The Brazilian Draft Law Criminalizing Enforced Disappearance in Light of the Rome Statute Provisions and Its Impact on the Transitional Justice in Brazil

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In the recent History, Brazilian society witnessed the perpetration of the crime of enforced disappearance as part of a systematic attack directed against political opponents. During the 1970´s, in furtherance of the military government policy of "National Security", State officials were ordered to commit such crime. After re-democratization in 1988, Brazil has signed various human rights treaties, such as the International Convention for the Protection of All Persons from Enforced Disappearance and the Rome Statute. However, there is still no provision related to this crime in the Brazilian law and no person was ever held responsible for those acts. The article aims to analyze the draft of the Brazilian New Criminal Code, bringing International Criminal Law and the needs of the transitional justice into its perspective. Concerning the crime of enforced disappearance, the Brazilian law is not yet properly adapted to International Criminal Law, but it can be, mostly whereby the promulgation of the new Code, which may have a positive impact on the transitional justice. The research emphasizes the bibliographic method, based on materials available in both print and electronic media.

Keywords: *Crime of enforced disappearance, New Brazilian Criminal Code, Rome Statute, Transitional justice..*

THE BRAZILIAN DRAFT LAW CRIMINALIZING ENFORCED DISAPPEARANCE IN LIGHT OF THE ROME STATUTE PROVISIONS AND ITS IMPACT ON THE TRANSITIONAL JUSTICE IN BRAZIL

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INTRODUCTION

In the recent History, Brazilian society witnessed the perpetration of the crime of enforced disappearance as part of a systematic attack directed against political opponents. During the 1970´s, in furtherance of the military government policy of "National Security", State officials were ordered to commit such crime.

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After re-democratization in 1988, Brazil has signed various human rights treaties, such as the International Convention for the Protection of All Persons from Enforced Disappearance and the Rome Statute of the International Criminal Court. However, there is still no provision related to the crime of enforced disappearance in the Brazilian law and no person was ever held responsible for those heinous acts.

In 2012, it was presented to the Brazilian parliament the draft of the New Criminal Code (Draft Law No. 236/2012), which criminalizes the enforced disappearance in its Article 466, and according to Article 458, defines this act as a crime against humanity.

In this article, the draft of the Brazilian New Criminal Code will be analyzed in light of the International Criminal Law and the needs of the transitional justice. Therefore, in order to have a better understanding of the implication of the new law in the Brazilian society's quest for justice, it is indispensable to address the systematic perpetration of the crime of enforced disappearance by the State machinery against political dissidents during the military regime in Brazil.

1. THE SYSTEMATIC PERPETRATION OF THE ENFORCED DISAPPEARANCE DURING THE MILITARY REGIME IN BRAZIL

The military dictatorship that ruled the country from 31 March 1964 to 15 March 1985, held the power based in the violent repression of civilians, suppressing their civil and political rights (v.g. the freedom of speech, the right to a fair trial, the right of association, the right to vote) and perpetrating heinous crimes of torture, killing and enforced disappearance against political dissidents, especially those among the left-wing movement.

According to the last report of the Brazilian Secretariat for Human Rights in 2007, more than 300 people were killed or disappeared by

State officials. The so-called “Memory and Truth Report” reveals that around 50.000 people were arbitrary arrested or detained and 20.000 thousands were tortured. Several politicians and intellectuals who were against the military repression were forced into exile and had the political rights suspended. [1]

In furtherance of the military government policy of “National Security”, which came as a response to the “communist threat” during the Cold War, State officials were ordered to persecute, torture, kill and “disappear” the anti-dictatorship oppositionists. The attacks were part of a plan promoted by the State to eradicate all the “internal enemies”, who were, mostly, partisans of the left-wing movement.

In 1968, the National Information Service (SNI) was created in order to control the “communist” activities in Brazil since it had as main objective to identify and eliminate "internal enemies", i.e., all those who questioned and criticized the military regime.2

Considering the rise of the intensity of the acts of persecution perpetrated by the State officials after the edition of Institutional Act No. 5 in 1968, an excessive law which determined the suppression of a wide range of civil and political rights and the Parliament shutdown, groups of political opponents took part in the armed struggle against the regime.3 The most famous armed group was called “Araguaia Guerrilla” (Guerrilha do Araguaia), a guerrilla movement whose operations took place in the Brazilian Amazon region, along the Araguaia River, between the late 1960’s and the first half of the 1970’s. The guerrilla was created by the Communist Party of Brazil (PC do B) and aimed to foster a socialist revolution, to be initiated in the countryside, inspired by the successful experiences of the Cuban

1. Brazilian Special Secretariat for Human Rights of the Presidency of the Republic, Memory and Truth Report (2007).
2. Swensson Jr 2009: 31-38.
3. Santiago Nino 1996: page 33.

Revolution and the Chinese Revolution.

The military regime overreacted and ordered the army to capture and kill all the members of the guerrilla. The vast majority of combatants, formed mainly by university professors and former students, were killed in battle or executed in the jungle after the arrest by the military during the final operations in 1973 and 1974. More than fifty of them are still reported missing.1

In the last years of the military dictatorship in Brazil, the regime engaged in the so-called Condor Operation (Operação Condor), a transnational political-military alliance between the various military regimes of South America - Brazil, Argentina, Chile, Bolivia, Paraguay and Uruguay with the CIA (Central Intelligence Agency) in the United States, carried out in the 1970's and 1980's - created with purpose of coordinating the crackdown on opponents of those dictatorships and to eliminate leftist leaders at the Southern Cone countries. In the absence of formal bureaucratic procedures, the victims who were in exile could be persecuted by the officials from any of aforementioned countries. Whereas the victims were deprived of their civil rights, they could be easily removed from one territory to another on charges of terrorism.

The victims were subjected to be arrested by foreign officials in Brazilian territory without any judicial warrant or without the need to have their arrest communicate to national authorities or to their family members. So, it became easy to facilitate their disappearance.

During the activities of the Condor Operation, several foreign citizens were victims of the enforced disappearance in Brazil, committed by officials from Argentina and Uruguay, while the Brazilian victims were also disappeared in Argentina, Bolivia and Chile.2

1. Eremias Delizoicov Documentation Center, Dossier of Political Deaths and Disappearances since 1964 (1995).

2. Brazilian National Truth Commission, *The Working Group on the Condor Operation Report* (2013).

As seen by these events, the enforced disappearance and other ill-treatment perpetrated during the military rule were part of a systematic attack against the civilian population, carried out in an organized manner, as part of a State policy, and therefore amount to crimes against humanity.

The perpetration of these crimes by the State machinery made almost impossible to victims to invoke the inviolability of their human dignity, which aggravated their suffering and left them without any resistance.[1] The idea of an unappealable power introduced by the arbitrary permission to State officials to torture, kill or disappear any person who was supposed to be a political dissident was devastating and served to spread terror across all sectors of the Brazilian society.[2]

Therefore, there is no question that the especial gravity of the offences committed imposes a duty to the Brazilian State and to the international community to bring justice to the victims. Eventually, the re-democratization, in 1988, has opened the doors to the respect for the rule of law, leading to the fulfillment of the society's quest for justice.

2. THE BRAZILIAN SOCIETY'S QUEST FOR JUSTICE AFTER RE-DEMOCRATIZATION

At the end of the 1970's, the military regime lost support by the various sectors of the Brazilian society mainly because of the large scale of the crimes perpetrated by the military regime against the political opponents.

1. As it was well-remarked by the Inter-American Court of Human Rights, "the circumstances of such disappearances generate suffering and anguish, in addition to a sense of insecurity, frustration and impotence in the face of the public authorities' failure to investigate". Inter-American Court of Human Rights. Blake vs. Honduras case. Decision pronounced in January 24, 1998, paragraph 114.

2. Pilar Calviero emphasizes that the especial gravity of the crimes committed by the State machinery rests on the fact that victims almost cannot offer effective resistance to preserve or to restore their dignity. *See* Calviero 2013.

Under the public opinion pressure to end the military rule in Brazil, the government enacted, in 1979, an amnesty law which retroactively exempted the State officials and all the dissidents from criminal prosecution for crimes committed during the time of the military regime.1 In March 1985, after the fulfillment of an agenda of political reforms, the military rule in Brazil came to an end with the appointment by the national parliament of the first civilian president since 1964.

In 1988, the first democratic Constitution of the re-democratization era was promulgated. The document restored the civil and political rights and provides people an extensive list of social, economic and cultural rights. In its Article 4, the Brazilian Constitution holds that the human rights shall always prevail in the Brazil's international relations.

As a democratic State, Brazil has actively participated in building and strengthening of both international and American systems of human rights protection. During the last decades, the Brazilian State has ratified several treaties, inter alia, the United Nations Convention against Torture (in 1989), the American Convention on Human Rights (1992), the International Covenant on Economic, Social and Cultural Rights (in 1992), the International Covenant on Civil and Political Rights (in 1992), the Rome Statute of the International Criminal Court (in 2002) and the International Convention for the Protection of All Persons from Enforced

1. "Article 1. Amnesty is granted to all those who, in the term between September 2nd, 1961 and August 15th, 1979, committed political crimes or related to these, electoral crimes, to those who had their political rights suspended and to servants of direct and indirect Administration, of foundations linked to the government, of Legislative and Judiciary, to the Military and to Union's leaders and representatives, punished on the basis of Institutional Acts and their complementary.
Para. 1. Are considered related, for the purposes of this article, the crimes of any nature related to political crimes or committed by political motivation.
Para. 2. Those who have been convicted for committing crimes of terrorism, robbery, kidnapping and personal assault are except from the amnesty's benefits. [...]"

Disappearance (in 2010).

In 1993, Brazil was represented in the United Nations World Conference on Human Rights in Vienna and accepted to adopt the Vienna Declaration and Program of Action, which provides in its Article 62 of the Part II that all States shall "take effective legislative, administrative, judicial or other measures to prevent, terminate and punish acts of enforced disappearance" and reaffirms that "it is the duty of all States, under any circumstances, to make investigations whenever there is reason to believe that an enforced disappearance has taken place on a territory under their jurisdiction and, if allegations are confirmed, to prosecute its perpetrators".

Two years after the ratification of the Rome Statute in 2002, the Brazilian parliament approved a constitutional amendment (Act No. 45/2004) recognizing the International Criminal Court jurisdiction. Once the Rome Statute has defined the crime of enforced disappearance as a crime against humanity, in Article 7(i), the Brazilian State has the obligation to repress and punish acts of this character, vis-à-vis the preamble to the Rome Statute which expressively determines to put an end to impunity for the perpetrators of the crimes against humanity and to take effective measures to prevent these crimes.

In light of these treaties provisions, the Brazilian society initiated a vast and necessary debate about the legitimacy of the 1979 Amnesty Law (Law No. 6.683 of 28 August 1979), regarding the lack of any accountability measure taken to ensure justice to victims of the military regime. Although the Brazilian Supreme Court has stated that the Amnesty Law is in accordance with the needs of the pacific transition to democracy and did not violated the International Law1,

1. Brazilian Supreme Court. *Remedy against non-compliance with fundamental rights No. 153*. Claimant: Order of Attorneys in Brazil. Claimed: President of the Republic and National Congress. Decision pronounced in April 29, 2010.

the Inter-American Court of Human Rights (IACtHR) found, in 2010, that the law was totally inconsistent with the provisions of the American Convention on Human Rights and the international customary law (jus cogens), which prohibits amnesty for crimes against humanity and entails the duty to bring justice to victims of these heinous crimes.1

Recalling that, according to the Article 27 of the Vienna Convention on the Law of Treaties (1969), a State party may not invoke the provisions of its internal law to serve as justification for its failure to perform a treaty, the IACtHR ruled that the Brazilian State, which voluntarily contracted international obligations (acceding to various human rights treaties), must fully comply with its conventional obligations in good faith. Moreover, the IACtHR invoked its own precedents (v.g. *Barrios Altos vs. Perú,* judgment of March 14, 2001) regarding the inadmissibility of the blanket amnesties in relation to the crimes against humanity.[2]

Regardless of the difficulties arisen in relation to the enforcement of the IACtHR decision in its all terms, especially in respect to the obligation to launch criminal investigations into acts of torture, murder, rape and enforced disappearance committed by the military regime, the Brazilian government has already implemented some remedies to ensure justice for the victims and the respect for their right to the truth.

Recently, it has been put in work a National Truth Commission in

1. IACtHR. *Gomes Lund* et al. *(Guerrilha do Araguaia) vs. Brazil.* Decision pronounced in November 24, 2010.

2. Kai Ambos notes that the IACtHR decisions on the inadmissibility of the blanket amnesties to crimes against humanity is in accordance with the precedents of the International Criminal Tribunal for the former Yugoslavia, the Special Court for Sierra Leone and the European Court for Human Rights, and is backed by the Resolution 1994/39 of the United Nations High Commissioner for Human Rights, which calls upon all States to take effective legislative, administrative, judicial or other measures to prevent, terminate and punish acts of enforced disappearance. *See* Ambos, 2009.

a two years term1, which is entitled to examine and clarify the serious human rights violations committed between 1946 and 1988 (therefore the military rule period is also covered) in order to accomplish the right to memory and historical truth and promote national reconciliation.

Even before the IACtHR decision on the Amnesty Law, the Brazilian State had already authorized remedies and reparation for the victims persecuted by the military regime. Law No. 10.559 of 13 November 2002 determined, inter alia, that pensions should be paid to the victims as compensation of gross violations of their human rights. Specifically about the enforced disappearance, Law No. 9.14 of 4 December 95 has recognized as officially dead the victims who were disappeared by the security forces during the military regime and granted their family members financial compensations.

On the other hand, the duty to proceed with criminal investigations against those who perpetrated crimes against humanity during the military regime, as ruled by the IACtHR in Gomes Lund et al. (Guerrilha do Araguaia) vs. Brazil, has not yet been fulfilled by the Brazilian State.

Notwithstanding the decision of IACtHR, the Brazilian government has relied on the decision of the Supreme Court which endorsed the 1979 Amnesty Law to prevent the initiation of criminal proceedings against former officials who committed crimes against humanity pursuant to a State policy. Moreover, specifically about the enforced disappearance of persons there is still no national law defining it as a punishable offence.

However, in 2012, it was presented to the Brazilian parliament the draft of the New Criminal Code (Draft Law No. 236/2012), which criminalizes the enforced disappearance in its Article 466, and according to the Article 458, defines this act as a crime against

1. Law No. 12.528 of 18 November 2011.

humanity.

In Gomes Lund et al. (Guerrilha do Araguaia) vs. Brazil, the IACtHR noted that Brazil had not complied with its obligation to properly conform its domestic law to the American Convention on Human Rights, and this fact was manifest due to the failure to codify the crime of enforced disappearance in the national law.

Taking into account the obligation assumed by the Brazilian State to repress, prevent and punish the crime of enforced disappearance imposed by the jus cogens norms (pursuant Article 53 of the Vienna Convention on the Law of Treaties) and also by becoming party to the American Convention on Human Rights, the Rome Statute of the International Criminal Court and the International Convention for the Protection of All Persons from Enforced Disappearance, the New Criminal Code may pave the way toward criminal accountability for human rights violations perpetrated during the last military dictatorship in Brazil.

2. THE DRAFT OF THE NEW CRIMINAL CODE AND ITS IMPACT ON THE TRANSITIONAL JUSTICE IN BRAZIL

In the year of 2011, the Brazilian Federal Senate constituted a Law Commission, led by Minister of Superior Justice Court Gilson Dipp, intending to provide a complete reform of the Brazilian Criminal Code. The requirement No. 756/2011, subscribed by Senator Pedro Taques, was approved in order to elaborate a "draft of a new Criminal Code adequate to the norms of the 1988 Constitution and to the new claims of a complex and risky society". As a complement, Senator José Sarney presented the requirement No. 1034/2011 and the Federal Senate has finally approved the establishment of the Commission of Jurists responsible for the elaboration of the pre-project of the Criminal Code, which had only a hundred and eighty days as deadline.

After several prorogations of the deadline for the conclusion of its works, the Commission presented the final report for the draft of the new Criminal Code, which defines, in Article 466, the crime of enforced disappearance of persons, inserted in Chapter I ("Crimes against Humanity") of Title XVI, which brings some provisions concerning the "Crimes against human rights".

According to the aforementioned Pre-project, the crime is defined as the commission of apprehension, detention or any type of deprivation of a person's freedom in name of the State, an armed group or a paramilitary organization – or with support of the State, its authorization or acquiescence – yet illegally hiding facts or denying information regarding the destination of the person or of his or her body, in such a way that the person whose freedom has been deprived is lacking of legal protection.

Therefore, it is possible to infer that the punishable conduct is fractionated in two distinct moments: firstly, the accused deprives a person of its own freedom and, after that, illegally refuses information regarding his or her whereabouts or hides that fact.

The crime of enforced disappearance admits any person as victim and, in the condition of perpetrator, demands an active conduct by a State official, a member of an armed group or a paramilitary, or yet that the action shall be supported, authorized or acquiesced by the State. Thus, the offence requires the perpetrator fulfills certain subjective conditions.[1]

Regarding the *mens rea*, besides the intent of depriving someone of his or her freedom and hiding that fact or denying information about the whereabouts of the victim, it is indispensable the presence of a subject element different from the intent.[2] The offence has to be committed with the specific aim of removing the victim from legal

1. Ambos, Bohm and Alflen 2013: 31-35.
2. Ambos, Bohm and Alflen 2013: 35-36.

protection, what is characterized as an internal transcendental tendency of the crime[1], considering it is required that such conduct aims at achieving a result that is beyond the legal framework of the offence.

This offence is a so-called pluri-offensive crime, since it affects two distinct interests. Not only the individual freedom is violated by the offence, but also the administration of justice, consisting in the legal obligation imposed to the State agents to inform the whereabouts of a detained person.

In the International Criminal Law, the crime of enforced disappearance of persons is established in Article 7(1)(i) of the Rome Statute, as a crime against humanity. Therefore, it must be committed as "part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack".

According to Article 7(2)(i) of the Statute, the enforced disappearance of persons is defined "the arrest, detention or abduction of persons by, or with the authorization, support or acquiescence of a State or a political organization, followed by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of those persons, with the intention of removing them from the protection of the law for a prolonged period of time".

The draft of the Brazilian New Criminal Code abides by the international concept of the crime of enforced disappearance. However, the draft law divides the offence into two different moments of commission: first, the deprivation of the victim's freedom, and second, the denying of information about his or her whereabouts. At same time, it requires the perpetration – as direct perpetrators or aiding or abetting – by State officials and, besides the intent, the specific aim to act pursuing the destitution of legal protection to the disappeared person.

1. Zaffaroni and Pierangeli 2011: 437-439.

Moreover, the Article 458 of the draft law requires that to be characterized as a crime against humanity those acts should be part of a widespread or systematic attack directed against any civilian population, pursuant to or in furtherance of a State or organizational policy. This contextual element of the crime is in accordance with the Article 7(2)(a) of the Rome Statute and the precedents of the International Criminal Court.[1]

Regarding the continuing nature of the crime, the Declaration on Protection of All the Persons against Forced Disappearance (United Nations General Assembly Resolution No. 47/133, of 18 December 1992), in its Article 17, states that the commission of the offence will last in time while the perpetrator continues to hide the fate and the whereabouts of the disappeared person and while the facts have not been clarified.

The Brazilian draft law also endorses the continuing nature of the crime of enforced disappearance. According to Article 466, the period of time in which the perpetration of the crime lasts corresponds to the one in which there is no information of the fate or the whereabouts of the victim. Thus, during this time the victim remains vulnerable by being under the arbitrary control of the perpetrator, considering that the administration of justice cannot play its role while disappearance lasts. Perpetuation throughout time, therefore, affects both the interests jeopardized by the offence.[2]

Thus, the classification of enforced disappearance as a continuing crime is a sensible comprehension of the impact of this offence in the protection of human rights, since it reflects the confirmation that also the family members of the person are affected by this act, in such a way that the commission of the offence ends only when there is a

1. Situation in the Republic of Kenya , Decision Pursuant to Article 15 of the Rome Statute, paragraph 89.

2. Ambos, Bohm and Alflen 2013: 109.

clarification of the fate or the whereabouts of the victim.

In the same way, the Inter-American Court for Human Rights has ruled that not only the disappeared person is the victim of this crime, but also his or her family members while they don't have any information about the location or fate of the person. In light of this comprehension, the Court's jurisdiction is able to encompass facts that could not be well-analyzed if the continuing nature of the crime would not be considered. It has noted that this breadth of the jurisdiction of the Court reflected in the decrease of impunity in cases of enforced disappearance submitted to the Court's adjudication.[1]

Surely, this debate about the continuing nature of the crime plays an important role in the Brazilian society's quest for justice, taking into account that Law No. 6.683 provided amnesty to all of those who, from 2 September 1961 to 15 August 1979, had perpetrated political crimes or related acts, had participated in electoral offences, and to those who had political rights suspended and had been excluded of the Public Administration Service. Whereas this law ensures the amnesty only for those who had perpetrated political crimes, the Brazilian Supreme Court ruled that it also pushes criminal prosecution away of those who had committed acts of torture and enforced disappearance of persons.[2]

Even though the Brazilian Amnesty Law has been promulgated during the period of military dictatorship and before the edition of the 1988 Constitution, which restored the democratic regime, the Brazilian Supreme Court affirmed the integration of this law to the new constitutional order, rejecting the lawsuit called "*Remedy against non-compliance with fundamental rights No. 153"*, in 2010.

However, considering the continuing nature of the enforced

1. Tavares 2011: 300.

2. Busato 2013: 611. The author noted that the Amnesty Law is very criticized, since it granted impunity to perpetrators of crimes against humanity.

disappearance of persons and following the precedents of the Inter-American Court for Human Rights, once the New Criminal Code enters into force, the possibility of criminal investigation and prosecution is opened in relation to situations where the fate or the whereabouts of the disappeared person has not yet been informed, whereas the arrested, detention or deprivation of freedom have been initiated during the military regime.

Actually, this hypothesis could turn into an important tool to bring justice to the victims of this heinous crime who remain with no information about the fate of their relatives more than 30 years after.

The continuing nature of the crime and the fact that the enforced disappearance is recognized by the *jus cogens* norms as a crime against humanity reinforce the importance of the new Brazilian law criminalizing this conduct, in order to avoid the nationals Courts endorse *ad hoc* solutions which do not accomplish with the needs of the transitional justice.

In this sense, it is remarkable the decision of the Brazilian Supreme Court in the judgment of the Extradition Request No. 974, proposed by Argentina, which asked for the extradition of Manuel Cordero Piacentini, major of the Uruguayan Army, accused of taking part in the disappearance of the Argentinean citizen Adalberto Waldemar Soba Fernandez, in 1976, during the so-called "Condor Operation".

In its decision, the Supreme Court noted that the crime of enforced disappearance perpetrated by the Uruguayan military was defined in the Argentinean Criminal Law and that Argentina has ratified the Inter-American Convention on Forced Disappearance of Persons. On the contrary, the Court highlighted that Brazil has not yet defined the crime of enforced disappearance in its criminal law and has not yet ratified the Inter-American Convention, although it has

signed it in 2007.[1]

Therefore, considering the lack of symmetry between the two national criminal laws, since there was no criminal definition in the Brazilian Criminal Code related to the crime of enforced disappearance, the Court decided to approve the extradition request on the grounds of Article 148 of the Brazilian Criminal Code, which brings provisions about the crime of kidnapping.[2]

Thus, due the lack of legal provision of the crime of enforced disappearance of persons, it was not possible to recognize the disappearance of Adalberto Waldemar Soba Fernandez as a crime against humanity, what makes clear the necessity of the promulgation of the New Brazilian Criminal Code's framework regarding the crime of enforced disappearance.

The solution carved out by the Supreme Court is problematic, since the crime of enforced disappearance is a much more serious crime than kidnapping. As a crime against humanity, the enforced disappearance should encompass the contextual requirements provided in Article 7(2)(a) of the Rome Statute and the conducts describe in article 7(1)(i) of the Statute. Moreover, according to the international customary law, the enforced disappearance, differently of kidnapping, is not subject to amnesties or pardons.

3. CONCLUSIONS

Concerning the crime of enforced disappearance, the Brazilian law is

1. See Brazilian Supreme Court. Extradition Request No. 974. Decision pronounced in November 06, 2009.

2. The same solution was upheld by the Supreme Court in the Extradition Request No. 1150. In its decision, the Court approved the extradition to Argentina of the former army officer Norberto Raul Tozzo, who was accused of enforced disappearance of four victims during the so-called "Margarita Belém Massacre", in 1976, orchestrated by military forces against political dissidents. See Brazilian Supreme Court. Extradition Request No. 1150. Decision pronounced in May 19, 2011.

not yet properly adapted to International Criminal Law, but it can be, mostly whereby the promulgation of the new Code, which may have a positive impact on the transitional justice.

After the restoration of the democratic civil life by the edition of the 1988 Constitution, Brazil has actively participated in the improvement and expansion of the international human rights system, acceding to various treaties on human rights and, specially, accepting the jurisdiction of the International Criminal Court.

Even though Brazil has recognized the legitimacy of the human rights system, it has not yet fulfilled with its obligation to prevent impunity to former officials who perpetrated the crime of enforced disappearance during the military rule. Notwithstanding the emergency of a new constitutional order in Brazil and the obligations imposed by the international law, the Brazilian Supreme Court refuses to overturn the 1979 Amnesty Law and thereby obstructs the right of the victims to have the perpetrators accountable for the crimes against humanity committed in the name of the State, in furtherance of the "National Security" policy, in the last military regime.

Therefore, the criminalization of the enforced disappearance of persons by the New Criminal Code may serve as tool to overcome the difficulties arisen from the scope of the Brazilian Amnesty Law. The continuing nature of the crime and its characterization as crime against humanity shall remove the legal obstacles imposed by the amnesties granted to militaries permitting the national Courts to comply with the duty to provide justice for victims of this serious crime under international law.

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NEW REGIONALISM IN THE SHANGHAI COOPERATION ORGANIZATION (SCO)

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INTRODUCTION

Global integration between states and nations from economic, cultural, and communication aspects has created a new world that is more integrated and the interests of political units are more incorporated. The appearance of the successful regionalism regimes in Europe and also in the South East Asia while they have tried to keep their correlations with the global trends, have prepared a suitable model for other regions to construct regional unities.

In the 1950s and 1960s, the phenomenon of economic regions was securing roots, particularly in Europe. This had attracted policy makers in other parts of the world. The process of integration of the

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states into a ‘‘region’’ brought a fresh leap in dealing with issues of economics, security and interactions among people as communities at the supra-national level. The EU is a case of ‘closed regionalism’ in that it is a customs union that unites many of the richest consumer markets in the world (Söderbaum & Sbragia, 2010: 569).By contrast, Asian regionalism — such as the APEC (Asia

Pacific Economic Cooperation) forum — symbolizes ‘open regionalism’ which is characterized by unilateral activity, such as the unilateral lowering of tariffs and the unilateral liberalization of national markets.

Whereas the mainstream IR literature on regionalism has favored generalizations from the case of EU in their theory-building efforts, the tendency has been the reverse in large parts of the so-called ‘new regionalism’ literature in IR, especially the radical and post-modern variants (Söderbaum & Sbragia, 2010: 566). New regionalism is new in the sense of a revival or renaissance of regionalist tendencies in terms of the fashionable creation of regional institutions, and heralding the return of an old and well known form of the phenomenon since the mid-1980s.Old regionalism has usually been associated with the protectionist provisions that characterized the post-war world (Spindler, 2002: 3). Contemporary debate on (new) regionalism within IR is strongly focused on conditions related to globalization and world order. Still, the phenomenon of new regionalism is seen as a protectionist measure while at the same time being associated with openness (open regionalism). This indicates a rather contradictory or even paradoxical nature of new regionalism.

Based on this background, the author argues that Shanghai Cooperation Organization (SCO) has tried to turn itself into a ‘‘region’ in the context of “new regionalism”. This development is invigorating the national efforts towards regional efforts in dealing with the different challenges. In fact, the past 20 years have witnessed

renewed interest in regions and new regionalism. The end of the Cold War brought significant retrenchment of great power involvement from much of the developing world. After centuries of intrusion and meddling during colonialism and the Cold War, global regions are enjoying greater autonomy. They enjoy expanded, if still disputed, room and IR theory has responded with a wave of ''new regionalist'' thinking. It builds on the previous flourish of regionalist theory that arose in the late 1960s and early 1970s. But the new regionalism more successfully builds regional theory into IR. Against old regionalism, new regionalism, not focus on separation of economic and political matters, i.e. low and high politics. So the new regionalism approach not only considers economic activities, but also political aspects of the relations among states.

Eurasia sits atop the world's major energy resources, and recent years have seen rapid developments in the exploitation and transportation of these resources to the outside world. At the same time, however, some security concerns are growing in the region. Exploitation of Eurasia energy resources is taking place in a climate of serious competitions that threaten peace in the region. Regional security issues including inter-ethnic and inter-religious tensions have provided a favorable atmosphere for different actors to further their agenda. Such kind of circumstances requires concerted regional efforts to deal with these interlinked security issues.

Regarding these realities, it seems that SCO as the most powerful and united regional mechanism can play an important role to improve the security of access to energy resources in this region for both energy producing and consuming countries. Besides the task of guaranteeing the access to the energy security, there are two additional tasks of particular importance for SCO strategic planners. First, regional stability, especially in the turbulent ethno-religious regions, is a serious issue. The SCO countries view the claims for autonomy and

participation in the politico-economic power of the central governments stated by ethnic and religious minorities as a direct threat to their territorial integrity. The fact that energy transportation routes have to cross unstable regions raises this problem. Second, the SCO great powers, China and Russia promote a multi-polar world order in their foreign policy strategy. As a result, in spite of some competing interests in the strategic perceptions of the SCO countries, the situation is prepared for a regional cooperation.

Today, the SCO is an institution with the potential to become a nucleus of a broader regional cooperation regime in Eurasia. It is also notable that there are several issues in which the members have strong common interests with the other powerful countries, e.g. regional stability.

In fact, strengthening of regional cooperation mechanisms, rather than against the outside powerful players, such as the United States and the European Union, has prepared a very reasonable means for absorbing geopolitical tensions and creating a new framework of cooperation, especially in the field of energy security. Geographically, the Shanghai Cooperation Organization has the elements to serve as an effective forum for such efforts. With observer states included, its members account for half of the human race and take in a stretch of Eurasia from the South China Sea to the Baltic Sea and from the Persian Gulf to the Bay of Bengal.

TRANSFORMATION IN THE SCO'S MISSIONS AND FUNCTIONS

When the Shanghai Five was formed in 1996, its primary objective was to boost border security and reduce troop levels along China's frontiers with former Soviet republics through a variety of confidence building measures. To this end, Russia, China, Kazakhstan,

Kyrgyzstan, and Tajikistan set up an intergovernmental structure to settle territorial disputes and to coordinate action on common threats such as terrorism, separatism, and extremism. (Rashid, 2002)In June 2001 the group admitted Uzbekistan, renamed itself the Shanghai Cooperation Organization, and broadened its objectives to include interregional economic cooperation, trade, and investment. Mongolia was granted observer status in 2004, followed by Iran, India, and Pakistan in 2005. (Pabst, 2009)

Later on it became clear that the foremost objective of the two key members—China and Russia—was to secure their strategic interests and to insulate the region from the negative influences of the Afghanistan and Pakistan-inspired religious extremism and terrorism. Since 2002 some SCO countries have held joint antiterrorist exercises along their shared borders. More significant, in 2007 units from all six members participated in a collective military exercise that started in the Chinese northwestern Xinjiang region and ended in the Russian Urals. The SCO has not only forged links with Collective Security Treaty Organization (CSTO), but it also has set up the SCO–Afghanistan Contact Group for the purpose of building joint counteraction against terrorism, illegal circulation of narcotics and organized crime. (Singh, 2009)

Gradually it became a powerful grouping which has acquired a regional anti-terrorism structure and has sufficient resources to fight terrorism, separatism and extremism in Eurasia. It has created a joint mechanism to counter threats to regional peace, stability and security and to strengthen cooperation in fighting drug trafficking and illegal migration (Roy, 2007). However, a careful analysis of developments within the SCO indicates that over the years its focus has shifted from settling border issues to security and now to economic cooperation. Of equal geopolitical significance is SCO's project to form a body charged with defining a common energy policy, to upgrade political

relations to reflect the growing strategic importance of the organization, and to create closer links with other trans-regional economic and political bodies such as the UN, the EU, the World Customs Organization, the Commonwealth of Independent States (CIS), the Association of Southeast Asian Nations (ASEAN), and the Eurasian Economic Community (EurAsEC). (Dushanbe Declaration of Heads of SCO Member States, 2008) It has also gained observer status in the UN General Assembly.

In fact, since 2004, the SCO's influence and role has been growing in the Central Asian region and its activities are significant in terms of making the international community take notice of this regional grouping. Trade among SCO member states has made headway during the past decade. Trade between Uzbekistan and other SCO members reached 42.1 per cent of the country's total foreign trade in 2006. In Tajikistan, the ratio was 36.6 per cent that year. Sino-Russian trade hit $55.45 billion in 2010, five times higher than in 2000. China now is Russia’s top trade partner. China’s trade with SCO members in Central Asia has kept an average annual growth rate of about 40 per cent. In 2010, the trade volume was $28.52 billion, 14.81 times higher than it was in 2000. (Mingwen, 2011)

On balance, it can be concluded that the SCO has emerged as an important factor in the Eurasian security architecture. Today, the SCO has expanded to include South and West Asian countries within its fold. While the SCO represents a major development in the strategic landscape of the Central Asian region, the inclusion of India, Iran and Pakistan as observer states in the SCO mechanism suggests that it is gradually expanding into the wider region. In the next steps it is expected that Sri Lanka and Belarus will become dialogue partners of the SCO. It would therefore be appropriate to rename it as the “Asian Cooperation organization,” if it wishes to emerge as a significant Asian multilateral body seeking to play a greater role in the Asian Region.

ENERGY COOPERATION AS A MOTIVATION OF REGIONALISM IN THE SCO REGION

A huge energy cooperation network now stretches from the west to the east of the SCO region. The SCO started to delve into the energy sphere in 2004, when members adopted an action plan that established a basis for cooperation between the organization's three energy-producing states (Russia, Kazakhstan and Uzbekistan) and the three consumer countries (China, Tajikistan and Kyrgyzstan). During the Moscow Summit in October 2005, members expressed an intention to promote joint energy projects. Then, in November 2006, Russian officials suggested the idea of creating an "Energy Club" when Vladimir Putin proposed to set up a mechanism that would unite energy producers, consumers and transit countries. Russia's initiative was supported by other members. Energy security also topped the agenda of the summit meeting in Kyrgyzstan in August 2007, when SCO members agreed to establish a unified energy market. The idea was to make the oil and natural gas of energy-rich states available to energy-deficient states for their development. President Putin had been working behind-the-scenes to create an energy club emphasizing the need for greater energy cooperation that would give a “powerful impetus” to regional projects among the SCO countries. (Roy, 2007)

The leaders in Bishkek Conference presented an integrated policy in the field of energy cooperation. Nazarbayev said in Bishkek, "The draft Asian energy strategy envisions the establishment of an SCO energy agency, which would be a type of 'brain center' and database, while transactions on the market for energy resources could be made through an SCO energy bourse". (Russian News Room, 2007) Putin endorsed Nazarbayev's. (Daly, 2007) Simultaneously, Iran's president, present as an SCO invited observer, reiterated his proposal to hold a meeting of SCO energy ministers, remarking, "I suggested last year that a meeting should be held between oil and gas ministers of SCO

member states to optimize cooperation in transportation, prospecting, development and refining. As before, Iran is ready to organize such a meeting." (Daly, 2007) The following year Kazakh Prime Minister Karim Massimov speaking in reference to an impending meeting of SCO energy ministers and in affirming that "the existing system of pipelines on the SCO space connecting Russia, Central Asian states and China is a serious basis for the establishment of an SCO unified energy space," said: “The projects on the establishment of a unified energy market and the SCO common transport corridor could become bright examples of the global approach to defining the forms and mechanisms of cooperation.” (Rozoof, 2009)

This process continued and in the summit of SCO in Beijing in 2009, Russian Prime Minister Vladimir Putin reiterated a proposal that SCO member states form an energy forum. "Energy traditionally holds a key position on the global agenda, which prompts me to remind you of Russia's proposal to set up a permanent mechanism for dialogue on the issue, a SCO energy club or forum," Putin said. He also said an informal exchange of opinions could promote energy cooperation in the region. (Mingwen, 2011)

According to the SCO General Secretary Muratbek Imanaliyev, the energy club principles are being developed on the basis of the existing elements that are employed in the bi- and tri-lateral trade and economic cooperation agreements within the SCO. “In the zone of our attention are such energy projects as the Turkmenistan – China gas pipeline since it goes through the SCO countries, and the pipelines from Kazakhstan to China and from Russia to China. And we pay priority attention to these projects,” he emphasized. (Mingwen, 2011)

Indeed, within the organization not only world leading hydrocarbon producers are represented, but also their biggest consumers. In 2010, China imported 18.5 per cent of its crude oil from the SCO region (from Iran 8.8 per cent, Russia 5.9 per cent and

Kazakhstan 3.8 per cent). In the field of importing natural gas, China's first import natural gas pipeline was the Central Asian Gas Pipeline (CAGP), which spans 1,130 miles and bring natural gas imports to China from Turkmenistan, Uzbekistan, and Kazakhstan. In March 2006, CNPC officials also signed a Memorandum of Understanding with Russia's Gazprom for two pipeline proposals, one from Russia's western Kovykta gas field to northwestern China. A second proposed route, called the Eastern pipeline, would connect Russia's Far East and Sakhalin Island to northeastern China. China and Kazakhstan are the forth and the thirteenth oil importers from Russia.

In Central Asia, while Uzbekistan imports oil from Kazakhstan, it sent over half of its natural gas exports to Russia and the remainder to neighboring states such as Kazakhstan, Kyrgyzstan, and Tajikistan in 2010. Uzbekistan is also a transit country for Turkmenistan's gas exports to Russia and China. (EIA country analysis briefs, 2010) As a result, the SCO could represent a platform, where the member states should have a possibility to substantially discuss on regular basis the organization's energy strategy, joint implementation of projects in the sphere of hydrocarbons exploring, production, processing, and transportation. As said by Leonid Moiseev, Special Representative of the President of Russia for SCO affairs, "This club or forum – no matter how it is called – can become a brain and information trust, which would contribute to coordination of long-term programs in the sphere of the fuel-energy complex". (Krans, 2009)

THE CHALLENGES FACING ENERGY COOPERATION IN THE SCO REGION

Although the SCO has achieved steady development during the past decade, it remains a young regional organization. It still faces tough challenges. Here we will do a brief review of the main challenges that

the SCO has faced in three internal, regional and international levels.

□ It is an undeniable fact that following the collapse of the Soviet Union, most of the Eurasian countries' economies weakened as regional trade collapsed. Throughout this period, religious and cultural differences also have often created the ethnic, religious and sectarian conflicts in the region. Terrorist and extremist forces have also used these religious and cultural differences to incite disunity and manufacture turmoil. (Guang, 2007) On the other hand, different separatist groups in the region have tried to challenge the powerful central governments in most of the Eurasian countries. The tyranny governments in these countries also have faced several democratic movements against the long standing economic corruption and political dictatorship. The lack of open economic markets in the SCO region also plays an important role in decreasing the suitable situations for establishing an enduring coalition in the field of economic collaboration, particularly energy cooperation.

Considering the complex relations among all the Eurasian powers, longstanding bilateral conflicts and contradictory alliances, more conflicts could be brought to the negotiation table in the event of the SCO's enlargement. From this perspective, it is hard to see how the SCO could provide a truly multilateral trade framework considering that all regional initiatives so far, e.g. the Economic Cooperation Organization (ECO) and the Eurasian Economic Community (Eurasec) have remained ineffective. Despite the necessity of cooperation in the economic sphere, the fact remains that long term economic cooperation has weak links in Eurasia. The SCO member countries that export oil and gas are so far not only partners, but also rivals on the promising markets in East and South Asia. Despite recent friendship between Russia and China, there are serious concerns within the higher levels of Russian decision-makers about China's increasing political, economic and military growth and its implications

for Russia in its backyard in Central Asia, West Asia and the Asia Pacific region. On the other hand, Central Asian SCO members are paradoxical about conducting win-win economic and trade cooperation with China. Enlargement also poses a problem to the SCO. The hostility between India and Pakistan stands out as the most serious obstacle to a greater regional dialogue including all the actors. The hostility between India and China does not facilitate things either. China's rapid development of infrastructure in Central, Southwest and South Asia is also feared in Indian policy-making circles to be a Chinese strategic encircle of the South Asian subcontinent. On the other hand, concern over relations with the USA is also limiting India's participation within the framework of the SCO. Carrots from the USA in assisting India with civilian nuclear technology as well as repeated statements of the bloc-like nature of the SCO from the USA is hindering a more extensive Indian participation in SCO.

As a result, considering the strategic interests involved in energy projects it seems that these states will find it difficult to cooperate in the field of energy in near future. In fact, within the energy sector it may also seem illogical why China and Russia would give an advantage to India and Pakistan to participate in the competition over Central Asian energy resources. Regarding these matters, it will pose major difficulties in initiating a dialogue among all the states in the SCO region.

□ It seems that Western considerations focus on the SCO increasingly becoming a mechanism to oust the United States and its Western allies from Central Asia. The most obvious challenge to US and European interests in this field is in terms of balance of power. Given the arms transfer makes up a large portion of the trade between China and Pakistan, Russia and India, Iran and Russia, Iran and China and China and Russia this may pose significant challenges to US and European interests in the long term as these states' scientific

competencies, technological know-how and economic growth promote defense modernization. (Mingwen, 2011)

It was specifically Moscow's proposal to create an Energy Club that caught the attention of Western policymakers. Some saw the announcement as an attempt by the SCO to move from only coordinating its participants' national energy policies to actually setting up some kind of energy cartel (Raith & Weldon, 2008).This causes obvious concerns in the West, which is actively trying to weaken Russia's and China's influence in this region, while simultaneously increasing its own expansion there. Generally, some hostilities appeared between two sides during last years and the United States application for observer status in the SCO, but were rejected in 2006. In recent years, the Obama Administration has called for more regional input into and burden sharing for complex problems such as Afghanistan, and agreed to U.S. participation at a SCO-sponsored international conference on Afghanistan in 2009.

THE OPPORTUNITIES OF ENERGY COOPERATION IN THE SCO REGION

There is no doubt that the SCO is partly a vehicle for the permanent members and observers to justify and legitimize their own interests in the Eurasia region. It seems that there is a need to realize the benefits involved with increasing engagement across the East Asia/Central Asia/and South Asia regions. Undoubtedly, greater interdependence could raise the costs of conflicts among the Eurasian states. Any development promoting increased regional dialogue about trade and other issues may have conflict-preventive effects in this conflict prone region.

Obviously, the SCO’s move into the trade sphere should not primarily be assessed in terms of its ability to provide a regulatory

multilateral framework of trade, similar to that of the European Union's common market or the North American Free Trade Association, but as a way to coordinate and discuss such issues. Considering the growing complementarities between India, Pakistan and China on the one hand and Russia, Iran and the Central Asian states on the other in the energy sector, there is truly a need for a multilateral forum where energy infrastructure and trade and transit coordination may be discussed. The move of the SCO into the trade sphere and its engagement with Iran, India and Pakistan is a sign of the growing trading ties within Eurasia that has consolidated itself in the post-Cold War period.

The trade between the SCO members in this region has a long history. (Starr, 2005) What today stretches up north of the Pamir mountains, into the Fergana Valley, to Khorgos in the East and the Caspian in the West was a zone of strong economic interaction which may see its economic revival today. Trade potential between China, Afghanistan, India, Pakistan and Iran, the five Central Asian nations, and all the way to Western Europe is considerable. A major driver for this is growing energy needs in India, Pakistan, China and enormous energy supplies in the Caspian, the Middle East, and Russia that would be led to significant complementarities between the SCO economies. (Norling & Swanstrom, 2007)

However, it is important to consider that to date, trade, energy and economic matters are mostly settled bilaterally on the sidelines of the heads of states summits and the regional coordination aspect is often neglected. Paradoxically, the bulk of these deals seem to be between the SCO members and observers. This indicates that a greater regional dialogue including not only China, Russia and Central Asia, but also its neighbors in South Asia is needed. Even if the economies of the current SCO members are already complementary, the inclusion of Iran, India and Pakistan into a greater dialogue would increase the

ability to discuss matters of concern and bridge the South and Central Asia divide.

From this perspective, SCO can play an important role in confidence-building and conflict prevention in Eurasia. For the first time since partition of British India in 1947 into India and Pakistan (India, Pakistan and Bangladesh in 1971) the basic interdependence between India on the one hand, and the states of Afghanistan, Pakistan, Iran, Central Asia, China and Southeast Asia on the other, seems to be restored. It is also important to include Afghanistan into the regional economy, not least for the former post-Soviet states. If this could be achieved, this would mean increased access to ports in Pakistan at Gwadar and Iran at Bandar Abbas and Chah Bahar for Central Asia giving important outlets for products to the world market. India and Pakistan will also get a further source of energy and an important diversification away from a reliance on the Middle East (Koolaee and Tishehyar, 2013, 61-84 (b).

On the other hand, as the successful restoration and reconstruction of Afghan society and infrastructure is a key component in a dynamic South and Central Asian market, Afghanistan is going to be further integrated into the SCO structure. There has been increasing talk recently in Europe and the United States about the possibility and even necessity of a dialogue between the SCO and NATO. Common approaches to combating terrorism and normalizing the situation in Afghanistan could well become the basis for boarder cooperation with NATO. The SCO is particularly valuable here because some of its member-states and observer countries carry a great deal of weight with individual Afghan ethnic groups (specifically: Tajikistan, Uzbekistan, Iran, Pakistan, and India). These influential external players could motivate those groups inside Afghanistan to join internal conflict resolution talks. (Lukin, 2011 and Koolaee& Tishehyar, 2013, 61- 84 (a))

Moreover, for the first time since the 1960s China has shown a more moderate position in the conflict between India and Pakistan. Although China still is, and has been, Pakistan's main supporter in the last 50 years, ties between China and India are improving. (Deepak, 2006: 49)Generally, regional cooperation in the SCO region could bring fruitful achievements for the different partners although their interests are not overlapped in all aspects. For China, the SCO provides a perfect political and economic mechanism and a framework to contain the Uighur separatist movement, access to Central Asian energy resources and economic benefits. The SCO provides China an opportunity to regain its strategic space which had started waning post 9/11 with increasing US influence.

For Russia, the SCO provides an opportunity for strengthening its political, military and economic ties with the Eurasian countries and for engaging China economically while at the same time balancing US influence. For Central Asians, the SCO provides greater maneuvering capacity to balance the major powers and gain economic and military aid. Central Asian countries are looking to reduce their vulnerability to external powers. Their responses to this new unfolding situation is driven more by their need for economic support and investments in various sectors, and fear of increasing political opposition, than by the fear of great power rivalry and hegemony. (Singh Roy, 2006)

And in the field of energy, while the three countries of Central Asia, including Kazakhstan, Uzbekistan and Turkmenistan, along with Iran and Russia, are considered the major oil and gas producers in Eurasia, other members of the organization, such as China, India, and Pakistan, are among the largest energy consumers in the world. Given this reality, organizing a network of cooperation among energy producers and consumers in the Caspian region is achievable through multilateral cooperation, intra-organizational investments and providing energy transportation network between these countries. It

can also allow the participated countries to expand energy cooperation through the formation of a consortium of SCO's national oil companies.

CONCLUSIONS

Increased interactions across Eurasia in all directions increases the potentials of the SCO states to find new markets and Central Asia will find itself in the middle of this trade network. This is not to say that these growing arrangements in Eurasia do not cause challenges to Western interests. But the benefits should also be recognized. The increased interdependence and regionalism in Eurasia will raise the costs of conflicts and provide a climate encouraging to cross-border interactions, which in the end will benefit Western firms as well. Cooperation in the SCO has discarded the Cold War thinking, providing a good example of coexistence among nations of different religions and cultures.

Member states include believers of Taoism, Buddhism, Eastern Orthodox Christianity, Hinduism and Islam. With China and Russia, the SCO occupies two of the five permanent UN Security Council seats. In the future, it will continue to help further economic development in member states and the region in general. The SCO's geographical proximity to Afghanistan particularly, with the Central Asian countries, will require that neighboring countries engage Afghanistan bilaterally as well as through the SCO in specific areas like controlling drugs and terrorism and energy transportation.

The SCO is of strategic significance to both China and Russia. It is also important for Central Asian member states, not only because China is one of the major investment and trade partner of them. The SCO also provides them a best platform to conduct independent diplomacy and advance economic growth. The SCO region is

significant for China, India and Russia with respect to dealing with threats to security posed by non-state actors such as terrorists, separatists, and drug-traffickers. The three could also cooperate with regard to energy resources, transport and investment in the region.

That said, it should be noted that competition could not be ruled out and hence it was necessary to structure their interaction in terms of 'cooperative competition' and well-coordinated trilateral interaction, for example, by each agreeing to specialize in a particular sphere or sector. For balance of power in the region, Russia would need India and India would require the support of Russia in Central Asia and the AfPak region. China has always tried to counter Indo-Russian security cooperation by forming strategic military ties with Pakistan and this trend is likely to continue in the future as Beijing tries to maintain the balance of power in Southern Asia. In fact, the relationship between China and Russia is a typical one between two great powers - on one hand, pragmatic considerations urge both sides to co-operate; on the other hand.

However, it is still noticeable that although there is widespread belief that the future of SCO will depend on how successfully it is able to deal with the issue of economic cooperation in the Eurasian region, one can count various reasons for the lack of certain results. The major shortcomings for the SCO have been mainly the absence of political will and confidence; difference in economic status of member states; cultural differences and domestic challenges of Eurasia countries. If the SCO has to emerge as a successful regional organization, it should develop into an effective multilateral organization to address security and economic challenges in the region on the basis of mutually beneficial terms among its members.

It is worth noting that energy cooperation could be a foundation from which the region could form an integrated community using the basic framework to promote market efficiency and accelerate

liberalization across the region. Besides, more energetic efforts by the SCO members in implementing joint economic and energy projects could strengthen security in Central Asia. Creation of the SCO Energy Club in any case must contribute to closer cooperation of energy resources producers, their consumers and transit countries.

The realization of this idea can transform SCO into a self-sufficient energy system both in global and regional contexts. In many respects, chaos in Eurasia stems from poverty and despair. If these issues will be resolved within the SCO on a parity basis, for instance, joint projects implemented in the energy and economic spheres, and then tension in the region would gradually lessen and fall short of the levels where extremist groups could flare up with armed acts.

So SCO's activities could be interpreted in the context of new regionalism, following protectionist measure while at the same time being associated with openness (open regionalism).This indicates a rather contradictory or even paradoxical nature of new regionalism that is linked to the question of the relation between new regionalism and globalization.

And finally, it is arguably too early to expect convincing results from the SCO as it would need a time frame to mature and is still in the process of defining its political characteristics and functions.

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