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Conflict in Mali: the legality of international and regional peacekeeping interventions

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*siente fa' accussì,
miette 'e creature 'o sole
pecchè hanna sapè' addò fà friddo
e addò fà cchiù calore*

Pino Daniele

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Chapter I: The conflict in Mali

1.1. The long-term causes of the conflict

Historically speaking, the Malian population has always been characterised by multi-ethnic groups. Yet, since the French decolonisation, the country's population was split up in two parts. It was decided that black Malian southerners, rather than northern Tuareg groups, had to be trained in order to rule. Consequently, from an ethnographic point of view, many Malians depict the North as a problem¹. It is by no accident that this north-south divide is strengthened at the religious level, since the rebel groups, which belong either to the Arab tradition or the already mentioned Tuaregs, lay claim to a relinquishment by the central source of power in Bamako, the capital city. These parts of the society complained a marginalisation of the Northern regions from the central and centralised "national cake"². For instance, 5 years after the inception of Mali as a newly independent country³, it exited the Common Organisation of the Saharan Regions (OCS). This move had above all precluded any continuation of the exploitation of the soil, which at the time was the most profitable activity.

Of course, part of the responsibility lies on the government, which is deemed as "legitimate" well-nigh exclusively in the southern part of the country, i.e. Azawad⁴ excluded. Furthermore, the implementation of specific strategies throughout the last decades have fed and led to a further fragmentation along the Malian territory. First, a *divide et impera* strategy was implemented. Basically, it consisted of sending some anti-Tuareg vigilantes to northern Mali in order to prevent any separatist project to take root. This proxy worked (up to a certain extent) as a counter-insurgency measure, but it implied as drawbacks the exacerbation of tensions and the intensification of the already spoiled relationship between North and South. In fact, starting from national elections in 2002 this strategy went off the rails of the democratic tenets and hence emphasised the Bamako government's inability to face and above all tackle the issues weakening the unsteady unity of the statehood. In substance, the state lacked its Weberian⁵ *conditio sine qua non*, i.e. the monopoly of legitimate use of force. Second, patronage was deemed as an ordinary procedure. Usually, Bamako demonstrated some degree of openness towards northern élites by letting them enter the state apparatus. However, this move was not meant to reinforce the national unity, rather it gave birth to a government, whose way of doing became collaterally unpopular, since no development was derived

¹ Wing, Susanna D. "Mali: Politics of a crisis." *African Affairs* 112.448 (2013), p. 478.

² Chauzal, Grégory, and Thibault Van Damme. 2015. *The roots of Mali's conflict. Moving beyond the 2012 conflict*, p. 18-19

³ In 1960 and above all moving away from the former name, French Sudan into Mali

⁴ The Azawad is the area extending from Timbuktu to north-eastern borders of Mali. As it can be seen from a map, it has the form of a trapezoid.

⁵ Weber, Max. 1965. *Politics as a vocation*. Philadelphia: Fortress Press

from these promises.⁶ Among others, Tuaregs underwent a “double colonisation”⁷, *in primis* from French élites in pre-independence period and in the post-colonisation one by Southern government. The Malian state’s incapacity to control the North since 1991 and the wielding of power in the hands of political élites in Bamako are two further points put forth by the Azawadi when claiming their neglected status.

Apart from this economical preference and political neglect, what mainly stands out from a historical point of view is Bamako’s proclivity towards military intervention in order to settle northern crises. For instance, during the first post-colonial war in 1963, a martial law was implemented in the Tuareg-populated regions. The reason was that local populations wanted to take advantage of the disarrangement engendered by the inception of a new country, to which most of them neither wanted to be nor felt part of. Another striking example is provided by the embezzlement of funds, which derived from the EU Commission’s Special Programme for Peace, Security and Development in northern Mali.⁸ This project was substantially aimed at assisting local populations at a social and economic level. Yet, the government preferred allocating those funds to reconstruct the military infrastructures in the north and by so doing showing a certain pugnacious will. Notwithstanding this misuse in earmarked funds management, the Malian apparatus was appraised as “highly politicised, bitterly divided and poorly trained and equipped”⁹. To this point, several civil and military servants, coming from the South, were sent in the “spoiled North” as a punishment for their wrongdoings.

Still, because of the Malian state’s inability to assert authority on its whole territory as well as the geographical influence and importance that Mali has preserved along time, many foreign sponsors have tried to gain favour from this territorial disunity. The example *par antonomase* is Qaddafi’s regime, which was a key supporter of the Northern Mali population up until its downfall. The latter, above all Tuareg groups, in return for their military workforce expected *prima facie* to be assisted back home in order to set in motion an overthrow of the Malian government. Notwithstanding this, Qaddafi merely exploited these Malian combatants as an asset to gain some further military power, a quasi-endless allegiance and to serve his regional interests. The fall of his regime played a plot twist in the uprisings¹⁰ given that from 2011 onwards, the Sahel, and above all Mali lacked one of its main contributors both at the economic and military level. In fact, the return from Libya of the

⁶ See n.2

⁷ Cristiani, Dario, and Riccardo Fabiani. From Disfunctionality to Disaggregation and Back?: The Malian Crisis, Local Players and European Interests. Istituto affari internazionali, 2013, p. 3

⁸ See n°2: 22. It was implemented in 2010 with a substantial participation by EU funds.

⁹ UN Doc. S/2012/894, 29 November 2012

¹⁰ See n.2, p. 44-45

abovementioned well-equipped combatants emboldened the Tuareg rebellion¹¹. Most part of the Malian Tuareg leaders returned home well prepared at the military level and eager to emancipate themselves from any kind of central government's restriction, while others opted for joining in the Malian army¹². Therefore, the end of the Colonel's regime had a destabilising spill over effect all over the Sahel region, which was in turn already spoiled because of the turmoil of the Arab Spring. Because of the lack of control over the arms flood into the country at the end of the intervention in Libya, Mali entered into a crisis in which there was no way out.

1.2. The North-South instability

Tracing a clear outline of the events is far from simple. The heuristic hurdles are given by the presence of a multitude of non-state actors, whose intervention in the conflict varies from one group to another. So, it is of the uttermost importance to introduce them amid the outline of the facts from January 2012 until today.

As we have realised, Mali's social structure is manifold. Considering the Azawad only, the civil society is divided at the religious, ethnic and political level. Because of these divisions, the proliferation of terrorist and armed groups was facilitated by this open wound in the already weakened body of the hippopotamus.¹³ Among these, two categories of fighting groups against the Malian government can be distinguished: *in primis*, the Salafist groups, whose main aim is to institute the *shari'a* law through violent attacks, while on the other side the Tuareg "rebels", who fought for the independence of the Azawad. The Mouvement National de l'Azawad (MNLA) represents the youngest movement, but the best equipped at the military level. It was a laic movement who collected and embodied the Tuareg grievances about the socio-political neglect of Bamako, claiming for the independence of the Azawad. On 17th January 2012, the triggering event for the Mali conflict occurred. The MNLA launched some attacks towards the cities of Aguelhok, Menaka and Tessalit. The MNLA later received support by other non-state actors. First in time, there is the Al Qaeda in Maghreb (AQIM). It is the outcome of an alliance between the Algerian Salafist Group for Preaching and Combat (GSPC) and Al-Qaeda, the terrorist group historically led by Bin Laden. Its involvement in the Libyan war and the exploitation of Malian territory only for stocking arms up on makes it an

¹¹ Report of the Secretary-General on the situation in Mali, S/2012/894

¹² Lecocq, Baz, et al. "One hippopotamus and eight blind analysts: a multivocal analysis of the 2012 political crisis in the divided Republic of Mali." *Review of African Political Economy* 40.137 (2013): 343-357. The military inclination was chosen accordingly to the factional logics of clan and class within Tuareg society, whose sphere of influence is still burdensome.

¹³ As it was brilliantly described in the paper "One hippopotamus and eight blind analysts: a multivocal analysis of the 2012 political crisis in the divided Republic of Mali", Mali's territorial shape looks like a hippo; nonetheless, it is also the country's mascot and in the Bambara language is a homonym for the name of the country.

external regional terrorist network given its cross-border roots. As time passed by, it reinvented itself as an actor that has managed to become integrated with local communities, thanks to a strong co-optation with local preachers, also called marabouts¹⁴ as well as to marriages with local Tuaregs. In addition to this, there is the Movement for Divine Unity and Jihad in West Africa (MUJAO), whose birth is ascribed to the divergences within the Islamist emirs in the AQIM. Both (MUJAO and AQIM) financed themselves through the hub that the entire Sahel constituted.

Together with the Libyan conflict returnees, the region had witnessed a rapid increase in criminality in those years. Given the few economic opportunities and the geographical location of northern Mali, the border area became a huge hub for trafficking of any kind.¹⁵ Criminal smuggling of drugs, arms and illegal migrants was handled in collusion with terrorist groups which funded their activities also through kidnapping of European citizens. What probably made effective the first attacks by MNLA, even after January 2012, was given by the cooperation with a new splinter group from AQIM, i.e. Ansar Dine. The group's name means in Arabic "Defenders of the Faith", hence they envisaged a unity of all Saharan Tuareg groups as well as the Northern part of Mali under the name of Allah¹⁶. They were led by the Tuareg leader Iyad ag Ghali¹⁷, who was a member of the MNLA, yet as he was not able to seize the reins of it, he then stated that their aims were inconsistent with his. Consequently, Ghali decided to create a new coalition (Ansar Dine) and by so doing further rifts within these groups were found.

To make matters worse for the Malian state, on 21st and 22nd March 2012, a disorganised and all but dense group of garrisons guided by Captain Sanogo headed from Kati¹⁸ to the capital for a demonstration against the government. Notably, this protest activity performed by few young renegade garrisons was meant to remonstrate with the government, which was incapable of providing technical assistance to the soldiers, which in turn were not able to handle the uprisings. It is important to stress that many of them were sent to patrol Azawad desertic regions, very far from their hometowns and from being protected by their principals¹⁹. Notwithstanding this, the pacific march turned into an improvised *putsch*. In a similar way to Vico's theory of course and recourse of history,

¹⁴ Bøås, Morten, and Liv E. Torheim. "The international intervention in Mali: "Desert blues" or a new beginning?." *International journal* 68.3 (2013), p. 420

¹⁵ See n.2, p. 27

¹⁶ See n.12, p. 349

¹⁷ He is a famous and respected personality in the whole sub-Saharan area. His direct participation in 1990 rebellion, where as leader of the *Mouvement Populaire de l'Azawad* (not to be confused with MNLA) he signed an agreement with the central government. Along the conflict, his position stands controversial since he aimed to be placed in the centre of every possible outcome.

¹⁸ A province right outside the capital

¹⁹ See n.2, p. 12. To this point, an analyst maintains that "for a southern soldier from Sikasso or Kati, being sent up north to patrol the open desert is akin to a Muscovite being sent to Siberia in the 19th century".

this unwanted *putsch* occurred exactly 21 years after the last coup d'état. In 1991 some strong, but pacific, civil demonstrations were suppressed by the then President Traoré's faithful army with substantial bloodshed. On that occasion, Amadou Toumani Touré (ATT) guided the insurgent groups of the military to a *coup d'état* and he was considered as the ultimate upholder of democratic transition. It was Traoré, who beforehand himself removed from power the dictatorial regime of Modibo Keita in 1968²⁰ providing additional evidence to Mali's historical putschist trap.

Thus, what was perceived as a stable and republican power from an external point of view²¹, suddenly collapsed overnight, causing the getaway of the President ATT. Up to this point (March 2012), the Malian state faced two major security threats in both latitudes of the country. In the northern part, the MNLA got the upper hand over the other challengers and tried to enlarge more and more its area of control as ATT's government was overthrown. In less than three months, the MNLA was able to conquer the cities of Menaka, Tessalit and Aguelhok through frontal combats against the abandoned Malian army. On the 6th of April, the MNLA declared the independence of the Azawad from Mali.²²

Of course, this declaration would be consistently considered as void and unlawful by the United Nations (UN). Notwithstanding this, what comes out is that the MNLA has *de facto* impaired Malian authorities more than half of its whole territory. Whereas, in the Southern part, despite Captain Sanogo and his group's utter disorganisation, they were able to set up a military junta called *Comité National pour le Redressement de la Démocratie et la Restauration de l'état* (CNRDRE). The latter took the reins of the state, by immediately removing the 1992 constitution; as a consequence to this, the Economic Community of West African States (ECOWAS) designated the Burkinabe President Comparé as President of the Commission for a mediation in Mali. Hence, the ECOWAS claimed for an immediate restoration of the state integrity, stability and constitution, by suspending Mali's membership in the Community, by immediately freezing the top military junta's assets and by establishing some economic sanctions in case of non-compliance.²³ The junta decided to comply and after having allowed a legal stepdown by ATT, an institutional passing of the baton occurred, where a new *ad interim* transition presidency was instituted. Cheik Modibo Diarra and Dioncounda Traoré

²⁰ See n.1, p. 479

²¹ http://www.oecd.org/dac/conflict-fragility-resilience/docs/2011report_financial_ressouces_flows_full.pdf In this report dated 2011, Mali is not even reported among the fragile states receiving financial support.

²² MNLA, *Déclaration d'indépendance de l'Azawad*, 6 April 2012 available at :

<http://www.mnlamov.net/component/content/article/169-declaration-dindependance-de-lazawad.html>

²³ Emergency Mini-Summit of ECOWAS Heads of State and Government on the situation in Mali

Para. D, provision 9: "In the event of non-compliance by the CNRDRE with the decisions of Authority, the sanctions outlined above shall take effect within 72 hours of their adoption and, in any case, not later than Monday, 02 April 2012.

" Available at : http://documentation.ecowas.int/download/en/reports/communiqués/emergency_mini-summit_of_ecowas_heads_of_state_and_government/comfinal_mali_2012.pdf

were respectively the *ad interim* Prime Minister and President of Mali, whose task was to draft a road map for the transition of the country. Of course, this presidential change of settings did not reinstall the peace in this political turmoil. It is by no accident that on 21 May 2012, some protesters having allegedly a pro-putschist attitude, have physically assaulted the President Traoré, who was obliged to hospital care in France.

1.3. The turning point and the UN resolutions

In the meanwhile, the unity of purpose of independentist (MNLA) and *mujahideen* groups shattered all of a sudden. The MNLA found itself isolated against the coalition made up by Ansar Dine, MUJAO and AQIM²⁴ and lost most of its cities, before almost disappearing from the Azawad. This represents a clutch turning point in the history of the conflict, since from this point onwards the so-called “war on terror” erupts. It is not against an independentist ideology anymore. In this context, from July 2012 onwards, the UN decided to adopt three resolutions. The UN finally came to the fore on 5 July with Resolution 2056²⁵.

In the prelude of the document, it is determined that the conflict in Mali represents a “threat to the international peace and security in the region”. By so doing, the UN Security Council (UNSC) acted within chapter VII and above all in conformity with Article 39 of the UN Charter, where the situation is qualified. This qualification represents the object of the resolution. Then, the UN expresses support to the efforts made by the ECOWAS and African Union (AU) and invites them to work in cooperation with the Transitional Authorities of Mali. Furthermore, it maintains deep concern related to AQIM and the terrorism deriving thereof. This is a cross reference to the 1989 (2001) resolution²⁶ about the war on terrorism. In conclusion, worth mentioning is the condemnation of the unilateral and unlawful declaration of independence by the MNLA and the destruction of “sites of holy historic and cultural significance” belonging to the UNESCO World Heritage in Timbuktu, which constitutes a violation of the Protocol Additional II of the 1949 Geneva Conventions²⁷.

²⁴ See n.2, p. 348

²⁵ UNSC Res. 2056 (2012)

²⁶ UNSC Res. 1989 (2011): “[...] terrorism in all its forms and manifestations constitutes one of the most serious threats to peace and security and that any acts of terrorism are criminal and unjustifiable regardless of their motivations, whenever and by whomsoever committed, and reiterating its unequivocal condemnation of Al-Qaida and other individuals, groups, undertakings and entities associated with it, for ongoing and multiple criminal terrorist acts aimed at causing the deaths of innocent civilians and other victims, destruction of property and greatly undermining stability.”

²⁷ Article 16 of the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts: “[...] it is prohibited to commit any acts of hostility directed against historic monuments, works of art or places of worship which constitute the cultural or spiritual heritage of peoples, and to use them in support of the military effort”.

On September 2012, the ECOWAS sent a letter to the Secretary General Ban-Ki Moon²⁸ asking for an authorisation of deployment of a stabilisation force under Chapter VII mandate and providing a three-phase strategy for its implementation. The 2071 Resolution²⁹ basically follows the blueprint of the previous one (2056/2012). The UNSC recalled for a detailed *modus operandi*, including the objectives, means and modalities envisaged for this joint operation with regional stakeholders³⁰. It emphasised the need for a Malian-led operation against the Malian crisis, it asked furthermore for a presentation of a detailed road map for transition, which shall lead to a consolidation of the democratic institutions by calling fair and free elections as soon as possible. All in all, the UNSC withheld the approval, by not yet triggering a deployment mandate under Chapter VII of the San Francisco Charter, but it is laying its foundations in order to properly tackle the Malian crisis. The impression is that the UN seems more concerned about the stability of Malian government and partially sets apart or is not confident of a military Pan-African intervention meant to cast out the jihadists in the north. As a confirmation to this hypothesis, Romano Prodi is appointed as Special Envoy for the Sahel³¹. His task is to develop the UN integrated strategy on the Sahel. The latter presented a huge scope passing through security, governance, development and human rights issues, but it entered into force only in June 2013.

A harder answer by the Sahelian regional organisations, i.e. ECOWAS and AU, eventually arrived in October, when a draft of the “Strategic Concept for the Resolution of the Crises in Mali” was agreed upon. Representatives from these organisations, together with other neighbouring countries decided to gather in Bamako in order to adopt “in a holistic manner, the political, security, military and other measures that need to be taken to address the challenges at hand”³². Only at this point, the UNSC unanimously approved the Resolution 2085 deciding to authorise the deployment of an African-led International Support Mission in Mali (AFISMA)³³ under Chapter VII of the UN Charter. In the same paragraph it is stated that “[Afisma] shall take all necessary measures”, which implies an interpretation of Article 42 of UN Charter³⁴. As we recall, this article is one of the

²⁸ See annex of “Letter dated 28 September 2012 from the President of the Commission of the Economic Community of West African States addressed to the Secretary-General”, available at: <https://undocs.org/S/2012/739>

²⁹ UNSC Res.2071 (2012)

³⁰ See n.25, para. 18.

³¹ According to some scholars, it seems that this appointment was substantially political, since Romano Prodi was a former Italian Prime Minister, but above all a former President of EU Commission. Therefore, it was a political move to present the European Union as a “key foreign policy actor”, for further information see: <https://www.opendemocracy.net/en/opensecurity/conflict-at-eus-southern-borders-sahel-crisis/>

³² <https://au.int/fr/node/25507>

³³ UNSC Res. 2085 (2012), para. 9

³⁴ Article 42 UN Charter. As necessary measures are deemed: “it may take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security. Such action may include demonstrations, blockade, and other operations by air, sea, or land forces of Members of the United Nations”.

exceptions to the use of force, which in turn is prohibited by the principles of the Charter and specifically by Article 2 paragraph 4.³⁵ Rebuilding the capacity of the defence and security forces was one of the priorities of the mission, along with the reappropriation of the occupied regions in the north, by reducing the threat of terrorist and affiliated extremist groups and transnational crime³⁶. As we can see, the conflict resolution approach is mutating as long as the international resonance of the matter increased. It started from a national approach where the Malian *ad interim* and then Transitional authorities were charged to mitigate the takeover of the terrorist groups. Then it moved to a regional approach with AFISMA. The latter's original implementation start was set in September 2013, because the UN required "detailed recommendations for a swift, transparent and effective implementation"³⁷. Yet the leading terrorist groups, Ansar Dine and AQIM, seized the chance to gain some advantages, while ECOWAS and the AU tried to accelerate the operations by setting their commencement in January. However, this did not prevent the *mujahideen* to start heading southwards and seize the strategic city of Konna, which is almost 600 km from the capital. Moreover, their aim was to capture the city of Mopti as well as the airport of Sevaré, which are two of the most crucial intersections for incoming aids of every kind, be they logistical or military.

Hence, the belated start of the support mission made Mali's president Traoré immediately fly to Paris in order to ask support to the French President, François Hollande, on 9 January 2013. Even though the latter proclaimed on 12 October that "the *Françafrique* [was] over"³⁸, France declared to intervene in Mali because of three main assumptions found in his declaration³⁹. First, because the inviting state has been facing a terrorist threat and this suited the French high commitment against terrorism in general. Secondly, Mali is considered a friendly state and the security of the local population shall be guaranteed by an external help coming from France. Eventually the presence of more than six thousand nationals on the Malian soil strengthened their position. On the same day, the French Foreign Affairs minister stated that it was necessary to stop the breakthrough of the terrorists, otherwise the whole Mali was bound to fall into the hands of a threat to the entire Africa and Europe as well. Based on these assumptions, the first French intervention in Mali, called Serval Operation,

³⁵ Article 2 UN Charter, par. 4: "All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations".

³⁶ Report of the Secretary-General on the situation in Mali, S/2012/894, Para. 56

³⁷ UNSC Res. S/2085/2012, para. 21

³⁸ The President of the French Republic declare the end of the *Françafrique* in Dakar, Senegal on 12 October 2012. Available at: <https://www.youtube.com/watch?v=jL7r78JeySk>

The *Françafrique* is a pejorative word related to neocolonialism, designing the formal independence of the former French colonies, which are still linked by a subordination on matters of military, political and economic dependence.

³⁹ Declaration of the President of the French Republic, François Hollande, available at: <https://basedoc.diplomatie.gouv.fr/vues/Kiosque/FranceDiplomatie/kiosque.php?fichier=bafr2013-01-14.html#Chapitre2>

was implemented forthwith on 11 January. The day before, the UNSC released a press *communiqué* in which it was called for the settlement of the crisis by Member States, by providing assistance to the Malian armed forces.⁴⁰

From a legal point of view, there have been several controversies concerning the legality of Serval Operation. As Massimo Starita wrote in his article⁴¹, given the increase in the use of authentic interpretation during last decades, a *distinguo* was made between the statement to the press and the presidential statement. From a formal point of view, only the latter can be attributed to the Council, since statements to the press merely report the standpoints of the participating Members. Therefore, such a press communiqué cannot be deemed as a legitimate point for intervention. Furthermore, Resolution 2085 narrows the third parties' involvement in the sole training and providing for assistance to Malian armed forces. What stands out is that neither an implicit nor an explicit authorisation of the UNSC is found in any of its resolutions. According to Laura Magi, the French Operation Serval cannot even be reconducted to individual or collective self-defence as provided by article 51 of UN Charter⁴². This can be deduced by the origin of the terrorist groups. Notwithstanding the fact that AQIM, MUJAO and Ansar Dine all have cross boundary roots, their logistical centres are based on Malian soil. Along with this, they intertwined with local population and groups in order to conduct their actions. In conclusion, the intervention by invitation and the need to prevent the terrorist takeover from heading southwards are the legal basis for such an intervention⁴³. What lacks in this scenario is *only* the request of authorisation to intervene by the UNSC.

Thanks to a cooperation with AFISMA, the main aim of the operation, i.e. helping the Malian platoons to push the jihadists out to the North, is achieved. In fact, their two thirds control of the country was drastically reduced, given to the large number of French contingents. These were almost four thousand, since France already had several military logistic centres spread in West Africa. Apart from the military preparedness of the French fellow soldiers, their unexpected success was to a certain extent due to the MNLA returnees. After having been casted out from the Azawad, in order to fight against their common Islamist enemies, i.e. Ansar Dine, MUJAO and AQIM, some of MNLA

⁴⁰ Security Council Press Statement on Mali, SC/10878-AFR/2502. Available at: <https://www.un.org/press/en/2013/sc10878.doc.htm>

⁴¹ Starita, M. "L'intervento francese in Mali si basa su un'autorizzazione del Consiglio di Sicurezza?." *Rivista di Diritto Internazionale* 96.2 (2013): 535-546.

⁴² Article 51 UN Charter : "Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security.

⁴³ Magi, Laura. "Sulla liceità dell'intervento militare francese in Mali." *Rivista di diritto internazionale* 96.2 (2013): 551-561. On the same point see also: Bannelier, Karine, and Theodore Christakis. "Under the UN Security Council's Watchful Eyes: Military Intervention by Invitation in the Malian Conflict." *Leiden Journal of International Law* 26.4 (2013): 855-874.

members decided to provide inside information about the morphology and the hiding places in the territory. In less than one month, the joint working troops recovered all the main cities in the north. As a consequence, the Iyad ag Ghali's faction (Ansar Dine) underwent a secession. The moderate wing of the group created a new faction called Islamist Movement of the Azawad (MIA)⁴⁴, which set apart the terrorist attitude, by returning to the independentist grievances of the Tuareg community. This split implied further help to the French purposes. On 2 February, a triumphant Hollande travelled to Bamako, where he was received as a national saviour. Together with the *ad interim* Malian President, Traoré, it was declared that the terrorist threat was repelled, hence a new independence was taking place for the Malian people.⁴⁵ Notwithstanding this, President Traoré maintained that AFISMA was bearing fruit, however because of its partial implementation the terrorist threat could not be utterly eradicated. Therefore, a transformation of AFISMA into a United Nations stabilization and peacekeeping operation⁴⁶ was formally requested in a letter dated 12 February.

The latter was not long in coming, one more time acting under Chapter VII of the UN Charter, the UNSC adopted Resolution 2100 on 25 April. As it clearly appears, this was meant to set in motion a peace-keeping operation called United Nations Multidimensional Integrated Stabilisation Mission in Mali (MINUSMA)⁴⁷. According to the Resolution, the mission shall last for an initial period of 12 months envisaging the same standards as the AFISMA, but apt to substitute it. As for the latter, also MINUSMA had to "take all the necessary measures" in order to achieve the objectives of the mission, therefore the two shared consistently the same mandate. It is by no accident that half of French troops of Serval Operation flew into the new mission. One fundamental difference from the African-led operation lies on the reference to the number of military and police personnel⁴⁸, which lacked in Resolution 2085.

After the resolution, many others have followed in order tackle the underlying causes of the Malian crisis. In May 2014 a ceasefire agreement with the Tuareg independentists was agreed on; in the same year, Hollande initiated Barkhane Operation, which differently from the previous one did not present any invitation from the Malian *de jure* authorities. MINUSMA is still underway and it is the

⁴⁴ Le Monde and AFP, "Mali : scission au sein d'Ansar Eddine". Available at : https://www.lemonde.fr/afrique/article/2013/01/24/mali-scission-au-sein-d-ansar-eddine_1821602_3212.html

⁴⁵ <https://www.youtube.com/watch?v=IXsz7IERYOs>

⁴⁶ See annex of "Letter dated 12 February 2013 from Mr. Dioncounda Traoré, *ad interim* President of Mali to the Secretary-General". Available at: <https://undocs.org/S/2013/113>

⁴⁷ UNSC Res. 2100 (2013), par. 7 "the UNSC [...] further decides that the authority be transferred from AFISMA to MINUSMA on 1 July"

⁴⁸ It comprised up to 11200 soldiers for the first, while up to 1440 for the police personnel.

deadliest among UN peace-keeping operations. 191 members of the UN personnel have fought to restore the peace for the Malian people, a peace that still needs to be reinstated.

2. Acting under Chapter VII: the peacekeeping and its regional reach

Since the wake of the Cold War in 1989 and the consequent veto-free context in the UNSC⁴⁹, a reduction of conflicts has been registered, mainly because the two-factions global conflict was deemed as the principal source of international tensions. Moreover, by analysing the trends on a worldwide scale, the number of interstates conflicts started diminishing from the end of the Second World War and kept dropping after 1989 reaching just two conflicts in 2003. Quite the opposite are the figures of intrastate ones also called non-international armed conflict (NIAC). In this ever-growing category fall the “armed conflicts not of an international character occurring in the territory of one of the High Contracting Parties”⁵⁰, having as parties to the hostilities both non-state armed groups and the government of a state. Riots and revolutionary warfare developed and scattered all over the world, hence the UN had to change over time its *modus operandi* for keeping the peace.

Present-day, what strikes out from this framework is that even though the 1899 and 1907 Hague Peace Conferences made huge efforts to abolish definitively the war and the recourse to the means of warfare, these two sound vane. Both conferences have gradually become part of customary law, therefore they belong to *ius cogens*, i.e. peremptory norms from which no derogation is permitted. In addition, even though the number of conflicts has been reducing so far, the trend for peacekeeping operations is on the other way around. From 1991 to 1994 the number of peacekeeping operations rocketed and were more than those from 1947 to 1991. This is a clear symptom that peace still needs to be kept.

The objective of this thesis is to elicit and analyse the legality of the ECOWAS intervention in Mali as well as the French Serval Operation, and the legal, political and security-related implications they entailed. Before doing so, it is necessary to draw out the legal basis and practice behind the collective security system. All along this chapter the peacekeeping principles and its historical phases are to be analysed, by heading eventually to the regional development it had from 1992 with the Secretary General “Agenda for Peace”.

2.1. Peace-Keeping operations: the invention of the United Nations

During the 1947-48 Arab-Israeli war, a first mission of peacekeeping aiming at the respect and maintenance of a ceasefire agreed on by the two parties to the conflict was established. However, there is no specific reference to the term “peacekeeping” in the UN Charter. This void was usually filled by triggering the most desirable Chapter VI, which commends the peaceful settlement of

⁵⁰ Common article 3 of 1949 Geneva Conventions

disputes such as mediation or good offices, and Chapter VII, where the enforcement of all the necessary means, ranging from partial interruption of economic relations to armed force for restoring international peace and security.

The first four articles under Chapter VII of the UN Charter are the grounding ones for peacekeeping matters. Among these no hierarchy is found, as well as no specific procedural order. Notwithstanding this, the (concerted) practice has followed a *continuum* so far. As we have seen in the first chapter, starting from article 39, where the situation is qualified, the UNSC is called to identify a “threat to peace, a breach of the peace, or an act of aggression”. However, the definition of these latter is not found in the Charter and it is also an ongoing reform of the concept. During the first years of the organisation, the international armed conflicts were the only typology classified as a threat to the peace. Over time, the UN has broadened this concept, for instance by judging piracy, the Ebola virus, poaching and illicit wildlife trafficking as threats to international peace and security⁵¹. Hence, also the *ratione materiae* of the definition evolved, suggesting that non-military entities are also sources of instability⁵².

In the cases in which none of these is expressly identified, then the collective security system cannot be activated. Typically, this has happened when one party of the UNSC was also a party (in)directly involved. Whereas, if one of these conditions is found, the UNSC “shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security”⁵³. However, before doing so, under Article 40 the UNSC shall recommend the parties concerned to comply with the provisional measures, which are neutral, for instance cease fire or withdrawal of the troops. Lastly, it seems that Articles 41 and 42 move in tandem, even though their implications are utterly different. Both are binding decisions, but the first may include a complete or partial interruption of economic relations, having as goal the one of (creating) a breakdown in the concerned party’s system. Notwithstanding this, if the Council deems these measures as inappropriate or inadequate, every necessary means shall be involved in order to maintain the international order. It is under article 42 that this decision is taken and through which the peacekeeping operations have typically been authorised.

So far, it seems that the whole system hinges upon the UNSC, given that “[..] members confer on the Security Council primary responsibility for the maintenance of international peace and security, and agree that in carrying out its duties under this responsibility the Security Council acts

⁵¹ UNSC Resolution 1816 (2008), 2177 (2014) and UNGA 69/314 (2015).

⁵² Security Council Presidential Statement S/23500, on date 31 January 1992.

⁵³ Article 39 of the UN Charter

on their behalf⁵⁴. Notwithstanding this conferral of powers, it does not imply an utter exclusion of the Member States. To this point, quintessential is also the role of UN's plenary body, the General Assembly (UNGA). It is entitled to authorise the peace-keeping operations as well as consider and recommend appropriate action. The so-called “*Uniting for Peace*” Resolution strengthens this argument.

As the UNSC was stuck by the continuous boycott of the Soviet Union's empty chair, the Council decided that its concurring vote was not necessary and the UN mission in Korea was easily facilitated. However, there was a high likelihood that the Soviet Union would have not let this happen ever again. Therefore, in order to prevent a foreseeable *empasse* in the Council, the then Secretary-General Hammarskjöld stepped up. The UNGA designed a new mechanism, by adopting the Resolution 377 A (V) “*Uniting for Peace*”⁵⁵. The plenary body wanted, within the limits of its powers, to authorise the use of force in case of deadlock in the voting system of the UNSC.

Even if its resonance was astonishing, the Resolution has been considered as *ultra vires*. Considering that in Article 12 of the Charter, it is found that while a situation is before the UNSC and falls under the latter's jurisdiction as assigned by the UN Charter, then the General Assembly shall not interfere with any recommendation on the same ground. However, this view was dissolved by the Advisory Opinion on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, when it was ruled by the ICJ that “there has been an increasing tendency over time for the General Assembly and the Security Council to deal in parallel with the same matter concerning the maintenance of international peace and security”⁵⁶. Lastly, in the spirit of the ever-evolving UN Charter and implied powers of the organisation, the concomitant practice on peace and security matters is not prohibited anymore.

2.2. Principles and Guidelines

Sixty years after the from the first PKO, the United Nations Peacekeeping Operations Principles and Guidelines, also renowned as the “*Capstone Doctrine*”, was published. What once was guided by a largely unwritten body of principles, is now contained in this document, which describes the inception of the peace-keeping operations (PKO) from the “*womb to the tomb*” and posits itself at the top of the sources for consent-based missions. At the basis of the *mise en oeuvre* of every peace-

⁵⁴ Article 24 of the UN Charter, para. 1

⁵⁵ UNGA Resolution 377 A (V) (“*Uniting for Peace*”), 1950.

⁵⁶ Advisory Opinion of 9 July 2004 on the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*.

keeping mandate there must be three basic principles: consent of the parties, impartiality and non-use of force, except in self-defence and defence of the mandate⁵⁷.

First and foremost, consent is the *conditio sine qua non* to intervene for the UN. This implies that all parties to the peace or ceasefire agreement must consent to its intervention. This principle is also the main reason why PKOs are not to be confused with peace-enforcement ones, where consent is not a requirement. For instance, in 1967 the United Nations Emergency Force (UNEF) was quickly withdrawn from the Suez Canal as the Egyptian government did not consent to its presence anymore.

Second, the missions and decisions shall be no favour or prejudice towards any party involved. Impartiality represents a hallmark to PKO.

In conclusion, the non-use of force except in self-defence and defence of the mandate refers to an operational priority for troops and personnel. The use of force might give rise to uncontrolled circumstances. Yet, it is also true that the non-use of force causes a violation of the mandate. In the case *Mothers of Srebrenica*⁵⁸, the plaintiffs demanded for compensation from the Kingdom of the Netherlands and the UN for their failure in preventing the genocide at Srebrenica enclave. The latter was under the protection of the Dutch battalion in the framework of United Nations in operation United Nations Protection Force (UNPROFOR), the first peacekeeping force in the former Yugoslavia. These battalions were overrun by the Bosnian Serb forces of General Mladic and only defended themselves. Consequently, more than 8000 Muslim Bosnian died. Therefore, this case was ruled by the Supreme Court of International Court of Justice (ICJ), which judged the UN possessing an absolute immunity by interpreting article 103 of the UN Charter⁵⁹. Later, another lawsuit was filed to the Dutch Court, which ruled that the Netherlands was liable for only 300 out of 8000 deaths. All in all, the setting in motion of the use of force is a thorny concept. Opposite to the climax of UNSC's *modus operandi* on peace and security matters, PKO troops must stick to the idea that armed action is allowed in case of self-defence or defence of the mandate. Once force is used, then de-escalation is mandatory by returning to non-violent means of persuasion.

2.3. The historical phases of peacekeeping

⁵⁷ United Nations Peacekeeping Operations Principles and Guidelines, UN Peacekeeping Department, 2008. Available at: https://www.un.org/ruleoflaw/files/Capstone_Doctrine_ENG.pdf

⁵⁸ A large group of family members, above all mothers of the people died in the genocide of Srebrenica started an *incidenter* proceeding before the ICJ, reaching their appeal up to the Supreme Court of this organisation.

⁵⁹ Article 103 UN Charter "In the event of a conflict between the obligations of the Members of the United Nations under the present Charter and their obligations under any other international agreement, their obligations under the present Charter shall prevail"

As presented by Micheal Barnett⁶⁰, there are two main phases of peacekeeping. The first and original PKO envisaged light-armed battalions, whose use of force was only called for self-defence. Therefore, they played the role of a referee by strictly following the abovementioned principle of impartiality. However, this latter impaired any pro-active action by peacekeepers, whose arms became also obsolete, since because of the gridlock found in the UNSC, Member States had no point in financing and reinforcing this all but efficient operations⁶¹. Hence, the first-generation of PKO is inherited from the post-colonial settings, where in order to achieve the juridical sovereignty and to avoid an involvement (read dependence) of ex-colonisers, there was a conceptualisation of the means to bring a stable peace system about. PKOs were designed to guarantee that the juridical sovereignty of a state and decolonisation went hand in hand. By juridical sovereignty is here meant that a constitutional independent state that is also recognised as such by others and both respect the principle of non-interference.⁶² As a matter of fact, there is a large consensus upon the idea that what really matters is the empirical sovereignty, i.e. a *de facto* sovereignty, where a state is capable of actually exercising his authority all over the country. This formal and factual distinction is going to be properly rebutted in Chapter 4, when talking about the legality of the French intervention by invitation.

When in 1988, the Soviet Union's President Mikhail Gorbachev invited the UNGA for the enhancement of peacekeeping, an utter change for PKO was foreseeable and the start for a second-generation set forth. After several years of Soviet Union and United States preponderance for veto in the UNSC decisions about interventions by regional organisations, since they were deemed as all but impartial, along with the end of post-colonialism⁶³, the PKOs' concern was about the "transition from civil war to civil society"⁶⁴.

Barnett defines it as a "cognitive shift" concerning how to build a peace system⁶⁵. Fearing the spillover of internal into an inter-state regional or global conflict, as well as the codification of new sources of threats, the peace policymakers opened a new dialogue. Above all, the more relaxed UNSC concertation, led to important decisions which "have even come close to being legislative in nature"⁶⁶. For instance, the Resolution 1373 represents a quasi-legislative resolution, since after 9/11 the

⁶⁰ Barnett, Michael. "Partners in peace? The UN, regional organizations, and peace-keeping." *Review of International Studies* 21.4 (1995): 411-433.

⁶¹ Mackinlay, John, and Jarat Chopra. "Second generation multinational operations." *Washington Quarterly* 15.3 (1992): 114-115.

⁶² See n.59, p. 413.

⁶³ The UN was involved from 1945 to 1999 in the emancipation of ex-colonial countries. The UNGA and the United Nations Trusteeship Agreements have listed all the countries considered as non-self-governing. As East Timor became independent, and joined in September 2002 the UN as Timor Leste, since then under this UN list there is no territory aiming at emancipation anymore.

⁶⁴ See n. 60, p. 417

⁶⁵ *Ibidem*, p. 416

⁶⁶ Klabbers, Jan. *International law*. Cambridge University Press, 2nd edition, 2009, p. 198.

decision made all the Member States be part of the UN Convention for the Suppression of the Financing of Terrorism⁶⁷. In this second generation, the PKO shadow a broader mandate, involving peace enforcement and peacebuilding. The latter engages in a long-term process aiming at the reduction of risks that a state might fall into trouble and reinforcing its core functions.

As for the PKO, the peacebuilding was not envisaged in the UN Charter, whereas the term “enforcement” can be derived from the provisions of the collective measures as it is found under Chapter VII.

2.4. The Agenda for Peace and its regional developments

The title of this paragraph is taken directly from the far-reaching document written by Boutros Boutros-Ghali, who was the UN Secretary General from 1992 to 1997. He paved the way for what was already foreseen in the aftermath of the Second World War, namely the development of coordinated undertakings on security, and above all peacekeeping, matters with the regional organisations.

As he reports, Article 21 of the Covenant of the League of Nations had already praised the “validity of regional understandings [...] for securing the maintenance of peace”⁶⁸. Therefore, his ideals went even behind the Great War, claiming that keeping a perpetual peace all over the globe is a difficult task. Yet, even though the regional arrangements and organisations had typically been set apart [up to that moment], he truly wanted to consider them in a new light. He continues by stating that the UN Charter devotes Chapter VIII to regional arrangements or agencies, even though no definition of them is originally provided. In his view, these arrangements, be they “treaty-based organisations, [...] regional organisations for mutual security and defence or organisations and groups created to deal with a specific political, economic or social issue of current concern”⁶⁹, shall contribute and deal with those matters relating to the maintenance of international peace and security, hence reiterating the appropriateness of their activities⁷⁰. The then Secretary General divulged that regional arrangements are effective in the nascent stages of the peace-making, but still find some obstacles in peacekeeping and peacebuilding. Therefore, there should be in his view a division of labour, by intertwining the efforts and capacities of both regional stakeholders and the UN.⁷¹

⁶⁷ UNSC Resolution 1373 (2001)

⁶⁸ Covenant of the League of Nations, article 21

⁶⁹ Boutros-Ghali, Boutros. *An agenda for peace*. UN, 1995: para 61

⁷⁰ UN Charter, Ch. VIII, article 52 (1). “[...] their activities are consistent with the Purposes and Principles of the United Nations.”

⁷¹ See n. 60, p. 426

Notwithstanding all of this, by taking for given that peaceful settlement of disputes must be a priority to the UN, Boutros-Ghali also reinforced the concept that the foundation-stone of his work must remain the State. Several times in the document, the Secretary General advocated for the respect of the Westphalian principles⁷², prior to any PKO. Moreover, he identified a juridical sovereignty as the constitutive principle of international relations, as well as that “states are able to uphold juridical sovereignty only after they contain empirical sovereignty”⁷³. Of course, his attempt on the behalf of the Member States did not want to overrun in any way the essential primary responsibility on peacekeeping matters, which will continue to reside in the Security Council.⁷⁴ Nor, it is meant to set new formal frameworks, rather it results in being an exhortation for the future concerted operations carried out by UN and regional stakeholders.

What strikes the most is Boutros-Ghali’s acumen in defining peacekeeping as a “technique that expands the possibilities for both the prevention of conflict and the making of peace”⁷⁵. He foresaw the developments of current PKOs. As provided in the Principles and Guidelines of PKO, there has been an evolution from consent-based missions apt to observe cease-fires and separate the concerned forces after inter-state wars, “to incorporate a complex model of many elements – military, police and civilian – working together to help lay the foundations for sustainable peace”⁷⁶.

In the following chapter we are going to analyse first how the ECOWAS, as an African regional organisation, evolved from an economic community to a new peacekeeper in the region. Above all, it was the pioneer of these co-deployment operations on a regional scale as foreseen under chapter VIII of the UN Charter. Finally, getting to the core of the thesis, the approach to the Malian conflict is going to be analysed.

⁷² The peace of Westphalia in 1648 initiated a general principle of the international law, according to which each state has an exclusive sovereignty over its territory.

⁷³ See n. 60, p. 416

⁷⁴ See n. 69, para. 65

⁷⁵ *Ibidem*, para. 20

⁷⁶ See n.57, p. 18

3. ECOWAS: From Regional Economic Organization to Regional Peacekeeping union

The Economic Community of West African States was established in 1975 through the ECOWAS Treaty, which was signed by the then 16 contracting parties⁷⁷. The social integration, the economic development and co-operation are quintessential features to its inception. Moreover, its main prerogative was the enhancement of an economic union between the states of the West African subregion. Thus, in order to improve and guarantee better living standards to the peoples of the high contracting parties, a common market was established. In a similar fashion to the European Union, at the basis of this collective growth, it was agreed on the free movement of goods, persons⁷⁸ and capital, on the abolition of trade levies on imports and exports between Member states as well as on the abolition of non-tariff barriers in order to establish a free trade area⁷⁹.

Notwithstanding this similitude, what differentiates the ECOWAS from the European peer is the evolution it displayed over time, especially on security matters. At the beginning, the Community simply had an economic connotation. Originally, the non-aggression between Member States and the peaceful settlement of disputes were *in primis* two main principles of the Community, along with a prerequisite for economic development⁸⁰. Hence, the original treaty in 1975 did not provide a deliberated legal resolution against any case of threat to the peace and security of the region. Some steps forward were done by 1978 Protocol of Non-Aggression⁸¹ and with 1981 the Protocol relating to Mutual Assistance on Defence (PMAD). The first reinforces the principle of non-intervention and respect of each member state's sovereignty, but it does not rule out "the right of individual or collective self-defence nor the possibility of enforcement under Chapter VII of the UN Charter"⁸². Whereas the second Protocol reiterates the refrain from use of force as provided by article 2(4) of the UN Charter and that every armed threat or aggression directed against other members shall constitute a threat or aggression against the entire Community⁸³. Furthermore, in any case of internal armed conflict, which is "engineered and supported actively from outside likely to endanger the peace and

⁷⁷ In the moment of the writing of this text, members are fifteen. In December 2000, Mauritania decided to exit the Community leaving no Arabic-speaking member. In fact, eight are French-speaking (Benin, Burkina Faso, Cote d'Ivoire, Guinea, Mali, Mauritania, Niger, Senegal and Togo); five are English-speaking (Gambia, Ghana, Liberia, Nigeria, and Sierra Leone); and two Portuguese-speaking (Cape Verde and Guinea-Bissau).

⁷⁸ To this point there were several hurdles forestalling the free movement of persons. As Dennis and Brown present in their chapter "The ECOWAS: From Regional Economic Organization to Regional Peacekeeper", neighbouring countries were obliged to make connecting flights in Europe and then get back to the all but far desired destination in the African Continent.

⁷⁹ Article 3, para. 2 (i) of the Revised Treaty of the Economic Community of West African States (ECOWAS).

⁸⁰ Article 4 (a,d and f) of the Revised Treaty of the Economic Community of West African States (ECOWAS).

⁸¹ It was agreed on after three years of border and frontiers controversies, e.g. Benin and Togo, or Senegal and Guinea-Bissau over maritime frontiers. These altercations were skilfully mediated by ECOWAS personnel.

⁸² The Journal of Humanitarian Assistance, "ECOWAS and the Subregional Peacekeeping in Liberia", 25 September 2005. Available at: <https://sites.tufts.edu/jha/archives/66>

⁸³ Article 4 (b) of the Protocol Relating to Mutual Assistance of Defence could trigger a collective security mechanism.

security in the entire Community”⁸⁴. Moreover, the 1981 Protocol entitles ECOWAS to take all the appropriate measures. The extent of these legal instruments implies *inter nos* disputes, by leaving some room *only* to potential external threat.

3.1. ECOMOG and the Liberian experiment

The 90s represent the turning point of the ECOWAS on collective security grounds. The reason why is the growing instability that was raging in the West African territory. The objectives of the Community, albeit attractive from a theoretical standpoint, were not fulfilled and caused large dissent over Member States. In addition, ranging well-nigh completely the Atlantic Ocean coast, Liberia, Guinea-Bissau and Sierra Leone underwent internal turmoil, causing further exacerbation in the region.

Particular is the case of the Liberian crisis (1989-1997), where in less than six months, in May 1990, the group of dissidents guided by Charles Taylor, also known National Patriotic Front of Liberia (NPFL), launched their battle against the US-backed government of Samuel Doe and got the upper hand over almost ninety per cent of the country. Consequently, the population faced aberrant humanitarian disorders and no institution was overtly willing to be involved in the conflict resolution. Although ECOWAS was not able to prevent this conflict, it was the sole player to reach out the arms in order to support the distressed population⁸⁵. This precise step represented the start of the transition from a mere economic union into a Community involved into the maintenance of security and peace in the region.

In 1990, as the threat of Taylor’s became consistent since they started heading to the capital city, Monrovia⁸⁶ and the parties to the conflict were not able to find a meeting point to settle the dispute, in the footsteps of the UNSC, the five-member Standing Mediation Committee (SMC) of ECOWAS was set up. Its *raison d’être* regarded the mediation in this and potential future conflicts. Up to that point, the conflict was internal, therefore as provided by the abovementioned Protocol Mutual Assistance in Defence, no interference could take place, unless the conflict was fomented from outside. As this latter condition was found, the SMC decided to create the Cease-fire Monitoring Group called ECOMOG, whose immediate goals were uttered by the Peace Plan for Liberia⁸⁷.

⁸⁴ *Ibidem*

⁸⁵ Kabia, John M. "Regional approaches to peacebuilding: the ECOWAS peace and security architecture." BISA-Africa and International Studies ESRC Seminar Series: Africa Agency in International Politics, African Agency in Peace, Conflict and Intervention at the University of Birmingham, 7th April. 2011.

⁸⁶ The evolution of the events was similar to the 2012 Malian conflict

⁸⁷ Decision A/DEC.1/8/90 of 7 August 1990 on the Ceasefire and Establishment of an ECOWAS Ceasefire Monitoring Group in Liberia. This decision will be later called in layman’s terms Peace Plan for Liberia.

Of course, the establishment in Liberia of this brand-new force was not backed by all Member States, hence reinforcing the clash between Francophone and English-speaking countries, where *inter alia* some of them had interests at stake. Specifically, the President of Côte d'Ivoire, Houphouët-Boigny and his son-in-law, and at the same time also Burkina Faso's President, Blaise Compaoré⁸⁸, rejected this force and decided to support the NPFL side⁸⁹.

However, the legality of ECOMOG intervention was not much discussed by scholars. On this topic, Christine Gray asserts that in the establishment of ECOMOG, there was no legal reference to its implementation and subsequent deployment⁹⁰. The purpose of ECOMOG was firstly keeping the peace, hence making the parties of the conflict compliant to the cease-fire and monitor the respect of the latter. Among others its objective was also of "restoring law and order to create the necessary conditions for free and fair elections"⁹¹. This went beyond the scope of peacekeeping of that time, which first did not include peace-building competences yet. Second, to put ECOWAS in an uncomfortable position, as the conflict escalated ECOMOG was severely attacked by NPFL. This made of the regional arrangement a *de facto* implied party to the armed conflict, or better to say an undesired player in the game. Therefore, ECOWAS did not display the *volenti non fit injuria* principle, since the consent for its intervention was no longer conceded by all the concerned parties and in addition there was a large perception that its impartiality principle had at this point vanished⁹².

Finally, having the context before our eyes what lacks is *again* the authorisation by the UNSC, since as uttered by Article 52 "[...] no enforcement action shall be taken under regional arrangements or by regional agencies without the authorization of the Security Council". Moreover, "the Charter does not establish differing criteria *vis-à-vis* the use of force, be it by a state acting individually and on its own or by a regional or sub-regional group"⁹³. In the Liberian case, the only "limited" authorisation was given by the note of the President of the UNSC, which invited the parties to "cooperate fully with the ECOWAS to restore peace and normalcy in Liberia"⁹⁴. All in all, ECOMOG intervention will not be authorised by an *ex post facto* authorisation either. Rather, in 1993 the UNOMIL and ECOMOG started a co-deployment activity of peacekeeping.

⁸⁸ He is then appointed by ECOWAS as mediator in 2012 Malian crisis.

⁸⁹ Dennis, Peter M., and M. Leann Brown. "The ECOWAS: from regional economic organization to regional peacekeeper." *Comparative Regional Integration*. Routledge, 2018: p. 232.

⁹⁰ Gray, Christine. *International law and the use of force*. Oxford University Press, 2018: p.

⁹¹ See n.87, article II, para. 2

⁹² Adibe, Clement E. "The Liberian conflict and the ECOWAS-UN partnership." *Third World Quarterly* 18.3 (1997): p.475-476

⁹³ Acevedo, Domingo E. "Collective Self-Defense and the Use of Regional or Subregional Authority as Justification for the Use of Force." *Proceedings of the ASIL Annual Meeting*. Vol. 78. Cambridge University Press, 1984.

⁹⁴ Note by the President of the Security Council, S/22133, 1991.

In conclusion, the reason why I wanted to stress this strong commitment by ECOWAS in Liberia is that it represents a footprint of Boutros-Ghali's exhortation, as well as a blueprint of what is coming next. Above all, ECOMOG deployment, despite its uncertain legal position, was effective in its task of ensuring the ceasefire and later political settlement. This was the first joint operation in the history of co-deployment but the climax eventually culminated at the turn of the millennium, when the regional organisation finally stipulated the most outstanding Protocol adopted so far: the Protocol relating to the Mechanism for Conflict Prevention, Management, Resolution, Peace-Keeping, and Security, also called Protocol-Mechanism.

3.2. The Legal Framework of the Protocol-Mechanism

In December 1999, the ECOWAS adopted a brand-new protocol relating to the Mechanism for Conflict Prevention, Management, Resolution, Peace-Keeping, and Security (also called Protocol-Mechanism). It represented a cornerstone in this field, since it expressly clarified the *modus operandi* for this specific, and for regional organisations in general, about collective security. ECOWAS, as well as other regional stakeholders, realised their regional-bound possibilities in peacekeeping action and even though the latter was not provided by its establishing treaty (1975), Member States decided to agree on this ground⁹⁵.

In the research paper written by Hartmann and Striebinger, it is stressed that the adoption of this protocol, together with the supplementary one about Democracy and Good Governance in 2001⁹⁶, represents a "global script on how regional organisations can deal with inter and intra-state conflict"⁹⁷. Hence, the Protocol-Mechanism ideologically followed the spirit of the then disregarded Chapter VIII of the San Francisco Charter. As we have seen above, until 1999, the UNSC was the sole organisation having the jurisdiction to intervene in domestic affairs of States. The Mechanism overhauled the reach of ECOWAS, which before 1999, "formally" relegated the Community to a mere undertaking of classical peacekeeping and collective self-defence in case of active support from an external actor. As noted by Abass⁹⁸, the Mechanism will apply not only to traditional peacekeeping undertakings, but also "by using force to guarantee such".

The Mechanism is defensive in nature and innovative in practice. It works in a similar way to the one of the North Atlantic Treaty Organisation. In those cases in which a Member State is

⁹⁵ But for the Mauritania, which quickly withdrew the Community in the days following the signature of the Protocol at stake.

⁹⁶ Protocol on Democracy and Good Governance prescribing the promotion of peace and security in West Africa

⁹⁷ Hartmann, Christof, and Kai Striebinger. "Writing the Script? ECOWAS's Military Intervention Mechanism." Governance transfer by regional organizations. Palgrave Macmillan, London, 2015. 68-83.

⁹⁸ Abass, Ademola. "The new collective security mechanism of ECOWAS: Innovations and problems." J. Conflict & Sec. L. 5, 2000

aggressed and asks for an intervention, then this attack is deemed as an attack to the entire Community⁹⁹. However, this is not the only instance setting in motion the regional intervention. The Protocol-Mechanism can be activated by the Authority, at the request of a Member State or the UN and eventually by the MSC. The latter looks like the UNSC, since it has been provided the primary responsibility on the maintenance of peace and security in the sub-region. It is made up by 9 members, among which 7 are elected by the Authority. In turn the latter is made up by all the head of state and government of the Member States. A decision can be taken only on the basis of a “double two-thirds majority”, which entails that if and only if two-thirds (6) of the total (9) are present and if and only if among the present, a two-third majority votes for the intervention, then the Mechanism is activated¹⁰⁰.

Notwithstanding this, the main innovation that differentiates ECOWAS from its regional peers is found in functions that can be authorised. To be precise, the abovementioned entitled organs of the regional organisation can “authorise all forms of intervention”¹⁰¹. Whereas, article 25 enumerates the other conditions in which the Mechanism shall be applied and therefore be deemed as innovative: first, “in the event of an overthrow or attempted overthrow of a democratically elected government”; additionally, to enhance this mechanism, ECOWAS shall embody the role of peacebuilder as well, implying that processes towards the restoration of political authority shall be undertaken in case of lack or erosion of the authority of a Member State. The list of tasks does not end here. In a less innovative vein, the engine is set in motion also in case of conflict between two or several Member States, therefore recalling the 1981 Mutual Defence Assistance Protocol; eventually whenever in case of internal conflict a humanitarian disaster arises, or this represents a threat to the security in the sub-region¹⁰².

Abass underlines that the most important provision of the Protocol-Mechanism is article 48, since it sets forth a shift from “an able and willing” basis of PMAD to a multilateral obligation to provide “adequate resources for the army, navy, gendarme, police and all other military, paramilitary or civil formation necessary for the accomplishment of the mission”¹⁰³.

Finally, another important innovation is brought about by Article 22, which provides the mandate of ECOMOG, i.e. the specific tasks that the then peacekeeping force is entitled to carry out. This was probably due to the “undetected” transformation it had over time in the conflict in Liberia

⁹⁹ Article 5 of North Atlantic Treaty Organisation: “The Parties agree that an armed attack against one or more of them in Europe or North America shall be considered an attack against them [..]”

¹⁰⁰ *Ibidem*, article 9, para.1 and 2.

¹⁰¹ Article 10, para. 2, clause (c) of the Protocol A/P.1/12/99 relating to the Mechanism for Conflict Prevention, Management, Resolution, Peacekeeping and Security.

¹⁰² *Ibidem*, Article 25 para. C, clause (i) and (ii).

¹⁰³ See n.97, p. 218

from a mere peacekeeping force to a “full-fledged robust peacekeeping operation”¹⁰⁴. Therefore, it seems to be put as a clause of legitimacy to the Ceasefire Monitoring Group, which was in turn unilaterally implemented to face the inaction of the UNSC in the Liberian conflict. Practically, the ECOMOG shall inform the UN for any military intervention undertaken in pursuit of the objectives of the Protocol and in compliance with article 54 of the Charter. Notwithstanding this, no reference to a prior authorisation from the UNSC has been provided.

3.3. ECOWAS responsibility to intervene

As we have seen in Chapter 1, the conflict in Mali suddenly broke out, when the MNLA quickly gained large part of the territories in the Northern provinces of the country. To make the ailing conditions of the Malian government even worse, a platoon of scorn soldiers entered the capital city, Bamako, and unilaterally seized the reins of the government. This *coup d'état* was condemned by the international community, which heralded by the UN, initially invited them to withdraw their activities.

ECOWAS responded alike, by preferring a peaceful settlement to this turmoil. Immediately after the unplanned overthrow of the government in March, ECOWAS initially preferred to proceed mildly. In fact, guided by the Burkinabe President, Blaise Compaoré, who was appointed as mediator in the conflict, it was planned for the intervention in the conflict. Thus, in the short-term ECOWAS invited the rebel groups to lay down their weapons. Second, a roadmap to restore democracy and to reform the Malian army was initiated. Yet, this resulted inconsistent in this first case, and idle in the second. Therefore, in March 2012 “ECOWAS tightened its coercive strategies by imposing economic and diplomatic sanctions”¹⁰⁵ on the *CNRDRE*. Broadly speaking, it consisted of a suspension of Mali from its membership from ECOWAS and all the assets of the *Comité* were frozen, along with a denial of accessing the ports of ECOWAS Member States¹⁰⁶. The *CNRDRE* stepped down within the 72-hours limit and an *ad interim* presidency was invested with powers.

From this moment on, the unitary front made up the MNLA and the *mujahideen* groups were heading southwards, spreading the panic in the West African country. At this point, Mali finally asked for an ECOWAS intervention on its soil to cast out this threat, but the regional organisation turns out to be torn about intervening or not. The chosen path is still a peaceful settlement of the dispute and to seek the authorisation from the Security Council. Yet, the UN provides a more regional approach to the conflict, which started as local and it is at this point expanding. The requests made by ECOWAS

¹⁰⁴ Ibidem, p. 219

¹⁰⁵ Kwesi Aning, Fifi Edu-Afful, *African Agency in R2P: Interventions by African Union and ECOWAS in Mali, Cote D’Ivoire, and Libya*, *International Studies Review*, Volume 18, Issue 1, March 2016, Pages 120–133

¹⁰⁶ See n.23, para. 7, clause A. and B.

were rejected. The UN kept on commending a detailed plan before allowing for a stabilisation force under the aegis of the regional actor. In the meanwhile, Romano Prodi was appointed as a Special Envoy for the Sahel, whose task was to find a more regional solution to this turmoil. This appointment was probably the first step towards a regional approach to solve the matter.

Sometime later, the President of the Commission of ECOWAS seems to be well-nigh begging the UN to implement the stabilisation force with an authorisation to act under Chapter VII of the Charter. In this letter¹⁰⁷, the President provides a three-phases *mise en oeuvre* of the undertaking. First, a coordination centre near Bamako was to be set up. In the second phase, it was envisaged to restructure and reorganise the security and defence forces of Mali. Finally, in order to restore the stability of the country, a combat against terrorist and criminal networks shall be taken on, along with a fine-tuned response to the humanitarian consequence of the civil conflict.

As soon as the mandate was granted, ECOWAS would be ready to deploy the first contingents of the stabilization force to undertake tasks under phases I and II of the deployment strategy, while tailoring the modalities and means for phase III in cooperation with the United Nations and other stakeholders. Notwithstanding this plan and exhortation by ECOWAS, the UN response was harshly negative.

3.4. A missed opportunity for regional peacekeeping

At this juncture, the question to be answered is why the ECOWAS not decided to get military involved with ECOWAS Mission in Mali (ECOWAS), differently from what it did unilaterally in Liberia in a similar civil conflict. The similarities with the Liberian conflict were diverse. First, a non-state armed group, the MNLA unilaterally declared a sovereign jurisdiction over large portion of the Malian territory, therefore putting the basis for a NIAC. In this case, having conquered the Azawad, the MNLA exercised its authority over 75 percent of the country. Second, given the internal disputes that the African Union was undergoing, and the UN need for a detailed plan¹⁰⁸, ECOWAS still represented the only player in the game to reach out the distressed Malian population.

Yet, the Saharian conflict had also some differing components, that is the presence of a terrorist threat, which was constituted by Ansar Dine, MUJAO and AQIM. Especially the latter is recognised by the UN community as a dangerous non-state actor, given its linkages with Osama Bin Laden's terrorist group¹⁰⁹. In addition, after having enriched themselves through the hub of

¹⁰⁷ See n. 28

¹⁰⁸ Albeit the situation was already considered as a threat to the peace

¹⁰⁹ Al-Qaida Sanctions Committee narrative summary of reasons for the listing for individuals, groups, undertakings and entities included in the ISIL (Da'esh) and Al-Qaida Sanctions List. Available at :

kidnapping of European hostages and the rich ransoms deriving thereof, the *mujahideen* could benefit from the availability of enormous resources.

Probably, ECOWAS could have superseded the UN red light and therefore implement its enforcement action against this ever-evolving threat. Yet, after the events of 11 September 2011, the legal framework on how to react to terrorist attacks was altered¹¹⁰. As seen in the evolution to the elements falling under the category of the “threat of the peace”, and especially as it was reaffirmed in the first Resolution related to the Malian crisis, “any terrorist threat any acts of terrorism are criminal and unjustifiable regardless of their motivations, whenever and whomsoever committed”¹¹¹. So far, collective self-defence was justified only in cases of armed attack against a Member State. In addition, the aggressor state was the target setting in motion the collective mechanism of self-defence as provided by article 51 of the UN Charter. At this point, the target is difficult to find, or better to say has changed, since these acts of terror are carried out by non-state actors having their logistical bases spread in several countries. Therefore, it would be legally unjustified and politically undesirable to respond on grounds of self-defence to a state, whose negligence is harbouring the aggressors. This turns to be the *ratio*, unless the state is expressly committed to the terrorist cause.

Notwithstanding this, what leaves huge room for perplexity is why the 1999 Protocol-Mechanism was not triggered at all. Setting apart the implementation in case of overthrow of the legitimate government, which was luckily solved through peaceful modalities and means, there were other grounds which the MSC could have invoked to start a peacekeeping undertaking by also using the force to guarantee such. First, the civil conflict caused a humanitarian disaster for the Malian population, not only on an economic level, but especially on a social and religious one. For instance, in the name of the *shari'a*, plenty of women were harassed because of their non-compliance with the integralist view of Islam, while other people were tortured and discriminated because of their Tuareg roots. Cutting to the chase, the terrorist attacks were at this stage a well-developed threat to the security and peace of the sub-region. ECOWAS was, yes, brilliantly involved in the process of governance restoration, hence of peace building in the country, but lacked in audacity *vis-à-vis* the implementation of a peacekeeping operation having a full-fledged robust mandate.

3.5. The implications of the non-intervention

https://www.un.org/securitycouncil/sanctions/1267/aq_sanctions_list/summaries/entity/the-organization-of-al-qaida-in-the-islamic

¹¹⁰ Cassese, Antonio. "Terrorism is also disrupting some crucial legal categories of international law." *European Journal of International Law* 12.5 (2001): p. 996.

¹¹¹ See n. 25

This missed intervention by ECOWAS has some implications concerning the reach that regional actors may entail in peacekeeping operations. As it has been analysed so far, the scope of ECOWAS is impressive if it is to be considered the immediate reach of “high politics”, i.e. security issues. The outcome is surprising also for international relations neo-functionalists scholars, who praise the “spill-over effect” as a fundamental component in the formation and integration of newly formed organisations. The mind behind this notion, Ernst Haas¹¹², envisaged that economic actors (e.g. states) are driven to engage themselves in a cooperation for a first set of matters, which then would spill over into other fields. This is exactly what happened for ECOWAS. A group of member states showing a certain degree of proximity and cooperation decided to set up a regional organisation in order to foster the economic, social and political growth of their countries. Theoretically speaking, a cooperation on grounds of collective security and above all peacekeeping should have realised after several years of partnership. Instead, although the young age¹¹³, ECOWAS succeeded in this impressive result and was also the first party committing to the heritage of Chapter VIII of the UN Charter¹¹⁴.

Boutros-Ghali maintained that regional stakeholders must have an important role in peacekeeping and as it has been provided by Dennis and Brown¹¹⁵, there are some pros and cons to this. Regional actors show higher degrees of commitment, since they feel that the threat to the peace is in proximity. Therefore, as high politics spills over, also high problems, e.g. unstable situations and dangerous menaces, might flow alike. Moreover, it is also easier for a regional actor to be retained as a legitimate actor, sometimes even more than the UN, because of their knowledge and better understanding of *in primis* the language of the victim state, as well as latter’s history, culture and above all morphology of the territory.

At the same time, it is necessary to be aware of the neutrality, which as previously underlined is a *conditio sine qua non* to the peacekeeping undertaking. Sometimes it could happen that an operation leans towards one side or another. An example on this ground is given by the large consensus about the Nigerian persistence on intervening in Liberia. Since the time of the Liberian civil war and probably still today, Nigeria was the richest and best prepared at the military level and many scholars assert that it wanted to establish itself as a hegemon of the region. In addition to this, the organisation’s headquarters are located in Abuja, Nigeria, as well as most of the budget still comes from the Nigerian assets. However, as Barnett puts it forward, the regional organisations have an

¹¹² Haas, Ernst B. *Beyond the nation state: Functionalism and international organization*. ECPR Press, 2008.

¹¹³ ECOWAS was only twenty-four at the moment of the signature of the Protocol-Mechanism.

¹¹⁴ ECOMOG co-deployed with UN observer missions were instances of good partnership between the UN and the regional stakeholders

¹¹⁵ See n. 78, p.233

advantage over the UN regarding the military interventions, because of their self-interests at stake¹¹⁶. Notwithstanding this, it would be a huge mistake to consider Nigeria as a synecdoche of ECOWAS, since all the decisions are taken collectively, by both friendly and non-friendly states to Nigeria, who take part to the SMC.

In sum, the lacking authorisation to MICEMA by the UNSC has legitimised an utter dependence of a regional actor to the UN's blessing for their operations¹¹⁷. Therefore, the latter would have disentangled a greater legitimacy in the international community for ECOWAS, and among others, it would have also lightened the financial and political burden for the UN in the implementation of MINUSMA. Notwithstanding these hindsight conjectures, ECOWAS did not implement the Protocol-Mechanism concerning the collective self-defence because of a lack of resources compared to those of the terrorist groups, whose preparedness and experience were of a great concern to the entire Community. To make things worse, the concept of MICEMA was absorbed by AFISMA, whose starting date was set in September 2013. However, the increasing fear of a terrorist takeover of Mali, made the French forces intervene through the Serval Operation, which shifted the magnifying glass from a regional to an international scope. The latter utterly thwarted ECOWAS efforts.

¹¹⁶ See n.60, p.427

¹¹⁷ *Ibidem*, p. 428

4. The French Intervention in Mali

Until December 2012, the approach to the resolution of the internal conflict in Mali was essentially regional in ideology. On a more pragmatic level, the uncontested descent of the *mujahideen* towards Bamako frightened the international community, to the point that the Special Envoy for the Sahel, Romano Prodi later maintained that the French intervention was inevitable. Despite his role for the sub-region at stake, he declared that it was not only for the Mali *per se*, rather for the consequences and the resonance that the region may have¹¹⁸. For this reason, as a consequence of the invitation by the Malian *ad interim* government the French President of the Republic, François Hollande, decided to intervene on Malian soil.

In this final chapter, the legality of the French intervention, called Serval Operation, will be first under analysis, starting from the legal practice and arguments on which its intervention lies. Finally, the paper will conclude with an assessment of the Serval Operation, which was, yes, immediate, but, as we will see, it has a “*double détente*” because of its impact both at local and international level.

4.1. A threefold legal justification

In January 2013, as the terrorist groups conquered the city of Konna, which is 600 kilometres from Bamako, the Malian *ad interim* President, Dioncounda Traoré, went to Paris in order to officially ask for a French intervention on Malian soil. This intervention was meant to cast out the terrorist threat from the northern part of the country. Given the complex difficulties that the African-led mission had encountered to be set forth, the Serval Operation was meant to reinforce their platoons, but also to lavish with the financing, logistics and skills to fight in desertic areas. Almost four thousand soldiers were immediately deployed in the West African country. Of course, this was possible thanks to the French availability of troops in the neighbouring countries.

Despite the declaration of the French *chef d'état* that interventions in former French colonies would have no longer taken place during his mandate, France decided to accept this invitation. Some days after its implementation, three were the legitimate reasons provided by the representatives and encountered little opposition by other members of the community¹¹⁹: by triggering article 51 of the

¹¹⁸ Romano Prodi: l'intervento in Mali era ‘inevitabile’’. Available at : <http://www.europarl.europa.eu/news/it/headlines/world/20130405STO07013/romano-prodi-l-intervento-in-mali-era-inevitabile>

¹¹⁹ Laura Magi provides only three instances, i.e. the president of Egypt, Morsi, the President of Tunisia, Marzouki, and the Turkish Minister of the Foreign Affairs, Davutoğlu.

UN Charter related to individual or collective right to self-defence; a request of assistance by the *de jure* authority; and finally the authorisation by the UNSC.

First of all, the French stance in this framework is all but clear. This is not due to the diverse grounds on which their intervention shall be authorised, rather from the incongruity between what it has been publicly declared and what the UN received as a justification¹²⁰. Hence, this shows off a distance from the public sphere and the government.

However, the Minister of the Foreign Affairs, Laurent Fabius, reinforced before the Senate¹²¹ that the deployment was authorised by 2085 Resolution. In this document, the UN invites the Member States to provide the necessary support and cooperation to the AFISMA, which would enter into force only in September 2013. Still, the situation is controversial, because it was stated both that the Member States were invited only to provide assistance and training skills to the African-led mission. Whereas the latter “shall take all the necessary means” against the terrorists. Therefore, as Laura Magi puts it, an intervention on the basis of an implicit authorisation is inappropriate and has to be immediately dismissed¹²².

Additionally, some French representatives adduce the legal justification to their intervention on a statement to the press made the day before the French declaration, in 9 January 2013. As reported in Chapter I, Starita makes a clear distinction between the statement to the press and the presidential statement when using the authentic interpretation. From a formal point of view, the first merely reports the stances of the participating Members of the UNSC, while the presidential statement is attributable to the Council as a whole, hence producing the same legal effects of a resolution¹²³. Furthermore, by also giving a teleological approach to the interpretation of this document, what lacks is the reference, albeit implicit, to the use of force by Member States. All in all, in 2085 Resolution there is a strong commitment by the international community to the training of Malian forces, which still have a prerogative in the settlement of the dispute.

Also, Fabius maintained that article 51 of the UN Charter related to the right to self-defence was a legal justification to the French intervention. This turns to be not exactly true, since first it is necessary to draw out whether the abovementioned right, be it for individual or collective purpose, also applies to armed attacks coming from non-state actors. On this ground, the IJC has already ruled

¹²⁰ Lettres identiques datées du 11 Janvier 2013, adressées au Secrétaire général et au Président du Conseil de sécurité par le Représentant permanent de la France, UN Doc. S/2013/17, 14 January 2013

¹²¹ Bulletin d'actualités du 17 janvier 2013, Senat de la République Française. Available at : <https://basedoc.diplomatie.gouv.fr/vues/Kiosque/FranceDiplomatie/kiosque.php?fichier=bafr2013-01-17.html#Chapitre3>

¹²² See n.43, p. 555-556

¹²³ See n. 41, p. 569

in 2004 in the *Advisory Opinion on Construction of a Wall in the Occupied Palestinian Territory* judging the Israel invoked right to self-defence as void, since the threat to which it desired to answer was internal. Hence, article 51 recognises the existence of this right to self-defence only in case of armed attack of a State against its peer.¹²⁴ This served as a legal *distinguo*, between the terrorist attacks underwent by Israel and those of 9/11, which were set in motion by Al-Qaeda. In the Malian case at stake, the terrorist groups, despite their allegedly cross-border roots, are set up in the local community. Their logistical bases are on Malian soil. Thus, the origin of the attacks, albeit terrorist in practice, is internal to its territory.

Subsequently, Hollande stated that the acceptance of its intervention was based on the request of assistance by the Malian government. As argued by the US Permanent Representative to the United Nations, Susan Rice, Malian authorities have a right to “seek what assistance they can receive”¹²⁵. To this end, it is also necessary to consider that behind the French involvement there is the presence of many French nationals on Malian soil. The right of rescue of a state’s nationals is broadly deemed as falling under customary international law, and also strengthens the French claim for intervention. By contrast, the legal doctrine concerning the intervention by invitation is highly debated, since no standard praxis can be always applied.

4.2. The intervention by invitation

After having striked the controversial invoked grounds of French intervention out, the request of assistance by another State, also called intervention by invitation, remains the sole ground upon which in principle might justify the French implication in the Malian conflict. Generally, it is recognised to the government of the state an inherent right to defence, merely because of the occurrence of these violent acts under its authority. Hence, in this chapter we are delineating the legal practice concerning the breakout of a civil war and the consequent invitation to intervene in the affairs of another state.

Notwithstanding this, the legal problem with the foreign intervention on the soil of a Member State, upon the request of the latter, is given by the fact that such an action, although consented would violate the *jus cogens*, which in this specific case finds its embodiment in article 2, para. 4 of the UN Charter¹²⁶. Moreover, it is difficult to draw out the legal standard to foreign intervention in case a civil war, being it a non-internationalised conflict (NIAC), since it generally violates the principle of

¹²⁴ *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, I. C. J. Reports 2004: p. 194, para. 139.

¹²⁵ <http://usun.state.gov/briefing/statements/202714.htm>

¹²⁶ Christakis, Theodore, and Karine Bannelier-Christakis. "Volenti non fit injuria? Les effets du consentement à l'intervention militaire." *Annuaire Français de droit international* 50.1. 2003.

internal self-determination as well¹²⁷. The legality of the intervention by invitation lies on two fundamental grounds: the level of intensity of a NIAC and the entitled entities to demand an intervention on its soil.

In order to assess the NIAC as such, the common article 3 to the four Geneva Conventions 1949 lends us a big assist. This article is of path-breaking importance on multiple levels. First, it stresses the customary norms from which no derogation is allowed in case of a non-internationalised conflict, as well as the offer of humanitarian support by the International Committee of the Red Cross to the of parties of the conflict. Secondly, as it was also stressed by the *Tadic case*¹²⁸ in 1999, there are three main criteria apt to characterise the NIAC. A responsible command from the insurgents, who must have an overall control¹²⁹ enabling them “to carry out sustained and concerted military operations, and the ability to implement the Protocol”¹³⁰.

Rebus sic stantibus, if earlier it was not clear whether the Malian turmoil represented a civil war or a case of internal strife, it can be argued that for sure this case falls in the NIAC category. Since the terrorist groups showed some degree of “responsible command”, which carried out continuing and planned military operations, and eventually also controlled over a part of the territory, i.e. the Azawad. Generally, if these conditions are found and acting within the framework of a NIAC, then the intervention by invitation is broadly allowed¹³¹.

4.3. What is a legitimate invitation?

What rises at this juncture and needs to be assessed is detecting the entitled authority to ask for an intervention on its territory. As a general rule, “the only authority entitled to extend an invitation for military assistance to another state [...] is the internationally recognised *de jure* government”¹³². Usually, in order to identify the latter, the effective control principle is taken into account. This is exactly what we have seen under chapter II (3), and above all Boutros-Ghali and Barnett have praised in the 90s concerning the peacekeeping undertakings. Both retain that the empirical sovereignty, that is a *de facto* control and exercise of its authority all over the country, be of utmost importance in the recent context. In addition to this, Erika de Wet suggests that the

¹²⁷ See n. 43, 558

¹²⁸ *Prosecutor v. Dusko Tadic*, case IT-94-1-a, judgement of 15 July 1999, paras. 120-2.

¹²⁹ Differently from the “effective control” condition found in *Nicaragua case*, where the activities carried out by the revolutionary group, Contras, fell effectively under the control of the United States.

¹³⁰ Commentary of 1987 Material Field of Application, ICRC.

¹³¹ Tancredi, Antonello. Sulla liceità dell'intervento su richiesta alla luce del conflitto in Mali. *Rivista di Diritto Internazionale* vol. 96, n. 3. Milano: A. Giuffrè Editore, 2013. See also n. 43, p. 558.

¹³² De Wet, Erika. "The Modern Practice of Intervention by Invitation in Africa and its Implications for the Prohibition of the Use of Force." *European Journal of International Law* 26.4 (2015): p.982

acceptance, or the acquiescence of the population to be represented by the government at stake is a further prove to the “effective control” principle¹³³.

However, after the Cold War *empasse* the principle of effective control has been substituted by the requirement of democratic governance. This means that for a state to be recognised as such, first free and fair elections are to be hold. Then, another necessary condition is a strong commitment to human rights and *jus cogens* protection. Hence, the internal recognition of authority, which beforehand played a huge role, is then replaced by a recognition of what is “mild is right”.

Such a condition sets apart the practice of international recognition by states, which consisted in a fallacious reasoning leading to a transitivity problem. It implied that if a state A recognises B, and B recognises C, but C does not recognise A, then a “no-recognition situation” is engendered. Additionally, albeit a state was to lose its effective control over large parts in its territory, as it was the case of Doe’s government in Liberia and also the *ad interim* Malian one, its status of recognised “mild state” seems to be persisting over time.

4.4. The terrorism and the peace enforcement

Having this evolution of the legal practice clear, nothing is left to do but analysing the legality of French intervention after the invitation by the Malian transitional authority. The latter was deemed as the legitimate and *de jure* authority by Resolution 2071, where it was furtherly reinforced that the solution to the crisis shall be Malian-led, given the primary responsibility of the authorities in ensuring security and unity in its territory¹³⁴. Therefore, the principle of legitimacy was found.

By the time French intervened on Malian soil, the situation had further evolved from Resolution 2071. The threat was not the independentist movement MNLA anymore. Rather the latter and France had a similar *Weltanschauung* over the intervention, because of the logic according to which the enemy of my enemy is my friend. The common threat embodied by the terrorist groups played the role of a game-changer.

First, the conflict crossed the threshold of a NIAC. This was not due to the presence of terrorist groups, whose roots are allegedly from outside the Malian jurisdiction, rather because of the intensity that the conflict entailed. Yet, this did not delegitimated the legality of the invitation extended to France. The UN, after having seen the Malian authority and population on their knees, tacitly accepted the French undertaking and probably backed it in an *ex-post facto* approval¹³⁵.

¹³³ *Ibidem*, p. 983.

¹³⁴ See n.29.

¹³⁵ See n. 47

Second, the French intervention possessed a *double détente* at the national and international level. As what concern the latter, it was depicted as combating terrorism¹³⁶. Whereas on a more limited scope, it was also meant to reunify the Malian state¹³⁷. A rapid deployment of platoons facilitated from the presence of military bases in neighbouring countries, tactical and surgical airstrikes made the terrorists move back to their hideouts in the arid mountains of north Mali. In addition, these attacks do not fall under the category of peacekeeping only because of the lack of a “peace to keep”.

Still, the MNLA partnership with the international actor facilitated the effectiveness of the Serval Operation against the terrorism. Taking as given the logistical and military preparedness of French military apparatus, the latter would have not been as successful as it was without MNLA knowledge of the common enemies. This statement is not meant to lighten the MNLA wrongdoing, rather to put forward the thesis that, in line with the Boutros-Ghali's *Agenda for Peace*, regional actors and organisations provide a crucial advantage in the enforcement of any kind of undertaking. Their better knowledge on several grounds (i.e. culture, language, morphology of the territory) constitutes an asset in the peacekeeping framework. Albeit the end of the Cold War had set apart the political stalemate caused by a preponderance in triggering the veto power by permanent members, still some further little steps on cooperative grounds between Member States and the UN need to be taken in order to draw near to the desired “giant leap for the mankind”, i.e. peace.

¹³⁶ See n. 131.

¹³⁷ Gaulme, François. « *Intervenir au Mali : le retour du politique* », *Études*, vol. tome 418, no. 5, 2013 : p. 583.

Conclusion

Since the end of the Cold War, a reduction of international armed conflicts has been witnessed. Notwithstanding this, the number of NIAC and peacekeeping operations have augmented over time as a demonstration of a persistent global instability and a general commitment by the international community to keep a global peaceful order.

To this point, I deemed as necessary to elicit and analyse the general principles, guidelines and subsequent practice in peacekeeping operations, before getting to the interventions of ECOWAS and French Serval Operation in 2012 Malian crisis. Concerning the regional organisation, it has been emphasised the transformation from a mere economic community of West African States to a peacekeeping union. During its first years, ECOWAS had undertaken “classic peacekeeping operations, involving the use of force within the sovereign jurisdiction of one of their member states, at times without prior Security Council authorization and at times in coordination with the Council”¹³⁸. However, all its interventions have then spilled over into strong co-deployment undertakings with the UN. This emphasises the need to foster a better cooperation between regional organisations and the UN, as it is enshrined in Chapter VIII of the United Nations concerning the regional arrangements and the *Agenda for Peace* by Boutros-Ghali. Finally, getting to the crux of the research, there are some questions and several regrets about the non-intervention of ECOWAS on Malian soil. Although the regional organisation wanted to intervene in Mali, yet no green light for deployment of a peacekeeping operation was released from the UNSC. Taking for granted that any unilateral action shall be refrained, ECOWAS lost a good opportunity to present itself as a valid “stunt double” of the UNSC and personally be involved in the settlement of the still today (*alas*) enduring conflict in its sub-region.

Whereas, in a similar fashion to the previous chapter, the last part of the research is focused on the legality of intervention by French troops in January 2013. Three were the legal grounds adduced by French representatives to their intervention: a request of assistance by the *de jure* authority, triggering article 51 of the UN Charter related to the right to self-defence and the authorisation of the UNSC. Two of these have been quashed, because *in primis* the Security Council had not expressly authorised, neither through a resolution nor with a presidential statement the implementation of any enforcement action by France. Secondly, article 51 of the UN Charter could

¹³⁸ Cardoso Squeff, Tatiana, and Rafaela Rosa. "ECOWAS' Operations under International Law: a Matter of Common Goals to Bring about Peace or a Shield for States' Self-Interests?." (2014).

not have been triggered because the attack that Mali was undergoing had internal origins, therefore it is within the framework of a non-internationalised armed conflict that France should have acted.

Hence, Serval Operation was based on two grounds: the intervention by invitation of a *de jure* authority, which in this case is embodied by the Malian Transitional authority, and the so-called “hunt for evil”, i.e. the fight against terrorism, which was inherent to all of the former justifications. The legality of the French intervention was an argument of long discussion among scholars, yet differently from what ECOWAS was meant to do, France intervened militarily, albeit in a strategically way, in order to fulfil its *double détente*. The objective was on a national ground to restore the democratic governance of the Malian *ad interim* forces, while trying to eradicate on a global scale the rising threat of terrorism.

All in all, despite the several attempts carried out by single, regional and international actors in the conflict in Mali has still to find present-day any closure.

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List of abbreviations

AFISMA = African-led International Support Mission in Mali
AQIM= Al Qaeda in Maghreb
ATT = Amadou Toumani Touré
AU = African Union
CNRDRE = Comité National pour le Redressement de la Démocratie et la Restauration de l'état
ECOMOG = ECOWAS Cease-fire Monitoring Group
ECOWAS = Economic Community of Western African States
EU = European Union
GSPC = Group for Preaching and Combat
IAC = International Armed Conflict
ICJ = International Court of Justice
MINUSMA = United Nations Multidimensional Integrated Stabilisation Mission in Mali
MNLA = Mouvement National de l'Azawad.
MUJAO = Movement for Divine Unity and Jihad in West Africa
NIAC = Non-international Armed Conflict
NPFL = National Patriotic Front of Liberia
PKO = Peacekeeping operation
PMAD = Protocol relating to Mutual Assistance on Defence
Protocol-Mechanism = Protocol relating to the Mechanism for Conflict Prevention, Management, Resolution, Peace-Keeping, and Security
SMC = Standing Mediation Committee
UN = United Nations
UN Charter = Charter of the United Nations, San Francisco, 26 June 1945
UNEF =United Nations Emergency Force
UNGA = United Nations General Assembly
UNOMIL = United Nations Observer Mission in Liberia
UNSC = United Nations Security Council

IL CONFLITTO IN MALI: LA LICEITÀ DEGLI INTERVENTI DI *PEACEKEEPING* REGIONALI ED INTERNAZIONALI

A partire dalla fine della Guerra Fredda, si è complessivamente registrata una riduzione dei conflitti armati internazionali, soprattutto di carattere interstatale, che hanno raggiunto quota due nel 2003. Tuttavia, analizzando ulteriormente i *trends* su scala globale, il numero di conflitti armati non-internazionali (NIAC) o interni è aumentato vertiginosamente, così come le forme contenute al suo interno. In questa categoria rientrano i conflitti armati che hanno luogo nel territorio di uno stato e hanno come parti coinvolte nel conflitto un governo di uno stato e uno o più attori armati non-statali. In questa ampia categoria rientra anche il conflitto in Mali del 2012.

Questo elaborato finale comprende quattro capitoli. Nel primo viene portata alla luce la cronologia degli eventi avvenuti tra il 2012 ed il 2013 nel paese dell'Africa occidentale ed le cause scatenanti del conflitto interno. Nel secondo capitolo vengono delineate le basi legali *vis-à-vis* gli interventi di mantenimento della pace (*peacekeeping*), passando per un'esamina della relativa dottrina, i principi e le linee guida della sua *mise en oeuvre*. Inoltre, all'interno dello stesso capitolo viene analizzato il pioneristico documento scritto dall'ex Segretario Generale delle Nazioni Unite, Boutros Boutros-Ghali, in merito allo svolgimento di operazioni di mantenimento della pace che prevedano un sempre crescente coinvolgimento regionale. Infine, giungendo al punto cruciale dell'elaborato, nei capitoli tre e quattro verrà discussa la liceità e conseguente portata degli interventi da parte della Comunità Economica degli Stati dell'Africa Occidentale (ECOWAS) e della successiva *Operation Serval* francese.

Lo scoppio del conflitto in Mali nel 2012 presenta dei motivi ascrivibili non soltanto a cause recenti, bensì ad un'instabilità interna dovuta *in primis* ad una forte caratterizzazione multi-etnica della popolazione e ad una transizione post-coloniale molto travagliata. Sin dagli albori dell'indipendenza dalla Francia nel 1960, la parte della popolazione settentrionale del Mali, di matrice tuareg, si è sentita nuovamente colonizzata da quella nera del sud, che invece si è imposta a capo del governo. Questo divario tra Nord e Sud del paese ha generato un divario rappresentativo, nonché dei presupposti di agitazione collettiva.

Da un punto di vista etnografico, la popolazione settentrionale recrimina un'incuria da parte del governo centrale di Bamako. Quest'ultimo è pertanto considerato illegittimo nelle zone nord del paese, soprattutto in seguito a delle azioni che hanno generato un'ulteriore frammentazione sociale. Una tra tutte è la strategia di *divide et impera*, utilizzata ricorrendo sistematicamente all'uso della violenza al fine di evitare che dei progetti separatisti attecchissero tra la popolazione tuareg e di gestire le crisi nel nord.

Ad ogni modo, nel contesto in questione va aggiunta all'incapacità del governo di imporre la propria autorità, anche un'influenza geografica da parte dei paesi limitrofi, soprattutto dalla Libia. Durante la guerra civile in Libia, molti tuareg sono partiti per supportare del generale Gheddafi, speranzosi di poter ricevere, una volta terminato il conflitto, un ricambiato supporto ai fini dell'indipendenza tuareg. Tuttavia, con la morte del generale e la conseguente fine del regime autoritario nel 2011, la situazione della regione sub-sahariana è andata deteriorandosi. I reduci tuareg ritornarono in patria con un'accresciuta capacità bellica sia dal punto di vista tecnico che dell'esperienza.

Da questo momento in poi, si è registrata una proliferazione di gruppi armati di stampo terroristico, religioso o indipendentista. Ai fini di facilitare la comprensione dei molteplici attori coinvolti contro il governo di Bamako, ho optato per una divisione in due delle fazioni: da un lato, ci sono i gruppi salafisti come Ansar Dine, Al Qaida in Maghreb (AQIM) e Il Movimento per l'Unicità e il Jihad in Africa Occidentale, il cui obiettivo comune è quello di instaurare la *shari'a* anche attraverso attacchi armati atti a disseminare il terrore. Dall'altro lato vi sono i ribelli Tuareg con il Movimento Nazionale di Liberazione dell'Azawad (MNLA) che lottavano per l'indipendenza dell'Azawad, ossia un ampio territorio maliano formato da lunghe distese desertiche ed abitate prettamente dai nomadi tuareg.

A marzo 2012, fu proprio il MNLA a sferrare i primi attacchi nelle regioni settentrionali conquistando subito le città di Menaka, Aguelhok e Tessalit. Ad avvantaggiare la loro corsa verso la capitale, c'è stato *in primis* un supporto da parte degli altri gruppi tuareg. Inoltre, a peggiorare la situazione, ebbe luogo in quel periodo una manifestazione di alcuni soldati frustrati dal trattamento ostile del governo che si tramutò improvvisamente in un colpo di stato. Una giunta militare chiamata *Comité National pour le Redressement de la Démocratie et la Restauration de l'État* e guidata dal capitano Sanogo, prese il potere e sospese la costituzione del 1992.

Dopo aver guadagnato sempre più campo nei confronti dell'avversario, il MNLA dichiara l'indipendenza dell'Azawad il 5 Aprile 2012. Questa dichiarazione verrà smentita dalla comunità internazionale e sarà compito della risoluzione del Consiglio di Sicurezza delle Nazioni Unite 2056 farlo ufficialmente. Invece, a fermare immediatamente la deriva militare in Bamako fu un pronto intervento da parte dell'ECOWAS, che nominò il presidente Burkinabé, Blaise Compaoré, come mediatore regionale al conflitto. L'organizzazione regionale decise di adottare delle sanzioni in modo tale da ricondurre ad una stabilità ed all'integrità costituzionale dello stato.

In seguito, venne istituito un nuovo governo *ad interim*. Quest'ultimo invitò l'ECOWAS ad un pronto intervento, tuttavia l'organizzazione preferì agire con cautela domandando

un'autorizzazione sotto l'egida del Consiglio di Sicurezza. Tuttavia, le Nazioni Unite tardarono nel loro intervento, chiedendo all'ECOWAS di stipulare un *roadmap* specifico per il ripristino della pace in Mali.

Nel frattempo, la situazione andava deteriorandosi. Il MNLA era ormai a 600 km da Bamako e questa conquista causò una pronta reazione da parte della Francia. L'Eliseo agì in seguito ad un invito da parte delle autorità *ad interim* del paese ed inviò immediatamente 4000 truppe per smantellare la minaccia terroristica.

Avendo chiarito il quadro storico del conflitto, prima di delineare il *modus operandi* delle autorizzazioni delle operazioni di *peacekeeping*, è necessario ribadire che esse possono avvenire sulla base di tre principi: consenso delle parti coinvolte nel conflitto, imparzialità e il divieto dell'uso della forza fatta eccezione per la difesa del mandato. Per quanto concerne, invece, la loro autorizzazione, le operazioni di *peacekeeping* non erano previste dall'originale Statuto delle Nazioni Unite. In data odierna, il loro beneplacito è dato dal capitolo VII dove il Consiglio di Sicurezza, avendo la responsabilità principale di mantenimento della pace e sicurezza internazionale, qualifica la situazione secondo l'articolo 39. Laddove una delle tre situazioni possibili, i.e. una minaccia alla pace, una violazione della pace, o un atto di aggressione, venisse riconosciuta, è poi compito dell'articolo 41 prendere delle misure non implicanti l'uso della forza armata, quali l'interruzione delle relazioni economiche e internazionali. Successivamente, qualora le precedenti misure risultassero inadeguate, il Consiglio può intraprendere "ogni azione necessaria" atta a ristabilire la pace, incluso l'uso della forza armata.

Sulla base di questa dottrina, le Nazioni Unite hanno rappresentato l'unico baluardo in materia di *peacekeeping*, prevedendo delle truppe con attrezzatura leggera. Ciononostante, nel pieno del periodo della post-colonizzazione e Guerra Fredda, il Consiglio si è trovato spesso in un *empasse* istituzionale a causa di un preponderante uso del veto. Molte operazioni, soprattutto quelle richieste da attori regionali, non sono state autorizzate in quanto ritenute inadempienti del principio dell'imparzialità. Per questo motivo, nel 1992 Boutros-Ghali, pubblica un documento pionieristico presentando un'*Agenda per la pace*, che prevedesse una maggior implicazione delle organizzazioni regionali in materia di mantenimento della pace e della sicurezza, come previsto dal capitolo VIII dello Statuto.

Proprio in quegli anni, l'ECOWAS, nata nel 1975 da un progetto simil-europeo di facilitare una libera circolazione delle persone, servizi e capitale all'interno della Comunità, stava trasformandosi da un'unione di stampo meramente economico in un'unione che prevedesse dei meccanismi di sicurezza collettiva e *peacekeeping*. In questo contesto è fondamentale il lavoro del

Protocol relating to the Mechanism for Conflict Prevention, Management, Resolution, Peace-Keeping, and Security (anche chiamato *Protocol-Mechanism*). Questo Protocollo rappresenta, secondo alcuni autori, un “copione” globale su come le organizzazioni regionali dovrebbero gestire i conflitti interstatali ed interni agli Stati Membri. Il motivo è riscontrato nella sua possibilità di autorizzare ogni forma di intervento in molte circostanze: in caso di deposizione o tentata deposizione di un governo democraticamente eletto; così come ai fini di mettere in pratica questo meccanismo, l’ECOWAS ha diritto ad essere coinvolto laddove si riscontrasse un caso di crisi umanitaria. Il *Protocol-Mechanism* trasforma, infine, la partecipazione alle operazioni di *peacekeeping*, che nel precedente Protocollo di Mutua Assistenza Difensiva (PMAD) era su base volontaria, in un obbligo multilaterale a fornire le risorse adeguate e necessarie al raggiungimento della missione.

All’interno di questo *Protocol-Mechanism* viene delineata la natura legale del *Monitoring Ceasefire Group* (ECOMOG), quasi a legittimare questo ente. Esso è stato dispiegato unilateralmente, i.e. senza autorizzazione del Consiglio di Sicurezza, durante la crisi in Liberia (1989-97) onde venisse rispettato il momentaneo cessate-il-fuoco tra le due parti coinvolte nel conflitto. Tuttavia, all’interno del documento non vi è nessun riferimento all’obbligo di autorizzazione del Consiglio di Sicurezza delle Nazioni Unite.

Sebbene ECOWAS avesse agito nella guerra civile liberiana, di natura simile a quella in questione, inviando unilateralmente delle truppe ECOMOG volte al mantenimento della pace, non avvenne lo stesso nella guerra civile maliana. L’ECOWAS venne formalmente invitato dal governo *ad interim* ad intervenire, affinché la minaccia terroristica venisse definitivamente sventata. Come visto in precedenza, ECOWAS ha preferito una risoluzione pacifica del conflitto, mediando attraverso delle sanzioni prima, e richiedendo, poi, la necessaria autorizzazione di *deployment* al Consiglio di Sicurezza.

Questa mancata partecipazione fa riflettere sulla portata del *Protocol-Mechanism*, così come sulla rilevanza degli attori regionali in materia di mantenimento della pace ed infine sull’effetto “*spillover*”, caro alla tradizione neo-funzionalista. Secondo questa corrente delle relazioni internazionali, dopo aver collettivamente accettato di cooperare su alcune aree (soprattutto economiche), le organizzazioni regionali tendono a confluire i propri sforzi in altri ambiti, tra cui quello della sicurezza regionale.

Invece, per quanto concerne la rilevanza delle azioni di mantenimento della pace e di imposizione della pace (*peace enforcement*), se guidate da organizzazioni regionali comportano un elevato livello di coinvolgimento sia nel numero di truppe, così come da un punto di vista mentale. Dato che una minaccia è percepita in prossimità del proprio territorio, questo potrebbe poi sfociare

altrove, riducendo, in un primo momento, le relazioni commerciali tra gli Stati Membri, ma anche minacciando la sicurezza interna di questi ultimi. Inoltre, sempre in linea con questo concetto di prossimità, i paesi aggrediti ritengono più appropriato un intervento da parte dei loro vicini, piuttosto che le attività sotto l'egida delle Nazioni Unite, poiché più preparati in termini di conoscenza della loro cultura, lingua e morfologia del territorio.

Nella parte finale del lavoro di ricerca, sono state discusse le tre giustificazioni addotte alla liceità dell'intervento francese, avente una *double détente*, ossia un impatto sia a livello nazionale e locale con il ripristino dell'autorità maliana, così come internazionale svolgendo delle attività atte ad eradicare il fenomeno terroristico.

Una prima giustificazione è data dall'innescamento dell'articolo 51 dello Statuto relativo al diritto di autotutela individuale e collettiva; una seconda base legale è fornita da un'autorizzazione del Consiglio di Sicurezza; ed infine dalla richiesta di assistenza da parte del governo maliano.

Avendo accuratamente analizzato la pratica e la dottrina in materia, possiamo concludere che la liceità dell'*Operation Serval* non è ascrivibile alle prime due basi legali. Nel caso dell'articolo 51, similmente a quanto pronunciato nell'opinione consultiva *Conseguenze giuridiche dell'edificazione di un muro nel territorio palestinese occupato*, l'attacco sferrato dai gruppi terroristici ha origini interne e pertanto resta nel quadro di un conflitto armato non-internazionale. Per quanto concerne, invece, l'autorizzazione del Consiglio di Sicurezza non vi è alcun riferimento, né esplicito, né implicito ad un dispiegamento di truppe in Mali.

L'*Operation Serval* è, dunque, riconducibile alle norme di intervento su invito. Questa norma prevede come *conditio sine qua non* che l'invito provenga da un'autorità *de jure*. Ciò implica che il principio di controllo effettivo del territorio è stato superato dal requisito di *governance* democratica, i.e. il rispetto delle norme consuetudinarie, quali lo *jus cogens*, così come lo svolgimento di elezioni libere e giuste. Pertanto, provenendo l'invito da un governo *ad interim*, riconosciuto come *de jure* dalla comunità internazionale, possiamo asserire che l'operazione è legale. A legittimarla ulteriormente è il mandato di "caccia ai terroristi", che tuttora rappresenta un argomento cruciale su scala globale.

In conclusione, la mancata autorizzazione all'intervento dell'ECOWAS da parte del Consiglio di Sicurezza ha legittimato una completa dipendenza da parte di un attore regionale in materia di mantenimento della pace. Pertanto, se l'ECOWAS fosse riuscito ad agire, non avrebbe soltanto ottenuto una maggior legittimità *vis-à-vis* la comunità internazionale, bensì avrebbe alleggerito il fardello economico e politico delle Nazioni Unite, come previsto dall'*Agenda per la Pace*.

Rebus sic stantibus, ECOWAS è stato così relegato ad attore di mero interesse economico e non atto a mantenere la pace e la sicurezza regionale. Purtroppo, a causa dell'impreparazione del suddetto attore regionale rispetto agli avversari locali, l'intervento francese è stato ritenuto necessario per fermare questa deriva terroristica.