have seen that neo-colonialism is correlated to Imperialism which is the process of establishing colonial and neo-colonial relationships. In a colonial relationship, the people and resources of one country called the colonized country are subjected to the power, authority, and control of another country called the colonial master. The relationship is an essential one between servants or slaves whose human and material resources primarily serve the interest of the master. A neo-colonial relationship is not very different from a colonial relationship except that it is more subtle. In a neo-colonial relationship, the people and resources of a country that has the outward appearance and trappings of an independent country but poor and relatively weak are subjected indirectly and informally to the power, authority, and control of the rich and powerful states of the world.

1.0.3 Conclusion

I find it imprudent for anyone to believe in middle-class rulings and preferably, one should look at what is the objective reason that has made it a logical necessity for the middle class to have displayed massive blindness in their own ridiculous postures? The most common reasons why African leaders want to remain in power; is that they suffer from the shadow behind/over syndrome sickness. And they found themselves on the top of the mountain. This is because in Africa, Law operates like a cobweb, while in Western & Europeans is like blind kid. It does not know its parents. And secondly to protect their wealth, which is mainly family-based. Thirdly, once they lose the

political values, they get affected by both physical and psychological difficulties, for example Angola with The Dos Santos family's business empire. In Africa where, we have two groups of voters, one with the purpose of power consolidation, while the other group comes to remove; and remember in Africa, there is no impeachment or middle ground, so you either win or lose out. That's why there is election violence. For example, Uganda's 2020-2021 elections¹⁹. In contrast, Americans put the foundations and all means to see their brains back. American presidents make money through their speeches, because they speak on the point of experience.

Politics is like a psychological war, to fight the psychological war, one must be highly intelligent, like grass root politicians who have the potential and explain issues with credibility, this is because there are people who do not know the difference between exposure and knowledge (confine image Politicians.) African leaders can show an acute awareness and a healing cynicism of political situations, only to their families or close friends, and then in whispered metaphors: "anything that boils will eventually cool down"; that's a big no, that's why Fanon rejects the binary of Nationalism. Nationalism should not be rejected but must-have qualities that drive progressive international consciousness; therefore, people should come up with strategic and principled pressure to reform: what is principled is that middle-class ruling must change now, it is not sustainable, people won't wait for another century that's the principled and people should be uncompromising as far as the demand for change is concerned. Strategically, people must be aware of serious work, pulling in rather than shouting down, this would happen through a revolutionary change aligned with solidarity and networks²⁰.

It is true that the African continent was turned upside down for several reasons: solely interests for both the West and bourgeoisie through exploitative institutions. Africans must know that Western nations are states

¹⁹ Human Rights Watch, "Uganda: Elections Marred by Violence", <<https://www.hrw.org/news/2021/01/21/uganda-elections-marred-violence>>.

²⁰ Sergiu Mișcoiu, Sedagban Hygin Kakai, Kokou Folly Hetcheli (eds.), *Recul démocratique et néo-présidentialisme en Afrique Centrale et Occidentale*, Iași, Institutul European, 2015.

with their own interests and it has taken time after African countries gained their independence so therefore; there should be economic, social, and political reforms in order to create and exploit their resources without the hand of external involvement. This would help African countries to gain self-reliance, strong leadership and a party grounded in the lowest of the low mass line from masses to the masses through developing the norms and values of a democratic society and these include strong institutions, formidable leadership, minority rights, human rights as well as civil rights, that can only happen through political education embraced by the free will of people. During times when the government has failed its people by providing less of what is supposed to be like food, education, security and many others because the west liberals who have been providing donations, aids, and investments have failed them by not providing as much as they were before. The people will start to face challenges because the human rights will be violated yet everyone has a right to food, clean environment, education and many others which may results into demonstrations then later violence occurs resulting into death of many people, destruction of property and many others. Again, when the government itself has failed its people, and the west liberals who have been posing as their friends through donors, aids, and investments failed them. And once people see that, all these other sources to which they have turned, have failed (International regulations) due to the confusion of human rights with limited governments.

1.1 State Engineered Human Rights' Abuse

1.1.1 Introduction

Human rights abuse is when a state commits human rights violations either directly or indirectly and this can either be intentionally performed by the state and or come as a result of the state failing to prevent the violation²¹. When a state engages in human rights violations, various actors can be

²¹ Naomi Roht-Arriaza, "State Responsibility to Investigate and Prosecute Grave Human Rights Violations in International Law", *California Law Review*, 78(2), 1990, p. 525.

involved such as police, judges, prosecutors, government officials and more. The violation can be physically violent in nature such as police brutality, while rights such as the right to a fair trial can also be violated²². There are different types of violations which may include the failure by the state to protect like when there's a conflict between individuals or groups within a society reducing the respect of all human types²³. If the state does nothing to intervene and protect vulnerable people and groups, it's participating in the violations. In the United States, the state failed to protect black Americans when lynching's frequently occurred around the country since many of those responsible for the lynching's were also state actors (like the police), this is an example of both types of violations occurring at the same time. Another example is during the election period in Uganda where the National Unity Platform supporters were beaten brutally by the police during campaigns in the different districts: as reported by Aljazeera 1st December 2020, and most of the culprits were not put to fair judgment even when some had lost their lives. The other examples of human rights violation include civil, political, economic, cultural, and social rights can all be violated through various means²⁴. Different rights are violated differently like Civil and political rights may be violated through genocide, torture, and arbitrary arrest. These violations often happen during times of war, and when a human rights violation intersects with the breaking of laws about armed conflict, it's known as a war crime.

Conflict can also trigger violations of the right to freedom of expression and the right of peaceful assembly²⁵. States are usually responsible for the violations as they attempt to maintain control and push down rebellious societal forces hence suppressing political rights, which is a common tactic for many governments during times of civil unrest. Another example of violation maybe economic, social, and cultural rights and the economic, social, and

²² Caroline Beer, Neil J. Mitchell, "Democracy and Human Rights in the Mexican States: Elections or Social Capital", *International Studies Quarterly*, 48(2), 2004, p. 298.

²³ *Ibidem*, p. 310.

²⁴ Stanford Encyclopedia of Philosophy, "JohnRawls", <<https://plato.stanford.edu/entries/rawls/>>.

²⁵ Ocheni, Nwankwo, *op. cit.*

cultural rights include the right to work, the right to education, and the right to physical and mental health. The government ratifies a treaty and they have a three-fold obligation where they must respect, protect, and fulfill human rights. When violations occur, it's the government's job to intervene and prosecute those responsible and it must hold everyone (and itself) accountable. The puppet leaders from third world countries are targeted by Imperialists powers so the third world countries and their different institutions have continued to suffer because such leaders have displayed inability in their positions and in this case the power holders are not to be blamed since they are also leading people who are seen as political cowards.

This paper argues that Human Rights should be looked and apportioned responsibility which should be shared by the former colonial powers and the current post-colonial political elites, rather than seeing Human rights promotion as yet another excuse to interfere or control other sovereign nations. The study is based on the fact that colonized countries especially during the Cold War, suffered political oppression, economic exploitation, and social degradation yet alignment either with the capitalist or communist ideology failed. Now they are obliged to adapt to the neoliberal ideology and do their best to have access to aid and investment. This study discusses about the post-colonial Politics and their reflection and just to rephrase some key words, where different states mean the states with both Military power and Economic power, therefore the main idea here is their hypocrisies and calculations in transposing their values through the exploitive institutions/government departments, to the rest of the world.

For the viewer to understand the study, it is imperative to define some of the key points, among others includes conservatism which is a political and social philosophy promoting traditional social institutions in the context of culture and civilization. Liberal conservatism is a term used to incorporate the classical liberal view of minimal government intervention in the economy where individuals should be free to participate in the market and generate wealth without government interference. The key competence: could it be that

the universality of human rights is actually a dodge, for the political influences by imperial states through their political ideologies? "A human being has inalienable rights granted at birth and cannot be taken away"²⁶, this is a point which was aligned with Western liberal democracy as stipulated human rights declarations act.

Human rights are relatively universal and the implementation of these rights could be culturally relative²⁷, which involved the brutal and systematic denial of most human rights to the most colonized world which unpacked on state failure and resulting into refugee movements due to the states inability to attain a functional balance both in terms of societal satisfaction and juridical viability coupled with the inability to distribute resources equitably between the various ethnic nationalities which leads to the social conflicts and civil wars. Since the practice of human rights in Africa contradicts with the its actual concept, it demonstrates how liberalism systematically fails to live up to its own claims of universality and uses colonial violence and racism both materially as well as ideologically in order to paper over that ingrained contraction at the core of its calculations. The controversy over the Universality of human rights based on reality is the only crack between the success of exercising human rights and the failure to exercise rights whether at a regional or national level.

1.1.2 Liberals and Conservatives

The discussion between liberals and conservatives is quite active in contemporary society. Liberalism is seen as a political and social philosophy that promotes individual rights, civil liberties, democracy, and free enterprise like educational policies while honouring religious and cultural pluralism. It is a political and moral philosophy based on liberty and consent of the governed equality before the law by giving rights to everyone like political rights, property rights and civil rights, on the other hand

²⁶ Standford Encyclopedia of Philosophy, "Locke's Political Philosophy", *loc. cit.*

²⁷ Donnelly, *op. cit.*, p. 14.

conservatism is a political and social philosophy promoting traditional social institutions and distinguishing characteristics.

This section looks at the different ways in which the ideas associated with these social and political philosophies have consequences in the lives of all members of society more so the rights to humanity. Liberal meant to "liberate" or "free" and as applied to social questions meant that individuals should be as free from interference from the government as possible. There is a need to review political systems in Africa in line with the values of human sovereignty though in social affairs it was taken to mean that individuals were to remain free to pursue their own interests and to work then keep the results of their labour, Individuals had a right to property and the pursuit of what would make them happy though what is seen happening in most countries is that there is a lot of government interference with individual's earnings.

1.1.3 Discussion

In my discussion I will address the following introductory questions; The first question would be how and why the issues between power and freedom have not considered Cultural Rights of the third world? Secondly, one would ask who those human rights' opportunists are. How and why, they are human rights violators? Before we get into it, I would like to recall the three dimensions of Human Rights and the core values of a democratic society, through three dimensions of human rights.

I have introduced the three dimensions of Human Rights in order to engage how the most so-called powerful political ideologies understand the controversial issues of both social and economic in the sense that what is more likely to be tolerant when it comes to socioeconomic issues. The understanding on how different political ideologies perceive socio-economic issues in the real world is demonstrated.

The interpretation of the above summary is that the liberal is more likely to be tolerant on socio-economic issues through government programs whereas the conservative in the present generation is enslaved by the past and

does not serve the interest of the many but the few! The next point will be on how they understand foreign policies where the conservatives are well known for example, Trump's (US Republican Party), Immigration policies and Cameron UK 2005-2016: Big society, fiscal austerity, gay Marriage rights & overseas may control immigration/hard Brexit/Industrial Policy but when it comes to the tradition/cultural rights, this is how they see their society Human imperfection, organic society, authority, property and pragmatism²⁸. They conserve their cultural rights but they do not want to hear others claiming their rights for example their exercise in slavery and imposing their cultural values in their colonized countries.

However, we have an image of how superpowers understand socio-economic rights issues but still it does not change the fact that those issues are questionable especially when it comes to the human rights issues and some superpowers see themselves above International laws which makes them the greatest violators of Human Rights. It is true that I have a problem with the late source of human rights in the sense that the abuse of human rights is related to the complicity/government tolerance between different states as we know this US Magnitsky Act Congress, December 14, 2012 and US Rendition program²⁹. It is after US military operations through complicity with local governments' departments like police or military on committing crimes against humanity by kidnapping innocent people for enhanced interrogation methods and later they betray their complicity by indictment through USA Magnitsky Act for example the former Ugandan Inspector General of Police was charged for violating Human Rights yet the operation of counter terrorist was conducted with complicity of US agents where they were kidnapping young Somalis for enhanced interrogation methods somewhere in the middle

²⁸ Atebol Cyfyngedig, "Key Elements of Conservatism" <<https://www.gwleidyddiaeth.cymru/index.php/conservatism/key-elements-of-conservatism>>.

²⁹ Mark J. Murray, "Extraordinary Rendition and U.S. Counterterrorism Policy", *Journal of Strategic Security*, 4(3), 2011, 15-19.

east countries³⁰ but in the Bible, there is a saying “before you remove a speck in the fellow eye, you look at the log which is on your own.” (Matthew 7:3)

In America every 24 hours a black person is shot dead by American Police and millions of black people are either in prisons³¹ or out of prison on parole. It has the largest prison in the whole world in fact the number of black people in prisons is higher than the number of black people at Universities³². That is why I argue that when it comes to the resolution of Human rights, they are more political issues than criminal and to begin with the fact that America and others see themselves above international law and continue to violate Human Rights in their ridiculous posture of so-called veto is why the Human Rights resolutions should be at national level rather than international. Then look at the ongoing expansion of the Mexico–United States barrier during the U.S. presidency of Donald Trump where in June, the Trump administration leveraged the threat of tariffs against Mexican goods thereby putting pressure on Mexico to commit to an unprecedented increase in immigration enforcement and to accept non-Mexican asylum seekers back from the United States under an abusive returns program.³³ I therefore would like to engage some school of thoughts to our discussions about the asked introductory questions where the first question was how and why the issues between power and freedom have defied Cultural Rights of the third world? And to be able to answer this question will be through school of thoughts engagement then analytical assessments.

³⁰ U.S. Department of the Treasury, “Treasury Sanctions Former Ugandan Inspector General of Police for Role in Serious Human Rights Abuse and Corruption”, <<https://home.treasury.gov/news/press-releases/sm775>>.

³¹ Deutsche Welle, “Blacks in the US Targeted by an Unfair Justice System”, <<https://www.dw.com/en/blacks-in-the-us-targeted-by-an-unfair-justice-system/a-53884696>>.

³² Wesley Stephenson, “Are There More US Black Men in Prison or College?”, <<https://www.bbc.com/news/magazine-21791038>>.

³³ Sean Valentine, Gordon Mosley, “Acculturation and Sex-Role Attitudes Among Mexican Americans: A Longitudinal Analysis”, *Hispanic Journal of Behavioural Sciences*, 1(22), 2000, pp. 104-133.

I would first submit my application to Jack Donnelly who defines Human Rights as “Relatively universal and the implementation of these rights could be culturally relative³⁴.” Secondly, I would emerge from Frantz Fanon’s two major arguments that include that the colonized are caught in an impossible blind and unable to achieve equality within the colonial culture³⁵. In other words, there is an inability by Africans to practice their own culture at the expense of foreign culture which they cannot perfect either although Fanon’s whole idea was conceptualized with a colonial dilemma. I have used the above argument in the context of human rights especially culture as an aspect of Human Rights that is actually a given birth right. It is true that not only the colonized countries whether before, during or after decolonization suffer social degradation but also the violation of their cultural rights which is an aspect of Human Rights that was denied but the main question which is always asked is how long colonized world will understand that it has been high time, they have got their independence? When Africans’ middle-class ruling will understand the rights and responsibilities towards the people, they lead to avoid mass Africans’ Graves in Mediterranean Sea therefore now is the time for the third world to understand that it is long overdue since they started working towards their sovereignty as a way of fully making meaning out of their independence.

In his Fanon’s argument he said “If to be human is to be white, but they are not white, they are forced to see themselves as subhuman³⁶” a deeply embedded message like this which pushes the colonized people into an agonizing psychological position where they look to be dehumanized. It is a fact that the colonial masters not only have exploited and colonized economically and suffered political oppression but also their identity, human dignity lost in a dehumanization manner which is critical to the point of view as another aspect of Human Rights. This has resulted in the controversial issues that Human Rights discourse today is laced with all kinds of hypocrisy,

³⁴ Donnelly, *op. cit.*, p. 14.

³⁵ Frantz Fanon, *Black Skin, White Masks*, New York: Grove Press, 1967 (1952).

³⁶ *Ibidem*.

conditionality, selective enforcement and notions of 'Do as I say not as I do. European governments and their big brother, the USA see themselves as the defenders and enforcers of human rights standards and often talk to the rest of the world in condescending terms³⁷. Which has provoked some backlash in Africa and other poor countries. Many see the West's promotion of human rights as yet another excuse for it to continue to interfere and control other people and impose their values causing many challenges to human rights in Africa³⁸.

However, I see the above as a lazy argument in sense that people still have under mistaken beliefs, that one may argue with reasons and with evidence, indeed that the difficulties faced by colonized countries are caused by colonial masters but to describe it as a colonial organization might be, by dodging few factors, that power holders in Africa, whether before, during, or after decolonization have displayed the inability in smoothing appropriation of western politics through looking at their personal problems to be exploited for the benefits of Westerners. When it comes to Human rights relativity, it is an issue between both power and freedom and those who believe Human Rights are relative, are already individuals who have acquired those rights for themselves and for their community so because they have acquired those rights or dominant Rights, they are there to dismiss others' complaints or proposing their own entitlement to Human Rights for example the conservative norms: "Sense of Belonging, Identity, and rootedness generates social/cohesion equates collective to the sense of who we are" and even though those who have access to the power and freedom, those on side of the power including intellectual anthropologists sounding expression of do nothing in fact nobody has come up to deny cultural rights because cultural rights are given. What is at stake is that the opportunists transpose/impose their cultural values in order to dominate the rest of the world. Secondly,

³⁷ T. Abdul-Raheem, "Africa: The Many Challenges to Human Rights in Africa", *Pambazuka News*, 233, 2005, pp. 1-3.

³⁸ *Ibidem*, pp.1-2.

one would ask who are those opportunists, how and why they are human rights violators. To answer this question, we shall look at the spectrum of Decolonisation and Independence a situation soon after the Second World War where large parts of the world were under European colonialism.

1.1.5 Conclusion

This study concludes with recommendations to third world leaders, to look at the people they lead, as their responsibility, since no leader, whatever his/her worth, can replace the will of people. For example, “Marshall plan” by George the American, and Maurice Harold Macmillan, the British Prime Minister 1957-1963. Which results in radical movements for African political weakness system that leads them to look out of their personal problem and imperialists to exploit it at their benefits³⁹. This has given the facts, that the emergence of the new superpowers namely, the USA and the Soviet Union which replaced Britain, France, and Germany and that they latter had failed to protect world peace because the new powers wanted to be free to pursue their trading interests in Africa. In addition, the US wanted to spread the ideology of capitalism while the Soviet Union wanted to extend communism because of their political weakness, African leaders have tried to apply in their countries’ political ideologies and practices of developed countries such as western models of democracy, institutions, political parties, and procedures. The implementation failed because these references could not be transferred and applied automatically in different contexts and it contributed to political instability and crisis because of the internal conflicts created by these policies that were alternatives proposed by Africans and other Third World leaders for example African socialism or non-alignment that have been opposed by big powers and disappeared. Therefore, African countries became aligned during the Cold War which was either towards the capitalist or communist ideology

³⁹ Irénée Ndayambaje, “The Causes and the Effects of Neo-Colonialism”, *History Student Book*, Kigali: Rwanda Education Board, 2019, pp. 97-115.

and now they are obliged to adapt to the neoliberal ideology and do their best to have access to aid and investment⁴⁰.

For example, the current issues of the USA and China that emerged in Africa: Of course, what Achille Mbembe and Bernard Stiegler quoted or referred to “calculations in their new form of diplomacy and militarise the rest of the World⁴¹” which is also resulting into Civil conflict as result in human rights violations. Given the fact that African States are largely modelled on colonial institutions with little regard for the continent's peculiarities and the weaknesses result from the common practice among colonial powers to exclude ethnic factors both during the partitioning of the continent and in its later management. Coming up to the original question, the opportunists are evidently Western Nations with their big brother the USA which are credited with qualifying the Human Rights, they have been the same the greatest violators Human Rights. They are the ones in fact who set emotion amongst us because of the exercise such as Slavery, economic exploitation, and social degradation to indicate that some people are less to human rights than others. Having discussed who, how human rights violators, the final section of this paper addresses ways which” Africa and other colonized countries suffer political oppression, economic exploitation and social degradation that cause those liberals & conservatives to fail them through their donors, aids, and investments so why can't Third world leaders turn to themselves and create a self – reliant programs?”.

According to Fanon, “No leader or whatever his worth can replace the will of the people, and the national government before concerning itself with international prestige and he must first restore dignity to all citizens by furnishing their minds, filling their eyes with human things and developing a human landscape for the sake of its enlightened and sovereign inhabitants”⁴².

⁴⁰ Irénée Ndayambaje, “African Nationalism and Acquisition of Independence”, *History Student Book*, Kigali: Rwanda Education Board, 2019, pp. 82-96.

⁴¹ Achille Mbembe, “Dialogue: Achille Mbembe and Bernard Stiegler”, *APL-TCS-AAU Conference*, <<https://youtu.be/w6gP8Z6NQ3o>>.

⁴² Fanon, *op. cit.*, 1961.

In other words, Fanon teaches us about the internal contradictions within a progressive revolutionary movement, in his way, hints a devoted political education on democracy values; This is because, we are in the world of both non- intellectuals with physical endurance and intellectuals with manipulation. And this can only happen if Africans and the colonized world turn to themselves with the values of democracy, strong institutions, minority rights (Checks and Balances), freedom of speech and freedom of expression, free press and right to protest, right to petition the government Independent Judiciary, and everybody has to follow the law.

They must know that politics is like swimming, you do not swim towards a storm. In other words, you do not make alliances with someone, whom you do not share historical bonds. Because there is no single nation on the earth that does not fight for its own benefits. How far and how fast people become oppressed depends on two things which are the countries that hold an election where sometimes the winner magically gets 90% of the vote and on the other is the opposition is locked up and cannot get on Television or fell out with the government which may turn to Refugees' problems because people cannot be free.

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ESILIO DI CAMILIAN DEMETRESCU IN ITALIA.
MILITANTISMO, ANTICOMUNISMO E PROFESSIONALITÀ

EXILE OF CAMILIAN DEMETRESCU IN ITALY.
MILITANCY, ANTI-COMMUNISM AND PROFESSIONALISM

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Abstract

Anti-communist by excellence in spirit, the painter, sculptor and illustrator Camilian Demetrescu left Romania and went to Italy, tired of the continuous persistent attempts of the Securitate to attire him into becoming a collaborator. He left Romania legally in 1969, with a passport, and when the visa expired, he asked for political asylum. His stay in a capitalist country, but most of all the depths of his cultural and political exile, reflected in the articles of the Italian printed press and in the participation to actions or congresses, determined the Securitate not only to target him informatively, but also to threaten him, fact that did not stop him from being up to the end, with stoicism and determination, a convinced and militant anti-communist, a promoter of democracy and of human rights, but also

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an artist, who kept in his paintings, illustrations and sculptures the emotional relationship with Romania.

Keywords: anticommunism, political exile, militantism, art, democracy

Introduzione

La complessità degli eventi dell'anno 1968 hanno abbozzato nell'Occidente l'atmosfera incontestabile di uno sfondo idealistico, il più spesso di estrema sinistra. Per quanto concerne l'Italia, il momento di riferimento 1968 ha inserito nel mondo contestatario dello spazio universitario il successo, almeno parziale, dell'alleanza fra gli studenti e le masse e la radicalizzazione del mondo degli operai in un senso di anarchia; il trend dei cambiamenti finendo nel 1969 in una critica radicale contro il corporativismo, il consumismo e in genere contro la società capitalista. Un 1969 specialmente marcato dalle azioni dure degli operai, ma anche dal riformismo pregnante nei giovani ricercatori, in tal maniera che lo spazio universitario e scolastico è rimasto ancorato, ancora per quasi un altro decennio, nella zona delle lotte per la riforma istituzionale.

Quindi, il comportamento contestatario del 1968 ha portato, direttamente o indirettamente alla futura promozione di valori considerate alternative: una nuova identità sociale, il realismo, l'accento messo sul tempo libero, sul momento privato, sull'innovazione scientifica, sulla rappresentatività degli studenti, sul modellamento in chiave critica della filosofia didattica e anche sull'emancipazione della donna, attraverso la graduale liberazione dal destino familiare femminile. Un certo tipo di modernismo della società è penetrato anche nel movimento ecologico, per il fatto che l'ecologia diventava un'importante richiesta nel contesto del cambiamento sociale¹. Il contributo del movimento si è manifestato anche nel concetto del movimento politico di massa, nella neutralizzazione della cultura scientifica e delle professioni, e in tutto quello che né è seguito nei decenni seguenti sotto forma della giustizia democratica, della medicina democratica e

¹ Michele Citoni, Catia Papa, *Sinistra ed ecologia in Italia. 1968-1974*, Brescia: L. Micheletti, 2017, pp. 6-16.

della nuova fenomenologia della scuola e del riconoscimento della dignità umana².

L'intensità delle passioni, dei sentimenti e degli effetti del fenomeno *Sessantotto* fu così pregnante, che i politici ed in genere gli intellettuali o le grandi personalità della cultura né presero posizione oppure parlarono dell'esperienza '68. Seguì ne nomino alcuni degli stessi: Lorenzo Milani, prete, nominato a partire dal 1954 a Barbiana, un villaggio di bambini poveri, ai piedi del monte Mugello, che attraverso il giornale di insegnamento formativo ricerca e produzione di materiale didattico e pedagogico è riuscito a creare una rivoluzione culturale, didattica e pedagogica che respingeva l'indifferenza, la passività, la scissione sociale, l'analfabetismo e l'insegnamento teorico; Raniero Panzieri, professore di Filosofia del Diritto presso l'Università di Messina, editore presso la casa editrice torinese Einaudi e fondatore della rivista di sinistra *Quaderni Rossi*; Raul Mordenti, politico, scrittore, teorico, critico letterario, professore di Letteratura Italiana presso l'Università La Sapienza di Roma, e ulteriormente, professore ordinario di Critica Letteraria presso l'Università Tor Vergata di Roma, come anche membro delle strutture *Intesa Universitaria*, *Democrazia Proletaria* e *Rifondazione Comunista*; Gabrio Lombardi, giurista e presidente del *Movimento dei Laureati di Azione Cattolica*; Giuseppe Chiarante, politico e giornalista dedicato alla cultura politica marxista, deputato e senatore del Partito Comunista Italiano e direttore della *Rinascita* e della *Critica Marxista*; oppure Pier Paolo Pasolini, poeta, regista e scenarista che adottò un atteggiamento di frode verso la borghesia ed il consumismo, anche nelle sue note opere come *Ragazzi di vita*³. A Pasolini e ad altre

² Ferdinando Raffaele, "Il giudizio di Gabrio Lombardi sul movimentismo universitario del Sessantotto", in *Gabrio Lombardi nel centenario della nascita. Seconda sessione. Il referendum sul divorzio, Atti del Convegno nazionale di studi (Roma, 28-29 aprile 2014)*, 2014.

³ Lorenzo Milani, *Lettera a una professoressa*, Firenze: LEF, 1967; Marco Scavino, "Sviluppo economico e culture del conflitto. Grande industria e sindacati negli anni del boom economico", in Levi, F., Maida, B. (a cura di), *La città e lo sviluppo. Crescita e disordine a Torino, 1945-1970*, Milano: Franco Angeli, 2002, pp. 465; Giovanni Sciroco, "Panzieri, Raniero", in *Dizionario biografico degli italiani*, vol. 81, Roma: Istituto dell'Enciclopedia Italiana, 2014; Raul Mordenti, *Frammenti di un discorso politico. Il '68, il '77, l'89*, Roma: ed. Rinascita, 2008, pp. 25, 31-32; Gabrio Lombardi, "Premessa", in *Comitato Cattolico Docenti Universitari*, 1965, pp. 9-14; Ferdinando Raffaele, "Il giudizio di Gabrio Lombardi sul

figure intellettuali dell'Italia di quel periodo possono essere attribuite la preoccupazione per il shockante ideologizzato e politicizzato „marxismo borghese”.

L'Italia, l'esilio romeno ed il comunismo

Camilian Demetrescu, come lui stesso ha affermato è arrivato nell'occidente nel 1969, „quando l'Italia viveva il suo '68 politico contestatario”, e „Pier Paolo Pasolini era dalla parte del giovane carabiniere con la testa spaccata da una pietra ribelle in Valle Giulia, sulle scale della Facoltà di Architettura di Roma, dove ebbe luogo uno scontro violento fra gli studenti ed i carabinieri”⁴. In sintonia con la realtà del momento, il pittore ricordava anche che gli studenti “non volevano altro che il voto politico agli esami, ovvero essere tutti promossi in maniera democratica”. Evidentemente, per un esile dell'Est dittatoriale e comunista dell'Europa, la formula del “marxismo borghese, era una sorta di “razionalizzazione” capitalista del sistema politico-istituzionale o almeno, in qualsiasi caso, uno stato ibrido, creato da certi principi ideologici comunisti, rivoluzionari, anti-autoritari, estremisti e rivendicativi e certe “sfumature borghesi” risultanti addirittura dagli origini di alcuni dei protagonisti”⁵. D'altronde, anche il prete Don Milani di Barbiana, autore nel 1967 del celebre opuscolo della moralità cristiana militante *Lettera a una professoressa*, essenziale per il movimento studentesco del '68, appunto per aver sottolineato il ruolo selettivo e discriminatorio della scuola e della sua propria cultura, come anche il carattere conservatorio e tradizionalista dei metodi di insegnamento e studio della scuola italiana, proveniva lato il ramo paterno dalla borghesia fiorentina. Difatti molti dei protagonisti del movimento *Sessantotto* hanno avuto origini nei ceti degli operai,

movimentismo universitario del Sessantotto”, in *Gabrio Lombardi nel centenario della nascita. Seconda sessione. Il referendum sul divorzio*, Atti del Convegno nazionale di studi (Roma, 28-29 aprile 2014), 2014.

⁴ Camilian Demetrescu, “Italia – exilul românesc și stânga marxistă” in *Memoria – Revista gândirii arestate*, no. 27 (2), 1999, <<http://www.revistamemoria.ro>>, 16.06.2020.

⁵ Alberto Cavalli, Carmen Leccardi, “Le culture giovanili”, in *Storia dell'Italia repubblicana*, vol. 3, tomo II, *L'Italia nella crisi mondiale. L'ultimo ventennio*, Torino: Einaudi, 1997, pp. 762-763.

mentre altri, come visto sopra, hanno avuto una discendenza borghese⁶. Inoltre, alcuni autori hanno considerato che l'idea di essere attori protagonisti della ribellione non fu necessariamente una questione di classe sociale, ma piuttosto una legata alla generazione stessa, con tutte le sue sfumature di emancipazione personale, spirito ribelle, liberazione ecc⁷.

Ciò che né risultò fu la prospettiva illusoria del capitalismo dinamico, oppure, ancora più evidente, l'idea delle forti contraddizioni del mondo capitalistico. D'altronde il *Sessantotto* significò in maniera ancora più sottile, il transito dal capitalismo moderno borghese, al capitalismo postmoderno e post-borghese, descritto da Pasolini in Italia e da Clouscard in Francia.

Seguito allo „shock del marxismo borghese”, considerato in Italia „il vero marxismo”, il pittore Camilian Demetrescu fu attirato inevitabilmente dalla filosofia politica italiana, le cui élite erano i partiti di sinistra, principalmente il partito comunista, rassegnato, come anche altri partiti simili occidentali, al non poter raggiungere la maggioranza parlamentare per elezione, ma deciso di conquistare la maggioranza ideologica per qualsiasi mezzo. Antonio Gramsci, il leader comunista, così tanto risaltato da Raul Mordenti nei suoi scritti, era il protagonista, e „l'immaginazione al potere”, il celebre slogan delle ribellioni studentesche di Parigi e Roma del '68-'69, costituiva l'espressione di tale strategia, che doveva condurre alla costituzione della così detta società civile, avanguardia del progressismo marxista anti-occidentale e filo sovietica⁸. Partendo dalla realtà comunista talmente pregnante in Italia, Demetrescu ha affermato che la fuga nell'Occidente non ha modificato il modo di rapportarsi al potere, siccome in Italia, come anche in Romania, dovevano essere affrontati i „rigori di un equilibrio politico ostile a qualsiasi dissidenza” ed evidentemente tutto quello che non era alla sinistra del partito comunista era considerato fascista. Certamente, ad eccezione della Democrazia Cristiana che era corrotta, arrogante, clientelare, e soprattutto il partner inevitabile dei comunisti nella strategia del „compromesso storico”.

⁶ Ruggero Zangrandi, *Perché la rivolta degli studenti*, Milano: Feltrinelli, 1968, p. 27.

⁷ Rossana Rossanda, *L'anno degli studenti*, Bari: De Donato, 1968, p. 140.

⁸ Camilian Demetrescu, *op. cit.*

Dimostrando di essere anche un ottimo analista politico, Camilian Demetrescu ha approcciato un'intera problematica riguardante l'internazionalismo comunista, la relazione fra il Partito Comunista Italiano ed il Partito Comunista Romeno, la simpatia degli italiani per la Romania, l'atteggiamento pro regime comunista di una parte della stampa italiana, l'immagine, la propaganda e la politica estera romena e gli inquadramenti interni ed esterni della dissidenza romena.

Ha avuto ragione quando ha considerato che la „rottura ufficiale da Mosca, molto trombata dai compagni italiani, non poteva cancellare i peccati del partito comunista italiano che non si è comportato diversamente dal PCUS rispetto agli altri popoli fratelli dell'Est”, nonostante qualsiasi internazionalismo proletario invocato⁹. Dev'essere d'altronde aggiunto che lo stesso Partito Comunista Italiano dimostrò interesse nel seguire l'atteggiamento critico della Romania nei confronti del potere sovietico dominante¹⁰. D'altronde l'idea che si avvicina visibilmente al concetto di Camilian è quella che il Partito Comunista Italiano ha cercato di allontanarsi dalla rigidità ortodossa sovietica, trovando negli „eretici” romeni un'opportunità per consolidare la politica dell'autonomia rispetto a Mosca. Nonostante questo, né il Partito Comunista Italiano né le autorità dello stato italiano non hanno preso delle posizioni contro gli abusi del regime politico di Bucarest, specialmente rispetto alla violazione dei diritti e delle libertà fondamentali. Al contrario, al di là del legame con il partito Comunista Romeno, i comunisti italiani hanno seguito i propri interessi in Romania, incluso interessi economici, Camilian Demetrescu accennando al trattamento esclusivo per l'importo della carne, di cui godettero i compagni in Romania tramite la Lega delle Cooperative.

Le affinità ideologiche verso la Romania sono riflesse nell'atteggiamento di alcuni intellettuali o politici italiani, soprattutto della sinistra, disposti a fare delle concessioni nei confronti del regime, delle autorità o del leader. In questo senso,

⁹ *Ibidem*.

¹⁰ Alberto Basciani, „Successo e appannamento dell'immagine di Nicolae Ceaușescu in Italia 1964–1989”, in D'Alessandri, Antonio; Guida, Francesco (a cura di), *Dialogoi Politike. L'Europa e il suo Sud-est*, 2015, pp. 69-70.

Camilian Demetrescu ha parlato del mito dell'indipendenza di Ceaușescu nei confronti di Mosca, un mito „costruito con acribia dagli esperti del servizio delle informazioni estere DIE (*Dipartimento Informazioni Estere*), che ebbe un grande successo nelle mass-media dell'Occidente”¹¹. L'ultima parte di questa asserzione è indubbiamente verificabile. La propaganda comunista e l'intero apparato di promozione di principi, inclusi i principi di politica esterna, ha portato al miglioramento dell'immagine del paese e implicitamente del regime in Italia, e in genere nell'Occidente. Il leader di Bucarest e gli organi della Securitate, si sono focalizzati sull'attirare importanti personalità politiche estere dalla parte della Romania, oppure sul sostituire degli stereotipi negativi per quanto concerneva il paese, con degli stereotipi positivi. Le azioni propagandistiche delle istituzioni dello stato comunista, trovata in una evidente offensiva internazionale alla metà del settimo decennio, hanno avuto però anche una seconda connotazione, nel senso che l'immagine della Romania promossa all'estero è stata associata alla relazione con gli intellettuali romeni in esilio. La strategia di azione ebbe come scopo di attirare generalmente parlando i romeni ad essere favorevoli ai „risultati” del regime di Bucarest, ma anche ad usare gli intellettuali stabiliti definitivamente in Italia allo scopo di promuovere la politica estera romana per la consolidazione delle relazioni bilaterali, oppure per trarre dei benefici dai progressi tecnico-scientifici dell'Occidente¹².

Facendo riferimento al contesto internazionale comunista, lo storico Alberto Basciani ha considerato ragionevolmente che la ferma condanna da parte di Nicolae Ceaușescu dell'agosto del 1968 rispetto all'invasione della Cecoslovacchia da parte delle forze del Patto di Varsavia, ma anche il tentativo di autonomia rispetto a Mosca, hanno contribuito alla simpatia degli italiani nel confronto della Romania, o, meglio detto, con il suo stato comunista e anche alla

¹¹ Camilian Demetrescu, *op. cit.*

¹² Anca Stângaciu, „Les intellectuels roumains de l'exil italien et la nouvelle politique étrangère roumaine dans le contexte de la propagande communiste” in *Synergies Roumaine*, no. 14, 2019, p. 201.

costruzione di una certa popolarità del presidente romeno¹³. D'altronde, anche la visita del presidente romeno presso il Vaticano, a maggio del 1973 ebbe come risultato un incredibile successo d'immagine, Ceaușescu ricevendo, fra altre onorificenze, la cittadinanza d'onore della città di Bari. È certo che il leader di Bucarest è riuscito in un determinato contesto politico esterno, ma anche per via di strategie di promozione diretta o indiretta, oppure per via delle relazioni politiche, economiche e culturali romeno-italiane a guadagnare una evidente popolarità nell'Italia degli anni '70-'80. Libri contenenti i discorsi o la visione politica di Ceaușescu sono stati pubblicati specialmente presso le seguenti case editrici: gli Editori Riuniti, SugarCo ed Edizioni del Calendario; tutte essendo case editrici avvicinate al Partito Comunista Italiano, o altre volte, indipendenti, come la casa editrice Rusconi di Milano e la casa editrice Bulzoni di Roma. Difatti, oltre gli articoli favorevoli che sono comparsi nel giornale ufficiale del Partito Comunista Italiano fino al 1991, *L'Unità*, ma anche nei giornali *Domenica del Corriere* ed *Epoca*, ma anche in altre pubblicazioni, fra cui alcune consacrate, l'imprenditore italiano Giancarlo Elia Valori ha pubblicato nel 1974 presso la casa editrice Bulzoni il libro di elogio *Ceaușescu*, ed il giornalista Giancarlo Vigorelli ha fatto più interviste, che sono andate in onda presso la RAI 1, nello stesso anno¹⁴.

Inoltre, il celebre Giancarlo Vigorelli, professore presso l'Università di Roma, noto conoscitore dell'opera manzoniana e fondatore della rivista *L'Europa Letteraria* e del giornale *Corriere Lombardo*, e collaboratore presso *Il Giornale*, *La Stampa*, *Il Frontespizio* e *Tempo*, segretario della Comunità Europea degli Scrittori e sostenitore della sinistra italiana, intendeva scrivere un libro sulla „sua personalità” seguito ad un'intervista con il presidente Ceaușescu¹⁵. In ogni caso ha visitato la Cina negli anni '50 e per forza ha voluto illustrare l'ignoranza degli

¹³ Alberto Basciani, "Tra aperture e neostalinismo. Italia e Romania negli anni Sessanta e Settanta", in I. Garzia, L. Monzali, M. Bucarelli (a cura di), *Aldo Moro, l'Italia repubblicana e i Balcani*, Besa: Nardò, 2011, pp. 188-217.

¹⁴ *Ibidem*, pp. 70-71.

¹⁵ Archivio del Consiglio Nazionale per lo Studio degli Archivi della Sicurezza (ACNSAS), fondo SIE, dossier (d.) 18789, fila (f.) 129.

italiani „su tutto quello che riguardava il comunismo cinese”¹⁶. Inoltre, anche se fu un eccellentissimo segretario dell’Unione Europea degli Scrittori, Vigorelli inclinava purtroppo a ritenere che nell’URSS la letteratura clandestina, anche se esisteva sotto forma di manoscritti, non avesse alcun valore, in quanto, secondo lui, valevano soltanto quelle opere che erano pubblicate¹⁷. Non molto sorprendente il fatto che Vigorelli fece parte delle cerchia di un altro intellettuale romeno stabilito negli anni '80 in Italia, il pittore, grafico e ceramista Miħu Vulcănescu. L'artista grafico è rimasto nella Penisola italiana fino alla sua morte nel 1994, e fu amico o collaboratore di molte personalità politiche, come anche Piero Bargellini, pubblicista, critico d'arte e senatore Democratico-Cristiano a vita, Renato Giunti, editore di oltre sei case editrici italiane ed ex-sindaco di Firenze, Marcello Tadei, D. Novelli e Luigi Colombari, giornalisti, A. Argan, M De Michelli e A. Viorelli-Marsau, critici d'arte, Mario Penelope, segretario della Biennale di Venezia, Marcello Tadei, direttore del giornale *La Nazione*, Padre Alexander, redattore del giornale *La Voce* (Vaticano), Diego Novelli, capo redattore del giornale *Unità*, Primo Conti e Gutuso, pittori, l'avvocato Bausi, il sindaco della città di Firenze e ovviamente molti altri ancora. Dal cerchio di Vulcănescu né fece parte anche L. Colombari, vice-sindaco della città di Bologna, „la città rossa”, dominata da simpatizzanti dei comunisti¹⁸.

Anche alcune delle così dette pubblicazioni scientifiche di Elena Ceaușescu sono state prese in considerazione negli anni 1980 e 1982 quando Antonio Carelli e rispettivamente Giuseppe Montalenti hanno firmato due introduzioni alle pseudo ricerche riguardanti la sintesi dei composti macromolecolari della moglie del presidente romeno, lavori già pubblicati nelle principali lingue dell'Europa occidentale¹⁹, e tutto ciò nonostante l'ignoranza e

¹⁶ Mario Filippo Pini, *Italia e Cina, 60 anni tra passato e futuro*, Roma: L'Asino d'oro, 2011, p. 41.

¹⁷ Vl. Bukovskij, Ju. Galanskov, A. Ginzburg, Vl. Osipov, A. Sinjavskij, *La primavera di Mosca*, Milano: Jaca Book, 1979, p. 188.

¹⁸ ACNSAS, fondo SIE, d. 18789, ff. 2-3, 25-27, 46.

¹⁹ Elena Ceausescu, *Ricerche nel campo della sintesi e della caratterizzazione dei composti macromolecolari*, prefazione del professor Antonio Carelli, Milano: SugarCo, 1980; Idem,

l'artificialità scientifica dell'autrice nota in Italia, come anche in Romania, come *Accademico Dottore Ingegnere*²⁰. La spiegazione del fenomeno del sostegno di cui ha goduto Elena Ceaușescu nella qualità di direttore dell'Istituto Centrale di Chimica di Bucarest da parte del presidente dell'Accademia Nazionale dei Lincei, Antonio Carrelli, e la firma della prefazione da parte di personalità come Giuseppe Montalenti l'hanno data nel 1990 i giornalisti del giornale *La Repubblica* sotto la forma di concessioni degli specialisti italiani per motivi evidenti di opportunismo, anche se, in quei tempi, almeno Montalenti affermava nel *L'Espresso* che le concessioni sono state fatte alle pressioni dell'Ambasciata della Romania, allo scopo di mobilitare gli scientifici a favore della pace²¹.

Certo è che partendo da ragioni di politica estera e commerciale *in primis*, lo stato comunista romeno ha guadagnato del credito e del prestigio nell'Occidente, rispettivamente in Italia. Si può affermare anche, che al di là delle relazioni ambivalenti e controverse fra il Partito Comunista Italiano ed il Partito Comunista Romeno, questo risultato fu piuttosto ottenuto dallo sviluppo delle relazioni, principalmente economiche, fra i due paesi²². In realtà fu appunto il rafforzamento degli accordi economici bilaterali a scatenare visibilmente la curiosità e l'interesse del mondo politico italiano nei confronti della Romania²³. A partire dalla metà degli anni '60 è stato creato un contesto in cui le interferenze industriali fra la Romania e l'Italia sono diventate sempre più chiare, tramite la creazione di società miste, oppure tramite la firma di accordi²⁴, ed il tutto nel contesto della Romania che intendeva modernizzare la propria infrastruttura

Nuove ricerche nel campo dei composti macromolecolari, prefazione di Giuseppe Montalenti, Roma: Edimez, 1982.

²⁰ C. L. Olteanu, "Cultul Elena Ceaușescu în anii '80", in A. Ciupală (ed.), *Despre femei și istoria lor în România*, Bucarest: Editura Universității București, 2004.

²¹ Giovanni Maria Pace, "Elena Ceausescu, Accademica d'Italia" in *La Repubblica*, 03, no. 17 <<https://ricerca.repubblica.it/repubblica/archivio/repubblica/1990/03/17/elena-ceausescu-accademica-italia.html>>, 27.06.2020.

²² Stefano Santoro, "Comunisti italiani e Romania socialista. Un rapporto controverso" in *Storia e Futuro. Rivista di Storia e Storiografia online*, 26, 2011, <storiaefuturo.eu/comunisti-italiani-romania-socialista-rapporto-controverso>, 22.06.2020.

²³ Alberto Basciani, *op. cit.*, p. 69.

²⁴ Anca Stângaciu, *Romania în contextul integrării în structurile Uniunii europene. Relațiile economice romano-italiene*, EFES: Cluj-Napoca, 2007, pp. 40-41.

industriale, mentre l'Italia era in pieno sviluppo e crescita economica e poteva trovare delle risorse nei paesi dell'Europa dell'Est per *joint venture* e altri tipi di iniziative industriali, di stato o private²⁵.

D'altronde, la Romania è riuscita a creare la strategia e negli anni '80 è riuscita a conservare l'apparenza di un atteggiamento discordante rispetto ai paesi del blocco comunista e specialmente rispetto all'Unione Sovietica, la critica delle autorità romene nei confronti dell'intervento dell'esercito sovietico del 1979 in Afganistan, o la visibile partecipazione degli atleti romeni alle Olimpiadi di Los Angeles nel 1984, essendo degli esempi rilevanti in questo senso. I documenti del parlamento italiano hanno dimostrato che fino verso il 1985, l'intero arco parlamentare italiano ha considerato Ceaușescu essere un vero apostolo della pace²⁶. Facendo riferimento agli "intellettuali del libero Occidente" Camilian Demetrescu considerava a buon ragione che gli stessi hanno fatto gara nel "glorificare i tiranni illuminati", così come nel caso di Ceaușescu e del suo „nuovo” tragitto²⁷. È altrettanto rilevante per la questione del „giornalismo politico”, il documento della televisione di stato italiana "A carte scoperte con Nicolae Ceaușescu", del 23 giugno 1974, realizzato da Carlo Ponti e concepito da Vigorelli, un documentario che attirò l'attenzione dell'esilio romeno tramite il sintagma delle „splendidi prove d'immaginazione" attribuite a Ceaușescu, Mao Tse Tung, Hrusciov e al Papa Giovanni, Camilian Demetrescu stesso reagendo con una replica severa nel giornale *Umanità* al riguardo della suddetta „sottomissione della Romania nei confronti di Mosca, diventata un triste ricordo"²⁸. È vero che la rottura con Mosca era accaduta già sin dai tempi di Dej e Hrușciov, dai primi anni '60, e Ceaușescu ha ereditato questa discontinuità, ma questo non era equivalente con l'indipendenza politica della Romania nei confronti dell'URSS e poi, la collaborazione fra la Securitate e KGB non fu mai interrotta. Camilian Demetrescu considera che gli intellettuali romeni in esilio non hanno mai avuto la possibilità di denunciare la verità scomoda dei crimini del

²⁵ *Ibidem*, p. 34.

²⁶ Alberto Basciani, *op. cit.*, p. 75.

²⁷ Camilian Demetrescu, *op. cit.*

²⁸ *Ibidem*.

reale socialismo dell'Est, giusto perché il giornalismo di connotazione politica era destinato alle masse, ma una certa vicinanza al mito dell'indipendenza, per esempio, che ha „ipnotizzato” l'intero Occidente si è verificata anche nel caso di molti intellettuali romeni dell'Italia. Da questo punto di vista, il momento Cecoslovacchia del 1968 rimane il più rilevante. La questione dell'invasione della Cecoslovacchia dalle forze del Trattato di Varsavia fu realmente discussa da molti degli esuli romeni, in termini ammirativi e di rispetto, specialmente perché il pericolo rosso aveva attivato le azioni irredentiste della migrazione ungherese, il filone dell'identità romena, il sentimento nazionale, ecc.²⁹.

Il giornalista Antonio Ferrari, che ha realizzato e pubblicato un'intervista nel *Corriere della Sera* il 30 dicembre 1984 in merito al bilancio di Ceausescu sulle relazioni Est-Vest, ha dichiarato sei anni dopo che è stata „l'intervista più imbarazzante, ma anche più appagante e più umiliante”³⁰. Il giornalista del famoso giornale, inviato a Bucarest, attirava l'attenzione che nel 1984 ha scoperto „un uomo intelligente e miserabile che mezzo mondo — l'Italia compresa — considerava un riformatore, un pugnace avversario dell'URSS, quindi un eroe”³¹. Critico del libro di Mihai Pacepa „che descriveva le porcherie e le follie del regime” e denunciatore di quel „traffico di ebrei tra Bucarest e Tel Aviv”, Ferrari chiese all'Ambasciata della Romania di concedergli un'intervista, e la sua richiesta fu poi accettata dal rappresentante del Ministero degli Esteri Romeno, con riserva di due domande, senza possibilità di registrare e prendere nota durante quell'ora e quindici minuti „di tortura”, ma con la certezza di poter ricevere „delle risposte intelligenti e acute del presidente romeno” presso l'albergo Intercontinental. Ritornò dopo un anno e mezzo a Bucarest, e l'esperienza fu terribile, in effetti un'amara pagina nell'esperienza professionale del giornalista, che fu innanzitutto drogato e poi dichiarato *persona non grata*, come confessa lo stesso nel libro *Sgretolamento. Voci senza filtro*, della Casa Editrice Jaca Book, 2013. La conclusione

²⁹ Idem, fondo SIE, d. 158, vol. 2, f. 100.

³⁰ Antonio Ferrari, „La mia intervista più imbarazzante: Nicolae Ceausescu” in *Corriere della Sera*, Milano, 4 luglio 2017.

³¹ Idem, „Ceausescu fa il punto sui rapporti Est-Ovest: «Credo nell'utilità dell'incontro di Ginevra»” in *Corriere della Sera*, 30 dicembre 1984. p. 1.

fu alquanto chiara, sviluppando l'idea che il leader di Bucarest „era forse il più pericoloso tra i leader dell'Est Europa”³².

A partire dalla metà degli anni '80, il successo mediatico del presidente romeno entra gradualmente, ma irreversibilmente in declino, essendo notevole in questo senso l'interpellanza del deputato Achille Tramarin del 1985, fatta dal Ministero degli Esteri, in cui lo stesso denunciava il regime oppressivo del leader di Bucarest e specialmente la mancanza delle libertà di qualsiasi tipo, il documento dell'ufficiale italiano rimanendo, però, un gesto quasi isolato nello spazio politico³³. Tramite il *Corriere della Sera*, *La Repubblica*, *La Stampa* o *L'Espresso*, la stampa italiana ha reagito, informando in dettaglio sulla realtà economica, sociale e politica dura e specialmente sulla tirannia vissuta dai romeni durante quegli anni, contrastante addirittura anche con le riforme introdotte da Gorbaciov nell'URSS. Rimane emblematica in questo senso la reazione dello storico dell'arte e dell'architettura Cesare de Seta nel *Corriere della Sera* del 1988, in merito alla devastazione del centro storico di Bucarest per la costruzione della Casa del Popolo e in genere sulla violazione dei diritti di proprietà. La Romania nel panorama dell'Europa Centro-Orientale in rapido mutamento era ancora un'anomalia, ma questa volta in termini del tutto negativi (novembre 1989)³⁴.

I servizi segreti romeni (la Securitate) e l'esilio di Camilian Demetrescu

Indipendente e critico, appassionato ed erudito, noto nel paese e riconosciuto all'estero, Camilian Demetrescu non poteva non essere preso di mira dalla Securitate, specialmente quando nel 1968 ha rifiutato l'onorificenza „Meritul cultural” Clasa a IV-a, (*merito culturale di quarta classe*), in segno di protesta nei confronti della politica culturale ufficiale. Sicuramente egli non ha tollerato i nonsensi di un regime che violava i diritti e le libertà dei cittadini.

Battezzato col nome del nonno, Constantin Paul, ed auto-battezzato Camilian dopo la precoce perdita del padre, come lui stesso confessava in un'intervista di *România Literară* a marzo del 1999, il pittore, grafico, critico d'arte e

³² *Ibidem*.

³³ Alberto Basciani, *op. cit.*, p. 74.

³⁴ “Praga insorge, Bucarest resta in catene” in *Corriere della Sera*, 21 novembre 1989.

pubblicista con studi di medicina, filosofia ed arte³⁵ ha cercato di adattarsi ai tempi del comunismo, pubblicando articoli letterari in pubblicazioni come *Flacăra*, *Contemporanul* oppure *Arta Plastică*, o viaggiando ed esibendo, già dal 1947, „capolavori qualitativi” in Russia, Cecoslovacchia, Bulgaria, RDG, Francia e Italia.

Dalla „Scheda Personale riguardante il sig. Dumitrescu Paul”, emessa il 28 maggio 1977, risulta che il pittore Demetrescu, figlio di Camil e di Maria, nato a Bucarest, ha finito il Liceo Militare „Mihai Viteazul” di Târgu-Mureș nel 1943, dopo di che si è iscritto presso la Facoltà di Medicina Umana di Bucarest, interrompendo poco dopo gli studi, per motivi di salute, ricevendo la laurea nel 1948 presso l'Accademia di Belle Arte³⁶.

Quasi due decenni dopo la laurea presso l'Accademia e fino alla sua partenza definitiva in Italia, il pittore Demetrescu ha fatto parte del Sindacato delle Belle Arti e dell'Unione degli Artisti Plastici, due strutture professionali sottoposte a permanenti pressioni ad unirsi nella partecipazione politica. Comunque, i tentativi di democratizzazione della metà degli anni '60 dell'Unione degli Artisti Plastici, di Demetrescu e degli artisti delle cerchia di Ciucurencu, fu solo un „tentativo ingenuo, sortito al fallimento” per motivi legati alle necessità delle „nuove élite” del nuovo unico partito³⁷. D'altro canto, le uscite internazionali del sesto decennio, molto probabilmente non sarebbero state possibili senza la partecipazione al comitato nazionale dell'UNPR, così come, altrettanto evidente è che l'opzione ad entrare nella struttura del PCR non sarebbe stata fatta al di fuori del momento di immagine internazionale favorevole ottenuta dallo stato romeno nell'estate del 1968.

Il 3 aprile, 1969 fu il momento decisivo della partenza da un paese in cui si sentiva dappertutto l'ombra terrificante della Securitate, approfittando dell'„occasione di una mostra personale” come specificava la Nota Personale della Securitate del 28 maggio 1977, in realtà una vera strategia di una mostra fittizia nella capitale dell'Italia; gli stessi documenti della Securitate tornano sul momento

³⁵ ACNSAS, fondo SIE, d. 37854, f. 6.

³⁶ *Ibidem*, f. 4.

³⁷ Sanda Anghelescu, Interviu. Camilian Demetrescu, „Cine spune că exilul politic a luat sfârșit se înșeală...”, in *România Literară*, no. 11, 1999.

della partenza, considerando che per arrivare all'estero era stato „aiutato da qualche persona influente”³⁸. La richiesta di asilo politico, dopo la scadenza del prolungamento del visto concessa dalle autorità romene (30 giugno 1974) e in genere il „contesto” della sua permanenza nella Penisola Italiana, fu la soluzione al desiderio di non accettare il „gioco” della Securitate e di poter dipingere in un paese libero, ma che faceva nettamente la distinzione fra artisti „progressisti” e artisti „reazionari”, come considerava Demetrescu se stesso³⁹.

Così come era da aspettarsi d'altronde, la permanenza assieme alla moglie in un paese capitalista, ma specialmente le profondità del suo esilio, riflesso negli articoli pubblicati nella stampa italiana e nelle partecipazioni a diverse azioni o congressi, hanno determinato la Securitate non solo ad prenderlo di mira in maniera informativa, ma a minacciarlo con la rapina del figlio maggior, Camilian oppure addirittura ad orchestrarne un'eliminazione fisica, annullata, ovviamente, dagli eventi del dicembre 1989⁴⁰.

Il codice morale dell'esilio di Demetrescu ed in genere, del esilio con carattere realmente politico, fu trascritto nell'assumersi tutti i rischi della lotta, a qualsiasi prezzo, contro la sinistra comunista, del paese madre e dell'Italia, un paese capitalista, dove „la scelta della libertà”⁴¹ non aveva modificato in nessun modo la relazione con il potere che dettava la legge. Quindi non pochi furono gli attacchi lanciati contro il regime di Bucarest, la Securitate trascrivendo, in questo senso, la pubblicazione da parte di Paul Demetrescu di una lettera scritta assieme alla moglie, Mihaela Demetrescu Mamali, nel 1971⁴². Nello stesso anno delle Tesi di Aprile, ideologizzanti, restrittive e scoraggianti, la Securitate seppe delle esibizioni di Demetrescu davanti agli „amici” Radu Aldulescu e Avram Cristea rispetto alla denigrazione „di tutto quello che era legato alle realizzazioni della Romania fino al 1971”⁴³.

³⁸ ACNSAS, fondo SIE, d. 37854, ff. 1-5.

³⁹ Anca Stângaciu, *Securitatea și exilul intelectualilor români în Italia*, Cluj-Napoca: Mega, 2019, p. 200.

⁴⁰ *Ibidem*.

⁴¹ Camilian Demetrescu, *Exil [încercările labirintului]*, Bucarest, Albatros, 1997, p. 8.

⁴² ACNSAS, fondo SIE, d. 37854, f. 7.

⁴³ *Ibidem*.

Anticomunismo, militantismo, criticismo, democrazia e libertà

La denuncia delle verità scomode del regime comunista non fu solo pericolosa, ma anche dominata da interminabili difficoltà o acrobazie complicate, imposte innanzitutto dalla stampa radicale della sinistra, ma anche dagli organismi anticomunisti, visto che, per esempio, *Radio Europa Liberă* (la *Radio Europa Libera*) imponeva che per trasmettere testi sulla situazione della Romania, gli stessi testi dovevano prima essere pubblicati in un giornale europeo, e solo dopo resi noti agli ascoltatori della Romania. E tutto questo nelle condizioni in cui gli articoli degli intellettuali dell'Est erano considerati "inopportuni per principio", e l'approccio di giornali della diritta potevano attirare l'accusa di essere fascista oppure traditore, rispettivamente l'approccio a giornali o pubblicazioni non allineate alla sinistra ortodossa, potevano attirare l'accusa di essere reazionario, ovvero ostile alla democrazia. Comunque sia, anche se sarebbe stato ovvio che "le denunce degli intellettuali dell'Est contro i regimi neostalinisti erano pubblicati soprattutto nella stampa comunista italiana, per dimostrare la consistenza con la molto trombettata rottura da Mosca", questo non accade appunto per non tradire il „sangue comune". Come ben si sa, la Democrazia Cristiana era paralizzata dalla sclerosi del compromesso politico con i comunisti e quindi nemmeno essa era disposta ad ospitare nelle pagine del suo giornale *Il Popolo*, "le imbarazzanti verità" dell'Est⁴⁴.

La soluzione per Demetrescu è venuta dal quotidiano dei socialdemocratici *Umanità*, un giornale politico al limite della scomunica, ma valido per citazione di stampa occidentale, come richiedeva la *Europa Libera*. I messaggi rivolti agli ascoltatori clandestini furono quindi pubblicati in italiano, tradotti poi in romeno e spediti a München (Monaco di Baviera) (i consideranti politici erano strettamente connessi all'accordo fra il Congresso Americano e i governi dell'Est, mentre quelli economici erano connessi al mancato pagamento di articoli citati nella stampa occidentale ma non raccomandati), con l'unico pagamento morale di soddisfazione per aver promosso la verità politica, e per aver smascherato la dittatura e le irregolarità del regime comunista e, ovviamente,

⁴⁴ Camilian Demetrescu, *op. cit.*

di aver diffuso la speranza di un futuro democratico nell'Est. Non è quindi sorprendente il fatto che, ripetutamente, alcuni redattori del giornale, ad eccezione del vice direttore Clemente Ronconi, hanno suggerito all'artista di rinunciare alla „politica” e di „occuparsene dell'arte e della cultura”, e che poi, il direttore dello stesso giornale, Ruggero Puletti filoceaușista convinto, ed il segretario del partito, Pietro Longo, essendo invitati ripetutamente a Bucarest, hanno desiderato scoraggiare del tutto i tentativi giornalistici di Camilian.

Lo spirito critico rispetto all'imperialismo, all'internazionalismo proletario, alla dittatura, al comunismo, alla tirannia del leader di Bucarest, all'indifferenza dell'Occidente nei confronti della lontana Romania, all'equilibrio politico stabilito dalle grandi poteri tradizionali con la Russia, al fariseismo del „diverso” Partito Comunista Italiano, al compromesso storico dei comunisti con il palcoscenico politico italiano, alla gramscizzazione dell'Italia (l'occupazione ideologica dell'Italia di cultura sinistra), al „marxismo borghese” dell'occidente oppure all'eurocomunismo italiano sono state le multiple e preoccupanti temi che Camilian Demetrescu mise in discussione con l'arte, la finezza, l'accuratezza, la lucidità ed il rigore dell'intellettuale raffinato, conoscitore della storia recente e, ovviamente, come vivente del reale comunismo e del reale esilio.

Nel 1974, a 30 anni dalla così detta liberazione della Romania, il pittore Demetrescu ha pubblicato nel numero 8, IV dell'*Umanità* il suggestivo articolo di un criticismo storico profondo *Pentru a nu fi ocupați de sovietici ne-am ocupat noi singuri* (*Per non essere accaparrati dai sovietici ci siamo accaparrati noi stessi*), accennante alla politica di Nicolae Ceaușescu dopo la soppressione della Primavera di Praga: „se non siamo tranquilli, arrivano i russi”. Il sintagma era in realtà lo slogan con cui il “tirano ricattava il popolo per poter rafforzare la propria dittatura” e tutto nell'ingiusta realtà in cui la stampa occidentale alzava la statura di Ceaușescu a proporzioni monumentali, mentre i romeni subivano umiltà, limitazioni, abusi e censura⁴⁵.

Indubbiamente, l'instaurazione del comunismo in Romania e le multiple privazioni che hanno portato all'esilio di molti intellettuali all'estero ha marcato

⁴⁵ *Ibidem*.

la storia recente della Romania fino al 1989, il dramma di questo fenomeno essendo un „capitolo doloroso e grottesco” per le élite romene, in realtà per la sua gran parte secondo quanto correttamente afferma Constantin Vișoianu „dal paese è uscito chi ha potuto uscire, non chi doveva uscire” o, in qualsiasi caso, non abbastanza degli ultimi⁴⁶. Il saggio *Când Bucureștiul nu era în Asia (Quando Bucarest non era in Asia)*, no 3, VII del 1975, pubblicato nella stessa *Umanità*, rappresenta una cronaca straziante dell’„emorragia di intelligenza” romena trasferita nell’Occidente nel periodo relativo all’apertura delle frontiere, realtà cruda, che ha continuato in tutti gli anni che seguirono, fino al 1989. Camilian Demetrescu constatava con tristezza e amarezza che “se il paese non poteva più tornare in Europa, che né tornito almeno i suoi intellettuali”⁴⁷, vivendo così in una Romania della libertà, una Romania alternativa. Il fatto che la seconda metà degli anni ’70 non ha portato alcun raggio di speranza o di ottimismo ai romeni dell’esilio lo comprova il saggio di Demetrescu di *Umanità* (no. 4, I, 1976), *Noul curs al lui Ceaușescu e vecchi (Il nuovo corso di Ceaușescu è vecchio)*, prova chiara e indiscutibile delle discrepanze fra le dichiarazioni solenne del dittatore ed il disastro del paese.

Convinto della necessità della libertà nell’arte, Camilian Demetrescu ha partecipato nella primavera del 1977 alla Biennale dei Dissidenti dei paesi socialisti, organizzata a Venezia, riuscendo ad essere assieme Radu Stoica, il fisico Horia Grecu, oppure Henry Mavrodin, fra i „transfughi” che svolgevano una propaganda contro la Romania comunista⁴⁸. Per scopo dichiarato di dare voce alla cultura alternativa di opposizione dell’Est Europa, la Biennale ha proposto inaspettatamente una grande mostra-evento, dedicata alla dissidenza, e tutto questo nel contesto in cui il comunismo italiano dichiarava in maniera dichiarativa la „rottura” da Mosca, l’ultima essendo lei stessa in una reale situazione di isolamento internazionale. Le quinte della Biennale, i significati nascosti, le direzioni e le reazioni della mass media italiana ed europea sono state catturate negli apprezzamenti franchi del pittore Camilian Demetrescu. L’affresco di quel momento, presentato con realismo e sottigliezza, prese di mira l’esaltazione del

⁴⁶ Anca Stângaciu, *op. cit.*, p. 119.

⁴⁷ Camilian Demetrescu, *op. cit.*

⁴⁸ ACNSAS, fondo SIE, d. 43030, f. 3.

progetto della Biennale da parte della mass media politica italiana, il protesto dell'ambasciatore sovietico in Italia e poi le sue minacce di ritirarsi assieme agli altri paesi dell'Est, da qualsiasi manifestazione futura dell'evento culturale, la mancanza di reazione del partito „euro-comunista” italiano, le dimissioni, in una prima fase, del presidente della Biennale, Ripa di Meana, il suo rientro, l'organizzazione della mostra e la reazione giustificata della dissidenza romena, realizzata per via della sua propria voce. In questo senso, il numero 12, III del 1977 del giornale *Umanità* ha pubblicato la lettera aperta indirizzata dal pittore Demetrescu a Ripa di Meana, dal titolo *Ca în Bucureștiul anilor '50 – nu trebuia să demisionați!* (*Come a Bucarest negli anni '50 – non doveva dare le dimissioni*). Una delle nere conclusioni di Demetrescu fu quella che la più potente arma segreta sovietica era appunto l'aggressività e la dittatura, che faceva impossibile che qualsiasi occidentale non si senta intimidito davanti ad un rappresentante del Cremlino, e la seconda, riguardava direttamente Ripa di Meana, le cui dimissioni non potevano essere che una vincita dei sovietici, una vittoria della diplomazia e dell'intimidazione psicologica allo strepito della verità. La realtà della Biennale fu ancora più nascosta che poteva sembrare ad una prima vista, siccome il commissario tecnico della mostra, il comunista Enrico Crispolti, aveva trovato la soluzione diplomatica della crisi di Mosca, nell'escludere la Romania e nel conservare solo la Russia, Cecoslovacchia e Ungheria, ma anche nel cambiare il tema della mostra-evento, da La Biennale dei dissidenti a La Biennale delle nuove tendenze dell'Est. Il motivo dell'eliminazione degli artisti romeni veniva dalla parabola preparata con tanta immaginazione, intelligenza e talento dallo stesso Camilian Demetrescu, ovvero la piramide di 5 metri, coperta di libri della letteratura universale da Omero a Marx, etichettate ironicamente, la piramide essendo simbolo dell'edificio della cultura ufficiale e la colla la censura. Difatti, Demetrescu aveva ragione; in realtà, dai tempi di Lenin nulla era cambiato nella pratica della censura e la piramide era la più severa e fine critica del rapporto fra l'arte ed il potere. La Biennale si ritrovò nell'attività pubblicitica del giornale *Umanità*, per via di alcuni articoli di sostanza: *Aceasta să fie cultura de mâine?* (*Che sia questa la cultura di domani?*) (no. 23, III, 1977) e *Poate un communist să judece arta dizidenților?* (*Può un comunista giudicare l'arte dei dissidenti?*)(no. 1, X, 1977).

Gli eventi eccezionali che hanno impegnato l'esilio e la dissidenza romena nel 1977 furono la Charta '77, la Conferenza di Belgrado per la libertà e per la dignità dell'essere umano e la nascita del Movimento per i diritti civili, rappresentata dalla potente figura dell'intransigente Paul Goma; un movimento che, appunto perché aveva inserito la Romania nella sfera della contestazione aperta e organizzata contro la tirannia comunista, ha beneficiato in quel momento dall'articolo di Demetrescu *Cenzurați-l pe Goma, sciitor obstinat (Censurate Goma, scrittore ostinato)* (*Umanità*, no. 5, II, 1977). Ne segue il formidabile legame che i minatori della Valle di Jiu hanno stretto con il Movimento Goma per i diritti civili, tramite la lettera dei 21 minatori che è stata inviata all'*Europa Libera* in solidarietà a Paul Goma, solo che, in maniera grottesca, la nuova direzione del giornale *Umanità*, Puletti e Longo, hanno considerato come inesistente la dissidenza romena e da qui fino al dichiarare la non lealtà della collaborazione del giornale con la dissidenza romena non fu che un passo. Il delicato aspetto relativo alla fenomenologia della dissidenza, comparso ad aprile del 1979, quando, dopo la partenza di Goma seguito alla configurazione del Sindacato Libero della Romania, avente oltre 2000 membri (nonostante la repressione), e la pubblicazione del libro del grande dissidente, *Cutremurul oamenilor (Il terremoto degli uomini)*, a Parigi, seguito della sua divulgazione alla stampa occidentale degli obbiettivi della Securitate, Ceaușescu ha mobilitato tutte le forze contro la dissidenza che era arrivata anche a Roma, fu riflesso anche nelle posizioni prese dal giornale *Umanità*. Il 4 aprile 1979, il giornale socialdemocratico ha pubblicato l'insignificante testo *Consecințele unor știri nefondate (Le conseguenze di una notizia infondata)* contro la dissidenza romena, rimandando alle fonti dell'Ambasciata della Romania e al non fondato Sindacato Autonomo della Romania, seguito il 14 aprile da un altro testo insignificante, *À-propos de o dizidență născută în eprubetă (A proposito di una dissidenza nata in un tubo)*, dichiarata microbica ed artificiale. La serie degli attacchi contro Goma, considerato essere "completamente mancante di talento", "impostore" oppure "romeno bastardo" hanno continuato nei seguenti numeri del giornale italiano, 9 agosto (*Cui prodest?*), firmato il più probabilmente da Valeriu Râpeanu, autore di un saggio dallo stesso titolo, comparso nella rivista *România Literară*. L'epilogo delle azioni contro la dissidenza romena fu evidente

nella pubblicazione in *Umanità* di un articolo che confermava ufficialmente il miscuglio delle autorità di Bucarest, tramite l'Ambasciata della Romania a Roma, sotto la forma della pubblicazione dell'articolo *La invitația lui Ceaușescu Longo și Puletti la București (Longo e Puletti a Bucarest all'invito di Ceaușescu)*.

Camilian Demetrescu ha poi smascherato la “vergognosa truffa politica” inviando a tutti i direttori di tutti i più importanti giornali dell'Italia una lettera di denuncia del “grave episodio di corruzione consumato a scapito dell'esilio politico romeno”, in realtà un vero atto di tradimento flagrante rispetto allo stesso⁴⁹. Gli effetti della stratagemma della Securitate rimbalzò, quindi, verso quelli che la avevano costruita, e una volta in più, a Parigi, il fallimento della campagna di denigrazione ebbe fine, con il licenziamento del giornalista di *Le Figaro* a Bucarest.

Sempre nel 1979, la Residenza di Roma, della filiale DIE in Italia, ha attirato l'attenzione per via dei telegrammi „strettamente segreti” sul ravvicinamento di Paul Goma e di Camilian Demetrescu, il pittore essendo considerato il „portatore di una lettera” che Goma aveva indirizzato al Partito Socialista Democratico Italiano e al giornale *L'Humanità*, nello scopo di richiedere il supporto alla „legittimità delle sue azioni” anti-romene (anti-regime), ma anche per la convinzione che le notizie della stampa italiana di sinistra erano „mancanti di fondamenta”⁵⁰. L'intenzione di Demetrescu fu quella di pubblicare alcune lettere con lo stesso contenuto anche in giornali di centro oppure conservatori, come *Il Popolo e Il Tempo*. In realtà, una delle strategie della Securitate romena, di contrastare le reazioni anticomuniste fu quella di utilizzare il potere della stampa di sinistra dell'Italia (nome di codice „Râșnov”) influenzandola verso la promozione di realtà romene interne ed esterne, come per esempio e specialmente gli sforzi della così detta indipendenza di Ceaușescu nei confronti di Mosca, un mito „alla moda” in quegli anni, costruito con meticolosità dagli esperti DIE⁵¹. D'altronde, Nicolae Ceaușescu aveva insistito ossessivamente durante quegli anni

⁴⁹ Camilian Demetrescu, *op. cit.*

⁵⁰ ACNSAS, fondo SIE, d. 37854, f. 14.

⁵¹ Camilian Demetrescu, *op. cit.*

sull'idea dell'indipendenza nazionale e dell'importanza della nazione, non esitando a criticare alcuni teorici marxisti per averne denigrato l'importanza⁵².

A settembre del 1979 la Securitate né è venuta a sapere di un'altra lettera „contenente calunnie contro l'ordine [...] sociale e di stato”, in cui il pittore ha accusato il giornale *Umanità*, il quotidiano politico del Partito Socialista Democratico Italiano, fondato a gennaio 1947 con l'appoggio del presidente della Repubblica Italiana, Giuseppe Saragat, che „fa il gioco dei comunisti” romeni. Quindi, gli ufficiali del Dipartimento della Sicurezza dello Stato hanno preparato un'offensiva per „smascherare l'attività reazionaria” nei giornali italiani e, in genere, per contrastare „le azioni calunniose” contro la Romania (nome di codice „Făgăraș”)⁵³, il segretario nazionale ed il giornale del Partito Socialista Democratico Italiano essendo chiaramente a favore della „propaganda positiva” nei confronti della Romania.

Jiří Pelikán, il giornalista cecoslovacco sostenente del movimento „la Primavera di Praga”, esiliato politico in Italia sin dal 1969 e membro del Partito Europeo dalla parte del Partito Socialista Italiano nelle legislature del 1979 e del 1984, ha avuto „sotto l'influenza di Demetrescu”, un debole e breve tentativo di rimproverare il giornale *Umanità* per la presa di posizione critica nei confronti della „dissidenza” romena dell'estero e, particolarmente, rispetto alla lettera di Goma; tentativo abbandonato per intervento del vice-segretario del Partito Socialista Democratico della penisola.

Conclusioni

A differenza della Francia⁵⁴, dove l'esilio fu più veemente e più militante ma anche più consistente dal punto di vista della partecipazione degli intellettuali

⁵² Archivio online dell'esilio romeno, Istituto per Investigazione sui Crimini del Comunismo e della Memoria dell'Esilio Romeno (AINMER), fondo George Ciorănescu, 1948/1976, Radio Free Europe, Ceausescu Reasserts Position on National Independence and Sovereignty by Robert R. King, 28 April 1976, f. 97, <<http://www.arhivaexilului.ro/ro/arhiva-online-a-exilului-romanesc>>, 24.11.2018.

⁵³ ACNSAS, fondo SIE, d. 37854, ff. 13-15.

⁵⁴ Adrian Corpădean, *Le message européen de la diaspora roumaine de France après 1945*, Cluj-Napoca: EFES, 2013, passim.

alla vita culturale e alle formule anticomuniste, l'Italia ha ospitato un numero più ristretto, ma significativo, di diplomatici, politici e artisti, che hanno sviluppato l'esilio politico, l'esilio culturale, l'esilio politico-professionale reale, oppure al contrario, passivo, ma comunque sia l'esilio degli intellettuali, di cui il 47% si stabilirono definitivamente nella Penisola Italiana.

È quindi vero ciò che Camilian Demetrescu stesso affermava considerando che „solo il 5-6% degli esili politici si sono dimostrati [effettivamente] attivi, sfidando tutti i rischi di tale scelta”⁵⁵, anche se le percentuali sono difficilmente quantificabili con esattezza. Al polo opposto c'è stata la gente del post-esilio, capito spesso come una controbilancia “colpevole”, ovvero lo spostamento nell'Occidente capitalista degli „spostati”, come li chiamava Virgil Ierunca, ovvero quelli che se ne sono andati con l'accordo della Securitate, come anche quelli che hanno collaborato in varie forme con la polizia politica romena.

L'esilio di Demetrescu si è dimostrato essere profondo, con ampi riverberi fortemente antitotalitaristi, anticomunisti e antimperialisti (antisovietici), la sua dimensione culturale ritrovandosi nel tema suggestivamente anticomunista della creazione artistica, nei suoi tentativi di conservazione di alcuni valori autoctoni, nel suo rapportarsi alle radici, alla dimensione ancestrale e storica, ma anche nei suoi tentativi di sensibilizzare il mondo politico e culturale nei confronti del regime comunista di Bucarest. Lo ha fatto senza esitare, con stoicismo, convinzione e coraggio e ovviamente con patriottismo; d'altronde entrambi i figli del rimpianto artista, Camilian ed Emanuel, parlano impeccabilmente il romeno, anche se sono residenti in Italia.

Lontano dall'accusa di aver voluto essere considerato un „martire”⁵⁶, rimane certo il fatto che l'artista plastico non cessò di essere un militante anticomunista, negli anni '80 riuscendo a creare assieme ad altri esili, l'Internazionale della Resistenza contro il totalitarismo comunista (1983) ed il Comitato Pro Romania (1989). Sempre nel 1989, all'Incontro dell'Amicizia fra i

⁵⁵ Sanda Anghelescu, *op. cit.*

⁵⁶ ACNSAS, fondo SIE, d. 37854, f. 17.

Popoli di Rimini, fece un denuncio pubblico contro Nicolae Ceausescu, il quale, nella sua opinione, sarebbe stato condannato penale e non politico a Doftana.

In conformità agli indirizzamenti fatti da UM 0503 nella cui struttura si trovava il dossier del pittore, no. 37854, lo stesso era stato preso di mira dagli inizi degli anni '70 e fino al 1984, come lo dimostra anche la quantità di materiale informativo, lettere operative, note personali o indirizzamenti verso altre unità della Securitate, il dossier non essendo uno consistente in volume.

Camilian Demetrescu, il filosofo artista, che ha percepito l'esilio, che sia esso politico o culturale, come un'apertura, un'evasione oppure un'auto condanna alla solitudine, ha continuato a sviluppare la propria arte senza dimenticare il legame con le legende dei Carpati oppure con altri elementi ancestrali, contrariamente alle impietrite annotazioni della Securitate, che consideravano erroneamente che le „[sue] opere d'arte non contenevano più nessun legame con l'arte romena", ma che, al contrario, erano „riscontrabili in qualsiasi punto del globo"⁵⁷, ciò che ne ha portato, anche da parte del regime di Bucarest, il riconoscimento della dimensione internazionale della sua opera.

Rimane indubbiamente vero il fatto che il pittore Camilian Demetrescu ha accompagnato con il suo atteggiamento realistico, critico, analitico, oggettivo ed elaborato, al di fuori di qualsiasi compromesso ideologico, politico o storico, l'intera storia post guerra dell'esilio romeno, militante, reale ed autentico, del clima politico internazionale e del palcoscenico politico italiano, visibilmente cariche di tendenze marxiste. Non c'è alcun dubbio che la voce dell'opposizione anticomunista, l'anticomunismo politico militante, le denunce di Demetrescu nella stampa occidentale ed in genere la critica contro il regime dittatoriale hanno incoraggiato l'esilio, rendendo note le dure realtà politiche romene e soprattutto hanno rafforzato la resistenza romena interna.

⁵⁷ *Ibidem*, ff. 6-7.

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LE SYSTÈME JURIDIQUE UNITAIRE À L'ÉPREUVE DU DROIT COUTUMIER : LA NÉCESSITÉ D'UNE TERRITORIALISATION DU DROIT

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Abstract

The French State is a unitary State as opposed to federal States, in which there is one Constitution providing for provisions applicable throughout the territory of the French Republic. Unity can be found in a legal unity first, in this the unitary Law is the one that does not admit of territorial differentiation. A political and organic unity, since there is only one Parliament, one Government. A social unity eventually, which consists of the admission of a single French people. If the French tradition is based on a centralized system, the implementation of the process of territorial decentralization led to reconsider the uniformity of the Law precisely with the question of territorial differentiation and territorialisation of Law. The present study proposes to return to the consideration by unitary Law of local territories including the overseas territories with the problem of reconciling such a system with customary Law.

Keywords: unitary Law, customary Law, territorial decentralization, territorialisation of Law, the overseas territories

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Comprendre le droit, c'est s'apercevoir que derrière les apparences se cachent d'autres apparences. Si l'on se questionne sur la place et le rôle du droit dans nos sociétés contemporaines, on arrive au constat qu'il y a une sorte de rapport de forces entre les partisans d'un monde ancien, considérant que le droit est statique et figé et ceux d'un monde nouveau, percevant le droit dans une dimension dynamique et vivante. L'on ne peut restreindre le droit à un ensemble de textes positifs sans tomber dans une torpeur idéaliste où le droit serait simplement ce que les lois disent qu'il est. La question de la différenciation territoriale est une réalité qu'il est nécessaire d'aborder lorsque l'on se questionne sur la conciliation au sein d'un système juridique unitaire du droit coutumier.

Pour la première notion, il n'existe pas de modèles figés du droit unitaire puisque pris isolément, ça ne veut rien dire – consentons-le, le droit est par essence unitaire, il a pour mission de rassembler la volonté générale – alors que l'État unitaire lui fait partie de la classification que l'on enseigne en droit constitutionnel et qui renvoie à la distinction entre un État unitaire dans lequel il n'existe en principe qu'une seule Constitution, un gouvernement et un Parlement. L'unité peut se retrouver en une unité juridique d'abord, en cela le droit unitaire est celui qui n'admet pas en principe de différenciation territoriale. Une unité organique ensuite, avec un gouvernement, un parlement et une unité sociale enfin, avec l'admission d'un seul peuple français. On reviendra précisément sur la possibilité d'un pluralisme juridique coexistant avec un système unitaire. À l'inverse, l'État fédéral est celui dans lequel il existe des États fédérés (les USA et les cinquante États fédérés ; l'État fédéral allemand avec les seize *länder*, etc). La Belgique est intéressante également puisqu'elle démontre que chaque catégorie n'est pas figée et que l'on peut passer d'un État unitaire à un État fédéral (via une réforme constitutionnelle) comme cela a été le cas pour la Belgique en 1993 avec un processus qui a commencé déjà dans les années 60/70. L'article 1^{er} de la Constitution belge prévoit que : « *La Belgique est un État fédéral qui se compose des communautés et des régions* ».

On le voit la question du système juridique unitaire dépasse le carcan parfois trop étroit de la recherche strictement juridique et des positivistes puisque qu'il y a des critères juridiques qui permettent de distinguer entre le droit unitaire étatique et le droit fédéral mais c'est avant tout une question de droit étatique qui est intimement liée à celle de l'histoire elle-même de l'État.

Lorsque l'on effectue des recherches en droit comparé, la question de la méthodologie se pose. Cette présente étude privilégie une approche qui oscille entre positivisme (c'est-à-dire rechercher dans la règle de droit, dans la loi, la constitution ce qui constitue la caractéristique du droit unitaire) et le culturalisme qui cherche à comprendre ce qu'il y a derrière le droit. Le comparatiste est celui qui prend en compte d'autres disciplines pour contextualiser le droit étudié, pour atteindre en quelque sorte la nature « culturelle » du droit. en cela : *« la pensée comparative contemporaine (...) doit s'enquérir de ce que sacco appelle la « dimension muette » de celui-ci qui mobilise des grilles de lecture aussi différentes que l'histoire, la sociologie, la religion ou l'économie pour pouvoir comprendre, expliquer ses différences, saisir sa dynamique, au lieu de se contenter d'une vision statique fournie par le seul examen des textes ou sources officielles. il faut donc chercher le substrat (le sous-texte) culturel »*¹. Le sujet de la territorialisation du droit comporte en réalité une double complexité. Il s'agit d'abord sur le plan théorique de comprendre ce qu'est la territorialisation du droit et plus loin le pluralisme juridique. Ce sont des théories qui en France ne sont pas suffisamment prises en compte puisqu'éloignées de la méthodologie classique des positivistes. Et ensuite, après la réflexion théorique, il s'agit de comprendre la pratique et donc de revenir quelque peu sur le sujet qui est présenté aujourd'hui, à savoir le droit coutumier.

Il convient de définir ce que l'on entend derrière la territorialisation du droit ou plus exactement de la nécessité pour le

¹ H. Muir-Watt, « La fonction subversive du droit comparé », *RIDC*, 2000, n°3, p. 518.

droit étatique unitaire de s'adapter, de se territorialiser, c'est-à-dire en prenant en considération les territoires locaux, l'exemple de l'outre-mer est par excellence un exemple qui illustre cette adaptation, cependant les territoires de la France métropolitaine représentent également un laboratoire intéressant dans la recherche de l'adaptation du droit unitaire. D'autant plus que si l'on considère qu'il existe juridiquement des territoires locaux en dehors du territoire strictement étatique, on dépasse déjà la vision moniste du droit et on entre dans une forme de pluralisme juridique comme l'avait déjà envisagé le doyen Maurice Hauriou lorsqu'il parlait de son hypothèse d'équilibres de superposition.

Selon Maurice Hauriou, le droit administratif en tant que droit vivant est la meilleure manière de se rendre compte de l'évolution de l'État moderne. Pour l'auteur, l'État libéral est une société politique ordonnée, l'idée d'équilibre est l'hypothèse selon laquelle on prend en compte d'autres équilibres que ceux constitutionnels pour étudier l'État, on regarde les équilibres entre la force politique et la force économique ; la vie publique et la vie privée ; l'activité de l'administration publique et privée. Pour lui les équilibres de superposition sont ceux entre la nation et le gouvernement de l'État.

Pour Maurice Hauriou, la nation est une population déjà organisée par des institutions primaires elle est ce à quoi s'est superposée historiquement le gouvernement de l'État. Le concept juridique de la décentralisation doit être établi sur la base de l'opposition et de l'équilibre de la nation et du gouvernement de l'État. L'État n'est pas une formation primaire mais s'établit chez des populations possédant déjà des institutions politiques (on voit clairement ici le parallèle entre le pluralisme sociojuridique de Georges Gurvitch et l'ordre juridique de Santi Romano).

Nous allons donc évoquer d'abord les enjeux de la territorialisation du droit, évoquer brièvement les grandes théories du pluralisme juridique puis terminer sur l'application de ces théories avec

l'exemple du droit coutumier et plus précisément avec l'articulation du droit commun et du droit coutumier.

I. La territorialisation du droit : signification et portée

L'idée de la territorialisation du droit consiste à renouveler l'approche classique de la conception du système juridique unitaire en considérant que les règles de droit appréhendent les territoires. Le constat de la diversité territoriale – de ces « *situations territoriales et juridiques complexes* »² – entraîne nécessairement une adaptation du système juridique unitaire, les territoires d'outre-mer constituent un exemple de cette adaptation pour tenir compte du principe de réalité³.

La prise en compte du territoire a eu une influence sur le droit, puisqu'il a permis au discours juridique d'intégrer la territorialisation du droit, pour comprendre de manière plus globale le phénomène de décentralisation dans son aspect de réorganisation du territoire⁴.

² J.-B. Auby, *La décentralisation et le droit*, LGDJ, 2006, p. 15 : « D'un point de vue très général, on peut dire que le pouvoir politique, et les règles juridiques qu'il produit, peuvent appréhender – et appréhendent effectivement – les territoires vers lesquels ils orientent leur action de deux manières : comme des ensembles uniformes ou comme des complexes de situations diverses ».

³ En effet, le Professeur Jean-Bernard Auby livre une approche précise de ce que signifie l'idée de territorialisation du droit et quelques exemples quotidiens de sa réalisation pratique dans le domaine de l'action publique, *id.*, pp. 15-16 : « (...) Ils les voient parfois comme des complexes de situations diverses, qui doivent être gérés par des moyens variables : lorsque cette seconde solution est choisie, il se produit, sur le terrain qui nous intéresse ici, une territorialisation, plus ou moins accentuée du droit. L'époque contemporaine nous donne l'occasion de contempler de nombreuses manifestations de cette seconde situation. L'action publique ne cesse de se démultiplier territorialement. Dans le cadre des politiques d'aménagement du territoire ou de la ville, tous les jours ou presque, telle ou telle portion de l'espace national se voit doter de particularités fiscales, budgétaires, institutionnelles, etc. au nom d'impératifs d'une politique publique ou d'une autre. La multiplication des territoires administratifs – des pays aux « territoires de santé » du Code de la santé publique, en passant par les « zones franches urbaines », ou les « pôles de développement »... - est le signe de cette évolution (...) ».

⁴ Aujourd'hui encore la question du territoire dans le droit de la décentralisation est d'actualité. La loi n°2015-991 du 7 août 2015 portant nouvelle organisation territoriale de la République, JORF n°0182 du 8 août 2015, p. 13705, texte n°1, vient supprimer la clause générale de compétence pour les départements et les régions. Elle revalorise ainsi les deux autres critères traditionnels de définition de la collectivité, constitués d'une part de l'origine

Ainsi, si la juridicité du territoire peut être le fait de créer des espaces juridiques nouveaux, la territorialisation du droit quant à elle, apporte à la sphère juridique, une sorte de gage de qualité. Le territoire apporte une dimension « spatiale » au droit, que celui-ci ne possédait pas, avant la mise en œuvre de la décentralisation territoriale, ou de manière insuffisante. C'est ce que le Professeur Yves Madiot nomme : « *la territorialisation ou la contribution à un droit de qualité* »⁵.

L'approche territoriale du droit est perçue comme une évolution évidente et nécessaire, inhérente à la transformation même du droit contemporain et paraît d'autant plus importante dans le droit de la décentralisation : « *Donner au droit une dimension territoriale, ce n'est donc pas lui faire perdre sa substance. C'est l'enrichir dans les domaines où il peut l'être : ni plus, ni moins. Ce serait aussi donner, au développement local, un considérable coup d'accélérateur* »⁶.

Concernant la question de la dimension territoriale du droit, le rôle du territoire est désormais pris en compte par la doctrine juridique qui en analyse les effets sur le droit. Par exemple, Élisabeth Mella consacre son analyse à l'approche territoriale du droit concernant la nature de la délibération locale et étudie les influences des facteurs territoriaux sur l'étendue et le contenu de la règle de droit⁷. L'auteure complète l'analyse du Professeur Yves Madiot sur la théorie de la territorialisation du droit puisqu'elle considère que le territoire agit sur le contenu matériel de la règle juridique. Elle prend en compte le caractère extraterritorial d'un acte juridique, tout comme l'avait envisagé Charles Eisenmann, justifié par des « besoins locaux territoriaux » ou en d'autres termes, par la spécificité territoriale.

élective, c'est-à-dire par la mise en place de la démocratie locale et d'autre part, par son territoire. Voir en ce sens, l'article de la Professeure Laëticia Janicot, « Les collectivités territoriales, une définition doctrinale menacée ? », *RFDA*, 2011, p. 227.

⁵ Y. Madiot, « L'aménagement du territoire et le droit », *RFDA*, 1994, p. 955.

⁶ *Ibidem*, p. 963.

⁷ E. Mella, *Essai sur la nature de la délibération locale*, préface de Jean du Bois de Gaudusson, Paris, LGDJ, coll. Bibliothèque de droit public, 2003.

Le territoire est devenu un générateur juridique, une force de production juridique. C'est l'opinion défendue par les Professeurs Jean-Bernard Auby et Jacques Caillosse. Ce dernier considère le territoire dans sa fonction de « *générateur juridique* »⁸, comme une force de production juridique.

De manière générale, l'appréhension des territoires peut être considérée par le droit de deux manières. C'est d'une part, une considération « uniforme », dans le sens où « *les ensembles uniformes* »⁹ sont l'objet sur lequel le droit apporte une réglementation égale et uniforme. D'autre part, les territoires peuvent être appréhendés par le droit, comme « *des complexes de situations diverses* »¹⁰, qui doivent par là même être gérés de manière distincte, par des « *moyens variables* »¹¹. C'est lors de cette deuxième hypothèse d'appréhension que la territorialisation du droit apparaît¹².

Partant, le Professeur Jacques Moreau considère la territorialisation du droit comme une rupture justifiée ou justifiable de l'égalité normative, incluant un régime juridique dérogatoire. En d'autres termes, l'auteur

⁸ J. Caillosse, *Les mises en scène juridiques de la décentralisation*, LGDJ, 2009, p. 91 : « Il a surtout été question jusqu'à présent de juridicité du territoire, au sens où ce dernier nous est surtout apparu comme un espace de réception et de circonscription de la règle juridique. Prétendre traiter des rapports qu'entretiennent ces deux données oblige à considérer aussi le territoire dans sa fonction de générateur juridique. Loin de se réduire à un espace informé par le droit, le territoire se fait, le cas échéant, condition d'un droit applicable qui tient, de cette territorialisation, son origine comme sa signification. Changement de décors. Ce n'est plus le juridique qui donne figure aux territoires : après leur avoir imprimé ses marques en les soumettant à sa raison, le droit a joué – et ne cesse d'ailleurs de le faire – un rôle décisif dans le procès d'organisation de l'espace, autant son économie interne semble aujourd'hui fonction des territoires. Production juridique, le territoire est devenu à son tour force de production juridique. Nul doute qu'il y ait là pour le juriste une évolution riche d'implications théoriques. (...) ».

⁹ J.-B. Auby, *op.*, p. 1.

¹⁰ *Ibidem*.

¹¹ *Ibidem*.

¹² « Même si le phénomène est à certains égards de tout temps, il est clair qu'à notre époque, l'action publique tend à se démultiplier territorialement de façon croissante. C'est une façon de mieux adhérer aux problèmes à régler, de se rapprocher d'eux comme des citoyens qui les vivent (...). Et pourtant, la roue tourne, et notre droit public fait, comme d'autres, après d'autres souvent, lui aussi l'apprentissage du pluralisme juridique territorial » : *Ibidem*, p. 15.

explique que la territorialisation du droit est due aux spécificités territoriales, la règle de droit s'adapte à la diversité de la situation donnée. En France par exemple dans les territoires d'outre-mer les lois et les règlements sont applicables de plein droit. Ils peuvent faire l'objet d'adaptations tenant aux caractéristiques et contraintes particulières de ces collectivités. On voit ici une application de l'adaptation de la loi et du règlement. Cependant, certains domaines ne peuvent pas faire l'objet d'une telle adaptation, il s'agit de la nationalité, des droits civiques, des libertés publiques, de l'organisation de la justice, du droit pénal de la sécurité, etc.

Comme le Professeur Jean-Bernard Auby le précise : « *quiconque observe le fonctionnement juridique concret des collectivités territoriales ne peut qu'être frappé par la diversité des pratiques, les changements dans la forme et le contenu des mêmes actes, les variations dans la tonalité des relations juridiques. Passant d'une collectivité à une autre, on a facilement le sentiment que ce qui est interdit ici est permis là, que tel service public qui a tel régime ici, obéit, là, à un autre. Il ne faut sûrement pas exagérer cette part de différenciation juridique territoriale, mais on ne peut pas nier qu'elle existe* »¹³.

La territorialisation du droit a indirectement pour effet d'engendrer une multiplication d'outils permettant de répondre directement au besoin local, par la coopération entre les entités infra-étatiques elles-mêmes ou entre le pouvoir central et le pouvoir périphérique. Cela produit ainsi de manière concrète, une innovation dans la création d'outils juridiques locaux et par là même, de manière globale une évolution des rapports entre l'État et les collectivités territoriales, crée par ce nouveau « *polycentrisme juridique* »¹⁴.

Maurice Hauriou encore une fois évoquait la triple fonction de la notion juridique de territoire en le prenant dans sa fonction de circonscription territoriale pour le régime de l'État. Les individus pris comme appartenant à un territoire ont la qualité d'habitant, c'est cette

¹³ J.-B. Auby, *La décentralisation et le droit*, op. cit., p. 57.

¹⁴ C. Gallo, « Recherches sur la territorialisation du droit », *Jurisdoctoria* n°10, 2013, p. 36.

qualité qui fait qu'ils sont soumis à la législation de l'État, à ses règles, à sa police à ses services publics. La notion juridique du territoire est ensuite caractérisée pour Maurice Hauriou comme une absence de droit de patrimonialité, le territoire caractérise ce qui relève de la vie publique et de la vie privée, l'État n'a pas en principe d'appropriation sur les terres privées. Enfin, le territoire a un rôle juridique puisqu'il délimite le pouvoir de l'État. L'État ne commande en principe que sur son territoire.

Maurice Hauriou envisageait déjà dans ses théories l'idée d'une certaine forme de pluralisme juridique avec l'idée de nation et d'institutions primaires organisées, c'est ce que l'on retrouve chez Georges Gurvitch et son idée de droit social organisé et inorganisé.

II. Les théories du pluralisme juridique

On a souvent reproché à Georges Gurvitch d'être anthropologue ou sociologue du droit, on revient sur le débat qui consiste à sortir de l'idée d'un monisme ou d'une centralité du droit basée sur celle du droit de l'état. Cependant, au lieu d'exclure l'analyse des anthropologues sur leur méthodologie je pense au contraire qu'ils ont beaucoup à apporter à la recherche sur le fond par leurs idées.

L'idée de ces anthropologues du droit est d'exclure la seule analyse de la centralité juridique basée sur le droit de l'État : « *Pour les anthropologues du Droit, c'est la confrontation aux cultures « non modernes », et spécialement dans le contexte colonial, qui a fait éclater l'idéologie du « centralisme juridique » (legal centralism) et a ouvert les portes d'une prise de conscience du pluralisme juridique. Selon John Griffiths, dans son texte fondateur sur le pluralisme juridique, le centralisme juridique est la perspective du juriste selon laquelle seul existe le droit de l'État à l'exclusion de tout autre. C'est une idéologie en ce sens qu'elle véhicule une vision du monde du juriste qui ne correspond pas à la réalité factuelle observable, telle qu'elle ressort par exemple clairement dans les anciennes situations coloniales occidentales où cohabitaient parallèlement au droit étatique d'autres formes de Droit, « coutumières ». Ces situations étaient*

clairement des situations de pluralisme juridique, caractérisées par la présence dans un même champ social de différents ordres juridiques »¹⁵.

La problématique principale de la pensée qui a entouré ces courants, peut être résumée comme une interrogation sur la science du droit épurée de la volonté des gouvernants et de l'assimilation au droit de l'État. Le pluralisme juridique conçoit donc un droit en dehors de la loi et en dehors de l'État. Très rapidement pour Georges Gurvitch, l'auteur analyse le droit de l'État comme faisant partie du droit social. Selon l'auteur, l'analyse du droit ne se limite donc pas à une simple étude du droit de l'État mais inclut celle du droit émanant de la société. Par conséquent, l'auteur considère la notion de droit positif similaire à celle du droit social. Il distingue deux grands types de droit social¹⁶. D'une part le droit social inorganisé, qui est un droit attaché à des communautés. Le droit social inorganisé apparaît pour l'auteur, à chaque fois que se forme un groupe, composé de principes et de valeurs, la création d'une communauté entraîne la formation d'un droit social inorganisé¹⁷.

¹⁵ G. Otis (dir.), *Méthodologie du pluralisme juridique*, Éditions Karthala, 2012, p. 76. V. aussi Levente Salat, Sergiu Mișcoiu, "Roma autonomous lawmaking – the Romanian case", in Tove Malloy and Levente Salat (eds.), *Non-Territorial Autonomy and Decentralization. Ethno-Cultural Diversity Governance*, Abingdon. New York, Routledge, 2021, pp. 67-94 ; Ioana-Cristina Hrițcu, Sergiu Mișcoiu, « Le Kriss : peut-on parler de pluralisme normatif en Roumanie dans le cas de la minorité rom ? » in *Studia Universitatis Babeș-Bolyai. Studia Europaea*, nr. 1, 2014, pp. 243-262.

¹⁶ G. Gurvitch, *Éléments de sociologie juridique*, Paris, Dalloz, 2012 (reproduction de l'édition parue en 1940 aux Éditions Aubier).

¹⁷ Voir en ce sens, l'article de J.-G. Belley concernant l'analyse du droit social inorganisé de Georges Gurvitch : « (...) surgissent du « droit social inorganisé » à travers les conduites « novatrices » et les « expériences immédiates de la justice » dans des groupes sociaux plus ou moins durables ; dynamique du « psychisme collectif » dans les nouveaux phénomènes de « masse » (les manifestations...), de « communauté » (les assemblées générales, les communes) et de « communion » (les groupuscules militants) où s'affrontent les « croyances morales, mystico-extatiques et juridiques » ; contestation des « symboles réfléchis et figés » du « droit organisé » au nom de la fluidité du « droit vivant » et d'une symbolique social plus intuitive, émotionnelle ou esthétique que rationnelle », J.-G. Belley, « Le « droit social » de Gurvitch : trop beau pour être vrai ? », *Droit et société*, 2014/3, n°88, p. 731-732.

D'autre part, le droit social organisé est pour Georges Gurvitch, le droit d'une communauté qui s'est institutionnalisée et qui trouve sa source dans le droit social inorganisé. Le droit social organisé est le seul à rendre compte pour l'auteur des inventions juridiques modernes et met par conséquence en avant un changement d'objet de la science du droit : une science du droit social. La démarche de Georges Gurvitch consiste à analyser juridiquement la société et à rapprocher ce qui est habituellement en droit opposé. Pour l'auteur, la place des faits est importante dans le droit. Le droit social est ainsi une valeur qui se réalise dans les comportements ou la conduite des membres d'un groupe déterminé. Georges Gurvitch voit le droit positif comme un univers dans lequel s'observe un agrégat de groupes sociaux avec une pluralité éthique, la société étant socialement et moralement plurielle. La question qui se pose alors à l'auteur est de comprendre quel est le concept qui permet d'identifier la formation d'un ordre de droit social. Il recourt dans son analyse à la notion de « *fait normatif* » – de la force normative des faits – et à la notion de valeur, la mise en valeur du fait normatif s'impose devant celle des règles de droit¹⁸.

¹⁸ Le concept de « fait normatif » est un concept clé de la philosophie du droit de Georges Gurvitch, qu'il rapproche notamment du concept « d'institution » de Maurice Hauriou. Il considère que les « valeurs » relèvent du champ de l'expérience et « *inclus dans les données immédiatement perceptibles par la conscience et accessibles à la connaissance intuitive* », J. Le Goff, G. Gurvitch, *Le pluralisme créateur*, Michalon, collection « Le bien commun », 2012, p. 57. Voir également en ce sens, l'analyse de J.-G. Belley, « Georges Gurvitch et les professionnels de la pensée juridique », in *Droit et société*, n°4, 1986, p. 358-359 : « (...) Pour Gurvitch, un ordre juridique émerge avec l'expérience sociale de la justice. Il se structure par l'élaboration de règles et de modèles préétablis des conduites. Il s'organise par la mise en place de superstructures plus ou moins autonomes. Respectant le sens profond de la vie sociale, la sociologie du droit aborde son objet d'étude de bas en haut, du primaire au secondaire, du matériel au formel, du spontané à l'organisé, du sentiment de justice à la rationalité juridique, de l'intuitif au réfléchi dans le droit. La sociologie du droit se tourne ainsi vers la valeur de justice plutôt que vers les règles de droit pour construire son objet premier. Elle inverse l'ordre dans lequel les éléments constitutifs de la réalité sociale du droit interagissent les uns sur les autres. Dans la perspective ascendante suggérée, la prise en compte du sentiment de justice précède conceptuellement celle de la pensée juridique, l'étude des manifestations de valeur de justice et des conduites collectives novatrices tend à

Deux concepts fondamentaux sont présents dans la pensée du pluralisme sociojuridique de Georges Gurvitch, constitués par le concept de droit social et de fait normatif. La communauté au sens de l'auteur se distingue du groupe social et est l'équivalent d'un ordre juridique social avec l'imbrication du droit et du fait. Ce qui est important pour le sociologue du droit est de décrire juridiquement la société.

Le pluralisme sociojuridique permet à la théorie juridique de sortir de l'idéologie étatiste tout en restant dans le champ de la réflexion juridique. L'auteur a eu une influence sur le courant des anthropologues du droit, notamment avec John Griffiths considérant le pluralisme juridique comme un fait et le centralisme juridique, un mythe¹⁹. Les anthropologues ayant considéré que les sociétés ont connu une diversité des ordres juridiques et donc de juridicité. Ils observent que dans toute société, différentes formes de juridicité peuvent être créées par des processus sociaux-culturels d'émergence des normes. À partir du moment où les pratiques sociales procèdent de l'apparition de règles, il y a un processus juridique. Dans ce sens, le pluralisme juridique désigne une réalité sociale et culturelle du droit dans lequel apparaissent différents cadres du droit qui sont en relation les uns avec les autres.

précéder celle des conduites régulières et des superstructures organisées, la mise en valeur du fait normatif s'impose avant celle des règles de droit ».

¹⁹ J. Griffiths, « What is Legal Pluralism ? », in *Journal of Legal Pluralism and Unofficial Law*, 24, 1, 1986. L'idée de ces anthropologues du droit est d'exclure la seule analyse de la centralité juridique basée sur le droit de l'État : « Pour les anthropologues du Droit, c'est la confrontation aux cultures « non modernes », et spécialement dans le contexte colonial, qui a fait éclater l'idéologie du « centralisme juridique » (legal centralism) et a ouvert les portes d'une prise de conscience du pluralisme juridique. Selon John Griffiths, dans son texte fondateur sur le pluralisme juridique, le centralisme juridique est la perspective du juriste selon laquelle seul existe le droit de l'État à l'exclusion de tout autre. C'est une idéologie en ce sens qu'elle véhicule une vision du monde du juriste qui ne correspond pas à la réalité factuelle observable, telle qu'elle ressort par exemple clairement dans les anciennes situations coloniales occidentales où cohabitaient parallèlement au droit étatique d'autres formes de Droit, « coutumières ». Ces situations étaient clairement des situations de pluralisme juridique, caractérisées par la présence dans un même champ social de différents ordres juridiques », G. Otis (dir.), *Méthodologie du pluralisme juridique*, Éditions Karthala, 2012, p. 76.

Georges Gurvitch a amené à repenser la réalité objective du droit en société. Pour l'auteur, la pensée juridique n'est plus une structure d'analyse du droit mais bien un fait structurel des analyses humaines dans lesquelles des faits juridiques peuvent entrer en dissonance et où des normes peuvent circuler d'un système à l'autre. La postérité du courant de Georges Gurvitch s'inscrit également dans la pensée post-moderne du droit et de l'État avec l'idée du passage d'un droit imposé à un droit négocié où l'État perd de sa centralité au sein de la société et tend alors à déléguer sa puissance normative à différentes instances dont les collectivités territoriales. Au regard des critiques relatives à l'observation de la société et non du droit pour Gurvitch, c'est sans conteste le juriste italien Santi Romano et son œuvre majeure concernant *L'ordre juridique*, publiée pour la première fois en 1978 qui a relancé le débat sur le pluralisme juridique en tant que pluralisme des ordres juridiques.

La théorie de Santi Romano se base sur deux concepts clés. Il s'agit d'une part de la notion d'ordre juridique et d'autre part du concept de relevance pour expliquer les relations qu'entretiennent entre eux les différentes institutions étatiques et non étatiques. Santi Romano considère l'existence d'un ordre juridique constitué par les normes étatiques mais pas seulement puisque selon l'auteur, à côté de cet ordre juridique, coexistent différents ordres juridiques normatifs en concurrence sur un même territoire et en rapport avec une même population. Santi Romano se rapproche de Maurice Hauriou puisqu'il a analysé la notion d'institution et plus précisément d'organisation. Pour l'auteur, chaque institution est un ordre juridique qui a la caractéristique d'être autonome et spécifique. L'institution est alors assimilée à une organisation ou à une structure sociale. Pour le juriste, le critère d'organisation est indispensable à la définition d'un ordre juridique. En cela, il a une conception holiste de l'ordre juridique qui sera normatif à partir du moment où il est organisé²⁰.

²⁰ « (...) si l'on veut définir un ordre juridique dans son entier, il ne faut pas avoir égard seulement à ce qu'on croit être ses différentes parties, c'est-à-dire aux normes qui y sont comprises, et dire ensuite que c'est l'ensemble de ces parties. Il est au contraire indispensable d'atteindre la caractéristique, la

Le pluralisme juridique a été influencé par la théorie de l'institution dérogée par Maurice Hauriou. L'institution, étant le fondement juridique de l'État, elle est avant tout caractérisée par toute « *organisation sociale créée par un pouvoir qui dure parce qu'elle contient une idée fondamentale acceptée par la majorité des membres du groupe* »²¹. Dans cette conception, c'est l'institution qui crée le droit alors que pour Santi Romano l'institution est le droit. Santi Romano utilise la notion d'institution qu'il attribue alors à la notion d'organisation et a ouvert la voie à une nouvelle approche du pluralisme juridique.

Il y a un pluralisme des ordres juridiques puisque les institutions sont constituées en ordre juridique, et qu'à partir du moment où « *ces institutions structurées sont inévitablement assorties d'une production juridique* »²² et qu'au sein même de l'État « *les mêmes personnes sont soumises à plusieurs ordres juridiques indépendants les uns des autres* »²³, et qu'il existe « *un ensemble de normes situées à la fois à côté de et contre l'ordre juridique étatique* »²⁴, alors il y a pluralisme des ordres juridiques. C'est d'ailleurs le Professeur Pascale Deumier qui a intitulé l'un de ces articles relatifs au droit coutumier kanake de pluralisme des sources et des ordres juridiques pour évoquer ces « *territoires de droit* »²⁵.

nature, de ce tout », S. Romano, *L'ordre juridique* (1946), trad. L. François, P. Gothot, Dalloz, coll. Philosophie du droit, 1975, p. 7.

²¹ M. Hauriou, *Précis élémentaire de droit constitutionnel*, Librairie du recueil Sirey, 2^{ème} édition, 1930, p. 73.

²² J. Chevallier, « Droit, ordre, institution », *Droits*, 1989, n°10, p. 21.

²³ F. Rigaux, *Droit public et droit privé dans les relations internationales*, Pedone, 1977, p. 439, cité par F. Ost, M. Van de Kerchove, *De la pyramide au réseau ? Pour une dialectique du droit*, Publications des Facultés universitaires Saint-Louis (Bruxelles), 2002, p. 185.

²⁴ H. Dumont, *Le pluralisme idéologique et l'autonomie culturelle en droit public belge*, t. I, Publications des Facultés universitaires Saint-Louis (Bruxelles), 1996, p. 47, cité par M. Van de Kerchove, « Les rapports entre systèmes juridiques : entre clôture et ouverture », in J.-L. Bergel (dir.), *Le plurijuridisme*, PUAM (Aix-Marseille), 2005, p. 38.

²⁵ P. Deumier, « La coutume kanake, le pluralisme des sources et le pluralisme des ordres juridiques », *RTD civ.*, 2006, p. 516.

III. Le droit coutumier : une exemple d'adaptation du droit étatique unitaire

Il faut rappeler que la coutume est une source du droit et du droit français. La coutume naît d'une répétition et d'un sentiment d'obligation. C'est donc la question du pluralisme des sources et du pluralisme des ordres juridiques qui se pose ici et de l'articulation entre ces différentes sources et ordres juridiques.

Dans le cadre d'un pluralisme des ordres juridiques, la référence à nouveau aux travaux de Santi Romano est présente. La coutume kanake peut constituer un ordre juridique complet avec une organisation sociale accomplie. Pour relever quelques caractéristiques de cet ordre juridique coutumier, on peut déterminer le lien communautaire, la racine ancestrale, le respect des traditions, la prééminence des clans et l'esprit d'harmonie.

On voit très nettement une première classification entre un droit civil de droit commun et un droit naturel des communautés, cette classification étant importante par-delà les aspects juridiques puisqu'elle va concerner davantage l'identité culturelle. En quelque sorte, une intuition peut se dégager de ces constats puisque lorsque le droit naturel des communautés prend le pas sur le droit civil on est dans une situation qui se rapproche d'une autonomisation poussée de la communauté en question et donc des problématiques relatives à l'indépendance.

Pour terminer sur l'adaptation du droit unitaire et du droit coutumier, deux perspectives de recherche peuvent être relevées. Sur l'adaptation du droit étatique unitaire, elle peut se retrouver dans le raisonnement même des juges par exemple. En cela, peut-être privilégier plutôt une logique basée sur une répartition des compétences entre ordres juridiques (ce qui sous-entend une reconnaissance du pluralisme et de l'ordre juridique coutumier), plutôt que d'une logique qui s'appuie sur une méthode classique avec une hiérarchie des normes (loi/coutume) ou une articulation des normes entre le droit commun et le droit spécial : « *la*

coutume n'accède à la positivité que par le truchement de l'action des tribunaux qui a été favorisée par l'action de magistrats militants »²⁶.

Sur l'adaptation du droit coutumier, l'une des perspectives de recherche pour terminer cette communication concernerait non plus la seule adaptation du droit unitaire étatique mais l'adaptation cette fois-ci du droit coutumier, avec en exemple la modernisation des instruments juridiques de la coutume kanake et l'introduction du mode électoral et non plus héréditaire pour la composition du sénat coutumier et des conseils coutumiers.

On peut repartir sur un débat identitaire qui n'est pas facile à traiter pour le juriste mais qui consiste tout de même à se poser la question de la reconnaissance de la coutume kanake dans le sens où il ne s'agit d'enfermer l'individu dans une communauté mais plutôt de lui donner les moyens de choisir : entre appartenir à la communauté ou non pas de s'y retirer mais de la dépasser.

L'État a une mission qui est clairement relevée en droit international et qui consiste à individualiser le droit pour permettre une protection effective des individus. En cela, il s'agit de rechercher l'effectivité du droit individuel, c'est l'idée qu'un « État qui ne promulgue pas les lois nécessaires pour garantir [à l'individu] la jouissance des droits et de la protection qu'il est tenu de leur octroyer (...) »²⁷ est responsable de cette non-effectivité. C'est bien la question du « vivre ensemble » qui se cache derrière ce débat et du rôle du droit, le Professeur Alexandre Viala dans son dernier ouvrage sur *Le*

²⁶ S. Gerry-Vernières, *RTD civ.*, 2018, p. 1008, dans son étude sur *Les décisionnaires et la coutume : contribution à la fabrique de la norme*, G. Cazals, F. Garnier (dir.), Presses de l'Université Toulouse 1 Capitole, Études d'histoire du droit et des idées politiques, n°23/2017, p. 500.

²⁷ D. Anzilotti, « La responsabilité internationale des États en raison des dommages soufferts par les étrangers », *RGDIP*, 1906, p. 8 cité par S. Touzé, « Pour une lecture « anzilottienne » de la convention européenne des droits de l'homme. À travers la subsidiarité, un dualisme oublié », Presses universitaires de France, « Droits », 2012/2, n°56, p. 265.

pessimisme est un humanisme aborde cette question de la place du droit dans le vivre ensemble :

« Loin de tuer la vie, le droit est l'un des chemins nécessaires pour alléger le poids qu'exerce sur les individus la pression du vouloir-vivre qui les incite à commettre l'injustice. Il est le passage obligé pour instituer le principe de responsabilité et garantir, par voie de conséquence, le vivre-ensemble. Le « vivre-ensemble » telle est l'obsession du pessimisme libéral. Voilà une expression qui désigne implicitement, par son énonciation, toute la difficulté de vivre ensemble. Ne dit-on pas trivialement que la Constitution garantit le vivre-ensemble, comme si le vivre-ensemble, sans appui artificiel de la raison juridique, n'allait pas de soi ? »²⁸.

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²⁸ A. Viala, *Le pessimisme est un humanisme, Schopenhauer et la raison juridique*, Éditions Mare et Martin, 2017, p. 284.

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LES PRINCIPES REGISSANT L'EXPULSION DES ÉTRANGERS À LA LUMIÈRE DE LA JURISPRUDENCE DE LA CEDH, LA CIJ ET LA PRATIQUE DES ORGANES DE CONTRÔLE ONUSIENS

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Abstract

Expulsion as a measure for the removal of foreigners from a State is governed by number of principles, which must be respected by the State having resorted to expulsion. First, we note that a State has the power to expel a foreigner from its territory, because of its sovereign power on grounds of public order, national security, or the illegal stay of the foreigner. But this expulsion is regulated by international law through a number of principles. However, the power of State in this matter is not unlimited. Thus, any decision to expel must be in accordance with the law, the State is not allowed to resort to collective expulsion, moreover, a State should only expel the foreigner to another State which is safe of origin which is safe, to prevent the foreigner from being subjected to torture.

Keywords: principles, expulsion of foreigners, case law, UN bodies, control

Introduction

Il est important de cerner en premier le sens et le contenu du mot expulsion, pour pouvoir, examiner avec clarté les principes qui régissent cette expulsion des étrangers. De ce fait, Richard Perruchoud définit l'expulsion comme « *l'action de chasser quelqu'un avec violence ou par une*

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décision de l'autorité du lieu où il était établi »¹. Sur le plan juridique poursuit le même auteur citant Ch. Rousseau, que « l'expulsion est la manifestation juridique d'un acte politique par lequel un État ordonne à un ou des étrangers de quitter son territoire dans un délai déterminé. En d'autres termes, l'expulsion est l'acte par lequel l'autorité compétente d'un État somme et contraint un ou plusieurs individus étrangers se trouvant sur son territoire d'en sortir sans délai ou à bref délai et leur interdit d'y pénétrer à nouveau »². Deux observations peuvent ressortir de cette définition à notre avis. En premier, l'expulsion est une décision d'État, ou de ses démembrements. En second lieu, ladite décision d'expulsion doit concerner une personne étrangère qui est déjà sur le territoire de l'État en question. C'est d'ailleurs, cet aspect qui différencie l'expulsion du refoulement qui se définit comme étant « la mesure d'éloignement prise à la frontière. Le mot refouler l'indique, comme une vague, la mesure repousse l'étranger, empêche son accès au territoire. Le refoulement doit être également motivé »³.

Cette expulsion qui est une mesure d'éloignement, concerne l'étranger. Celui-ci, est considéré de manière objective par rapport à l'État. Ce qui fait que l'on considère comme étranger, « la personne ou l'individu qui n'a pas la nationalité de l'État sur le territoire duquel, il se trouve. L'étranger s'oppose donc au national dans ce sens⁴ ». Nous constatons alors que le statut de l'étranger s'applique dès lors qu'une personne franchit, les frontières d'un État dont il n'a pas la nationalité. L'étranger ne se limite donc pas uniquement aux réfugiés, demandeurs d'asile, les apatrides, travailleurs migrants, migrants économiques etc, ce statut juridique concerne toute

¹ R. Perrouchoud, « L'expulsion en masse des étrangers », in *Annuaire français de droit international*, Volume 34, 1988, p. 677. Disponible sur <<https://www.persee.fr/doc/afdi-0066-3085-num-34-1-2861>>, consulté le 30/01/2020.

² Ch. Rousseau, *Droit international public, tome III : les compétences*, Sirey, Paris, 1977, p. 19 cité par R. Perrouchoud, *op. cit.*

³ J.-Y. Carlier et S. Sarolea, *Droits des étrangers*, Larcier, Bruxelles, 2016, p.195.

⁴ F. Julien-Laferrière, « L'étranger, une catégorie juridique discriminante in H. Asséo, F. Julien-Laferrière, L. Missaoui, *L'étranger. Études et travaux de l'IRMC (Institut de Recherche sur le Maghreb contemporain)*, 2002, p. 13.

personne qui se trouve sur le territoire autre que celui de l'État dont elle a la nationalité. Pour Jean-Yves Carlier et S. Sarolea, la définition théorique de l'étranger est une « *définition négative, en miroir : l'étranger est quiconque n'a pas la nationalité du pays où il se trouve. Il s'en déduit deux conséquences. Premièrement la définition négative conduit à l'exclusion. L'étranger est celui qui n'appartient pas à la communauté nationale, qui sera exclu de certains droits liés à la nationalité. Ce qui fait pour lui que le droit des étrangers soit un droit d'exclusion*⁵ ». En conséquence, « *l'accès au territoire et le séjour ne seront pas autorisés, sauf si l'étranger dispose d'une autorisation préalable sous forme de visa. Deuxièmement, cette définition n'épuise pas toutes les hypothèses. Cela étant, la personne peut se trouver sur le territoire d'un État dont il n'a pas la nationalité, telle personne ne sera pas considérée comme étranger parce qu'elle appartient à un ensemble d'État intégrés*⁶ ». Les auteurs évoquent ainsi le cas des citoyens européens qui peuvent être étrangers dans un autre État membre, mais qui ont un statut privilégié en qualité de citoyen européen⁷.

L'article 1 de la convention européenne des droits de l'homme apporte une nuance de plus dans la définition de l'étranger, en précisant qu'est « *étranger, celui qui n'a pas la nationalité de l'État dont il relève de juridiction* »⁸. Toute personne peut donc à différents moments et pour différents droits, relever de la juridiction de différents États⁹.

Au regard de ce qui précède, il est important de préciser que le droit international reconnaît à l'État le pouvoir discrétionnaire d'accepter ou de refuser à un individu l'accès sur son territoire, à travers sa politique de visa. De ce fait, l'État fixe librement les conditions d'entrer et de sortir des étrangers sur son territoire. Cela se comprend aisément par les termes

⁵ J.-Y. Carlier et S. Sarolea, *op.cit.*, p. 35.

⁶ La Convention d'application des Accords de Schengen, qui a mis en place la suppression progressive des contrôles aux frontières intérieures, définit l'étranger comme « toute personne autre que les ressortissants des États membres des communautés européennes », Pour aller plus loin voir J.-Y. Carlier et S. Sarolea, *op. cit.*

⁷ *Ibidem.*

⁸ Voir article 1 de la Convention européenne des droits de l'homme de 1953.

⁹ J.-Y. Carlier et S. Sarolea, *op.cit.*, p. 35.

retenus par l'alinéa 2 de l'article 13 de la Déclaration universelle des droits de l'homme (DUDH) qui prévoit que « *toute personne a le droit de quitter son pays, y compris le sien, et de revenir dans son pays*¹⁰ ». Comme on le voit très bien, cet article ne garantit pas le droit d'entrer dans un autre pays, mais plutôt le droit de quitter son propre pays ou tout autre. L'article 14 de la même déclaration garantit le droit à l'asile en ces termes « *devant la persécution, toute personne a le droit de chercher asile et de bénéficier de l'asile en d'autres pays* »¹¹. Comme le précise J-Y. Carlier, « *le droit d'asile est un droit de l'État et le droit des réfugiés est un droit de l'individu* »¹². Ce qui suppose que l'article 14 précité qui reconnaît le droit de chercher et de bénéficier de l'asile, n'en fait pas un droit pour l'individu. Cela étant, l'État peut accorder ou refuser l'asile. Le pacte international relatif aux droits civils et politiques, reprend à son article 12 point 2, le contenu de l'alinéa 2 de l'article 13 de la DUDH précité en ces termes « *toute personne est libre de quitter tout pays, y compris le sien* »¹³.

L'économie générale que l'on peut faire du droit international public, est qu'en matière de libre circulation, l'individu n'a que le droit de quitter son pays, le droit d'entrer dans un autre pays pour lequel, il n'a pas de nationalité, est subordonné à la volonté dudit État concerné. Logiquement, le même droit international, qui reconnaît avec clarté et en raison de la souveraineté des États, d'énormes compétences discrétionnaires aux États de décider librement de l'accès ou non des étrangers sur leurs territoires, assigne à ces mêmes États, certaines obligations en matière de respect des droits des étrangers, dont l'accès sur les territoires desdits États a été accordé¹⁴.

¹⁰ Art. 13 al. 2 de la Déclaration universelle des droits de l'homme du 10 décembre 1948.

¹¹ Art. 14 de la Déclaration universelle des droits de l'homme du 10 décembre 1948.

¹² J-Y. Carlier, *La condition des personnes dans l'Union Européenne*, Larcier, Bruxelles, 2007, p. 154.

¹³ Art. 12 point 2 du Pacte international relatif aux droits civils et politiques de 1966.

¹⁴ CEDH, *Guide de Jurisprudence sur l'article 1 de la convention européenne des droits de l'homme. Obligation de respecter les droits de l'homme notions de juridiction et d'imputabilité*, Edition du

De ce fait, c'est aux États d'assurer la protection des personnes se trouvant sur leurs territoires¹⁵. Pour ladite protection des droits de l'homme et des libertés fondamentales, les États doivent accorder aussi bien une protection de ces droits à leurs nationaux, qu'aux étrangers se trouvant sur leurs territoires¹⁶. Une fois que l'État admet un étranger sur son territoire, il se doit également, à travers ses services de sécurité et autres, d'assurer sa protection¹⁷. Il va de soi que l'étranger étant entré légalement sur le territoire d'un État, a l'obligation de respecter la législation de l'État hôte, qu'il soit réfugié, étranger ordinaire, migrant, apatride, demandeur d'asile, etc. L'expulsion telle que développée précédemment, est donc une mesure d'éloignement à travers laquelle, l'État hôte se débarrasse des personnes étrangères en situation irrégulière sur son territoire, pour des raisons d'ordre public, la sécurité intérieure de l'État hôte, ou encore, les demandeurs d'asile, dont les demandes ont été rejetées. Cette expulsion relève donc du droit national, mais connaît un encadrement du droit international. Comme le note A-L. Ducroquetz, « *l'idée sous-jacente qui doit être tirée des règles du droit international, est que les États ne peuvent pas pratiquer l'expulsion sans limite aucune. Il transparaît en effet que le principe premier, en vertu duquel leur pouvoir d'expulsion serait absolu, est obsolète*¹⁸ ».

Conseil de l'Europe, Strasbourg, 2019, p. 5, disponible sur <www.echr.coe.int>, consulté le 30/01/2020.

¹⁵ J-F. Akandji-Kombe, « Les obligations positives en vertu de la Convention européenne des droits de l'homme », in *Précis sur les droits de l'homme*, n° 7, Conseil de l'Europe, 2006, p. 7, <<https://www.refworld.org/pdfid/49f184122.pdf>>, consulté le 14/10/2020. Voir aussi, G. Sepeduti, « La protection des droits de l'homme et le principe de non-intervention dans les affaires intérieures des Etats », in Institut de droit international, Session de Saint-Jacques-de-Compostelle, 1989, pp. 1-4, <https://www.idi-iil.org/app/uploads/2017/06/1989_comp_03_fr.pdf>, consulté le 14/10/2020.

¹⁶ CEDH, *op.cit*, p. 6.

¹⁷ Dans l'interprétation de l'article 1 de la CEDH, la Cour européenne des droits de l'homme a noté à l'occasion de l'affaire *Catan et autres c. République de Moldova et Russie* [GC], § 103, que c'est « l'État de juridiction auprès de laquelle l'étranger se trouve, qui a l'obligation de le protéger et de protéger ses droits ».

¹⁸ A-L. Ducroquetz, *L'expulsion des étrangers en droit international et européen*, Thèse de doctorat en droit public, Université de Lille 2, 2007, p. 23.

Cet état de chose incite des questions relatives au respect du droit des étrangers et du droit international par les États hôtes. L'examen de quelques cas de jurisprudence de la Cour européenne des droits de l'homme, la Cour internationale de justice et les observations générales des organes des nations unies, à travers une analyse exégétique et jurisprudentielle permettra de rendre compte de l'encadrement jurisprudentiel et pratique de l'expulsion des étrangers.

L'expulsion des étrangers et ses principes directeurs

Comme relevé précédemment, l'expulsion d'un étranger est une mesure d'éloignement qui relève du pouvoir discrétionnaire de l'État hôte en raison de sa souveraineté. Toutefois, ce pouvoir connaît des limites liées à l'interdiction des expulsions collectives, le non-refoulement, le respect des droits fondamentaux et la disponibilité des voies de recours dans certaines circonstances.

Le principe de souveraineté des États

Notons que « *la souveraineté est le pouvoir suprême reconnu à l'État, qui implique l'exclusion de sa compétence sur le territoire national et son indépendance dans l'ordre international, où il n'est limité que par ses propres engagements*¹⁹ ». En raison donc de sa souveraineté, l'État exerce la plénitude des compétences sur son territoire. De ce fait, la réglementation de l'immigration relève de ses compétences législatives, et c'est à ce titre que l'État à travers une législation spécifique, couramment appelée la condition des étrangers, énumère un certain nombre des droits dont peuvent jouir les étrangers, auxquels, il a donné l'accès à son territoire. La violation des règles relatives à la condition des étrangers peut amener l'État hôte dans l'exercice de sa souveraineté à expulser l'étranger auteur de ladite violation

¹⁹ C. Colliard, *Précis des institutions Internationales*, Dalloz Paris, 1967, p. 77, disponible sur <<http://www.africmemoire.com/part.3-chapitre-i-generalite-sur-la-souverainete-de-letat-1505.html>>, consulté le 31/01/2020.

en respectant la procédure y relative. Notons que « *l'immigration intéresse directement la souveraineté de l'État en ce que l'immigration touche aux trois éléments qui composent l'Etat : le territoire, la population et le gouvernement* »²⁰. Quand il s'agit donc d'immigration, de droits des étrangers, le principe affirmé est celui de la souveraineté nationale. La migration et le contrôle de l'accès au territoire sont des exemples habituels d'exercice de la souveraineté²¹.

Dans l'affaire Chinese Exclusion Case, la Cour suprême des USA a estimé que « *l'indépendance, la préservation de l'identité nationale et la souveraineté de la nation impliquent le contrôle absolu de l'entrée des étrangers sur le territoire* »²². Précisons en plus qu'en raison de la souveraineté toujours, la Cour européenne des droits de l'homme a précisé dans l'affaire Abdulaziz, Cabales et Balkandali contre Royaume-Uni que « *d'après un principe de droit international bien établi, les Etats ont le droit, sans préjudice des engagements découlant pour eux des traités, de contrôler l'entrée des non-nationaux sur leur sol* »²³. L'étranger ayant gravement porté atteinte à l'ordre public ou à la sécurité nationale peut se voir expulser. Il sied de préciser que l'ordre public bien qu'étant une notion polysémique, fait allusion au « *caractère des règles juridiques qui s'imposent pour des raisons de moralité ou de sécurité impératives dans les rapports sociaux* »²⁴. Elle recouvre donc le bon ordre, la sécurité, la salubrité et la tranquillité publique²⁵. Cette notion d'ordre public

²⁰ J-Y. Carlier et S. Sarolea, *op.cit.*, p.70.

²¹ *Ibidem.*

²² C.S. Etats-Unis, 13 mai 1889, The Chinese Exclusion Case, 130 US 581, 18 janvier 1892, Nishimura Ekiu v. United States, 142 US 651, citée par J-Y. Carlier et S. Sarolea, *op. cit.*, pp. 72-73.

²³ CEDH, Aff. Abdulaziz, Cabales et Balkandali c. Royaume-Uni, 1985, citée par J-Y. Carlier et S. Sarolea, *op. cit.*, p. 73.

²⁴ S. Guinchard et al, *Lexique des termes juridiques*, Dalloz, Paris, 2018, p. 400, <http://bibliotheque.pssfp.net/livres/LEXIQUE_DES_TERMES_JURIDIQUES_2017_2018.pdf>, consulté le 14/10/ 2020.

²⁵ M. Bertrand Louvel, « L'ordre public : regards croisés du Conseil d'Etat et de la Cour de Cassation françaises », *Actes de Colloque du 24 février 2017*, paris, pp. 1-4.

réfère donc aux valeurs fondamentales d'un ordre social donné, et peut varier d'un État à un autre.

L'on doit en outre noter que cette notion d'ordre public se distingue difficilement avec celle de sécurité nationale. Toutefois J-Y. Carlier et S. Sarolea pensent que « *l'on peut considérer à ce sujet, qu'il s'agit d'un niveau de gravité plus élevé qui représente non seulement, comme l'ordre public, une menace réelle et suffisamment grave affectant un intérêt fondamental de la société, mais une menace réelle et suffisamment grave affectant l'existence même de la société*²⁶ ». L'exemple qui peut être donné à ce sujet est le terrorisme.

C'est ainsi que dans le passé, à savoir au XX^{ème} siècle, « les arbitres reconnaissaient déjà aux États le droit d'expulser les étrangers. Ainsi, dans l'affaire *Ben Tillett*, l'arbitre A. Desjardins admettait explicitement ce droit en soulignant qu' « *envisagé dans son principe, le droit d'expulser ne saurait être contesté à un État sur son territoire. Toutefois, les arbitres se sont rapidement inspirés de cette idée que ce droit n'était pas illimité*²⁷ ». L'on comprend toutefois, que l'exercice de la souveraineté de l'État en matière d'expulsion des étrangers, n'est pas illimité. Cela suppose que l'État doit respecter certaines contraintes exigées par les conventions relatives aux droits de l'homme, la coutume internationale et les règles de jus cogens.

L'interdiction des expulsions collectives

Au niveau de l'UE, l'article 4 du protocole n° 4 à la convention européenne des droits de l'homme « *interdit formellement les expulsions collectives des étrangers*²⁸ ». La Cour européenne des droits de l'homme a même donné une définition de l'expulsion collective des étrangers en ces termes « *l'expulsion collective est toute mesure prise par les autorités compétentes contraignant des étrangers, en tant que groupe, à quitter un pays, sauf dans les cas où une telle mesure est prise à l'issue et sur la base d'un examen*

²⁶ J-Y. Carlier et S. Sarolea, *op.cit*, p. 314.

²⁷ A-L. Ducroquetz, *op.cit*, p. 17.

²⁸ Art. 4 du Protocole 4 à la Convention européenne des droits de l'homme et des libertés fondamentales.

*raisonnable et objectif de la situation particulière de chacun des étrangers qui forment le groupe*²⁹ ». Nous constatons aisément à la lumière de cette définition donnée par la Cour européenne des droits de l'homme, que l'État même si ayant le pouvoir d'expulser un étranger en situation irrégulière sur son territoire, il ne doit pas procéder à des expulsions collectives. Il doit plutôt faire un examen au cas par cas³⁰. Le droit européen limite à travers cet article 4 du protocole précité, l'exercice abusif de la souveraineté et compétence des États membres en matière d'expulsion des étrangers.

Le principe du non-refoulement et la prévention de la torture ou le traitement inhumain et dégradant

Le principe de non-refoulement est prévu à l'article 33 de la Convention de Genève sur le statut des réfugiés en ces termes « *aucun des États contractants n'expulsera ou ne refoulera, de quelque manière que ce soit, un réfugié sur les frontières des territoires où sa vie ou sa liberté serait menacée en raison de sa race, de sa religion, de sa nationalité, de son appartenance à un certain groupe social ou de ses opinions politiques. Le bénéfice de la présente disposition ne pourra toutefois être invoqué par un réfugié qu'il y aura des raisons sérieuses de considérer comme un danger pour la sécurité du pays où il se trouve ou qui, ayant été l'objet d'une condamnation définitive pour un crime ou délit particulièrement grave, constitue une menace pour la communauté dudit pays*³¹ ». Bien que cette disposition prévoit une exception liée au fait que si le réfugié constitue un danger contre la sécurité nationale puisse être expulsé, nous constatons, que cet article prévoit toujours une certaine protection pour le réfugié, protection selon laquelle, il ne doit pas être expulsé dans un pays ou un

²⁹ CEDH, Affaires *Andric c. Suède* et *Čonka c. Belgique*, § 59, dans Guide sur l'article 4 du Protocole n° 4 à la Convention européenne des droits de l'homme, Conseil de l'Europe, 2019, p. 5. Disponible sur <https://www.echr.coe.int/Documents/FS_Collective_expulsions_FRA.pdf>, consulté le 31/01/2020.

³⁰ J-M. Ferry, « Face à la crise des réfugiés, l'Union européenne au défi du cosmopolitique », in H. Mercenier et al (dir), *La libre circulation sous pression. Régulation et dérégulation des mobilités dans l'Union européenne*, Bruxelles, Bruylant, 2018, pp. 113-124.

³¹ Art. 33 de la Convention de Genève sur le statut des réfugiés de 1951.

territoire, où sa vie, sa santé etc seront en danger. Le principe de non-refoulement interdit le retour dans le pays d'origine, qualifié de refoulement direct, mais également le transfert vers des pays où les personnes sont exposées au risque d'un renvoi subséquent vers le pays d'origine, à savoir le refoulement indirect ou en chaîne³².

L'importance de ce principe du non-refoulement à ces jours ou avant même, fait que ce principe est considéré de nos jours comme une règle coutumière. Ainsi, la Cour internationale de justice a considéré à l'occasion de l'affaire du Plateau continental de la mer du Nord reprenant l'article 38 du Statut de la CIJ que « *la coutume peut lier des Etats même en dehors de leur consentement du seul fait de leur appartenance à la communauté internationale qui reconnaît cette source du droit* »³³. Par conséquent, dans l'affaire précitée, la Cour assimile l'élément subjectif de la formation de la coutume internationale à une prise de conscience collective, c'est-à-dire de tous les sujets du droit international confondus, et juridique, de la nécessité sociale³⁴. Nous constatons qu'elle considère que la coutume doit son existence à des impératifs de la société internationale. Ces nécessités outrepassent la sacro-sainte volonté souveraine des États³⁵. Ce qui démontre que la norme coutumière dispose d'un rang particulier dans l'ordonnement juridique international.

Disons que malgré le fait que ce principe de non-refoulement puisse avoir ce rang particulier de norme coutumière, la pratique des États en matière d'expulsion des étrangers, n'est pas toujours conforme à l'esprit de

³² D. Monsch, « L'accord de réadmission dans la gestion de la crise des réfugiés : un révélateur de crise de l'Union Européenne ? », dans J. Auvret-Finck et A-S. Millet-Devalle (dir), *Crise des réfugiés*, Ed. Pédone, Paris, 2016, pp. 399-426.

³³ CIJ, Affaire du Plateau Continental du Mer du Nord, (République fédérale d'Allemagne c. Danemark République fédérale d'Allemagne c. Pays-Bas), [1969], citée par J-P. Beurrier, « L'influence de l'évolution du droit international sur ses sources », in *Revue québécoise de droit international*, Vol. 8, n° 2, 1993-1994, pp. 216-227, <https://www.sqdi.org/wp-content/uploads/08.2_-_beurrier.pdf>, consulté le 14/10/2020.

³⁴ Sabir Karim Mouttaki, « La coutume internationale : sujets de droit, consentement et formation de la coutume », in *Ottawa Law Review*, Vol. 9, 2004, pp. 255-275.

³⁵ *Ibidem*, p. 259.

cette norme³⁶. Si l'on se limite à l'état de la jurisprudence de la Cour européenne des droits de l'homme, l'on remarque que ce principe a été violé maintes fois par les États, bien que ceux-ci, soient condamnés par après par la Cour. De ce fait, l'Italie a été condamnée dans l'affaire Hirsi et autres, pour les avoir expulsés collectivement dans la mer méditerranée vers la Libye, alors qu'il est évident que ces gens devaient subir la torture et le traitement inhumain sur le territoire de la Libye. Ce qui a poussé la Cour européenne à faire application de l'article 4 du protocole 4 à la convention européenne des droits de l'homme, en condamnant l'Italie.

Interdiction de l'expulsion arbitraire des étrangers

Il est également important que l'étranger qui a ou qui doit subir l'expulsion, puisse avoir la possibilité de pouvoir contester la décision d'expulsion devant les juridictions nationales de l'État hôte. De ce fait, au niveau de la convention européenne des droits de l'homme, « *la notion de recours effectif au sens de l'article 13 de la Convention implique que le recours soit de nature à empêcher l'exécution de mesures contraires à la Convention et dont les conséquences sont potentiellement irréversibles*³⁷ ». Ainsi, dans l'affaire Conka c. Belgique, la Cour européenne des droits de l'homme indique que « *le contenu de l'article 13 s'oppose à ce que pareilles mesures soient exécutées avant même l'issue de l'examen par les autorités nationales de leur compatibilité avec la Convention. Il en résulte que le recours doit avoir un caractère suspensif pour satisfaire aux exigences de l'article 13 de la Convention combiné avec l'article 4 du Protocole no 4, concernant l'effectivité des recours devant le Conseil d'État*³⁸ ».

La Cour européenne des droits de l'homme fait toutefois une nuance dans l'affaire Khaifia c. Italie, en arguant qu'il convient de noter que « *l'absence d'effet suspensif d'un recours contre une décision d'éloignement*

³⁶ Ph. de Bruycker, « La nouvelle agence européenne de garde-frontière et de garde-côtes : un modèle neuf bâti sur une logique dépassé », dans J. Auvret-Finck et A-S. Millet-Devalle, *op.cit.*, pp. 11-166.

³⁷ Conseil de l'Europe, *Guide sur l'application de l'article 4 du protocole 4*, *op.cit.*, p. 10.

³⁸ CEDH, Aff. *Čonka c. Belgique*, § 79 déjà citée.

n'est pas en soi constitutive d'une violation de l'article 13 de la Convention combiné avec l'article 4 du Protocole no 4 lorsqu'un requérant n'allègue pas un risque réel de violation de ses droits au titre des articles 2 et 3 dans le pays de destination »³⁹.

Dans son observation générale sur l'article 13 du pacte international relatif aux droits civils et politiques, le Comité des droits de l'homme de l'ONU soutient clairement que « *l'article 13 ne porte directement que sur la procédure, et non sur les motifs de fond de l'expulsion. Cependant, pour autant qu'il n'autorise que les mesures exécutées à la suite d'une décision prise conformément à la loi, son objectif évident est d'éviter les expulsions arbitraires. D'autres part, il reconnaît à chaque étranger le droit à une décision individuelle; il s'ensuit que les lois ou décisions qui prévoiraient des mesures d'expulsion collective ou massive ne répondraient pas aux dispositions de l'article 13* »⁴⁰. À travers cette Observation, le Comité des droits de l'homme de l'ONU, précise le contenu de l'article 13 et insiste sur le fait que même en cas d'expulsion, la décision relative à celle-ci, doit obligatoirement être fondée sur la loi.

Il va de soi, que toute décision d'expulsion prise en dehors de la loi, est une violation de l'article 13 du pacte international relatif aux droits civils et politiques. Toutefois, la précision du Comité est claire sur l'étendue et le champ d'application de l'article 13 du PIDCP, elle indique que cet article se limite aux étrangers en situation régulière dans l'État hôte et donc, il écarte les clandestins de son champ d'application, mais pour des raisons humaines, les États face aux clandestins, doivent se comporter de bonne foi, en les accordant une protection au regard de leurs droits nationaux et du droit international de manière générale. Cela étant, même pour un étranger clandestin, ses droits et sa dignité humaine, doivent être respectés par les États.

³⁹ CEDH, Aff. *Khlaifia et autres c. Italie* [GC], § 281. In Guide du Conseil de l'Europe sur l'application de l'article 4 du protocole 4, *op.cit.*, p. 10.

⁴⁰ Comité des droits de l'homme de l'ONU, Observation n° 15 : situation des étrangers au regard du pacte international relatif aux droits civils et politiques, 1986, p. 3.

L'encadrement jurisprudentiel des principes régissant l'expulsion des étrangers

Nous avons démontré dans le premier point de cette étude qu'en vertu du principe de la souveraineté des États, ces derniers peuvent dans certaines circonstances bien précisées également dans le même point précité, expulser les étrangers en situation irrégulière, ou pour motif d'ordre public, de sécurité nationale, etc. Toutefois, il est nécessaire de montrer à travers ce point que ce pouvoir d'expulser les étrangers reconnu aux États, a connu et continu de connaître un encadrement jurisprudentiel des juridictions internationales et communautaires mais aussi, celui des observations générales qui viennent des organes onusiens de contrôle. De ce fait, la décision d'expulsion de l'étranger pour cause d'ordre public, doit tenir compte de la proportionnalité, la condamnation de l'exercice de juridiction en dehors du territoire de l'État, l'expulsion vers un État tiers sûr et la prévention de la torture, l'existence des voies de recours et leur effectivité.

La proportionnalité de l'objectif visé et le droit protégé

Dans l'affaire M. Beldjoudi, la Cour européenne des droits de l'homme a reconnu « *qu'il incombe aux États contractants d'assurer l'ordre public, en particulier dans l'exercice de leur droit de contrôler, en vertu d'un principe de droit international bien établi, à savoir la souveraineté, et sans préjudice des engagements découlant pour eux de traités, l'entrée, le séjour et l'éloignement des non-nationaux*⁴¹ ».

Toutefois indique la même Cour, « *leurs décisions en la matière, dans la mesure où elles porteraient atteinte à un droit protégé par le paragraphe 1 de l'article 8, doivent se révéler nécessaires dans une société démocratique, c'est-à-dire justifiées par un besoin social impérieux et notamment, proportionnées au but*

⁴¹ Voir CEDH, Arrêts Abdula aziz, Cabales et Balkandali c. Royaume-Uni du 28 mai 1985, Berrelab c. Pays Bas du 21 juin 1988 et Moustaquim c. Belgique du 18 février 1991.

*légitime poursuivi*⁴² ». Dans sa motivation, la même Cour a précisé « *qu'au regard de ces diverses circonstances, il apparaît quant au respect de la vie familiale des requérants, que la décision d'expulser M. Beldjoudi, si elle recevait exécution, ne serait pas proportionnée au but poursuivi et violerait l'article 8 de la convention européenne des droits de l'homme, alors même que Beldjoudi, avait un passé pénal très lourd, et devait être expulsé. La Cour a donc condamné l'expulsion par la France d'un algérien né en France et y ayant épousé une française*⁴³ ».

Nous constatons à travers cette affaire que le pouvoir d'expulser les étrangers pour motif d'ordre public, sécurité national reconnu aux États, peut connaître des limitations venant des mécanismes juridictionnels de contrôle du respect des instruments juridiques internationaux. Dans le cas d'espèce, la Cour européenne des droits de l'homme a condamné la France, pour non proportionnalité entre le but visé par sa décision d'expulser Beldjoudi et le droit à protégé, qui est le droit au regroupement familiale des citoyens européens et leurs conjoints et ou, membres de famille.

La condamnation de l'exercice de juridiction par l'État en dehors du territoire national pour empêcher les migrants d'atteindre son territoire

Dans l'affaire HIRSI Jamaa contre Italie, la Cour européenne des droits de l'homme a condamné l'Italie alors que ces ressortissants Erythréens, n'étaient pas encore entrés sur le territoire Italien. Ce qui fait que logiquement, l'État Italien, soutenait « *qu'il ne s'agissait pas d'une expulsion mais d'un cas de non-admission qui se plaçait au-delà du champ d'application de l'article 4 du Protocole n° 4* ». Face à cet argument de l'État Italien, la Cour a déclaré que « *la Convention est un instrument vivant qui doit être interprété à la lumière des conditions actuelles et d'une manière qui en rende les garanties concrètes et effectives et non pas théoriques et illusoires. Elle a ensuite constaté que le but de l'article 4 du Protocole n° 4 est d'éviter que les États puissent éloigner un certain nombre d'étrangers sans examiner leur situation*

⁴² CEDH, Aff. Beldjoudi c. La France, 26 mars 1992.

⁴³ *Ibidem*.

personnelle et, par conséquent, sans leur permettre d'exposer leurs arguments s'opposant à cette mesure⁴⁴ ».

Nous constatons directement que la Cour dans le souci d'apporter une meilleure protection aux étrangers, condamne « toute activité de l'État qui empêche l'entrée à un territoire et toute activité pareille constitue une expulsion aux termes de l'article 4 du Protocole n° 4, soit que le rejet ait lieu sur le territoire de l'État, soit qu'il ait lieu hors ce territoire. Cette idée large d'expulsion a été reprise par la Cour dans des affaires postérieures concernant des migrants refoulés immédiatement après avoir gagné le territoire de l'État⁴⁵ ». La même Cour européenne des droits de l'homme, a « rejeté dans l'affaire Sharifi et autres contre Grèce, une exception d'incompatibilité *ratione materiae* avec la Convention présentée par le gouvernement défendeur pour qui l'interdiction des expulsions collectives serait d'application dans des cas d'expulsion *stricto sensu*, mais non de refus d'admission sur un territoire⁴⁶ ». À travers cette condamnation de la Grèce et de l'Italie, la CEDH a donné une interprétation large que l'on doit avoir sur la manière d'exercice par l'État de ses compétences territoriales en matière d'expulsion collective. Et pour la Cour, le fait d'empêcher des migrants à atteindre son territoire pour que l'État en question ne puisse pas examiner leur demande d'asile, constitue une expulsion collective et tombe sur le champ de l'article 4 du protocole 4 à la Convention européenne des droits de l'homme.

Cette position de la Cour européenne des droits de l'homme dans l'affaire Hirsi Jamaa, semble marié correctement le raisonnement du Comité contre la torture au regard de son observation sur l'article 2 de la Convention contre la torture. Dans cette observation, le Comité précité précise que « la notion de territoire sous sa juridiction, étroitement liée au principe d'intangibilité, s'entend de tout territoire ou établissement et doit être

⁴⁴ Affaire Hirsi Jamaa c. Italie citée par F. Arlettaz, « Expulsions collectives : définition et portée de leur interdiction dans la jurisprudence de la Cour européenne des droits de l'homme », in *Annuaire canadien de droit international*, vol. 56, 2019, p. 63.

⁴⁵ F. Arlettaz, *op.cit.*, p. 64.

⁴⁶ Affaire Shariff citée par F. Arlettaz, *op. cit.*

appliquée sans discrimination d'aucune sorte de manière à protéger quiconque, ressortissant ou non-ressortissant, relève de droit ou de fait d'un État partie. Il souligne que l'obligation de l'État de prévenir la torture s'applique aussi à quiconque agit, de droit ou de fait, au nom de l'État partie ou en liaison avec lui ou encore à sa demande. Il est urgent que chaque État partie suive de près ses agents et quiconque agit à sa demande et repère tout acte de torture ou tout mauvais traitement résultant notamment de mesures antiterroristes et en rende compte au Comité, en lui indiquant les mesures prises pour enquêter sur les actes de cette nature, les punir et les prévenir à l'avenir, en accordant une attention particulière à la responsabilité légale des auteurs directs et des supérieurs hiérarchiques, que les actes aient été commis à leur instigation ou avec leur consentement explicite ou tacite⁴⁷ ».

Il est visible que le Comité précité dans son raisonnement va plus loin que les limites territoriales des États, pour encadrer et prévenir tout acte de torture que l'État commettrait même en dehors de son territoire, en agissant sous quelques formes à travers des personnes ou organismes interposés, agissant de droit ou de fait au nom de l'État. Il s'agit vraiment là d'une protection large assurée aux victimes, contre les actes de torture simulés des États.

L'expulsion vers un État tiers sûr ou l'État d'origine sûr et la prévention de la torture

Bien que le pouvoir d'expulser les étrangers soit reconnu aux États dans les circonstances déjà développées dans la première partie, l'État ayant ou qui veut procéder à l'expulsion de l'étranger, doit s'assurer que le pays où l'étranger sera amené, constitue un pays tiers sûr ou un pays d'origine sûr, pour éviter que l'étranger expulsé puisse subir la torture ou le traitement inhumain et dégradant dans ledit pays tiers. Sachant tout naturellement que l'interdiction de la torture est une règle de jus cogens de

⁴⁷ Comité contre la torture, Observation générale n° 2 sur l'article 2 de la Convention contre la torture et les traitements inhumains et dégradants, 2008.

droit international. Au niveau européen, c'est le règlement de Dublin II et III, qui en donnent un contenu. De ce fait, l'article 3§3 du règlement Dublin III, « donne la possibilité aux États membres de renvoyer le demandeur d'asile vers un pays tiers à l'UE. Pour autant que, conformément à la nouvelle directive 2013/32/UE (plus communément dénommée directive procédure refonte⁴⁸ remplaçant la directive 2005/85, le pays tiers soit considéré comme un pays tiers sûr, ou pays d'origine « sûr »⁴⁹. En plus, l'article 37 de la directive « autorise les États membres à mettre en place une liste établissant les pays tiers qu'ils présument être des « pays d'origine sûrs », ce qui permet d'accélérer le déroulement de la procédure de renvoi⁵⁰.

À l'occasion de l'observation générale n° 3, le Comité contre la torture a précisé l'étendue des obligations prévues à l'article 14 de la Convention contre la torture en ces termes « chaque État partie est tenu de garantir, dans son système juridique, à la victime d'un acte de torture le droit d'obtenir réparation et d'être indemnisée équitablement et de manière adéquate, y compris les moyens nécessaires à sa réadaptation la plus complète possible. Le Comité considère que l'article 14 s'applique à toutes les victimes d'actes de torture et de traitements ou peines cruels, inhumains ou dégradants ci-après mauvais traitements, sans discrimination d'aucune sorte, conformément à son Observation générale no 2⁵¹ ». Il en va de soi, qu'un État exerçant sa compétence en matière d'expulsion des étrangers, puisse respecter cet article 14 et les obligations contenues dans cette disposition d'après l'observation générale précitée. Dans le cas contraire, et au regard du caractère de jus cogens que le droit international accorde à l'interdiction de la torture et le traitement

⁴⁸ Directive 2013/32/UE du Parlement européen et du Conseil du 26 juin 2013 relative à des procédures communes pour l'octroi et le retrait de la protection internationale (refonte), J.O.U.E., L 180 du 29 juin 2013, citée par M. Clara, *op. cit.*, p. 39.

⁴⁹ Art.3§3 du règlement Dublin cité par M. Clara, *op. cit.*, p. 38.

⁵⁰ J-Y. Carlier, S. Sarolea, *Droit des étrangers*, Bruylant, Bruxelles, 2016, p. 467, cités par M. Clara, *op.cit*, p. 39.

⁵¹ Comité contre la torture, Observation générale n° 3 de 2012 sur l'art. 14 de la Convention contre la torture et les traitements inhumains et dégradants, observation disponible sur <https://www.apt.ch/content/files/cd1/Compilation%20des%20textes/7_8_9_10/9.2_CAT%20Observation%20generale%20No3.pdf>, consulté le 31/01/2020.

inhumain et dégradant, cet État doit engager sa responsabilité pour violation des droits de l'homme et du droit international.

Dans son observation relative à l'article 2 de la Convention contre la torture, le Comité contre la torture écarte toute situation pouvant justifier la torture sous toutes ses formes. De ce fait, le Comité précise que « *le paragraphe 2 de l'article 2 dispose que l'interdiction de la torture est absolue et qu'il est impossible d'y déroger. Il précise qu'aucune circonstance exceptionnelle, quelle qu'elle soit, ne peut être invoquée par un État partie pour justifier la torture dans tout territoire sous sa juridiction. La Convention cite entre autres circonstances exceptionnelles l'état de guerre ou de menace de guerre, l'instabilité politique intérieure ou tout autre état d'exception. Cela inclut toute menace d'acte terroriste ou de crime violent ainsi que le conflit armé, international ou non international. Le Comité rejette catégoriquement la pratique profondément préoccupante consistant pour les États à tenter de justifier la torture ou les mauvais traitements par la nécessité de protéger la sécurité publique ou d'éviter une situation d'urgence, que ce soit dans les situations susmentionnées ou dans toute autre situation*⁵² ». De cette observation, l'on comprend que l'interdiction de la torture est absolue, et dans une situation d'expulsion des étrangers, l'État qui procède à cette décision, doit pouvoir s'assurer et s'informer par tout moyen que les personnes objets de l'expulsion, ne risquent pas de subir la torture dans le pays tiers où, il veut les expulser. Le comité rejette toute possibilité pour l'État de justifier la torture par des raisons de sécurité nationale ou de l'ordre public.

L'existence des voies de recours, leur effectivité et le traitement égalitaire des étrangers

Le Comité des droits de l'homme de l'ONU dans son observation générale numéro 15 sur la situation des étrangers, indique que « *l'étranger doit recevoir tous les moyens d'exercer son recours contre l'expulsion, de manière à*

⁵² Comité contre la torture, Observation n° 2 sur l'article 2 de la Convention contre la torture et les traitements inhumains et dégradants, 2008, p. 2.

être en toutes circonstances à même d'exercer effectivement son droit. Les principes énoncés par l'article 13 au sujet du recours contre la décision d'expulsion ou du droit à un nouvel examen par une autorité compétente ne peuvent souffrir d'exception que si des raisons impérieuses de sécurité nationale l'exigent. Aucune discrimination ne peut être opérée entre différentes catégories d'étrangers dans l'application de l'article 13⁵³ ». Il est donc une obligation aux États, de prévoir dans leur systèmes juridiques, des voies de recours en faveur des personnes expulsées ou qui doivent être expulsées, pour leur permettre de faire valoir leurs arguments devant une juridiction, ou devant une autre autorité compétente à ce sujet. L'absence de ces garanties procédurales constitue donc une violation de l'article 13 du Pacte international relatif aux droits civils et politiques, et en pareille situation, l'État peut engager sa responsabilité.

Nous devons noter relativement à ce qui précède que dans l'affaire Diallo, la RDC a été condamnée pour absence, ineffectivités et inaccessibilités de voies de recours contre la mesure d'expulsion de Monsieur Diallo. De ce fait, la Cour Internationale de justice, a précisé que « *le séjour de M. Diallo n'était, au demeurant, nullement irrégulier. Quant à l'expulsion proprement dite de M. Diallo, elle a été tout fait arbitraire et illicite. Sans doute, sa présence était-elle devenue gênante pour le gouvernement zaïrois, mais ce prétexte ne saurait justifier l'expulsion. Il va sans dire qu'il n'y a eu aucune tentative de la part du gouvernement zaïrois de respecter les exigences du Pacte international relatif aux droits civils et politiques auquel il est partie de même que l'Etat requérant, la République de Guinée. Il n'a pas été question de « décision prise conformément à la loi. M. Diallo n'a pas eu la moindre possibilité de faire valoir les raisons qui militaient contre son expulsion et de faire examiner son cas par l'autorité compétente. Au contraire, il y a eu un manque absolu de bonne foi et il y a eu abus de pouvoir de la part du gouvernement zaïrois⁵⁴ ».* De cette affaire, l'on voit clairement que la Cour a non seulement insisté sur le fait

⁵³ Comité des droits de l'homme de l'ONU, Observation générale n° 15 : sur la situation des étrangers, *op.cit*, p.3.

⁵⁴ CIJ, *Affaire Guinée contre RD Congo*, Arrêt du 30 novembre 2010.

que la décision d'expulsion doit être conforme à la loi, mais aussi, il doit exister dans le système juridique interne de l'État en question, des voies de recours, qui permettent à l'étranger de faire valoir ses droits. Il s'agit-là, d'une interdiction formelle des expulsions arbitraires contre les étrangers et la nécessité de leur garantir des garanties procédurales en toute égalité.

Conclusion

Il ressort de cette étude que l'accès au territoire d'un État reste gouverné par le principe de souveraineté de l'État. Celui-ci, étant libre selon le droit international d'admettre ou de refuser l'accès d'un étranger sur son territoire. Toutefois, il est également prévu dans le droit international, que c'est à l'État de garantir la protection des droits de l'homme sur son territoire, et cela doit être fait sans aucune discrimination entre les personnes se trouvant sur son territoire. L'expulsion entant que mesure d'éloignement des étrangers dans un État, est encadrée par un certain nombre des principes, qui doivent être respectés par l'État ayant recouru à l'expulsion. En premier, l'on retient que l'État a la compétence d'expulser un étranger se trouvant sur son territoire en raison de son pouvoir souverain, pour des motifs d'ordre public, de sécurité nationale, ou de séjour irrégulier de l'étranger. Cette compétence n'est pas illimitée. C'est ainsi, que toute décision d'expulsion doit être conforme à la loi, l'État ne doit pas recourir aux expulsions collectives, en outre, l'État ne doit expulser l'étranger que vers un État tiers sûr ou un État d'origine sûr, pour éviter que ce dernier, c'est-à-dire l'étranger, ne puisse subir la torture.

Les juridictions internationales et particulièrement la Cour Européenne des Droits de l'Homme, la Cour Internationale de Justice, ont eu comme relevé dans cette étude, a condamné certains États pour atteinte aux droits des étrangers dans les procédures d'expulsion. Ce qui renforce la protection juridique déjà garantie dans les conventions internationales au profit des étrangers. Les organes de contrôle onusiens, ont également contribué à cette protection des étrangers à travers différentes observations sur les articles 13, 12 du Pacte international relatif aux droits civils et

politiques, et sur les articles 2, 3, 14 de la Convention contre la torture et les traitements inhumains et dégradants. Le grand défi, reste la méconnaissance de ces mécanismes juridiques et de contrôle par les étrangers, victimes de décisions d'expulsion de la plupart des États hôtes, mais aussi, la montée en puissance des politiques souverainistes contre les étrangers dans certains pays de l'UE et même en Afrique.

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ECONOMIC AND SOCIAL FACTORS IMPACTING SMALL AND MEDIUM-SIZED ENTERPRISES IN ISRAEL

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Abstract

The development of local entrepreneurship has become an integral part of the urban culture, creating an interest in the impact of small and medium-sized enterprises on the local economy, the satisfaction of the residents and their desire to remain in the city and bring up the next generation in their place of residence. A qualitative research approach, using semi-structured interviews with stakeholders of small and medium-sized enterprises in several cities in Israel was adopted to examine the situation of small and medium-sized enterprises from an economic, and social perspective. The findings indicated that while the local businesses fulfill a role in the social fabric of the city by connecting residents to their urban place of residence, the small and medium-sized enterprises are struggling economically, since they are faced with heavy competition from chain stores, malls and trading centers established in the peripheral regions.

Keywords: small and medium-sized enterprises (SMEs), economy, central authority, local authority, entrepreneur

Social movements and economic developments over the past few decades have created a need for adapting policies to changing situations. The outbreak of the COVID-19 pandemic in 2020, for example, posed new

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challenges for the small and medium-sized enterprises, forcing many of them to temporarily close. Nevertheless, despite the economic changes and the ongoing shift worldwide to a greater degree of globalization, it remains the local community that connects between the residents in a community enabling their involvement at a local level. Over the years in Israel, there has been a shift in policy from policies revolving around centralization and direct intervention to policies aligning with decentralization, liberalization, and privatization. Changes in policies have focused on facilitating the local authorities to support their local communities and empower them to deal with aspects affecting them daily at the local level¹. A study was conducted with the aim of examining in depth the economic and social factors that impact small and medium-sized enterprises in Israel and to gain an understanding of the perception of business entrepreneurs about the influence that these factors have on their small and medium-sized enterprises.

The study addressed the following research question: *How do economic and social factors impact small and medium-sized enterprises in Israel?*

Small and Medium-Sized Enterprises

Small and medium-sized enterprises have been defined according to the European Commission as having fewer than 250 people employed. Since small and medium-sized enterprises may employ between 1 and 250 employees, small and medium-sized enterprises can be further subdivided into micro, small and medium-sized enterprises according to the number of employees. The micro enterprises are the very smallest of enterprises employing fewer than 10 people. The small enterprises have between 10 and 49 people employed. The medium-sized enterprises are larger and

¹ E. Carrera, Q. Brugué, X. Casademont, M. Serra, "The Innovative Potential of Small Municipalities: From Theory to Practice", *Revista Española de Investigaciones Sociológicas*, 168, 2019, pp. 3-19.

employ between 50 and 249 people². In addition to the number of employees which distinguishes between the enterprises, small and medium-sized enterprises are further categorized by their turnover or balance sheet total. The turnover or balance sheet total of the micro enterprises is $\leq \text{€ } 2 \text{ m}$. The small enterprises have a turnover or balance sheet total of $\leq \text{€ } 10 \text{ m}$, while the medium-sized enterprises have a turnover of $\leq \text{€ } 50 \text{ m}$ or balance sheet total of $\leq \text{€ } 43 \text{ m}^3$.

Small and medium-sized enterprises are important drivers of economic development, since they play a major role in creating employment opportunities⁴. In the European Union, for example, by the late 1990s the number of SMEs had grown to around 18 million. The SMEs were employing around two-thirds of the work force in Europe. By the end of the 20th century, businesses in Europe were generally smaller, reversing an earlier trend of mergers⁵. The numbers of SMEs in Israel have also increased over the years leading to a greater recognition of the importance of SMEs to the economy and economic development in Israel and more particularly to regional development⁶.

Small and Medium-Sized Enterprises in Israel

Small and medium-sized enterprises play an important role in the business environment in Israel, since only 0.5% of the businesses in Israel

² Eurostat, Small and Medium-Sized Enterprises, 2018, <<https://ec.europa.eu/eurostat/web/structural-business-statistics/structural-business-statistics/sme>>.

³ Interreg Europe, Policy Learning Platform – SME Competitiveness, <<https://www.interregeurope.eu>>.

⁴ L. J. Rotar, R. K. Pamić, Š. Bojnec, "Contributions of Small and Medium Enterprises to Employment in the European Union Countries", *Economic Research – Ekonomska Istraživanja*, 32(1), 2019, pp. 3296-3308.

⁵ S. M. Karmel, J. Bryon, *A Comparison of Small and Medium Sized Enterprises in Europe and in the USA*, London, Routledge, 2003.

⁶ Israel Business Connection, Small Businesses, 2020, <<http://www.israelbusiness.org.il/startinyourbusiness/smallbusinesses>>.

are large businesses, that employ over 100 employees⁷. Yet despite their smaller numbers, the large businesses employ approximately 29% of employees in the business sector. Most of the businesses in Israel employ less than 100 employees and are categorized as small and medium-sized enterprises. In data collected in Israel in 2016, of the 511,772 businesses active in Israel, 99.5% were small and medium-sized enterprises. The small and medium-sized enterprises could be further subdivided according to their employment numbers. The small-sized enterprises which employ between 5 and 19 employees, constitute 11.8% of the business population, but make up 18.4% of the total employment. In comparison, the medium-sized enterprises, employing between 20 and 99 employees per enterprise, constitute only 3.1% of the business population, but employ 21.4% of the total employees⁷.

In addition to the small and medium-sized enterprises, the report of the Israeli Ministry of Economy and Industry published data that related to two additional subdivisions amongst the enterprises, the micro enterprises, and the independent enterprises. The micro enterprises were those enterprises that employed 1 to 4 employees and they compromised 33.5% of the business population, contributing 11.1% to the total employment. The smallest enterprises in the commercial sector were the independent enterprises. Accounting for over a half (51.1%) of the business population, these enterprises had no employees⁷.

Data available that relates to the turnover in the different business sectors illustrated the economic impact of the small and medium-sized enterprises on the commercial sector in Israel. The business sector that included the large businesses generated a turnover of approximately NIS 206.3 billion in 2015. This comprised 25% of the turnover in the commercial sector and contributed 48% of the Gross Domestic Product (GDP), indicating their contribution to the market value of all goods and services

⁷ OECD, "Financing SMEs and Entrepreneurs, 2018. An OECD Scoreboard: Israel", <https://read.oecd-ilibrary.org/industry-and-services/financing-smes-and-entrepreneurs-2018/israel_fin_sme_ent-2018-30-en#page7>.

produced across a specific period. The medium-sized enterprises had an annual turnover of about NIS 224.9 billion, which contributed 27% to the turnover in the commercial sector. The contribution of the medium-sized enterprises to the GDP was approximately 19%. For the small-sized enterprises their annual turnover was NIS 213 billion, contributing about 25% to the turnover of the commercial sector. The small-sized enterprises contributed 13% of the GDP⁸.

The annual turnover of the microenterprises in 2015 was approximately NIS 134.6 billion, which contributed about 16% to the turnover in the commercial sector. The independent enterprises had a turnover of approximately NIS 58.5 billion, accounting for 7% of the turnover in the commercial sector. Overall, the micro enterprises and enterprises combined accounted for nearly 20% of the GDP, with a value of nearly NIS 100 billion⁸.

The importance of the small and medium-sized enterprises in creating employment opportunities has been recognized. The change in the number of new positions in small and medium-sized enterprises was demonstrated by a growth of 78% in the number of new positions available in small and medium-enterprises between 2014 to 2015⁸. Comparisons between young small and medium-sized enterprises and veteran small and medium-sized enterprises showed differences in the source of income. Young small and medium-sized enterprises were defined as those enterprises that had been running for less than 5.3 years as opposed to the veteran enterprise which had been established for over 5.3 years. While the amount of veteran small and medium-sized enterprises whose income from exports accounted for more than half of their total income grew from 3.0% in 2015 to 5.0% in 2016, the amount of young small and medium-sized enterprises decreased from 9.1% in 2015 to 7.2% in 2016⁸.

⁸ Ministry of Economy and Industry, State of Israel, "Report: The State of Small and Medium Businesses for 2015", Agency for Small and Medium Business, Spokesperson and Public Relations, <www.economy.gov.il>.

Bankruptcies amongst the small and medium-sized enterprises was another issued that plagued the small and medium-sized enterprises. The number of bankruptcies has increased year-over-year from 2,061 bankruptcies amongst small and medium-sized enterprises in 2009 to 7,900 bankruptcies in 2018, according to data collected by the The Organisation for Economic Co-operation and Development (OECD)⁹.

Methodology

A qualitative research approach was adopted to examine the perceived impact of economic and social factors on small and medium-sized enterprises in Israel. On-on-one interviews were conducted by the researcher with ten stakeholders connected to the small and medium-sized enterprises in cities in Israel. The interviews were conducted to investigate the situation of the small and medium-sized enterprises in Israel, from an economic and social perspective. During the semi-structured interviews, the researcher used open-ended questions to guide the conversation and learn about any issues the interview participants were facing, by allowing the participants to express their attitudes and views openly. The responses of the interview participants were recorded and underwent content analysis. The first stage of the content analysis involved the initial mapping of the participants' responses to determine the presence of themes or concepts in the responses. Seven themes emerged as shown in Table 1 and for each theme, a response of one of the participants is provided.

Table 1: Content Analysis of Interview Participants' Responses

<i>Themes</i>	<i>Participant's Responses</i>
Perceptions about SMEs	Participant #8: "Of great importance in every city, the beating heart of the country's economy"
Situation of SMEs	Participant #3: "Very bleak situation"
Assistance for SMEs	Participant #4: "Encouraging businesses through various events".

<i>Themes</i>	<i>Participant's Responses</i>
Difficulties	Participant #6: "A lot of businesses, very hard to succeed"
The Influence of SMEs	Participant #1: "Local money, stays inside the city".
Expectations from Local Authorities	Participant #6: "More street events in business areas".
Expectations from Central Authorities	Participant #9: "Renovation of old neighborhoods near local centers".

Results

To gain a deeper understanding about how the economic and social factors impact small and medium-sized enterprises in Israel, the responses of interview participants were analyzed. In response to the open-ended question, *What are your perceptions about small and medium-sized enterprises?* Participant #4 explained that small and medium-sized enterprises are "the beating heart of the city". The small and medium-sized enterprises were generally perceived by the interview participants as influential and significant to the city from many aspects, including from economic, and social aspects. The small and medium-sized enterprises form the basis of the local economy. Three of the interview participants, Participants 1, 2 and 5 all agreed that "the city is built on the small and medium-sized enterprises".

The participants also related in their interviews to the small and medium-sized enterprises' contribution to the local culture of the city. Participant #3 described the "local events" that are arranged in the city, while Participant #1 spoke about the small and medium-sized enterprises' role in "employing people from within the community", as well as their physical visibility. The social aspect related to the small and medium-sized enterprises was also considered important since the small and medium-sized enterprises have been related to "leaving the young people in the city and bringing a new population into the city" according to Participant #6.

Participant #6 continued to explain that many of the small and medium-sized enterprises had been around for a long time, creating an “eternal” value that is desirable. Participant #8 talked about the small and medium-sized enterprises’ “great importance in every city” and constituting the “beating heart of the economy for the country”. Small and medium-sized enterprises connect families to their place of residence and to each other, since according to Participant #4 these are “family businesses”. Overall, the small and medium-sized enterprises were perceived as connecting the city in every way.

When relating to the situation of the small and medium-sized enterprises in the city, the stakeholders perceived their situation to be very difficult. The participants were asked, *What do you think is the situation of small and medium-sized enterprises in your city?* During the interview, Participant #3 described the situation of the small and medium-sized enterprises in their city as a “bleak situation” and provided one possible reason for the situation being, “there are too many businesses in the city”. Participant #2 provided additional insight into possible causes for the difficult situation as being that “the small businesses fail to adapt to changes in the market”. Participant #2 continued that the small and medium-sized enterprises “do not know how to adapt to changes in the business environment” and are thus usually left behind. As a result, many small enterprises close after a relatively short period of activity of between about one to three years. The difficulties that the stakeholders described seemed to be more acute in the peripheral regions. In the periphery, there is a multiplicity of businesses relative to the size of the population in these regions. In these areas where the population and the resources of the small and medium-sized enterprises are limited, the multiple enterprises may be hurting each other. The larger chain stores are moving into areas and taking over, with little space allocated to only a few of the small local businesses.

The participants were asked to share their views on *What do you think are the difficulties that small and medium-sized enterprises face?* The

economic difficulties faced by the small and medium-sized enterprises as perceived by the participants were largely attributed to the multitude of commercial areas that have been established in the periphery. In these peripheral areas, the population is relatively small, especially when compared to the number of businesses and commercial centers that exist. The large chain stores directly affect and weaken the small and medium-sized enterprises. Participant #6 described “a lot of businesses” being one of the challenges in many of the regions.

Furthermore, the economic situation of the resident population is inferior to that of the resident population in the larger urban areas. Small and medium-sized enterprises often do not have the capabilities for dealing with difficulties or cannot cope with challenging situations, especially involving financial difficulties. The small and medium-sized enterprises face harsh competition from the large chain stores, which in many cases leads to the closing down of small and medium-sized enterprises in the cities. The resulting reduction in trade in the city centers causes a loss of income to the city, damaging the local economy.

The perception of the stakeholders was that the effects of the small and medium-sized enterprises on the economic and social aspects of the city are substantial. Socially, the local businesses connect the residents to their place of residence. In addition, the small and medium-sized enterprises create employment opportunities for families and locals in the city center, possibly reducing the negative migration of the population to the outlying peripheral areas.

Economically, the effect of small and medium-sized enterprises in the city is enormous. The local economy is built on small businesses because the money spent by customers at the small and medium-sized enterprises remains within the city and does not flow out. Participant #1 provided their perspective on this economic effect saying, “local money stays within the city”.

Furthermore, the small and medium-sized enterprises contribute significantly to the city through their payment of municipal taxes.

Interview participant #4, who is a representative of local authority officials described the influence of the small and medium-sized enterprises as. “decisive influence, mainly the *Arnona* (municipal tax)”. The small and medium-sized enterprises are significant contributors to municipal tax.

During the interviews, the stakeholders outlined their expectations from the local authorities for assistance in dealing with the economic and social aspects that relate to their small and medium-sized enterprises. They were asked, *What do you think are the expectations from the local authority regarding economic and social aspects relating to small and medium-sized enterprises?* The assistance they expected took on many forms. It included the encouragement of the local authorities for residents to buy locally. The required assistance also included the reduction of regulations and bureaucracy to ease the establishing and running of small and medium-sized enterprises in the city. Extra assistance from the local authorities could also help prevent the small and medium businesses from falling through the cracks in regulations due to lack of knowledge and then paying indirectly the price for this oversight later. Participant #6 explained what the different avenues for aiding the local small and medium-sized enterprises could be. Assistance could be provided in the form of “local buying, encouraging business, promoting business areas”.

Socially, many of the participants expected the local authorities to be more active in arranging events in the streets of the city center and expressed the need for more events. Participant #1 said “events in key locations” and Participant #3 wanted “More local events”.

Towards the end of the interview, the participants were asked, *“What do you think are the expectations from the central authority regarding economic and social aspects relating to small and medium-sized enterprises?”* The stakeholders related to their expectations from the central authority for dealing with the economic and social aspects that relate to their small and medium-sized enterprises and the possible contribution and economic influence that the central authority may have.

Economically, the stakeholders had high expectations for the lowering of taxation to support the small and medium-sized enterprises that form the basis of the local economy. To improve the social aspects of the city center, the stakeholders expressed interest in the city having an increased budget allocated to social events and arranging various social events in proximity to the commercial centers where the small and medium-sized enterprises are located. Another need for the support of the central government was in the renovation of the old neighborhoods located near the local commercial centers which house most of the small and medium-sized enterprises in the city. Participants #8 and #9 called for the "renovation of old neighborhoods near local centers".

Discussion and Conclusion

Most companies in Israel are small and medium-sized enterprises which each employ up to 100 workers. Data from 2017 shows that there was a total of 559,567 businesses in Israel and the small and medium-sized enterprises comprised 99.5% of these businesses⁹. Due to the influencing role of small and medium-sized enterprises in the local business environment of the cities and towns in Israel, the focus of the study was an examination of the impact of economic and social factors on the small and medium-sized enterprises in Israel.

Changes over the last few years in urban development has driven the construction of shopping malls and power centers in Israel. These large commercial centers have influential marketing power and little attention has been paid to the economic and social implications and the effects on the business environment in the city centers. While veteran small and medium-sized enterprises increasingly depend on exports to boost their total income, the amount of young small and medium-sized enterprises depending on exports to supplement their total income, decreased from

⁹ OECD, "Financing SMEs and Entrepreneurs, 2020. An OECD Scoreboard", <<https://www.oecd-ilibrary.org>>.

9.1% in 2015 to 7.2% in 2016⁸. Thus, the main source of income for the young small and medium-sized enterprises remains as local commerce. The current financial situation of small and medium-sized enterprises in the cities was described as being not bright by the participants, similarly to the situation of the small and medium-sized enterprises commonly found in trading centers in Israel where the financial situation of the population might be weaker than that of the population in the big cities in Israel.

Small and medium-sized enterprises are struggling in many respects and mostly do not have the knowledge or capability to handle these challenges and may garner little support from the authorities. A move towards decentralization in Israel has increased the possibility of the local authorities to support their local communities and to assist the small and medium-sized enterprises in dealing with issues that affect them daily¹⁰. However, the perception of many of the participants was that the support they had been offered to face the economic and social challenges had been limited. While the participants expected a reduction of number of regulations and the level of bureaucracy, other measures such as encouraging the community to buy local were also expected to improve the situation of the small and medium-sized enterprises. It seems that the hardest struggle is the financial one, since the small and medium-sized enterprises are being forced to compete with the major chain stores in the shopping malls and trading centers. This harsh competition may have been responsible for the closing down of many small and medium-sized enterprises. The bleak situation as described by the participants in the interviews has been demonstrated by the increase in the number of bankruptcies amongst the small and medium-sized enterprises year-over-year from 2,061 bankruptcies in 2009 to over 7,900 bankruptcies in 2018⁹. With the financial challenges often causing the small and medium-sized enterprises to shut down, a chain effect is created that causes all the city's businesses to relocate elsewhere. This process has a negative effect on the

¹⁰ Carrera, Brugué, Casademont, Serra, *op. cit.*

city center, since small and medium-sized enterprises are the heart of every city and have the potential to affect the social aspects of the city. Socially, it has been suggested that the small and medium-sized enterprises play a part in integrating the different aspects of the city and form the basis of the local economy. Furthermore, the local small businesses serve to connect the residents to the city as their home. The role of small and medium-sized enterprises in economic development has been associated with the employment opportunities created by the small and medium-sized enterprises¹¹. The small and medium-sized enterprises were largely perceived by the participants as family businesses. The operation of a family business in the city center is expected to connect families to their place of residence and to each other. The small and medium-sized enterprises employ nearly 40% of the total employees in Israel⁷. By creating employment opportunities for many of the locals close to their place of residence, the small and medium-sized enterprises bind the locals to the city center and can be expected to prevent the movement of families to the periphery.

It seems that there are several actions that could be taken to improve the situation for the small and medium-sized enterprises. The interview participants frequently expressed a need for the authorities to coordinate social events in the streets of the city centers which are expected to attract residents and passersby to frequent the city center in the areas where the small and medium-sized enterprises are located. Renovating the old neighborhoods around the commercial centers where the small and medium-sized enterprises are situated is likely to revive the city center. Furthermore, encouraging residents to buy locally could improve the plight of the small and medium-sized enterprises highly dependent on local commerce in the city centers.

The difficulties expressed by the interview participants likely express the challenges that are faced by all the small and medium-sized

¹¹ Rotar, Pamić, Bojnec, *op. cit.*

enterprises and that need to be addressed to ensure that these enterprises vital for the city centers, continue to operate and to serve the immediate needs of the urban residents. Recognition of the small and medium-sized enterprises' important contribution to the economic viability of the city center and to the social fabric of the city and an understanding of their needs is required to ensure that the small and medium-sized enterprises receive the support they require to remain in operation.

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Book Review

Emmanuel Banywesize Mukambilwa,
En finir avec la politique de différence en Afrique.
Leçons des mouvements sociaux et de Covid-19,
Paris, Éditions du Cygne, 2020, 164 pp.

Déogratias Ilunga Yolola Talwa*

En finir avec la politique de différence en Afrique. Leçons des mouvements sociaux et de Covid-19. Tel est le titre de l'ouvrage de 161 pages écrit des mains d'Emmanuel M. Banywesize et publié en France aux éditions du Cygne, dans la collection « Pensée ».

Philosophe et Sociologue, Emmanuel Banywesize Mukambilwa est diplômé des Universités de Lubumbashi et de Paris 5 René Descartes. Professeur Ordinaire à l'Université de Lubumbashi et Professeur visiteur dans plusieurs autres Universités congolaises et africaines où il enseigne l'Épistémologie et l'Histoire des sciences, Emmanuel Banywesize a effectué un stage d'épistémologie au *Centre d'Etudes sur l'Actuel et le Quotidien* (CEAQ), au *Centre d'Études Transdisciplinaires, Sociologie, Anthropologie, Histoire* (CETSAH), à Paris. Il a fait un séjour postdoctoral à la Faculté de Sociologie et Assistance sociale, à l'Université Babeş-Bolyai de Cluj-Napoca, en Roumanie. Il est Secrétaire Délégué de l'*Association caribéenne de philosophie* (CPA) en Afrique francophone. Ses recherches dont les résultats ont fait l'objet de plusieurs publications scientifiques sont orientées dans le domaine de la Pensée complexe et de l'Épistémologie de la complexité et des sciences humaines. Il étudie les rapports complexes entre les sciences humaines et les sociétés africaines contemporaines. Il est aussi membre du Conseil International de la Multiversidad Real Mundo « Edgar Morin » du

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Mexique. Il a dirigé des numéros de revues de philosophie, dont *Cahiers Epistémo-logiques* et *Cahier du Jeune Chercheur* (Université Marien Ngouabi de Brazzaville).

Outre l'introduction et la conclusion, le livre est structuré en quatre chapitres. Dans la partie introductive intitulée *(Sur)vivre-ensemble par la politique de l'humain*, Emmanuel M. Banywesize ouvre la série de réflexions par un questionnement tiré de *Les corps glorieux des mots et des êtres. Esquisse d'un jardin africain à la bénédictine* de V. Y. Mudimbe que l'auteur reprend à son compte pour mettre en exergue l'enjeu-même de son livre : « Quels modèles offrir à jeunesse ? ».

Les réflexions du philosophe congolais ne viennent pas *ex nihilo*. En effet, elles sont la résultante d'une observation minutieuse et lucide des phénomènes sociaux contemporains dont la scénographie implique une interaction entre différents agents sociaux appartenant ou pas à différents champs.¹ Méthodiques, ces réflexions lisent dans des faits souvent négligés comme les « conversations anodines, banales, celles des cafés, terrasses, bars, trottoirs » une certaine intelligibilité discursive d'un savoir sociétal se construisant-en-s'énonçant.

Ces réflexions veulent également trouver dans chacune de facettes de l'économie des échanges entre agents sociaux, à l'instar de Marc Angenot² (*Mille huit cent quatre-vingt-neuf: un état du discours social*), la manière dont se raconte, s'écrit, s'argumente la société congolaise. Cette lecture immédiate du Réel, cette « sociologie du présent », pour reprendre les mots d'Edgar Morin³ est, pour Emmanuel Banywesize, une façon de philosopher « au cœur et à partir des situations historiques et à l'aide de

¹ Pierre Bourdieu, *Les Règles de l'art. Genèse et structure du champ littéraire*, Paris, Seuil, 1992.

² Marc Angenot, *Mille huit cent quatre-vingt-neuf: un état du discours social*, Montréal/Longueuil, Editions du préambule, Collection « l'univers des discours », 1989.

³ Edgar Morin, « Sociologie du présent », in *Sociologie*, Paris, Fayard, 1984, pp. 157-337.

divers savoirs, de comprendre ce qui advient à l'humain, à la société, au monde⁴ ».

Ainsi, la philosophie devient-elle une fille du temps présent habilitée donc constamment à questionner l'actualité, à réfléchir sur le fondement de la production des savoirs collectifs modernes de l'homme dans un nouveau paradigme qui n'est plus celui d'un discours rétrospectif sur l'homme mais bien celui où les phénomènes sociaux changeants et constituant des défis à relever pour la survie de l'humanité sont lucidement appréhendés dans leur matérialité prospective.

L'humanité se « rehumanise » pour répondre efficacement aux problèmes du présent et donner l'espoir à l'avenir que quand elle fait montre de ses capacités à s'inventer et réinventer des « Cités justes », pour parler comme Platon, c'est-à-dire des modèles politiques résilients et qui savent composer avec les changements politiques, économiques, sociaux, culturels, écologiques... induits par la marche du monde.

Face au défi collectif et à la nécessité de (sur)vie de l'humanité, un pays comme la République Démocratique du Congo dont les ambitions républicaines et démocratiques sont « ostensiblement » affichées déjà dans sa dénomination se doit de (ré)inventer continuellement des nouvelles intelligences collectives pour asseoir un vivre-ensemble paisible, gage de bonheur et de prospérité pour tous. Et dans le monde d'aujourd'hui où des nouvelles formes et modalités de travail, d'enseignement, de mariage et de vie en couple, de confession de foi, de revendication des masses, de criminalités, de maladie... apparaissent, chacune de ces nouvelles intelligences collectives ainsi créées se révélera comme une réponse idoine ou, mieux, comme la modalité obligatoire mais opératoire de passage de la sur(vie) à la vie des humains dont les Congolais.

Et par ricochet, la politique ne peut trouver sa justification que quand elle s'entend comme un mécanisme, un dispositif conçu à dessein

⁴ Emmanuel M. Banywesize, *En finir avec la politique de différence en Afrique. Leçons des mouvements sociaux et de Covid-19*, Paris, Éditions du Cygne, 2020, p. 12.

pour relever, un à un, les défis que les changements de tous ordres survenant dans l'espace public imposent à l'intelligence collective.

Portant sur « autoritarisme et résistance sociale », le premier chapitre est de la même veine méthodologique que la partie introductive car, pour l'auteur, la saisie de toute pensée ne peut forcément s'opérer qu'à partir uniquement des théories scientifiques pures. Elle peut tout aussi être captée dans les « manières de dire, de faire, de se conduire où l'individu se manifeste comme sujet de connaissance, comme sujet éthique ou juridique, comme sujet conscient de soi et des autres »⁵.

L'autoritarisme comme mode d'exercice du pouvoir politique et ses corollaires (mauvaise gouvernance, violence, exclusion, frustration, pauvreté, injustice, inégalité...) finit par générer un conditionnement prédisposant les sujets opprimés à se réorganiser pour trouver des solutions alternatives de (sur)vie impensées du pouvoir politique et auxquelles peu de recettes résilientes existent. Dans une Afrique où l'espace politique se réduisait à un face-à-face entre la majorité au pouvoir et l'opposition dont les moyens d'action étaient déjà connues par l'une et l'autre, l'on a vu émerger et s'imposer depuis peu un nouvel acteur, les « mouvements sociaux » avec des nouvelles méthodes et des nouveaux moyens d'action qui appellent l'État et tous les partisans de l'« Autorité de l'État » à se repenser en composant, dorénavant, avec l'absolue nécessité d'une nouvelle manière d'expression citoyenne d'un « vouloir vivre-mieux ».

Pour Emmanuel M. Banywesize, ces nouvelles intelligences affaiblissent des organes institutionnels et traditionnels de verticalisation du pouvoir (Présidence, Gouvernement, Parlement, Justice, Syndicats, Presse, politiques...) pour imposer un nouveau paradigme plus participatif apte à actionner la dualité démocratique inhérente à la démocratie participative identifiée comme alternative à la faillite de la pensée démocratique représentative ayant entretenu, couvé et engraisé une caste

⁵ *Ibidem*, p. 31.

des oligarques qui n'ont maintenu leurs pouvoirs que par les régimes de parenté, de corruption et de terreur.

L'histoire politique du Congo-Kinshasa rappelée ici sert de corpus au philosophe congolais pour mettre en exergue la contrariété même de l'homme. En effet, cette oligarchie est également et, paradoxalement, maintenue debout par une poignée de citoyens snobes scandant des salmigondis à la gloire éternelle des « timoniers » non pas par conviction idéologique mais plutôt par ignorance ou juste pour sauvegarder quelques petits intérêts personnels au détriment des intérêts de la Cité.

Là encore, la pensée d'Emmanuel M. Banywesize rejoint celle de Platon exposée dans son livre I des *Lois*. En effet, Platon se sert du mythe des marionnettes pour expliquer la gouvernabilité de la chose publique. L'homme y est présenté comme une fabrication des dieux mais dont les fils qui composent et régissent le mécanisme de manipulation inhérents à sa nature même lui dictent contradictoirement des registres axiologiques variés et qui n'appellent pas forcément harmonie et raison. Et c'est pour cela que l'âme humaine doit d'être éduquée, modelée, façonnée, accompagnée par des lois et principes tenus pour rationnels et constituant un référentiel d'un vivre ensemble harmonieux, heureux et conforme au Bien. C'est donc l'éducation, la connaissance qui évite à l'homme la manipulation. Le meilleur moyen de manipuler l'homme, la masse et de lui voler son destin est de l'abrutir, de le priver la connaissance. Sans la connaissance, l'homme devient semblable à un animal, à un objet, un pantin manipulable à souhait.

Cette contrariété relevée met en lumière la difficile condition humaine lorsque ses aspirations naturelles à l'opposition, à la résistance à l'autoritarisme, sa prédisposition à la contestation de toute forme d'oppression ne peut, malheureusement, pas parfois pas échapper à une tentation autoritaire. Là aussi, l'histoire politique africaine est riche en leçons. Les opposants et contestataires invétérés d'hier ne sont pas toujours rompus aux méthodes démocratiques et de gestion efficiente de la Cité.

Pandémie de Covid-19, vulnérabilité et nécessité d'inventer l'humanisme unidiversal est l'étiquette générique sous laquelle la réflexion du deuxième chapitre est articulée. La pandémie mondiale de Covid-19 a mobilisé – et continue à mobiliser – les chercheurs de différents domaines tentant, chacun avec sa/ses science(s), de comprendre les termes dans lesquels elle se pose et pose des nouveaux défis à l'intelligence humaine et lui imposent la nécessité de s'actualiser.

L'auteur de ce livre considère la vulnérabilité et la nécessité sous-jacente d'inventer un nouvel humanisme « unidiversal » non plus comme un comportement mais plutôt comme les deux versants d'une conduite dictée par la nécessité d'assurer continuellement la (sur)vie à l'humanité. Pour pouvoir se réinventer, il faut d'abord prendre conscience de l'état dans lequel on se trouve et de la nature du défi à relever. Or, la conscience est l'aïeule de la connaissance dans la mesure où elle pousse l'Âme à l'action. Pour Platon, c'est quand l'Âme est aux prises avec différents objets du monde que naît la connaissance.

Ainsi, la conscience et la connaissance deviennent-elles, pour Emmanuel M. Banywesize, les déterminants d'un principe de supermodulation impliquant une idéalité résiliente comme réponse à une vulnérabilité ambiante. Dès lors, (sur)vivre devient synonyme d'un perpétuel remodelage, une perpétuelle remise en question face aux changements que subit son environnement. Ayant « appris l'attachement de tous les humains à la vie et réveillé à l'existence d'un élan universel vers la vie bonne dans des sociétés bien gouvernées (...) comme l'acceptation de la coappartenance à une commune humanité riche des diversités et l'obligation collective de veiller à la pérennité de la vie et de l'humanité »⁶ », la pandémie de Covid-19 aura montré, aux yeux de l'auteur, que la (sur)vie de l'humanité est tissée au bout d'une ficelle faite de bonne gouvernance sociale et de bonne santé collective loin de tout capitalisme

⁶ *Ibidem*, pp. 76-77.

économique inconsideré qui avait fait du profit l'unique corde de la guitare mondiale.

Dans le troisième chapitre consacré à la dialectique entre le corps de l'Autre que Soi et la politique, l'auteur expose les disparités spatiales ainsi que les inégalités sociales et économiques générées par un ordre mondial qui était jusque-là présenté à l'humanité entière comme une félicité et qui ont été révélées par la pandémie de Covid-19. Ces disparités comme ces inégalités ont trahi – et continuent de trahir, un différentiel des schèmes porteurs des germes de « discrimination, de marginalisation et de paupérisation systémiques de certains [humains] préjugés et traités à partir de leurs corps ou de leurs origines socioculturelles »⁷. Ainsi, le Nègre ou, lâchons le mot, la négrofication du Noir apparaît-elle comme une de fabrications d'un capitalisme sauvage qui visait justement à en faire un produit économique comme l'ivoire, le caoutchouc, l'or, le cuivre... Il en est de même du mythe autour de cet être « sauvage », primitif qui nécessitait un projet civilisateur devant le doter d'attributs humains.

Emmanuel M. Banywesize bat en brèche tous ces discours relevant des paradigmes épistémologiques binaires, disjonctifs, réducteurs et exclusifs qui tendaient à ramener la rationalité à une question raciale dans le seul but d'asseoir un esprit capitaliste d'inspiration hédoniste. La recherche du plaisir exige le travail. Le travail est, par essence, une peine, une souffrance. Rechercher le profit exige à l'acteur-bénéficiaire une acceptation de la souffrance. Or, cet acteur-bénéficiaire ne veut pas souffrir. Il va se mettre à fabriquer des corps de pensée suprémaciste pour soustraire la souffrance consécutive à la réalisation de son profit à un Autre que Soi à qui il fabrique les corps de Nègre, de Sauvage...

Une plongée de l'auteur dans l'histoire occidentale -qui avait bâti sa pensée essentiellement autour de la dualité âme/raison/esprit *v* corps, lui permet d'éclairer ces injustices et ces inégalités qui avaient fini par limiter le Noir aux seuls rêves musculaires. Considéré respectivement par Platon

⁷ *Ibidem*, p. 81.

dans *Timée* et *République* comme « une promesse à la vie heureuse » et comme « tombeau qui, en emprisonnant l'âme, entrave son envol spirituel », le corps est carrément réduit chez René Descartes à un accessoire, une machine dont l'âme n'a pas besoin pour s'épanouir. Le corps apparaît dans la pensée occidentale (Socrate, Aristote, Montesquieu, Hume, Kant, Hegel, Nietzsche) comme l'incarnation de la déchéance ou de la honte devant être commandé par la tête.

Ayant démontré la faillite des bases sur lesquelles reposait l'hégémonie du capitalisme économique, Emmanuel M. Banywesize entreprend de *reprenre la question de l'humanisme pour fonder le vivre-ensemble en Afrique*, au quatrième chapitre. La prise de conscience de cette question ayant induit une certaine vulnérabilité est à la fois une nécessité et une urgence pour que, par résilience, émerge une nouvelle « réflexion critique nourrie par les mutations du monde actuel afin d'esquisser les voies d'un futur complexe, celui qui tisse ensemble des réalités hétérogènes, voire antagonistes »⁸.

Irriguée par la nécessité d'axer le questionnement sur un paradigme nouveau, non plus celui d'une idéalité réduisant la réflexion à la seule rationalité socio-anthropologiquement, philosophiquement, linguistiquement, littérairement... pensée et appréhendant de haut les savoirs ordinaires que secrètent les scènes sociales ordinaires, Emmanuel M. Banywesize élabore un paradigme nouveau qui, inversement, fait plutôt de ces scènes sociales naguère banales les matériaux de production des nouveaux savoirs, les réflecteurs d'une conscience collective et d'une expertise d'usage en vue d'un vivre-ensemble collectif humanisé et humanisant.

Face aux périls globaux qui guettent les sociétés modernes, le philosophe congolais propose, en guise de conclusion, de *penser le présent et le futur comme lieux de réaliser de l'humanité partagée*, en produisant « une pensée critique et autocritique, fécondée par la complexité essentielle du

⁸ *Ibidem*, p. 111.

monde et de l'humain et par la Relation des mondes. Une telle pensée a l'avantage de décentrer le sujet relativement par rapport à soi-même, en le conduisant à apercevoir, à juger et à transcender son ego-socio-centrisme qui l'enferme dans les idéologies étriquées, la cupidité et la prétention à la souveraineté intellectuelle et morale. Une telle pensée pourrait fonder la compréhension interhumaine qui engage au respect d'autrui, à l'humanisation des relations humaines et à asseoir une politique économique et une démocratie qui privilégient l'intérêt général plutôt que les intérêts puissants, garantissant la justice sociale et économique, la solidarité et les conditions d'une existence digne à tous les humains»⁹.

Il faut, tout de même, noter que réfléchir à partir des faits sociaux relevant du présent est une véritable gageure pouvant poser au chercheur des problèmes épistémologiques mais aussi méthodologiques. En effet, changer la posture épistémologique en inversant le paradigme et en s'efforçant de démontrer comment pourrait fonctionner une production de connaissances à partir des conversations ordinaires et autres faits banals du quotidien comme le fait Emmanuel M. Banywesize pourrait, si on n'y prend pas garde et si on n'est pas suffisamment outillé, se réduire à une sorte de journalisme sociologique. Le présent est une donne aux contours vagues, instables, mouvants sur laquelle une pensée rigoureuse pourrait difficilement se fixer si les dispositions nécessaires ne sont pas prises.

Bien écrit, *En finir avec la politique de différence en Afrique. Leçons des mouvements sociaux et de Covid-19* d'Emmanuel M. Banywesize interroge le *hic et nunc* et, à ce titre, est une véritable chevauchée dans la sociologie du présent. En effet, ce livre part des phénomènes sociaux ordinaires pour questionner des réalités sociales et plonger le lecteur dans un antagonisme passé/présent pour pouvoir baliser l'avenir.

Un autre mérite de cet ouvrage est qu'il fait redécouvrir, au-delà des réalités congolaises, celles de l'humanité tout entière. Une humanité aujourd'hui écartelée par l'enrichissement croissant des uns et la

⁹ *Ibidem*, p. 151.

paupérisation extrême des autres. Une humanité aussi déchirée par les inégalités, l'absence de la justice distributive, la confiscation du pouvoir par des minorités toutes-puissantes, la mauvaise gouvernance, la violation des droits de l'homme, le tribalisme, le racisme, le terrorisme sur fonds idéologique ou religieux, les catastrophes naturelles ...

Ces questions que vit l'homme d'aujourd'hui et, certainement, de demain font, d'une part, de *En finir avec la politique de différence en Afrique. Leçons des mouvements sociaux et de Covid-19* un livre d'actualité et d'Emmanuel M. Banywesize un philosophe d'aujourd'hui et de demain, d'ici et d'ailleurs.

Book Review

Annon Aran,

Israeli Foreign Policy since the End of the Cold War,

Cambridge and New York:

Cambridge University Press, 2021. 461 pp.

Raluca Moldovan*

Annon Aran, senior lecturer in International Politics of the Middle East at City University of London and a well-known Middle East commentator for the BBC, Bloomberg, *The Guardian* and *Financial Times*, provides readers with the first comprehensive outline of Israeli foreign policy since the end of the Cold War. At its core, the book is an historical account that traces chronologically the most important developments in Israeli foreign policy over the last three decades, yet it does not read like a typical history book, primarily thanks to the author's narrative talent. Aran is able to often make history come alive on the page by painting detailed pictures of events and political figures, thus giving readers the impression that they are actually watching occurrences unfold before their very eyes.

This impression, however, does in no way detract from the solid scholarly foundation of the book, as Aran used a wealth of primary sources (mainly from the archives of the Israeli Ministry of Foreign Affairs), as well as interviews with high-ranking Israeli domestic and foreign policy officials to support his argument. His main thesis is that Israeli foreign policy in the period in question shifted between three main positions, especially in relation to the thorny issue of the Israeli-Palestinian conflict: entrenchment, engagement and unilateralism. As a general rule, prime ministers belonging to the right of the political spectre dominated by the Likud Party

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(Yitzhak Shamir, Benjamin Netanyahu and, to a certain extent, Ariel Sharon) have opted for an entrenchment stance which called for reliance on a foreign policy guided primarily by military might rather than diplomacy and an uncompromising position vis-à-vis the Palestinian question expressed through the idea of “peace for peace”, not “land for peace”. Prime ministers belonging to the Labour Party (Yitzhak Rabin and Shimon Peres) favoured an engagement approach based on the idea of necessary territorial compromises to achieve a final status solution to the Palestinian question, which is why the Oslo process made the most progress during their time in office. Unilateralism is mostly associated with the policies of Ehud Barak, Ariel Sharon (after he left Likud and formed his own party, Kadima) and Ehud Olmert and it rested upon the idea that downscaling the occupation of the Gaza Strip and the West Bank was in Israel’s national interest, but not as a result of an agreement with an Arab counterpart or with the Palestinians themselves.

Additionally, Aran highlights the prominent role that domestic concerns play in foreign policy decision-making and identifies three concentric circles in which these concerns originate: the first is made up of decision-makers (primarily prime ministers and their inner circle), the second is represented by the security network comprising serving and retired Israeli Defence Forces (IDF) generals, politicians, bureaucrats, private entrepreneurs who play an influential role in determining key foreign policy issues, while the final concentric circle is comprised of national identity narratives based on a few basic assumptions: first, Israel is a Jewish state in which religion does play a role in public life; second, Israel is a Zionist state in which Jews represent not just a religion, but a nation; third, the Holocaust is deeply embedded in Israeli identity; fourth, Israel is a democracy, with free and fair elections, a competitive party system and freedom of the media.

Aran devotes quite a bit of space (more than one third of the book) to the Israeli-Palestinian issue which forms the backbone of the book, tracing the origins of the Oslo process from the unsuccessful 1991 Madrid

Conference to the signing of the Declaration of Principles in 1993 and, later, to the incremental steps made towards reaching a final status agreement during the premierships of Rabin, Peres, Netanyahu and Barak, before explaining in detail why the Oslo process ultimately failed to produce any lasting agreement between the two parties. He examines the domestic factors that influenced the negotiations, as well as the behaviour and ideologies of the various actors involved, from Arafat to Rabin, from Clinton to Netanyahu and from Barak to Peres by providing short periodic glimpses into their worldview. The author also provides us with a thorough analysis of the ups and downs of Israel's special relationship with the United States and the role that Washington, as mediator, played in the peace negotiations, highlighting how the latter often used a carrot and stick approach to persuade Israel to accept various compromises, while at the same time pressuring the PLO to renounce its violent tactics.

In addition to the Palestinian file, Aran examines Israel's relations with three of its Arab neighbours, Jordan, Syria and Lebanon, which took very different paths: while Israel and Jordan signed a peace treaty in 1994 and have enjoyed a fairly smooth rapport ever since, things could not be more different in the case of Syria, a state involved in all the Arab wars against Israel starting with 1948. Despite repeated efforts to conclude a peace treaty, all such attempts failed, primarily because of the difficulty of finding a mutually acceptable solution to the issue of the Golan Heights, Syria remaining, to this day, a noteworthy threat against Israel, despite being weakened by a decade of bloody civil war. with regard to Lebanon, Aran provides detailed explanations of the causes behind the armed conflicts between Israel and Hezbollah, following the withdrawal of the IDF troops from Southern Lebanon in 2000, and emphasises that Shia Lebanese militia group still remains a formidable and unpredictable enemy, especially considering its close ties with Tehran.

The author also looks into Israel's ties with the European Union, correctly pointing out that the Jewish state prefers to have bilateral relations with individual European countries rather than with the Union as

a whole, on account of Brussels' support for the boycott against Israeli products and the rising tide of antisemitism in many parts of the EU. Several subchapters are dedicated to Israel's relationship with the Far East, especially India and China, both of which officially established diplomatic ties with the Jewish state in January 1992. At present, the Israel-China and Israel-India relations are mutually beneficial, especially from an economic and trade perspective and the trend is very likely to continue in the future.

No analysis of Israeli foreign policy would be complete without considering the country's relations with the Gulf Arab states, on the one hand, and with its archnemesis, Iran, on the other. Aran succeeds in painting a fairly succinct, but instructive picture of Israel's economic and diplomatic links with the Gulf Monarchies (two of which – Bahrain and the United Arab Emirates – signed peace treaties with Israel in 2019, known as the Abraham Accords), emphasising how Tel Aviv is now actively pursuing closer ties with Saudi Arabia: concluding a bilateral treaty with the powerful Gulf state has long been seen by Netanyahu as the ultimate diplomatic triumph. As far as Iran is concerned, Israel's foreign policy towards Tehran is undoubtedly dominated by security concerns regarding the very survival of the Jewish state in case Iran pushes forward with its nuclear program. Iran has been the source of much discord between Israel and the US during Barack Obama's second term, when Netanyahu bitterly opposed the negotiations leading to the signing of the Joint Comprehensive Plan of Action (the Iran nuclear deal) and went so far as to address a joint session of Congress in 2015, heavily criticising the American president for pursuing negotiations with Iran.

The epilogue of the book traces the main directions of Israeli foreign policy under Netanyahu since 2009, when the leader of the Likud returned as prime minister, and one cannot help but notice certain critical notes in Aran's arguments: discussing Netanyahu's 2018 speech before the Knesset, in which he called the period since 2010 a "wondrous decade" for Israel, the author notes how the prime minister conveniently glossed over the less savoury aspects of the previous ten years, such as the controversial 2018

Nation-State Bill, which became part of the country's constitution and states that Israel is the nation-state of the Jewish people (with no mention of equal rights for the Palestinian Arab minority), thus cementing its deepening ethnocracy. The book's conclusion is somewhat bleak: Aran compares Israel under Netanyahu with Napoleon's Grande Armée, arguing that, while the country seems to leap from victory to victory, it might soon have to face its own harsh winter. Given the prolonged political crisis that has led to a record of four general elections in two years, Aran might well be correct in his assessment.

Overall, *Israel's Foreign Policy since the End of the Cold War* represents an engaging and informative read for Middle East scholars and students alike, as well as for the general public, and will undoubtedly remain a solid reference book for years to come.

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Hirsch, E. D.; Katt, Joseph F.; Trefil, James (2002), *The New Dictionary of Cultural Literacy* [<http://www.bartleby.com/59/17/postindustri.html>], 20 January 2005

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