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The Islamic State's Political Organization. The Political Impact of Jihadist Terrorism: Consequences in the European Union

1. Introduction: The Arab Spring

The “Arab Spring” is the name given by the media to a series of popular and political demonstrations that took place in the Arab region starting at the beginning of 2011. Most of them were a consequence of the extremely grave economic and financial situation in the region, and of the absence of political freedom that precipitated the government breakdown in Tunisia, Egypt and Libya, and caused instability in Yemen, Bahrain, Iraq and Syria.

These revolts have no precedent in the Arab world. In fact, in their history there have been many secular and republican revolutions, but all of them were born from military coup d'états and gave birth to new, often authoritarian governments, supported or not by the civilians. The difference in the present situation is the claim of democracy and the substantial improvement of living conditions. Given the nature of their claims – democratic freedom, political and social change – some European observers associate them with the European revolutions of 1830, 1848 and 1989 in East Europe, after the fall of the Berlin Wall.¹

The third democratic wave, from the mid-seventies to the nineties of the 20th century in the southern and eastern Europe, Latin America and Asia-Pacific, had not run through the frontiers of North Africa and the Middle East. The Arab world became the exception. That is the reason why revolts were received with optimism by those who believe that democratic transitions are produced in phases and affect simultaneously several countries in the same region.

1.1 Causes

The Arab Spring was a popular reaction against the ongoing abuses perpetrated by authoritarian regimes. In spite of the existing differences between Arab countries, most of them are characterized by a lack of political freedoms; a systematic

1 S. Mangana, *Las protestas en los países árabes son en respuesta al inmovilismo político*, “Vaduenuevo” no. 31, Montevideo 2011, available at <https://www.vaduenuevo.com.uy/index.php/faq/105-entrevistas/2064-31vaduenuevo01>, accessed 20 January 2016.

violation of human rights; restrictive legislation; evident gender inequality (being a result of the religious context, but also of the patriarchal values prevailing); and emerging laws created under the pretext of fighting external threats, as in the cases of Egypt, Algeria, Syria and Saudi Arabia.

The most neutral analysts believe that the causes of the initial demonstrations were the consequences of the economic crisis in a region that had put all its economic expectations on petrol. Those specialists, who are more aligned with the movement, describe the “Spring” as the product of the social maturity in societies which fight against inequality and search for people’s higher participation in political decisions.

The popular uprisings took place as a consequence of several structural causes: corruption, inefficiency and repressive eagerness of the regimes in the area. The permanent dissatisfaction in terms of basic needs from a wide percentage of the population – mostly young and with no expectation of developing a dignified life – is a structural component of a situation which explains the present mobilizations.²

We can differentiate various factors explaining the emergence of these revolutionary movements:³

- *Historical*: the loss of three wars against the State of Israel, that forced some countries in the region to accept peace and cooperation agreements with the United States, thanks to which the United States acquired control of the petrol resources and at the same time committed to maintain despotic leading figures in power, such as Mubarak in Egypt.
- *Political*: the establishment of single party dictatorships, which silenced the population.
- *Economic*: the 2008 Wall Street financial crisis obliged many countries to adopt unpopular financial measures.
- *Social*: the existence of a very young population with high unemployment rates and the impossibility of immigrating to Europe, given the obstacles imposed by European countries.

2 J. Núñez, *Apuntes de urgencia sobre la oleada de cambios en el Mundo Árabe*, Instituto de Estudios sobre Conflictos y Acción Humanitaria (IECAH), Fundación Carolina, no. 18, 2011, pp. 39–43.

3 I. Ramonet, *Cinco causas de la insurrección árabe*, “Le Monde Diplomatique” 05.03.2011, available at <http://www.monde-diplomatique.es/?url=editorial/0000856412872168186811102294251000/editorial/?articulo=8ca803e0-5eba-4c95-908f-64a36ee042fd>, accessed 20 January 2016.

1.2 Consequences

The consequences of the Arab Spring movements and revolts have been many and of a very different nature. The governments that have collapsed or been brought down had a model which was similar to the Soviet style countries, with a single party that was maintained by powerful security structures. The Arab monarchies have stood better than other systems in the area (Jordan, Morocco and the Persian Gulf); perhaps they guessed that establishing changes, even small changes with almost no repercussions, would be an important step for avoiding popular revolts. Another important consequence is the need for the United States to change their foreign politics in the Middle East, and the map secretly drawn by the UK and France during the First World War is apparently disappearing.⁴ The deep social and political transformations in the Arab world, the emergence of the general populace as an important political actor, the simultaneous demands placed on the authorities for accountability; and the increasing public debates about these Arab societies' futures, which were exposed as the main consequences of the movement, have not been completely resolved.

Four years after the Arab Spring, we do not have many reasons for optimism. In Egypt, a general reduction of freedoms has taken place since el-Sisi arrived in power. The Muslim Brotherhood, the winning party in the legislative elections of 2011 and in the presidential elections of 2012, have been removed from power and banned, accused of being a terrorist group. An anti-protest law has been approved to prevent large demonstrations such as those in Tahrir Square. Also, various activists have been condemned to long prison sentences for questioning that law. The Social Affairs and Justice Ministry has given an ultimatum to all the associations registering under the very restrictive law of 84/2002, allowing the authorities to dissolve associations, block their funds and even put their leaders in prison, if they are a threat to national security.⁵

In the case of Syria and Iraq, we encounter two sectarian regimes trying to exploit religious heterogeneity to their own benefit. The civil conflict in both countries has caused many non-state groups to challenge the legitimate monopoly of the use of violence by the central power. Armed militia and jihadist groups have empowered themselves by taking control of significant areas of territory, which

4 VVAA., *La Primavera Árabe y sus consecuencias*, "Journal Alif", no. 98, 2011.

5 T. Cartalucci, *2011: Year of the dupe 2011*, Land Destroyer Report, available at <http://landdestroyer.blogspot.com/2011/12/2011-year-of-dupe.html>, accessed 1 December 2015.

in some regions implied a retrograde interpretation of Islamic law or Sharia and, in some cases, the persecution of religious minorities.

Yemen and Libya, where the former leaders were kicked out of power, have now embarked on a dangerous “journey to nowhere” as a result of the central power’s breaking down.

Faced with the social changes in the North of Africa and the Middle East, several analysts have defended the birth of a new “democratization wave.” However, we cannot refer to it as a “democratization wave”, but we should rather describe them as a “wave of political change”, within a certain region, with very different effects depending on the nature of the Arab regimes. Of all the democratic transitions, which were opened in 2011, the only democratic regime has been established in Tunisia.⁶ Other Arab countries have undertaken political liberalization processes, which have not caused substantial changes in the authoritarian nature of power.⁷

In Tunisia, the democratic transition continues forward, in spite of the political clashes, the social gaps, the economic crisis, the regional instability and the terrorist threat. However, it may end up being unviable if the current regional situation carries on, not only because of the jihadist threat inside and outside its borders but also because their history has proven the structural dependence of Arab societies on each other.

Will the societies, in which this movement was born, fight for their citizenship, for viable civil societies, for democratic and transparent political institutions? It is unlikely that social movements can survive if local institutions and social groups are not flexible. Democratic development depends on the consolidation of a middle class – a social class generally not present in the region, with the exception of Turkey.⁸ A strong, independent civil society is vital, as democratization processes depend on it.

Another important consequence is the deepening schism between the two branches of Islam, which has led to alarming levels of sectarian violence. And, certainly, the most important reason has been the increase of regional instability after the beginning of the struggle for power in the majority of the affected countries.

The irruption of the Islamic State (IS) means a new destabilizing factor. The above-mentioned group, which controls several Syrian and Iraqi provinces and

6 P. Morillas, *Lo que queda de la primavera árabe, cuatro años después*, “Política Exterior” no. 163, 2015.

7 VVAA., *Escenarios post-Primavera Árabe: actores y dinámicas de cambio*, “Journal CIDOB d’Afers Internacionals”, no. 109, 2015.

8 B.S. Turner, *La ciudadanía árabe: la Primavera Árabe y sus consecuencias no intencionales*, “Sociología Histórica” no. 1, 2012.

governs over millions of people, is trying to restore an Islamic caliphate. Their practices include flagellations, amputations, crucifixions, torture and summary executions, and they are not only applied to their enemies, but also to those who drink alcohol, commit adultery or steal. The Islamic State has brought into the spotlight the treatment of minorities, together with deportations of Christians and the elimination of the Yazidis, including Muslims themselves, as they call Shia apostates, and of all those who dare to question their fanatical interpretation of Islam. In this respect, it is worth remembering that massacres have been perpetrated in recent months between various Sunni groups that rose against them and various ulemas who refused to swear obedience were executed.

The Arabic Spring has been analyzed from a Western perspective as an attempt to embrace freedoms and democracy by the people, but we cannot really deny that the power vacuum left in many countries has helped terrorist groups to operate with total impunity. Salafist networks occupy an important place among them. A considerable part of the rebels believe that fighting is a part of Jihad. As such, the Arab Spring has turned into a race between radicals and kleptocratic governments trying to organize themselves, when they are not yet prepared to govern under the norms of political reasoning, very different from religious thinking. The consequences of the problems in the power structures have strengthened the loyalists of Al Qaeda, and other diverse groups are also in search of the imposition of Sharia law.

2. The Development of Fundamentalist Movements. Islamic State Jihadism

In June 2014, on the first day of Ramadan, Abu Bakr al Baghdadi proclaimed himself in front of the world the Islamic State's (IS) caliph, also known by its acronym in Arabic as Daesh. And as such, since his very first public appearance in the Iraqi city of Mosul, al Baghdadi has called Muslims to follow his postulates. The political entity that is the IS, is first and foremost, a war machine, and wants to revive the religious and spiritual leadership of the Umma, the Muslim community of believers, by recovering the caliphate, the symbolic institution extinct since 1924. In the 21st century, the institution of the caliphate irrupts again, claiming to be a source of legitimacy for the IS, to support its dark plans of conquest and terror.⁹

9 Ataturk provided the "coup de grace" to the Ottoman Empire, and allowed its secularization and modernization getting rid of its political and religious leader, the Caliph.

2.1 The Caliphate: origins and development.

The subject of the Caliphate goes all the way back through Muslim history, occupying a central role in debates about the organization of Islamic power.¹⁰

The Caliphate was born to solve a specific political problem, the power vacuum left after the prophet's death. The continuity of the "Mohammedian" project was at stake, and with it, the birth of Islam, still at an embryonic stage, hence the election of the "successor" in the immediate aftermath of the prophet's death. In the religious hierarchy, the caliph is the "supreme guide" in charge of protecting and spreading the divine message, the first officiant of the collective prayer, and the guardian of the religion and holy places. In the political sphere, he manages the empire's administration and names his subordinates and representatives in the different provinces; he is in charge of providing justice, manages taxation and is the supreme chief of the armed forces. Since the beginning of the Institution, the Caliphate has been an ideal concept, adapted in different moments and circumstances. The restitution of the Caliphate has taken place in heterogeneous situations throughout history. The source of all legitimate power in Islam, as the "successor" of Mohammed, the caliph represents the umma, from which the importance of its symbolism derives. It is therefore in the Islamic State's interest to carry through its reinstatement.¹¹

2.2 The Caliphate: organization and division of power

The term "caliphate" was originally used by Mohammed's disciples to continue with the religious system established by the prophet, known as the Rashidun's Caliphates. A "caliphate" is also a state implementing this type of political system.

The Caliph's power is similar to the Roman kings' power, which concentrated all authority in a single person: the king is the religious, political, military leader, justice administrator and interpreter of the divine will. The Caliph is the highest spiritual leader. The Sultan is the leader of the armed forces, he is in charge of war and financial matters. The Emir is responsible for the administration of justice. The chamberlains have the same functions as the sultans and emirs; they are equivalent to other countries' prime ministers. *Visirs* maintain control of their territory inside the Caliphate by force. They were instituted by the Caliphate to avoid further disagreement. The *visir's* limits in his territory are determined

10 In his *Prolegomena*, a historian and sociologist Ibn Jaldun (1332–1406) highlights the Caliph's double role, political and religious, as the prophet's successor.

11 D. Alvarado, *El Estado Islámico y la reinención del califato*, "El Universal" 19.04.2015, available at <http://www.eluniversal.com/opinion/150419/el-estado-islamico-y-la-reinencion-del-califato>, accessed 20 January 2016.

according to his military strength. The *visir's* powers are delegated partially or entirely by the sultan.¹²

Regarding the central Muslim administration, the *divan* (group of secretaries) work in territories. They are classified in two branches: "the quill group" and "the sword group." The *divan* is presided over by the *visir* or *hachiv*. The Muslim system has two different bases: donations and tribute. Donations are divided in two groups: one of them is aimed at charity and the other one is for social aims. The tribute comes from conquered regions. The *Azaque* taxes annually income and goods and the percentage is calculated according to what is taxed. The *mucus* taxes foreign goods at 10%. Any other tribute imposed by the prince, not having a Quranic base, is illegal. The Muslim treasury is backed up by the prince's personal fortune, and the prince is the one who pays the principality's administrative expenses.

In terms of juridical Islamic organization, the juridical power was given by God to Mohammed and by Him to the Caliph, which is then delegated by a judge, known as a *cadi*. There are two instances and two competences for each part of the law. There are civil judges, called *cadi*, and penal and religious ones, known as *zabaxorta*, lastly those of the court of appeal that had executive functions. The judges were assisted by a caliph and assessed by two witnesses whose honorability was guaranteed by the *mozaqui*. After that they were named official witnesses. Each judge had a *hachiv* who carried out the procedures and was paid by the litigants.

The way to adapt Muslim law to the present world, and also link their leaders to those under their command, is based on the custom, conventions, juridical stragem, fiction and the prince's legislation. The Conventions' goal is to modify the original pact. The legal strategy and the narrative are created, so that the Muslim does not disobey the law nor violate Allah's precepts. The prince is not allowed to legislate or to create tributes. However, the law acknowledges that, without the measures imposed by him, the state would be ungovernable and the prince would not fulfill his mission. For this reason, in parallel to the religious *nizam*, there is a derivative of the King called *ganoan*, who establishes a type of counterweight to religious rule.

2.3 The Islamic State (IS). Development and Ideology

The Islamic State is a terrorist, rebel group of jihadist Sunni nature, a self-proclaimed caliphate, settled on a broad territory. Technically, the group is organized

12 M. Gaudefroy-Demombynes, *El califato musulman*, "Revista de Administración Pública", no. 6, 1951.

as a non-recognized state,¹³ declaring the intention to create a caliphate that would extend throughout the whole Muslim world. Abu Bakr al-Baghdadi is designated as its highest authority, the self-proclaimed “Ibrahim, iman and caliph of all Muslims.”¹⁴

With this intention, the group was renamed Islamic State, in response to their desire for expansion: “the legality of all emirates, groups, states and organizations is rendered null and void after the expansion of the Caliph’s authority and the arrival of his troops.” In practice, they call themselves a caliphate following the model of the former Islamic kingdoms, but it is a terrorist group which has managed to capture territory and establish a prototype of a de facto state.¹⁵ Just like many other jihadist groups, IS is a radical, Salafist group.¹⁶

Salafism is a Sharia (Islamic law) school, derived from Wahabism. The Salaf were the first three generations of Muslim believers – under the Rashidun caliphate, and according to them it was the ideal Islamic State, pure in its composition. The most radical Salafists want to impose that idealized order on every Muslim.¹⁷ Its main characteristic is to be a plebeian mass rejecting the traditional Islamic elite, because they believe it is corrupted. This means that religious interpretation

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- 13 Originally known as the Organization for monotheism and jihad, it was born as a terrorist organization, close to Al Qaeda, to face the Invasion of Iraq (2003). It was led by Abu Musab al Zarqawi. After his death, the new leader, Rashid al-Baghdadi, under the tutelage of Osama bin Laden, expanded through those governing Ambar province, Ninive, Kirkuk and a big part of Saladino, and also, but in a smaller measure through Babilone, DIALA and Baghdad. During that time, it was proclaimed the Islamic State of Iraq, and its headquarters were in the city of Baquba. The Islamic State renewed during the Syrian Civil War becoming the Islamic State of Iraq and the East or their Arab acronym Daesh or Daech. Their following and current leader, Bakr al-Baghdadi, cut relations with Al Qaeda and declared in 2014, their Independence and their sovereignty over Iraq and Syria, proclaiming himself Caliph under the name of Ibrahim.
- 14 Historically, we can recognize four previous periods in the development of the current Islamic State: Islamic militia: *Yama’at al-Tawhīdwal-Īhād* (since it was born until 2003); Direct dependence on Al Qaeda: *Tanzim Qaidat al-Jihad fi Bilad al-Rafidayn* (2003–2006); Indirect dependence on Al Qaeda: *Islamic State of Irak* (2006–2013); Syrian Civil War and independence from Al Qaeda: *the Islamic State of Iraq and the East* (2013–2014).
- 15 P. Cockburn, *Isis. El retorno de la yihad*, Planeta, Madrid 2015.
- 16 F. Soní, *¿Es ISIS realmente un Estado?*, 15.10.2015, available at <http://revistafal.com/es-isis-realmente-un-estado/>, accessed 20 January 2016.
- 17 F. Aznar, *Doctrina y acción política. Pugnas sobre el islam verdadero. El salafismo*, in: *Yihadismo en el mundo actual*, Documentos de Seguridad y Defensa, Ministerio de Defensa no. 62, 2014, pp. 17–42.

would not be in the hands of ulemas and Sharia experts, but in those of the fighters themselves, which means that, due to their ignorance in Islamic law (Fiqh), their interpretation of the Quran and Sharia is based exclusively in these texts and in the Sunnah (the verbally transmitted teachings of the prophet), which makes it possible for them to be radically textualist. The Salafists make accusations of apostasy and heresy (*takfir*) against other Muslims (mainly Shias), which, in turn, are used to justify their attacks and atrocities committed against the Salafists. In this way, IS justifies attacks against anyone who is not loyal to the Caliph.¹⁸ Salafism is opposed to nationalism because the imagined community they feel a part of is the umma (the community of all Muslim believers) and even if conventional Islam does not see any contradiction between nation and umma, it is not compatible for them. Nationalism in the Middle East has been secular.¹⁹

The name jihadist describes those who, feeling to be at the vanguard of Islam, pronounce themselves in favor of armed struggle, instead of religious preaching. Jihadism is a Western neologism used to name the most violent and radical branches of political Islam, characterized by the frequent and brutal use of terrorism, in the name of a supposed jihad, called by its followers a “holy war” in the name of Allah.²⁰ Jihad, as a basic concept of Islam, is a debated question. It has two accepted definitions: the “lesser jihad” of violent inspiration, where the jihadist tries to legitimize himself, and the “greater jihad” of spiritual interpretation, representing the effort that every believer needs to make to be a better Muslim, a better father, mother, spouse or person. Ideologically, jihadism as a political doctrine is a theoretical and totalitarian group of ideas with an anti-liberal and anti-democratic viewpoint which, according to its critics, “systematically disregards human life.” That is the reason why it is considered by many as one of the most serious threats faced by liberal democracies, particularly in Western countries.

Jihadism as a derivation of Salafism is a heterogeneous phenomena in which diverse interpretations about how to return to Islam's origins coexist. All these doctrinal principles agree on restoring the grandeur of Islam, re-Islamizing Muslim societies to the most strict orthodoxy and the aspiration of creating political structures looking out for and promoting the achievement of these principles. The

18 B. Rougier, *Qu'est-ce que le salafisme?*, Presses Universitaires de France, Paris 2008.

19 Atatürk in Turkey, Gamal Abdel Nasser in Egypt, Hafez al Assad in Syria and Mohamed Reza Pahlevi in Iran, all tried to “de-islamize” their societies and remove the clergy's power, and it caused a clerical and conservative reaction, like the Salafism promoted from Saudi Arabia against the Arab republics.

20 S. Amghar, *Le salafisme en Europe: la mouvance polymorphe d'une radicalisation*, “Politique Étrangère”, no. 1, 2006.

acting environment may only be regional but all the lines coincide in that they wish to achieve every the union of all Muslims and the will of extending Islam all over the planet. The priority given to each objective and the methods to be used to achieve these objectives, depend on the historical and political characteristics of each region, which define the differences between groups.²¹

Their objectives are generally gradual and, in the medium term, they involve the overthrow of governments ruled by moderate Muslims, that they consider apostates, impious and corrupt because they are half-hearted, hypocritical and friends of Western countries – these are most of the Muslim countries, Saudi Arabia included, which has been targeted by jihadists trying to overthrow its monarchy. They try to consolidate power in like-minded states since from the beginning their objective is expansion, and they intend to recover the Islamic territories “taken from them illegitimately,” and re-create a radical Islamic order over the whole world.

In recent times, the most radical doctrines aiming at the global jihad – whose priority is to fight against Western countries until death – have been consolidated. For the theorist of radical Islam, inviting those responsible for the new age of religious ignorance, or *jahiliyyah*, to be a part of Islam is unacceptable. The only way to rehabilitate Westerners is by killing them in such great numbers that their conversion and submission will be real and humble.²²

Islamic terrorism has manipulated the concept of jihad with ideological fundamentalists affirming an international plot against Islam coming from the most powerful Western countries. Under this argument, the radical Islamists have manipulated jihad to the degree of translating it into a totalitarian ideology justifying brutality and considering it an obligation of every Muslim to spread terror in Western countries, destabilize the governability of those states and weaken or destroy its liberal democracies.²³

Politically, without forgetting the lack of separation between politics and religion, IS defends a theocratic system. Theocracy (from Greek θεός [*theós*], ‘god’ and κράτος [*kratos*], ‘power’, ‘government’) is a form of government in which governmental leaders coincide with the leaders of the dominating religion, so that

21 G. Arístegui, *La Yihad en España, La obsesión por reconquistar Al-Ándalus*, La esfera de los libros, Madrid 2005.

22 M. R. Torres, *El eco del terror. Ideología y propaganda en el terrorismo yihadista*, Plaza & Valdés, Madrid 2009.

23 M. Espino, *Yihadismo, una amenaza mundial que puede estar operando en México*, Friends of Israel Initiative, No. 27 2015, available at http://www.friendsofisraelinitiative.org/uploads/papers/pdf/FOI_Paper27.pdf, accessed 20 January 2016.

the governing politics are identical with, or much influenced by, the principles of the main religion.²⁴ A theocracy [*theokratian*] confers power and authority to God, author of all the good things.²⁵ The *umma*, or community, is the basic political unit of Islam. Its main mission is religious: the propagation of the divine message. However, to obtain this goal, it needs to organize itself from a political point of view.²⁶ The political authority is inscribed in the same line, as the one in charge of supervising that the observance of sacred law provides the *umma* with the capacity of observing its divine mission. Sovereignty, therefore, does not reside in the political establishment nor in the religious one, but in the word of God himself, specified in the form of Sharia.²⁷ But it is also a totalitarian theocracy.

In spite of the difficulty in establishing adequate terminology, autocracy can be defined by its opposition to democracy. Autocracy, if it is in a significant degree, invades all the fields in the political and social life of a country, and its main characteristic is that of the concentration of power in a single person, an ethnic or religious group or in a “movement” or party, and the subsequent diminishment or annulment of the citizens’ freedoms. Considered from a legal establishment of rights, or should we say the lack or repression of these, we find ourselves in front of a totalitarian regime in which a person is not treated as an “end in itself but as a piece of a whole, an instrumental sable mean.”²⁸

Totalitarianism or totalitarian regimes differ from other autocratic regimes in that they are led by a political party that claims to be – or, in practice, acts as – the only legitimate party having control over all state institutions.²⁹ These regimes exalt, in general, the figure of a leader who has an unlimited power, reaching into every aspect of society and manifesting itself through its authority exercised hierarchically. They drive a mass movement in which the intention is to remake the whole society (with the purpose of forming a new person in a perfect society)

24 Wikipedia, available at <https://es.wikipedia.org>, accessed 20 January 2016.

25 F. Josefo, *Antigüedades y guerras de los judíos*, Editorial Luarna, Madrid 2012.

26 M. Ayooob, *Many Faces of Political Islam: Religion and Politics in the Muslim World*, University of Michigan Press, Michigan 2009.

27 P. Crone, M. Hinds, *God's Caliph: Religious Authority in the First Centuries of Islam*, Cambridge University Press, Cambridge 1986.

28 A. Torres Del Moral, *Estado de Derecho y Democracia de partidos*, SPUCM, Madrid 2010, p. 288.

29 J.J. Linz, *Sistemas totalitarios y regímenes autoritarios*, Centro de Estudios Públicos y Constitucionales, Madrid 1977.

and they make intense use of propaganda and other means of social control and repressive mechanisms like the secret police.³⁰

Totalitarianism is a form of State, a way of organizing the four components of the State itself: territory, population, government, power, and, according to the author, also the law and the judicial system. Totalitarianism is not simply a type of government, it is an organization around the people in power, a type of non-democratic state. Authoritarianism has as its main characteristic the lack of acknowledgement of freedom and human rights. However, the difference between totalitarianism and authoritarianism is that, in the former, is characterized by a privation of freedom and individual rights, non-recognition of the human beings' dignity, and turning the social classes into masses.³¹

Totalitarianism considers the state as an end in itself, and therefore seeks to maximize it. Given that power exists for other things to be achieved, it follows that, if the State is considered an end, these two components of politics are correlative; as a consequence, a larger state gives us more power. In this way, the power of the totalitarian state can do everything because it is an end in itself, which contains everything. Mussolini (who used for the first time the term "totalitarianism") created the slogan "everything in the State, everything for the State, nothing outside the State, nothing against the State." It is not the state for people, but the people for the state.

In its political aspect, totalitarianism implies political monism because all the power structure turns around political power, concentrated generally in a single leader who absorbs all the political powers and denies those who oppose him or are independent. Unlike in democratic states, where political power is just one of the powers, which in a hierarchy is on top of social power, in totalitarianism that hierarchy does not exist because there is only one power, a total political power. A primary characteristic of the state is the exaltation of an omnipotent or totalitarian state, bringing respect for the leaders almost to a level of "a cult of personality."

In the sociological aspect, totalitarianism defends the sociological monism, because its ideology rejects the concept of person as a free-will possessing individual in favor of another concept in which subjectivity is reduced to the status of a part of society. In light of this conception, human being is human precisely insofar as he/she is a member of society, and not an individual.

30 G. Hermet, *Totalitarismos*, Fondo de Cultura Económica, Mexico 1981.

31 R. Aron, *Democracia y totalitarismo*, Seix Barral, Madrid 1968.

2.4 The Islamic State as a State?³²

The State has resisted a clear definition. Its complexity determines that, in the attempt to define it, it is necessary to turn not only to legal aspects but also to historical and ideological events, and to the way power is executed. The global jihadist project is inspired by the desire of driving the Muslim world to a new wave of progress and expansion at all levels: political, economic, cultural, religious, etc. These aspirations lead to a double and essential purpose: to unify the whole Islamic community and its territories under a single flag, and to install a new caliphate supported by the strict principles of the Salafist ideology. At the same time, achieving these goals would require previous completion of three other long-term objectives:³³

- To reduce or eliminate the influences of non-believing governments over the Muslim world, particularly those influenced by Western nations but not only.
- To bring down the present apostate governments established in Muslim countries and replace their political institutions of Western inspiration by theocratic regimes, ordered according to the jihadist Salafist interpretation of Islamic law or Sharia.
- Re-conquer the territories that were a part of the Islamic world. This would include, naturally, Palestine and Israel, wide regions of Spain and Portugal, the Balkans, the Mediterranean islands, Greece and the south of Italy.

The caliphate does not accept other political or administrative frontiers than those imposed by the sharia. If, according to Torres del Moral,³⁴ the state is the institutional organization of a national community with a sovereign political power, can we consider the model established by the IS as a state? Given that its goal is to build a new state, it seems reasonable to question how closely the caliphate is being built into a State. A state needs to be a sovereign political institution with an administrative and legal frame maintaining the legitimate monopoly on violence inside its territory in order to maintain the established order.³⁵

In the long term, once the conflict is stabilized, it would be possible to analyze if the caliphate is a sovereign or not, if sovereignty is understood as the capacity of a State to act in the international system in a relatively autonomous way. The

32 F. Soní, *¿Es ISIS realmente...* op.cit.

33 L. De la Corte, *Yihadismo global: una visión panorámica*, in *Yihadismo en el mundo actual*, Documentos de Seguridad y Defensa, no. 62, 2014, p. 49.

34 A. Torres Del Moral, *Estado de Derecho y Democracia de partidos*, SPUCM, Madrid 2010, p. 288.

35 M. Weber, *Economía y sociedad. Esbozo de sociología comprensiva*, FCE, Mexico 1964.

limits of sovereignty are the acting capacities of other states. Therefore, the most powerful states are also the most sovereign ones, but even the weakest state keeps some capacity to act in an autonomous way to define its internal politics. The IS, however, is acting as if it were a *de facto* sovereign state, with no fear of contravening international laws or human rights, which implies that at least its internal politics is defined in a completely “sovereign” way.

The first condition to establish a state is the monopoly of force. In the first instance, it is not necessary that it is legitimate, as eventually legitimacy is obtained by virtue of the interest of whoever monopolizes the use of the force, benefitting out of it in the long-term within its territory, and promoting in this way the establishment of order in the territory that increases economic growth. One could expect that, by monopolizing the use of violence, the IS, n by means of peace and economic benefits, would build an administrative system allowing it to raise taxes and become legitimate in the eyes of the population.

To monopolize the use of violence and to take measures to institutionalize it, the group establishes its Islamic courts according to Sharia and organizes jihadists to carry out the work of the police. What is more, it establishes a secret police to control the population in a more efficient way. However, the radical application of Sharia – which imposes punishment such as mutilation, executions, crucifixions and slavery – could cost them legitimacy. In spite of the price of their atrocities, it should not be forgotten that these methods have facilitated the conquest of many cities, such as Mosul, where the Iraqi army ran away instead of facing this jihadist group, which executes its prisoners on a daily basis.

Islamic State combines both charismatic and traditional domination. Regarding traditional domination, the IS bases the control of the conquered territories in pacts with the local tribes, promising in exchange economic benefits depending on the resources which it controls (water and petrol) and organizing the administration according to Sharia. It searches for legitimacy by means of populist measures, such as the redistribution of wealth, the sharing out of food and petrol and the prosecution of commercial abuse.

The survival of this *de facto* State is yet to be seen, both because of the warring situation and the adaptations they would have to make to a government structure which is based on 7th century laws, the share of the power and the resources with their tribal allies and the tensions between Iraqis and foreign fighters whose interests are divergent. These adaptations will provoke tensions in the Salafist movement, because of the possible “deviation of a radical Salafism when re-interpreting Sharia to make it applicable to a functional state.”

In an attempt to conceptualize the state phenomena, we speak of a state when a certain population, living permanently in a delimited territory, is subjected to a

group of rules and concrete institutions. Analyzing the previous attempt of definition, the existence of various elements or compounds of the state phenomena can be obtained. The three elements we have highlighted in the State, and without which the State would not exist, are: people, territory and power.

However, it needs to be considered that the State is not a simple arithmetical addition of these three elements, but that they reach a determined interaction when connected with each other, creating a unit that cannot be considered separately and this is what, in particular, gives sense to the State concept.³⁶ Heller refers to the State as a domination unit, independent in its internal and external matters, which acts in a continuous way, having its own means of power, and clearly delimited.³⁷ In this way, as Heller indicates when analyzing these elements of the State, we must not forget in any case that it acquires full activity and reality only in its reciprocal interrelation. The previous affirmation does not mean that these three elements cannot exist separately, creating certain situations, but that these situations do not determine the existence of a State. That is the reason why the State elements must not be mistaken by the State. That is the reason why the State's elements should not be mistaken for the State itself.

In general terms, power is the capacity of a person or a group to impose his will and decisions within a certain community. In this first approach to the term, we can highlight several substantial aspects which we consider necessary for its execution. In the first place, it is worth highlighting the capacity and strength to execute a certain will or decision and, in the second place, we should point to the target group's acceptance to obey what is ordered. But power – political power – needs the legitimation of its acts, and this legitimation, in today's democratic societies, cannot be anything other than the "Rational" legitimation, which means the existence of a series of rules which are accepted by the community, and according to which power is executed. It is therefore a society that has its base in the law, and the law canalizes the relationship between leaders and those who are governed. Thus, it implies a high degree of institutionalization of power. Faced with this legitimation, traditional legitimation is based on the respect and the trust that the community has in its ancestral customs and habits, which determine the adequate execution of power.

Faced with these forms of legitimacy, we find "charismatic" legitimation, whose base is in the special characteristics of those who execute power. Those who hold power need to have a certain personal and prestigious conditions

36 C. Núñez, J.M. Goig, M. A. Núñez, *Teoría del Estado Constitucional*, Editorial Universitat, Madrid 2010, p. 18.

37 H. Heller, *Teoría del Estado*, Fondo de Cultura Económica, Mexico 1955.

which differentiate them from the rest of the community members, such as religious values, ethical values, etc. It has an autocratic nature and it corresponds to the historical phase of the personal, not institutionalized power. It is typical of underdeveloped countries and autocratic regimes and dictatorships, and it is in this environment that we would place the legitimacy the IS finds in the execution of the power, which is acquired through force.

In traditional Islam, the concept of state, government and, in general, the public is rigorously theoretical. After fourteen centuries of existence, this has generated hundreds of sects and excisions. Although the belief that sovereignty belongs to God, and not to the people, is not exclusive of this religious practice, and in a historical phase many cultures have based their political systems in the divine right, only in the Islam (the meaning of this word is “surrender”, “submission”) this school of thought has been kept until today.

The consequences for Muslim societies, particularly in the present, of the theocratic dogma, have been a complete disaster. Due to the fact that sovereignty belongs exclusively to God, the adverse effects multiply themselves: if the leader is the Creator’s direct agent, he is exempted from accountability for his actions over the governed. Only God can judge its public administration. This argument has served historically to justify the autocratic regimes, and in the specific case of the Islamic State it is still working to reject the democratic system and accuses it of being against divine sovereignty. At this moment in time, Islamic revivalists of the 21st century, conservatives and revolutionaries are reclaiming the divine sovereignty’s dogma to justify autocracies. What is more, they add that this dogma is an inalienable part of the so-called “Islamic identity.”

The IS does not defend a Muslim state, but an Islamic state: a state not defined by the fact that those in power confess to being Muslims, but because the whole system is structured on the basis of real Islamic law. The absolute sovereignty has its roots in Allah (*al-hakimiyya*) and therefore humans can only apply this sacred law which is superior and fairer than any other system created by humanity in the human history. There will be three pillars in the new Islamic State: the priority of religion in all aspects of life (*din*), the superiority of the community of believers over the differences of race, skin color or social condition (*umma*), and the absolute submission to Allah, as any power is executed by the people only insofar as they participate in the divine revelation (*hukm*).³⁸

38 J. Cepelledo, *Modelos de organización política de la umma en la historia del pensamiento islámico*, “Cuadernos electrónicos de Filosofía del Derecho” no. 22, 2011.

3. Jihadi Consequences on the International Order

The IS has come to stay. It has the organization, the strength and the support needed to go on with its activity for a long time. It has a territorial base to start working and building its goals. The proclaimed Islamic Caliphate controls the territory, the roads, the economy, the society and has enough popular support to consolidate its power. Unlike other terrorist groups that Western countries have fought against recently, the IS has decided to unite the Muslim world under a single flag, though through its methods it has no morality in the eyes of humanity, anything goes which follows Islamic laws, or at least their interpretation of them. Their fundamentalism makes them unique.

This has some unexpected consequences, which, in turn, may lead to unknown outcomes. The consequences can be found on different levels: economic consequences, political – not merely within its territory but everywhere, in internal and external security, and in the field of human rights – and *regional and international consequences*.³⁹ IS terrorist consequences reach the whole planet and this reflects the need for a holistic response from every state's powers and a solid and properly built international cooperation faced with a "shared" threat. This fight cannot only focus on repressive action, since the international community is facing a terrorism with new features that requires fast and effective response. The fight against violent fundamentalism still holds a key role in any effective response strategy. It is essential to develop wide fighting strategies against violent extremism at an international level, to fight radicalization. The foreign terrorist fighters present an important threat to peace and security. The jihadist flow to conflict zones has been widely expanded. But the worry is not only how it feeds the international lack of stability. The greatest fear in the long term is that they can return to their countries of origin trained and with orders to attack. To break this cycle, the members of the United Nations Security Council urged to reinforce the international cooperation to identify them, chase them and to adopt measures to prevent radicalization.

The Security Council adopted, as promoted by the United States of America, a resolution that established a legal framework to respond to the growing threat posed by foreign terrorist fighters. But, despite the adopted measures, the flow of terrorists continues and that is why some new measures need to be adopted to stop a phenomenon that knows no borders.

39 I. Fernández-Molina, *Islamismo y Relaciones Internacionales*, in: *Actas de las I Jornadas de Estudios de Seguridad de la Comunidad de Estudios de Seguridad*, UNED, Madrid 2009.

The Resolution 2178 (2014) is another piece in the fight against jihadism, and requires all Member States to prevent entry or transit through their territories of any individual about whom that State had credible information of their terrorist-related intentions. It also urges the exchange of information about terrorist suspect lists or criminal investigations. As recently stated by the United Nations (S/2015/358), there is no single, simple solution to this multifaceted problem. Disrupting the flow of foreign terrorist fighters and the threat that they pose presents an unprecedented challenge and will involve significant expense for Member States. Preventing radicalization in the first place and successfully screening, monitoring or rehabilitating returnees are at the heart of an effective global response. So too is the immediate need to improve analytical understanding of the problem and operational information and intelligence sharing within national Governments and between the Member States; in particular, by taking further steps to share watch list information on individuals of interest. Privacy, data protection and sensitivity of information concerns complicate this vital priority. The full implementation of preventive measures under Security Council resolution 2178 (2014) would be a major step forward. Intensified efforts with regard to prevention and returnee policies, including further work in relation to the Internet and social media, are crucial.

4. Europe Faced with Jihadist Terrorism

The attacks to the United States on September 11th, 2001, exposed the gravity and the seriousness of the jihadist threat to the Western world's collective subconscious. Since then, the European Union member states have tried to offer a coherent and collective response in the face of this transnational threat to thus guarantee the security of its citizens.

These efforts were reflected in the European Security Strategy, approved in 2003, and in the European Union's Counter-Terrorism Strategy adopted in 2005. Overall, these documents have articulated the general strands of the European Union's response against a jihadist threat that, since its appearance on the international scene with the attacks of 2001, has been clearly determined by the actions of a specific organization: Al Qaeda.

Faced with the new situation caused by the emergence of IS, or ISIS in current British usage, the EU has reacted formulating two interrelated strategies: the Counter-Terrorism Strategy for Syria and Iraq, with particular focus on foreign fighters, and the regional strategy for Syria and Iraq as well as the Daesh threat.

Although the Lisbon Treaty, approved in 2007, does not directly make significant changes to resources nor to the existing general lines of the strategy against

jihadism, many of its regulations open the door to potential improvements in the capacities and possibilities of action against jihadism abroad:⁴⁰

- By conferring a specific legal personality on the Union through article 47, it is allowed that, from now on, the EU can sign international agreements about terrorism with other countries.
- The treaty contemplates, through article 43, that the EU may carry on civil and military missions to support third countries in the fight against terrorism.
- The introduction of the mutual defense clause, article 42.7 TEU, and of the solidarity clause, article 222 of the Treaty on the Functioning of the European Union, leave the door open so that the EU can mobilize all the necessary instruments, including military resources, to respond to a potential terrorist attack.

After the jihadist attacks in Spain, London, Denmark and France, the countries that make up the European Union adopted the challenge of reinforcing their internal and external control mechanisms to avoid new terrorist actions. The terrorist threat has fostered “the political opportunity” to get measures off the ground that had been tucked away, for their possible violation of human rights, and that now are more likely to be launched. The Regional Strategy for Syria and Iraq and the Daesh's threat, adopted by the Council on March 16th, 2015, has a twofold objective: countering the threat from Daesh and other terrorist groups in order to get regional and international stability, and creating the conditions to achieve an inclusive political transition in Syria and sustainable stability in Syria, Iraq and the wider region. One of the aspects that the International Community and groups concerned with International Human Rights law have been most concerned with is the use by the United States of restrictive human rights measures under the protection of the security against terrorism.

The legislative reforms in matters of terrorism adopted by different countries have followed common guidelines: extended pre-charge detention time, judicial reorganization processes, with amendments to the appeal system and the presentation of evidence, reduction of secret telephone and cybernetic communications, even allowing the interception of telephone communications without a warrant, or admitting “preventive interception.” Secret service and police powers have also been expanded to fight against terrorism, facilitating the exchange of

40 F. Ruiz, *La estrategia de la UE contra el yihadismo en tiempos de ISIS*, Instituto Español de Estudios Estratégicos, no. 17, 2005.

information between different agencies, and the access to certain personal data without a court order.

This set of actions has resulted in the reinforcement of the State, with the consequent emergence of murky areas, where the fundamental rights and freedoms result, in some aspects, more fragile and precarious than in the past, offering weak protection to individuals against the pressure applied by terrorism,⁴¹ and such regulations may collide with the international standards that regulate the restrictions of rights, according to which, every measure to repeal, suspension or restriction of civil rights and freedoms must strictly accomplish certain requirements: that the rules are accessible, foreseeable and precise; that the restriction on rights is justified; that the restriction is necessary in a democratic society; that it is proportionate to the legitimate aim pursued and the reasons that motivate it; and that it is not discriminatory.

Security and the fight against terrorism are interests shared by all the European Union member states,⁴² as well as respect for human rights and democracy. As a result of the Arab Spring, a massive migration toward Europe, mainly by sea, took place from the countries involved, becoming the largest migrant wave known in Europe. In response to the situation, the European Neighborhood Policy (ENP) was reviewed, with the establishment of new elements, such as: 1. The so-called 3 Ms: “markets, money and mobility;” 2. the “more for more” principle (advance more with the neighbors that progress more); 3. the principle of differentiation, to “adapt” the Neighborhood Policy to the context in each country.

The review of the European Union’s political strategies toward North African Mediterranean countries had proven the urge to support the strengthening of some very incipient democracies to guarantee sustainable economic growth, without thereby having to renounce the strong frontier control to prevent the massive entrance of migrants. The European Union implemented the new external border surveillance system called Eurosur with the aim of improving the fight against irregular migration and organized crime, and at the same time, reinforced the frontier controls through Frontex, whose promotion and reform has been gradual and progressive.

41 M. Fernández, *La amenaza terrorista en la unión europea: reacción legislativa común y estatal*, “Revista Aequitas” no. 2, 2011, pp. 113–153.

42 A. Aixalá, *La estrategia de la Unión Europea ante el terrorismo internacional y la defensa de los Derechos y Libertades*, in: *Política exterior y Parlamento Europeo: hacia el equilibrio entre eficacia y democracia*, M. Barbé, A. Herranz (eds.), 2007 available at <http://www.recercat.cat/bitstream/handle/2072/204360/6%20cap%204.pdf?sequence=6>, accessed 20 January 2016.

4.1 Common European immigration and asylum policies

The EU has created a common asylum policy so that asylum-seekers rejected in a country cannot apply again in another Schengen country. This common policy was implemented with the Dublin Convention in 1990 and followed with the execution of the EURODAC system and the Dublin II Regulation IN 2003 and nowadays is still in use. In October 2009 two European Commission proposals were adopted, to provide for a single asylum procedure and the equity of a uniform status, valid throughout the European Union: the parts for the final construction of a for international protection. *The Stockholm Programme*, adopted by the European Council in December 2009, establishes the EU measures and priorities regarding international protection between 2010 and 2014.

With its adoption in June 2013, the European Union recast asylum procedure; the Member States will begin the process for the modification of national legislation so that it reflects the agreed changes. The EU, through a long and difficult process, has tried to face the migration policy as a European policy, establishing common elements to an array of regulation that has included many aspects: legal migration, irregular migration, asylum and refuge as well as integration policies. However, there is still a long way to go until the EU adopts a true common policy on the subject. Recently, terrorism and illegal migration are threatening one of the EU's most important principles, free circulation, and for that reason we need to address the way to manage the security in our frontiers without damaging the rights and freedoms of the immigrants, and without betraying the European Union's principles. Recent events may contribute to putting together the fight against terrorism, the European common foreign policy, especially toward the Middle East, border control, free circulation, the fight against irregular immigration and the integration in our societies of minorities from different cultures or religions.

In 2015, there was an increase of irregular immigration, boosted by different factors such as: the wave of conflicts in the Middle East (especially the problems in Libya and Syria); the demographic pressures in Africa; the increase in human trafficking as a result of the development of organized crime; the economic emigration from the Balkans, and the EU's own difficulties in managing in a consistent manner its frontiers. To all these factors we need to add the challenge of jihadist terrorism, that may require greater controls inside and outside our frontiers, and, above all the adequate management of the refugee claims in the EU's territory.

Besides the defense and diplomacy principles, and an adequate asylum and refugee policy, it is necessary to strengthen European foreign policy, so that it develops a proper cooperation and development policy with our neighbors, a crucial element for an adequate migrant policy. However, the area in which the

EU must remain determined is regarding free circulation, to maintain the political and civil project developed over a long process, because free circulation of people is a fundamental right that assists the EU's citizens according to the Treaties. The Schengen agreement, as part of the EU's judicial and institutional framework, has gradually expanded to include the majority of the member States and some non-EU countries, and is expressed through the area of free movement, security and justice without internal frontiers. The suppression of internal frontiers implies a stronger management of the external frontiers of the Union as well as the regulation of the entrance and residence of people from the non-EU countries through the use of measures like the common asylum and immigration policy.

The fourth dimension of the European project refers to its role as global actor in an international system characterized by fast and intense changes in its surroundings, the source and the rules of the distribution of power. The State Members, and the EU as such, would only manage to stay relevant and promote their interests and values abroad through a common foreign policy, and in particular through the Common Foreign and Security Policy (CFSP), including the Common Security and Defense Policy (CSDP).

The global and integrated perspective for the Community Policy on Migration suggested by the EU, and formally supported by the governments of the State members, is revealing itself as a declaration of principles. In fact, in recent years, the EU has demonstrated a total incapacity of developing a joint policy on migration, coherent and multidimensional: the migration management is still characterized by the outsourcing of Community frontiers, the fight against "uncontrollable" immigration, and the definition of different and discriminating legal status amongst the migrating community. This vision has shown itself to be more incomplete and one-sided each time, as well as insufficient and incorrect. The control of the EU's borders at any price is leading to a lack of criteria of transparency, legality and humanity, and to violations of the legality and human rights of migrants.⁴³

The Opinion of the Committee of the Regions – "The efforts to promote genuine solidarity on a real European migration policy" (2015/C 019/12), of 21 January 2015, recalls that fifteen years after the first attempts to draw up a common migration policy, there is still a wide gap between practice and the principles and stated values. There has been insufficient recourse to Article 80 TFEU for adopting measures implementing solidarity and fair sharing of responsibility with regard to mobility, including its financial implications, between the Member States. Commitments

43 E. Bazzaco, *La Unión Europea frente a los procesos migratorios: lejos de una política integral*, "Papeles" no. 104, 2008/2009.

concerning mobility, migration and repatriation have been entirely voluntary, and considers that, in such a sensitive and strategic area, the European Union and its chief institutions should shape a genuine migration policy and assume the political responsibility for its implementation. This task should not be left up to individual states, particularly the border States.

The European Union migration policy regarding the control and management of migratory flow, can be looked at from multiple perspectives. Besides the economic dimension, the defensive aspect states the need to secure frontiers from irregular migration in order to ensure both security and law and order. Also, the social aspect needs to be considered, acknowledging the immigrants' rights and freedoms according to the Constitution, and the need to integrate immigrants through rights and obligations.⁴⁴ The economic crisis and its social effects, as well as terrorism, are causing the implementation of more restrictive policies in the EU regarding asylum and migration, bringing into question the founding values of the Union and the Lisbon Treaty on the subject of Human Rights. The 5th Annual Report on Immigration and Asylum (2013) from the Commission has expressed the need to take action at the EU level to support Member States tackle the challenges of responding to migratory pressures, in full respect of migrants' fundamental rights.

Regarding the establishment of a *Common Asylum Process*, the Common European Asylum System (CEAS) has claimed to be a maximum priority for the EU. The CEAS intends to provide better access to the asylum procedure for those who seek protection; lead to fairer, quicker and better quality asylum decisions; ensure that people in fear of persecution will not be returned to danger; and provide dignified and decent conditions both for those who apply for asylum and those who are granted international protection within the EU. In an area of open borders and freedom of movement, the EU must apply a joint approach to asylum across the EU, since asylum is a fundamental right and granting it is an international obligation under the 1951 Geneva Convention on the protection of refugees.

New EU rules have finally been agreed, setting out common high standards and stronger cooperation procedures to ensure that asylum seekers are treated equally in an open and fair system — wherever they apply. This set of rules is integrated by several regulations: the revised Asylum Procedures Directive; the revised Reception Conditions Directive; the revised Qualification Directive; the revised Dublin Regulation, and the revised Eurodac Regulation. The modified

44 A. Solanes, *La política de inmigración en la Unión Europea. Desde tres claves*, "Arbor" no. 713 (181), 2005.

legislation has the potential to substantially contribute to harmonizing the asylum systems throughout the Union. If they are properly incorporated into national legislation and applied according to the principles governing the CEAS, the recast legislation could provide an adequate identification and qualification of people in need of international protection.

In 2015, more than half a million asylum-seekers arrived in Italy, Greece and Hungary by land and sea. There was, and there is, a consensus that the three states cannot face the economic, demographic and political challenge, since we are in what could be the worst moment of forced displacements since the Second World War. Action must be taken, but the EU has not been up to the task, it has been overwhelmed when dealing with refugees, and disagreements have arisen at the heart of the EU. Germany, Sweden, Spain, the host countries and France, are in favor of the distribution quotas and are accepting, or will accept, all the refugees requested by the EU. At the same time, however, Hungary, the Czech Republic and Slovakia have blocked the development of an asylum policy according to European principles. International law says that every refugee – who is actually a refugee – that arrives to European territory has the right to be granted asylum. Nonetheless, the fragility of the asylum systems in the EU needs to be clarified.

The centrality of the refugee crisis is due to the fact that Europe's foundational values are at stake. Either the EU is able to provide an effective and supportive response to the refugees' arrival or it will not be what it always meant to be and what the rest of the world thinks it is: a civil and humanitarian power; a territory that was able to convert the most terrible violence amongst neighbors into a beautiful experiment in peace, where respect for human rights is a natural part of civic society. Recent events showed that the EU's legislation on asylum has not been applied consistently throughout the Union to date. The divergent national legislations and asylum procedures question the global objective of granting equal and dignified life conditions to the refugees. Basic rights such as health, education or work are clearly under question. The limitations and restrictions imposed turn the asylum seekers into second-class citizens.

The current refugee and immigrant crisis can only be managed through a common EU emergency response. The individual measures taken by each country will not solve the problem and will worsen an already chaotic situation, increasing people's suffering and the tension among states at a time when Europe needs more trust and solidarity. The restrictive measures recently adopted by some States, especially Hungary, and the way they are being implemented, extraordinarily limiting the refugees' access through the border, including the use of dissuasive measures, would infringe the international law and European jurisprudence. At

the beginning, the EU played an important and brilliant role in the asylum and refugee crisis: Greece, despite its profound economic crisis has received the thousands of people who have overflowed on its coasts and ports on a daily basis and Germany initially assumed an historic role in terms of solidarity. The two of them have joined Italy, who has taken on a fundamental role in the Mediterranean rescue process. The Commission and the Parliament also requested a European response, based on the European principles and values. However, recently, there has been a profound modification in EU policy regarding immigration and above all asylum and refuge.

The Justice and Home Affairs Council meeting on 9 November 2015 established the need to modify the registration process, ignoring the asylum seekers free choice (most of the refugees still prefer Germany or Sweden, States with a more generous reception program). It also addressed relocation – States like Finland, Luxembourg, France or Spain have already received the first refugees, although at a very slow pace – and another key subject was border protection, laying bare the border control policy that defines the European migration policy. In that last point, it was agreed to reinforce Frontex, and the Commission even presented a proposal to create a border guard before the end of 2015. The Migration summit held in Malta on November 11th and 12th, 2015 has outlined as its final objective to limit the economic and security problems caused by the current migration flow. The Valletta summit has consummated the policy of border closures. The idea of how to help the refugees has been replaced with how to prevent new arrivals; the refugees' security focus has also been replaced with ours; there has been a change from the protection of the right to life or the recognition of the right of asylum, to our right to have safe borders. It is not anymore about how to integrate the immigrants, refugees or asylum seekers, but how to send them back to their countries of origin.⁴⁵

Instead of placing the foreign and development policies at the service of the European project, a new border policy is adopted, with a prevalence of security in general and in particular, the security of each European state. This tendency has increased since the jihadist attacks against France on November 13th. However, we understand that using walls and barriers is not the answer, and the use of scare tactics, putting the security and well-being of some in favor of the rights of others is also not the solution. Recent events have influenced again EU policy against

45 J. I. Torreblanca, *Cierre*, "El País" 13.11.2013, available at http://elpais.com/el-pais/2015/11/13/opinion/1447432847_417991.html, accessed 20 January 2016.

terrorism. IS has exported to the heart of Europe the most inhuman methods to spread terror.

On Friday (November 13th), six attacks took place in Paris almost simultaneously: four shooting, a bomb attack near the Stade de France and a hostage-taking at a concert hall. The IS claimed responsibility for the 130 deaths and 352 wounded. France responded by declaring war, declaring a state of emergency and establishing strict border controls by security forces, and the suspension of the Schengen agreement. France's initial response has been extended to the rest of the EU. The EU's behavior should consider two facts. The first of them is to properly address the debate around Islam's role in our societies. Islam is based on a series of ideological aspects of great significance: Islam's incompatibility with democracy; Muslim integration; the role of religion in public places; identity; multiculturalism and the need to control the migration, asylum and refugee flow. The second fact lies in the need to combine resources to face jihadist terrorism, turning to the rule of law; security forces, intelligence services, court access, etc. without giving up on the proportionate use of force, according to the idea that democracies have the right to defend themselves from these kinds of acts. In the EU, the solidarity clause introduced by Article 222 of the TFEU, anticipates the competence to mobilize all the instruments at its disposal, including military resources, in case of terrorist attack.

The Paris attacks follow the ones against the *Charlie Hebdo* magazine and a Jewish grocery store, also in French territory, and the Mali hotel hijack. They all expose that jihadist terrorism, especially from the IS, plays a significant role not only causing instability in Iraq and Syria, but it is also able to hit at the heart of Europe and, together with the territorial conquest – the goal of taking over Jordan and Saudi Arabia – the imposition of a tax system in the areas under its control, and the creation of new external operation units, all these aspects show its power and political organization.

Without reaching the complexity of the attack against the United States on September 11th, 2001, jihadism has used bombs again to target Europe, in this case Paris, but previously Toulouse and London, the biggest attacks since the ones in March 11th, 2004 in Madrid. The necessary conditions to face this problem are not to be carried away by outbursts that could mix up defense from jihadists with coexistence with Muslim communities, and not putting into question the basic freedoms that make the difference between Europe and its attackers.

Unrest in Africa and the Middle East has affected Europe in two ways: as an asylum and refugee crisis whose magnitude has never been seen before, and with an unprecedented terrorist threat, that requires an effective response. This response

has to face the mistakes in the current European policy, it has to provide asylum and refuge to those persecuted by the IS, and it has to improve the intelligence services and the legal and police resources, without forgetting the diplomacy to force a negotiation, and harassing the IS with financial, military and supply measures.

The first consequence of the Paris attacks has been the creation of a support front for France, from Moscow, the USA and the EU, to French and Russian bombers attacking IS in Syria. The EU will provide France with military support to face the terrorist threat and have, on November 17th, activated the duty of military assistance amongst States regulated in art. 42.7 of the Community Treaties which establishes that “if a Member State is the victim of armed aggression on its territory, the other Member States shall have toward it an obligation of aid and assistance by all the means in their power;” a mechanism that has been used for the first time since its existence and that demands bilateral offers.

The Paris attacks have also struck at the heart of the difficult process of receiving refugees in Europe, fueling the States who are reluctant to receive the asylum seekers and refugees and sowing fear in the rest. Hungary is the State most interested in establishing a link between terrorists and refugees and its parliament has already passed, on November 17th, a law that allows to the appeal against the European Court of Justice the Community decision of the program for the distribution of foreigners despite the fact that, until now, Frontex has dismissed the hypothesis that there is any hint suggesting that jihadists are using the routes into Europe that the asylum seekers are undertaking.

Another important effect from the attacks is the abandonment of the concept, supported by several democratic States in its relationships with the Islamic world, of putting forward safety as a priority, to the point of even defending tyrannical leaders or dictators, followed by a good governance, believing that stability is attractive regardless of which is the political model that ensures such stability. On the contrary, at present it is advocated that good governance is decisive for long lasting stability, and that this governability requires organic development whose model could possibly be the Quartet for the national dialogue in Tunisia.

In terms of rights and freedoms, the attacks have also had a great impact. After the Paris attacks, President Hollande, declared a state of emergency, but French law established that this could only be maintained for 12 days. In order to extend it to three months, the French Government submitted a project, approved in the National Assembly and the Senate which, in the name of the fight against terror, includes important limitations to civil liberties, among them the possibility of home searches at any time, with no need for a legal authorization, including the possibility of copying any computer data or data which is kept in any other format, without any

previous legal authorization; it could also dictate house arrest and being detained *incommunicado* for those on suspicion, and an electronic wristband could be placed on those who are recidivist in order to assure their confinement. It is also allows the banning of meetings and assemblies in public places, as well as dissolving associations or groups that participate, facilitate or encourage any type of act that might threaten public order, and establishes the possibility of blocking certain web sites and social networks. The basis for this legal modification, justified by the idea that the “state of emergency is not against the rule of law but that it tends to protect it” should reconcile security with the proportionality of its measures and their time limit, and in the necessity of maintaining and defending the freedom of information, with the exception of the essential restrictions, in order to allow the mass media to be instruments for highlighting any eventual abuses or malfunctions in the application of the emergency measures. A state of siege has also been declared in Brussels, where the Belgium government has already announced a legislative reform package in similar terms to the one done by France.

It is without doubt border control, where the attacks have had the greatest impact. The Council of Ministers of Justice and Interior has, on November 20th, 2015, agreed on a series of measures that directly affect one of the pillars of the EU: the leading measure is to review Schengen; an automatic registry has been activated which includes the fingerprinting of nationals from third countries that come illegally into the Schengen area, whether they might be migrants or seeking international protection, there will also be systematical controls in critical points within the Europe Union and, in addition to that, the immediate creation of the PNR, passenger name record, which will store the flying data for at least one year.

The UN has passed a resolution to fight ISIS with “all necessary measures” in compliance with international law, in all territories controlled by ISIS as well as any other groups, individuals and entities associated with Al Qaeda and any other terrorist group, condemning in its “strongest terms the continuous, extended and systematic abuses of human rights and humanitarian laws.” Although the resolution does not call on Chapter 7 of the United Nations Charter, which is what would provide it with a legal basis for the use of force, it does acknowledge that, in accordance with art. 42.7 of European Treaties, all Member States shall have toward it an obligation of aid and assistance by all means in their power, accordingly to art. 51 of the United Nations Charter.

The last measure proposed by Brussels is to transform Frontex from being a border control coordination body into a kind of European Agency of Border Guards, equipped with numerous agents who can be mobilized by the EU to alleviate the border crisis – up to fifteen European countries border either by land or sea on a

non-Schengen country. Even though this measure could clash with the fact that most of the immigrants are refugees, the fact is that the EU measures, who is moving in a vague and rash way, have the common goal to restrict the rights of immigrants and refugees – and, in some of them, to their own citizens, as well as to increase the sovereignty given to the States at the expense of a real foreign policy for the EU.

5. Conclusion

To the new situation that has led to the emergence of the Islamic State, the EU reacted by formulating various strategies regarding terrorism jihadist in Arabia, Syria and other African States, although it is accurate to say that the terrorist threat has led to “the political opportunity” related to adopting measures that were reserved or hidden, as they constituted possible violations of human rights under the aegis of the Defense against terrorism.

At the same time, legislative measures on terrorism adopted by different countries, such as France, United Kingdom, Holland, Hungary, Sweden, etc., have followed common guidelines: increasing the time of duration of pre-trial detention, reorganization of the judicial process, with changes in the system of resources and presentation of evidence, attenuation of the secret of the telephone and cyber communication, allowing even the interception of telephone communications without a warrant, or admitting the “preventive interception.” Faculties, both intelligence and police, have also increased in the fight against terrorism, facilitating the exchange of information among the various agencies and access to certain data of a personal nature without judicial authorization.

This set of trends has been the reinforcement of the Member States, a common position of the EU, and the birth of situations of tension, or breach, which rights and freedoms are, in some respects, more fragile and precarious than before, offering weak protection to individuals against pressures exerted by terrorism, and it can collide with international standards governing the restrictions of rights, in virtue of which, any measure of suspension, limitation or restriction of rights and freedoms must comply strictly certain requirements: that the standards are accessible, predictable and precise; to justify the restriction of rights; that restriction is necessary in a democratic society; it is provided with the objectives pursued and the reasons that motivate it; and that it is not discriminatory.

Security and the fight against terrorism are interests shared by all European States, but so are the respect for human rights and democracy.

Today, it is essential to harmonize the resources to deal with jihadist terrorism, and is at the moment in which, without renouncing the use provided force (the clause of solidarity referred to in article 222 of the TFEU, foresees the mobilization

of all available means, including the military), in the event of a terrorist attack, on the idea that democracies have the right to protection against such acts you have to resort to the instruments of the rule of law (security forces, intelligence services, courts, and respect for human rights).

The economic crisis and its social effects, and jihadist terrorism, are leading to that in the EU are applied, too, more restrictive policies on migration and asylum, to call into question the fundamental values of the Union and the content of the Treaty of Lisbon in the field of human rights.

Instability in Africa and the Middle East has affected Europe in two ways: as a crisis of asylum and refuge of a magnitude unknown so far, and with a terrorist threat without precedent, which requires you to build an effective response that happens, once found mistakes in European policy, to asylum and refuge to the persecuted by the ISIS, and improving intelligence and police and judicial, not forgetting the activation of diplomacy to force a negotiation, and harass the EI with financial measures and supply, as well as military.

Although it has been, without doubt, in the control of borders, where jihadist attacks have had greater consequences, we cannot ignore that, in terms of rights and freedoms, the attacks have also had an important consequence.

The internal and external security cannot be the argument for taking disproportionate measures restrictive of rights and freedoms. International law rights remain an important canon of protection. A community's "foreign policy" has to be common and co-ordinated with other intergovernmental entities, which fight against jihadist terrorism, promoting policies of co-development in different States and respecting all rights and freedoms.

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