



Miguel Ángel Franco García

Diploma of the Department of Defense. Auditor Commander Military Advocate.

Territorial Military Court Attorney IV (A Coruña).

E-mail: gadeafranco@gmail.com

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FROM NATIONAL DEFENCE DIRECTIVE TO NATIONAL MARITIME SECURITY STRATEGY: TREND TOWARDS THE INTEGRATION OF CIVIL AND MILITARY CAPABILITIES IN THE MARITIME FIELD

This work aims to demonstrate that new risks and threats at sea, the phenomenon of globalisation and international commitments are just some of the factors that have driven the development of the so-called comprehensive approach to security. An analysis of strategy and policy provides us with a not-entirely reliable insight into what is happening in the maritime field, as these may be subject to continuous and profound changes brought about by the aspirations of the company or entity from which they originate and are implemented. Nevertheless, the search for civil-military synergy at sea is a factor that shapes security strategy and defence policy in our country.

Strategy and policy; security and defence in Spain; comprehensive approach to the sea.

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I. TRENDS IN THE STRATEGIC AND CONCEPTUAL LANDSCAPE OF NATIONAL DEFENCE DIRECTIVES

Strategy, in its most common meaning, is the process that brings together means and ends; it is knowing how to act, and with what resources, in order to achieve policy goals. It provides a general overview of how the desired goals are to be achieved¹. It is obvious that we are looking at a multifaceted term, given that it entails commercial, environmental, nuclear and defence strategy, etc.

As Alonso Baquer explains, we only have a satisfactory notion of the wisdom we call strategy, understanding that it clearly refers to practical, not theoretical thinking². Strategy describes and explains events that happened in the past and then provides recommendations or instructions on what course of action to take. Strategy is about games, it is not about battles or debates; in fact, when the battle begins, strategy resorts to *tactics*, and when the debate commences, strategy turns to *politics*. Strategy is both the art of devising operational plans that are consistent with the legitimate ends of a political community and the art of leading armies towards decisive goals³.

1 * Ministry of Defence. Auditor Commander of the Military Legal Corps. District Attorney Regional Military Court IV (A Coruña). gadeafranco@gmail.com

MURDOCK, Clark: "Improving the practice of national security strategy", *Significant CSIS Issues Series*, no. 1, 2004, p. 26.

2 PARET, Peter: "Introducción", in *Creadores de la estrategia moderna: desde Maquiavelo a la era nuclear*, P. PARET, P. (coord.), Madrid, Secretaría General Técnica del Ministerio de Defensa, 1992, p. 15.

3 Vid. ALONSO BAQUER, Miguel: ¿En qué consiste la estrategia?, Madrid, Secretaría General Técnica del Ministerio de Defensa, 2000, pp. 13-20, 37, 43 and 44. POIRIER, Lucien: *Las voces de la estrategia*, trad. J.L. Tamayo Monedero y J. Guerrero Roiz de la Parra, Madrid, Colección Ediciones Ejército, EME, 1988, pp. 31-63. VON CLAUSEWITZ, Carl: *De la guerra*, trad. M. Howard y P. Paret, volumen I, libro III, ed. facs., Madrid, Secretaría General Técnica del Ministerio de Defensa, 1999, p. 304. LIDDELL HART, Basil Henry: *Strategy: the indirect approach*, London, Faber & Faber, 1967, p. 335. DE JOMINI, Antoine-Henri: *Compendio del arte de la guerra*, Madrid, Secretaría General Técnica del Ministerio de Defensa, 1991, p. 102. In Spain, VILLAMARTÍN RUIZ, Francisco: *Nociones del arte*

The tool used to define and implement strategic goals is strategic planning which, according to Arteaga and Fojón, provides a logical framework for state action in relation to the use of the resources at the disposal of a state or a coalition of states. Policy sets the goals of a strategy and assigns the necessary resources, but a planning process is needed to assess the defence problem, set strategic goals and implement strategy⁴. According to Escrigas and De Miguel, security policy is the tool that ensures the identity and survival of national security interests, while defence policy determines national defence goals and the resources and activities needed to achieve these. Military policy is an essential component of defence policy and determines the organisation, preparation and modernisation of military capability⁵.

Methodological calculation and appropriate planning must be used to address specific security or defence problems. If we fail to take the course of action indicated in the plan, we will be working with prediction, not forecasts, which is precisely what should guide strategy. In the military field, *capability* is the result of combining the resources needed to efficiently address a specific aspect of a strategic or tactical challenge. Planning is used to achieve certain military goals, and capability provides reasonable assurance that these will be achieved⁶.

Each moment in time brings its own disputes and security problems, and although it might seem contradictory, change is a constant throughout history. Constant change and the need to adapt to new challenges are evident in all national security strategies.

The 1990s marked the end of the East-West confrontation and ushered in a climate of understanding that resulted in the signing of conventions and agreements on arms control, disarmament, conflict prevention and crisis management. However, hopes for a peaceful world were dashed by the instability brought about by ethnic, religious

militar, Madrid, Secretaría General Técnica del Ministerio de Defensa, 1989, p. 323. ROJO, Vicente: *Elementos del arte de la guerra*, Madrid, Secretaría General Técnica del Ministerio de Defensa, 1988, pp. 26-28.

4 ARTEAGA MARTÍN, Félix y FOJÓN LAGO, Enrique: *El planeamiento de la política de defensa y seguridad en España*, Madrid, Instituto Universitario General Gutiérrez Mellado, 2007, p. 19. BEAUFRE, André: *Introducción a la estrategia*, colección Ediciones Ejército, Madrid, Servicio de Publicaciones del EME, 1980, p. 40. YARGER, Richard: *Strategic theory for the 21st century: the little book on big strategy*, Carlisle, (Pennsylvania), Strategic Studies Institute, US Army War College, 2006, p. 5. BUZAN, Barry: *Introducción a los estudios estratégicos: tecnología militar y relaciones internacionales*, Madrid, colección Ediciones Ejército, Servicio de Publicaciones del EME, 1991, p. 21.

5 ESCRIGAS RODRÍGUEZ, Juan y DE MIGUEL SEBASTIÁN, Jesús: *Modelo español de seguridad y defensa*, Documentos de seguridad y defensa, no. 8, Madrid, Secretaría General Técnica del Ministerio de Defensa, 2007, pp. 53 and 54.

6 MARTÍNEZ NUÑEZ, Juan Francisco: “Capacidades clave en la seguridad marítima”, in *Impacto de los riesgos emergentes en la seguridad marítima*, Cuadernos de estrategia, IEEE, Madrid, Secretaría General Técnica del Ministerio de Defensa, 2008, p. 150.

and cultural differences; genocide and outbursts of violence in Africa and the Middle East, as well as wars such as the Kosovo War and the Gulf War⁷.

Spain's Defence White Paper (2000) starts with the premise of the globalisation of the strategic environment, the low probability of large-scale wars occurring in the foreseeable future and outlines the guidelines of the Spanish strategic conception, whose principles are: the universalistic perception of Spain's world presence, protection of Spanish interests and a firm commitment to shared security and collective defence. It defines the country's vital national security interests: the mainland and islands; populations; constitutional order; sovereignty and independence. It also sets out the country's strategic interests, which it defines as those interests which provide security to our environment and whose protection contributes decisively to the defence of vital interests, and other national interests, namely interests that stem from its position in the international community, its sense of solidarity, its contribution to the cause of peace and freedom, and its relations with the nations of its historical and cultural community⁸. Spain's National Defence Directive (DDN) 1/2000⁹ stated that the strategic environment was characterised by an absence of a clear and defined threat to the territory but, nevertheless, by the emergence of asymmetrical threats, crises and conflicts that compromise peace, security and stability in many parts of the world and which could affect our own security and, therefore, require a response from Spain.

The September 11 attacks in 2001 marked a turning point in the strategic landscape and ushered in a period of uncertainty in relation to transnational crime and terrorism, highlighting the European countries' dependence in relation to the provisioning of resources¹⁰.

In this context, the Strategic Defence Review addressed conflicts such as that of the former Yugoslavia, which fuelled a new conscience that tended towards international intervention, and there was a new feeling of vulnerability¹¹ in the aftermath of the dramatic events of 9/11. Since then, terrorism has been regarded as a key element in the strategy of security and defence organisations. The aforementioned Document

7 Vid. *Libro blanco de la Defensa, 2000*, Secretaría General Técnica del Ministerio de Defensa, Madrid, pp. 27-29.

8 Ibid. pp. 29-36 and 68-71.

9 Dictated on 1 December 2000, <http://www.gees.org/documentos/Documen-007.pdf>.

10 DURÁN ROS, Manuel María: "Redefinición de los europeos frente a las nuevas amenazas: los riesgos del nuevo orden-desorden mundial", in *La seguridad europea y las incertidumbres del 11 de septiembre*, SEGENTE del MINISDEF, Madrid, Monografías del CESEDEN, no. 69, 2003, pp. 71 and 72.

11 MARQUINA BARRIO, Antonio: "Estudio introductorio", in *Comentarios de estrategia y política militar*, Cuadernos de Estrategia, Secretaría General Técnica del Ministerio de Defensa, Madrid, no. 128, 2004, p. 41.

spoke of the *Revolution in Military Affairs* – the harnessing of new technologies for management and control purposes, precision weapons and their means of delivery outside the range of the enemy – and *Shared Security*, recognising that Spain shared the same conditions of security and was exposed to the same changes in the strategic environment as the other allies¹².

Aside from the traditional risks and threats to international peace, stability and security, the DDN 1/2004 describes a strategic setting that is characterised by the emergence of new threats, such as transnational terrorism with a global reach. The New York, Madrid and Beslan terrorist attacks have demonstrated that traditional military superiority is not an effective deterrent against new risks and threats, nor does it guarantee greater security and protection against terrorist attacks and the proliferation of weapons of mass destruction. The Spanish response, the embodiment of collective defence and shared security, is based on what has been dubbed *effective multilateralism* and fulfilment of the commitments made to international organisations of which Spain is a member¹³. In this respect, the LODN 5/2005¹⁴ was an important step in the implementation of the aforementioned principles because it expressly regulates the intervention of the Spanish Armed Forces in foreign operations (something that was already happening) and lays down the obligation of the Government to seek the authorisation of the Congress of Deputies prior to implementing any measures not expressly related to the defence of Spain (Articles 17-19).

The multidimensional configuration of conflict was highlighted in DDN 1/2008

12 *Revisión Estratégica de la Defensa* (2003), Secretaría General Técnica del Ministerio de Defensa, Madrid, pp. 37-43. Vid. Appearance of the then-Minister of Defence, Federico Trillo-Figueroa, before the Defence Committee of the Congress of Deputies on 18 December 2002 to present the Strategic Defence Review (2003), published by the Technical General Secretariat of the Ministry of Defence, Madrid, p. 17.

13 DDN 1/2004, of 30 December 2004, pp. 1-4. The Statement of Reasons of Royal Decree 416/2006, setting forth the organisation and deployment of the Army, Navy and Air Forces, as well as the Military Emergency Unit (BOE no. 96, 22 April), states that *Spain's security and defence strategy is based on an effective multilateral system, given that isolated responses do not constitute an effective deterrent or provide effective prevention*. The so-called effective multilateralism, set out in DDN 1/2004, is an exact copy of the same principle enshrined in the European Security Strategy entitled *A secure Europe in a better world*, p. 9, approved by the European Council held in Brussels on 12 December 2003, which called for an *international order based on effective multilateralism* within the framework of the Charter of the United Nations. The European Security Strategy is available (in Spanish) at: <http://www.consilium.europa.eu/uedocs/cmsUpload/031208ESSIIES.pdf>. The use of effective multilateralism had been embraced by the EU prior to approving the Strategy in the document *Communication from the Commission to the Council and the European Parliament: the European Union and the United Nations*. COM (2003) 526 final. Brussels, 19 September 2003.

14 In the Statement of Reasons, the LODN 5/2005 points out that the bloc policy that characterised the Cold War has disappeared from the strategic landscape and that globalisation and a new framework for international relations have emerged.

and the strategic landscape was redefined in response to the growing number of – public, private, governmental and non-governmental – stakeholders; it was also stated that security and defence are competencies that are guaranteed by the State through the integration of different instruments and policies¹⁵. Therefore, it is not the sole responsibility of the Ministry of Defence; to the contrary, it calls for a “multidisciplinary approach and joint action on the part of the relevant public authorities, as well as a combination of civil, military, public and private instruments”¹⁶.

In short, globalisation tests states’ ability to act in a much larger space, and a global world is not necessarily an integrated one¹⁷, thus explaining why some problems have taken on a transnational dimension¹⁸, raising, from a national security perspective, concern for food, energy and water restrictions, and climate change. Furthermore, the dramatic increase in the number of non-state stakeholders (businesses, criminal networks and religious organisations, etc.) has given rise to significant multipolarity¹⁹.

In the current geostrategic landscape, it can be seen that risks and threats are cross-cutting; they are often transnational and they may be interconnected²⁰. Dealing with them requires the use of mechanisms that combine the efforts of those responsible for preventing or mitigating them, either internally, using techniques for the management and streamlining of inter-administrative relations, or at the international level. Whether from one level or the other, resolving the situation calls for a comprehensive and interdisciplinary approach in which all the stakeholders – both military and civilian – work under one command for planning and management. This is the only way to adequately address the challenges facing us.

15 BALLESTEROS MARTÍN, Miguel Ángel: “Seguridad y Defensa”, *Revista Española de Defensa*, no. 246, 2008, p. 51.

16 DDN 1/2008, of 30 December 2008, p. 7.

17 PORTERO RODRÍGUEZ, Florentino: “Relaciones internacionales y nueva gobernanza mundial”, in *Panorama estratégico 2009/2010*, Madrid, Secretaría General Técnica del Ministerio de Defensa, 2010, pp. 117 and 118.

18 PUMPHREY, Carolyn: *Transnational threats: blending law enforcement and military strategies*, Carlisle (Pennsylvania), Strategic Studies Institute, United States Army War College, 2000, pp. 1-10.

19 USA, National Intelligence Council, *Global trends 2025: a transformed world*, 2008, p. 1. Available at: www.dni.gov/nic/NIC_2025_Project.html. MOLINA RABADÁN, David: “Influencia de la identidad europea de seguridad y defensa en las políticas del Ministerio de Defensa”, in *El Ministerio de Defensa, creación, desarrollo y consolidación: II Congreso de historia de la defensa*, SEPÚLVEDA, I. y ALDA, S. (eds.), Madrid, IUGM. UNED, 2008, pp. 113 and 114.

20 SÁNCHEZ DE ROJAS DÍAZ, Emilio: “Los intereses vitales de España: un enfoque integral y de seguridad compartida”, in *Los intereses geopolíticos de España: panorama de riesgos y amenazas*, Documentos de seguridad y defensa, no. 43, Madrid, Secretaría General Técnica del Ministerio de Defensa, 2011, p. 53.

1.1. *The National Defence Directive: of legal or political force?*

The National Defence Directive was first drafted in 1980. However, it was not until 1992 that the content was unclassified, thus giving the public access to information on the Government's goals in the area of defence.

As stated in Ministerial Order 37/2005, of 30 March, regulating the Defence Planning process, the DDN sets out the general lines of action and provides guidelines for the development of the Government's Defence Policy²¹. It provides direction for Defence Planning and is drawn up every four years, for two-year implementation and two-year review (paragraph 3.1).

The minimum content of the National Defence Directive is laid down in the aforementioned Ministerial Order, which states that it shall include the following information, *among other things*: the goals, specifying the effort required of the Armed Forces; the factors influencing the planning process, particularly the ideal ratio of national military capability to international commitments, and an assessment of the current strategic and economic situation (paragraph 5).

The DDN is prepared by the Prime Minister²², and up to DDN 1/2008 it was drawn up solely by the Ministry of Defence, although - pursuant to Royal Decree 1310/2007, of 5 October, regulating the operation of the National Security Council and the composition and functions of the Inter-ministerial Defence Committee - the aforementioned DDN was drawn up by the National Defence Council²³.

Given the importance of the DDN in that it conditions defence policy, we should determine its nature, that is to say: does it embody regulatory requirements with the power to legally bind the bodies responsible for defence planning (Chief of the Defence Staff, responsible for Military Planning; Secretary of State for Defence, responsible for Financial and Material Resources Planning, and the Under Secretary of Defence, responsible for Human Resources Planning) or, to the contrary, does it merely have a planning or political value.

21 According to the Statement of Reasons of Ministerial Order 37/2005, of 30 March, regulating the Defence Planning process (BOD no. 68, 8 April). Set out in Article 6.3.b, the economic and financial aspects in Instruction 2/2011, of 27 January (BOD no. 26, 8 February), regulating the Financial and Material Resources Planning process.

22 In accordance with the provisions of Article 6.1.a) of LODN 5/2005 and paragraph 3.1 of Ministerial Order 37/2005.

23 As stated by the Minister of Defence, Carme Chacón Piqueras, on 25 November 2008 when she appeared before the Defence Committee of the Congress to report on the draft National Defence Directive, available at: infodefensa.com, *Información Defensa and Seguridad*.

Iglesias Velasco believes that the National Defence Directive has a certain legal value as it constitutes the legal-political basis for the Armed Forces' participation in foreign missions²⁴. Arteaga disagrees, however, arguing that the directive is a planning document that sets out the general lines of action and guidelines for the national defence policy. It merely provides general guidelines on defence goals and strategies because the policy required for implementing them has to be developed afterwards²⁵. In our opinion, it is crystal clear that it does not constitute a legally binding rule. It is not published in the Official state Gazette (BOE) and it does not provide a normative mandate from the bodies vested with superior legislative authority pursuant to the Constitution. Nor does it embody rules of a regulatory nature; the directive is not enforceable as it does not implement any law²⁶; and it cannot, therefore, be classified as a regulation of that nature. An analysis of the content of the directive allows us to conclude that it merely provides guidelines, general lines of action or strategic plans that do not contain any organisational or policy elements.

It is no more than a letter of intent, a starting point, and we should not get carried away with expectations. It influences but does not determine policymaking, and the final policy may constitute an improvement or deterioration on the plans set forth in the directive²⁷.

1.2. *From the National Defence to the National Security concept*

The term 'National Defence' has traditionally been associated with territorial sovereignty, protection of the lives of the population and the vital interests of the nation within, close to or adjacent to the nation itself. As Munilla Gómez has pointed out, the concept is closely linked to National Security; it is, he claims, the means of obtaining security or, in other words, the formula used to guarantee security²⁸.

24 IGLESIAS VELASCO, Alfonso Jesús: "El rumbo marcado por la nueva Directiva de Defensa Nacional", *Revista Electrónica de Estudios Internacionales*, no. 9, 2005, p. 1, <http://www.reei.org>.

25 ARTEAGA MARTÍN, Félix: *La Directiva de Defensa Nacional 1/2004*, Real Instituto Elcano (ARI), no. 29, 2005, p. 1, http://www.realinstitutoelcano.org/wps/portal/rielcano/contenido?WCM_GLOBAL_CONTEXT=/elcano/elcano_es/zonas_es/defensa+y+seguridad/ari+29-2005. CUESTA RICO, Francisco: "Los parámetros constitucionales de la acción exterior de las Fuerzas Armadas", in *El estatuto jurídico de las Fuerzas Armadas españolas en el exterior*, 2008, p. 268, footnote no. 76.

26 Article 22.3 of Organic Law 3/1980, of 22 April, of the Council of State (BOE no. 100, 25 April) provides for mandatory consultation with the Standing Committee of the Council of State on regulations and general provisions provided in implementation of legislation and any amendments thereto.

27 ARTEAGA MARTÍN, Félix: *La Directiva...* op. cit., p. 2.

28 MUNILLA GÓMEZ, Eduardo: *Introducción a la estrategia militar española*, Colección Adalid,

Organic Law 6/1980, of 1 July, regulating the Baselines of National Defence and Military Organisation, was introduced to implement the constitutional mandate enshrined in Article 8.2. Article 2 reflects the traditional concept of National Defence when it defines it as *the provision, integration and coordinated action of all the energies and moral and material forces of the Nation against any form of aggression*. Article 3, meanwhile, describes National Security as the effect produced by the implementation of National Defence actions. If we bear in mind that the dynamic view of defence is to foster strategy aimed at creating security, it can be concluded that the contextualisation of the definition of National Defence leads us to National Security and the best way of achieving this, which is by developing and implementing national security strategy²⁹.

The classical notion of National Security, whereby it is seen as an absolute concept, an exaggerated view in our opinion³⁰, has been defined as a situation in the life of every nation when the latter is protected against aggressions and threats to its sovereignty, its territorial integrity and that of its people; where it is protected against attacks on the normal exercise of its authority and the appropriate functioning of its institutions; a situation where both public and private activity can be carried out unhindered in order to attain the highest levels of peace, freedom and prosperity in all areas³¹. National Security is neither a static nor one-directional concept. When defining it, we must consider the growing interdependence of military, economic, social, political and environmental issues³². The basic guarantor of security has and always will be the

Madrid, Servicio de Publicaciones del EME, 1984, p. 32.

29 FOJÓN LAGO, Enrique: “Una revisión de los criterios básicos de la defensa nacional”, in *Revisión de la Defensa nacional*, Madrid, Secretaría General Técnica del Ministerio de Defensa, 2002, pp. 96 and 97.

30 QUERO RODILES, Felipe: *Introducción a la teoría de la Seguridad nacional*, Colección Ediciones Ejército, Madrid, Servicio de Publicaciones del EME, 1989, pp. 36 and 37. WOLFERS, Arnold: “Discord and collaboration: essays on international politics”, *Johns Hopkins University Press*, Baltimore, MD, 1965, p. 158. BUZAN, Barry: “People, states & fear: an agenda for international security studies in the post-cold war era”, *Revista Académica de Relaciones Internacionales*, UAM-GERI, no. 9, 2008, pp. 1-12.

31 MUNILLA GÓMEZ, Eduardo: *Introducción a la estrategia...* op. cit., p. 31. FERNÁNDEZ ESPESO, Carlos: *Consideraciones acerca de la seguridad nacional*, Información Comercial Española, no. 592, 1982, pp. 109-114.

32 GARRIDO REBOLLEDO, Vicente: *Modelo español de Seguridad y Defensa*, Documentos de seguridad y defensa, no. 8, CESEDEN, Madrid, Secretaría General Técnica del Ministerio de Defensa, 2007, p. 7. NIETO RODRÍGUEZ, Manuel: “El nuevo concepto de seguridad: amenazas y riesgos emergentes”, in *Política de Seguridad de la Unión Europea: realidades y retos para el siglo XXI*, Valencia, Tirant lo Blanch, 2002, p. 36. GARCÍA RODRÍGUEZ, José y RESA NESTARES, Carlos: “Un nuevo concepto de seguridad para el entorno europeo”, in *Política de Seguridad de la Unión Europea: realidades y retos para el siglo XXI*, Valencia, Tirant lo Blanch, 2002, pp. 47 and 48. ÁLVAREZ VERDUGO, Milagros: *La política de seguridad y defensa en la Unión Europea*, Madrid, Dykinson,

State; however, its role has become less exclusive because of the increased international recognition of human rights and the different aspects of globalisation, which Frost defines as a more interconnected world system, in which interdependent networks and flows surmount traditional boundaries (or make them irrelevant)³³.

In the early 1990s, it began to be felt that both the effect of globalisation on risks and threats and the development of new technologies that enable the use of precision-guided munition launched from great distances meant that defence could no longer be confined to the immediate territorial area³⁴. At the time, security focused on protecting people, catering to their physical safety and well-being in the economic and social spheres, as well as their dignity. Since then, however, the focus has shifted to the concept of *human security*, an idea that has received much criticism for being vague and amphibological³⁵.

2003, pp. 31 and 32. BARBÉ IZUEL, María Esther y PERNI, Orietta: “Más allá de la Seguridad nacional”, in *Introducción a los estudios de seguridad y defensa*, Granada, Comares, 2001, pp. 3-32.

33 FROST, Ellen: “Globalization and national Security: a strategic agenda”, in *The global century: globalization and national Security*, Washington, DC, National Defense University, 2000, p. 37. SCHOLTE, Jan Aart: “Globalization: a critical introduction”, *St. Martin's Press*, New York, 2000, p. 42. BOOTH, Ken: “Conclusion: security within global transformation?”, in *Statecraft and Security: the cold war and beyond*, Cambridge University Press, 1998, p. 345. AVILÉS FARRÉ, Juan: “Por un concepto amplio de seguridad”, in *Revisión de la Defensa nacional*, Monografías del CESEDEN, Madrid, Secretaría General Técnica del Ministerio de Defensa, 2002, p. 20. SALAS LARRAZÁBAL, Ramón: *Seguridad, paz y defensa*, Madrid, Secretaría General Técnica del Ministerio de Defensa, 1995, pp. 24 and 25. BUZAN, Barry: *People, states & fear...op. cit.*, p. 20.

34 Política de Defensa y Seguridad...op. cit., p. 31.

35 *New Dimensions of Human Security*, Chapter 2 of the *Human Development Report 1994*, 16 March 1994, by the United Nations Development Programme, Oxford University Press, New York, pp. 25-46, http://www.hdr.undp.org/en/media/hdr_1994_es_cap2.pdf. McCORMAC, Tara: “Power and agency in the human security framework”, *Cambridge Review of International Affairs*, no. 1, 2008, pp. 114-126. OWEN, Taylor: “Human security-Conflict, critique and consensus: colloquium remarks and a proposal for a threshold-based definition”, *Security Dialogue*, no. 3, 2004, pp. 373-387. MARTIN, Mary and OWEN, Taylor: “The second generation of human security: lessons from the UN and EU experience”, *International Affairs*, Vol. 86, 2010, pp. 211-224. FLOYD, Rita: “Human security and the Copenhagen School's securitization approach: conceptualizing human security as a securitizing move”, *Human Security Journal*, Vol. 5, 2007, pp. 38-46. McDONALD, Matt: “Human security and the construction of security”, *Global Society*, no. 3, 2002, pp. 280-283. BOER, Leen and KOEKKOEK, Ad: “Development and human security”, *Third World Quarterly*, no. 2, 1994, pp. 519-522. MUTIMER, David: “Beyond strategy: critical thinking and the new security studies”, in *Contemporary security and strategy*, London, Macmillan, 1999, p. 83. BETTS, Alexander and EAGLETON-PIERCE, Matthew: “Editorial introduction: human security”, *St. Antony's International Review*, no. 2, 2005, p. 7. BALDWIN, David: “The concept of security”, *Review of International Studies*, no. 23, 1997, p. 13. DUFFIELD, Mark and WADDELL, Nicholas: *Human security and global danger: exploring a governmental assemblage*, University of Lancaster. Department of Politics and International Relations, 2004, pp. 21-23.

Internally, this trend has progressively gathered pace. The introduction of DDN 1/92 brought a change in the conception of National Defence in connection with international crises in the political systems of states in Central and Eastern Europe and the Soviet Union. The preamble to the aforementioned DDN stated that such situations *have influenced our conception of security and demonstrate that this cannot be confined to our own or immediate territorial space because our nation's interests also require protection outside the confines of that space*³⁶.

Subsequent National Security Directives are based on the conviction that our security is inextricably linked to that of our neighbouring countries and countries in areas of strategic interest to us (DDN 1/96) due to the emergence of asymmetrical threats, crises and conflicts that compromise peace, security and stability in many parts of the world and which could affect our own security (DDN 1/2000).

Spain's commitment to security is based on a pentagonal framework of action, which is embodied in the statement: "we are Europe and our security is indissolubly wed to that of the continent", as well as in the consideration that the Mediterranean area is of special interest to Spain. In the area of security and defence, initiatives that facilitate dialogue and promote bilateral cooperation with countries in the region are therefore indispensable (DDN 1/2004 and DDN 1/2008). We should also bear in mind that Spain, as a member of the United Nations, is firmly committed to the values of international peace and security, that NATO continues to promote the collective defence of its members and that Latin America is a natural gateway for uniting and facilitating exchanges between the two sides of the Atlantic (DDN 1/2008).

With a view to building a secure environment, Spain assumes its responsibility for consolidating its position in the Mediterranean and, through collaboration with the EU and NATO, aims to ensure control of illegal trafficking from Latin America and the Gulf of Guinea, the existence of which justifies its presence in the Atlantic, all the while remaining concerned about the cases of piracy at sea (DDN 1/2012).

With this broad view of security, we see an overlapping of the security and defence concepts, given that security encompasses defence³⁷. National Security should be construed as a situation in which a nation feels it is adequately protected against all kinds of risks and threats, and where the level of risk is tolerable³⁸. Compared to the

36 The full DDN 1/1992 is available from *Política de Defensa y Seguridad* (1993), op. cit., pp. 115-119.

37 FELIÚ ORTEGA, Luis does not share this view: "La confusa terminología de la seguridad y la defensa", IEEE, Documento de opinión, no. 6, 2012, p. 2, http://www.ieee.es/Galerias/fichero/docs_opinion/2012/DIEEOo62012_ConfusaTerminologia_Seg.Def_GB_Feliu.pdf.

38 FONFRÍA MESA, Antonio et al.: "Hacia una estrategia de seguridad nacional para España", Documentos de seguridad y defensa, no. 25, CESEDEN, Madrid, Secretaría General Técnica del Ministerio de Defensa, 2009, pp. 17-19. BERNAL GUTIÉRREZ, Pedro: "La cultura de seguridad y defensa en España: sus orígenes y evolución", in *La cultura de seguridad y defensa: un proyecto en*

obsolete view of National Defence, the broad concept of National Security, according to Alli Turrillas, should allow state armies and security forces - while different - to play together at the complex game of National Security³⁹.

DDN 1/2012 sets out a broad view of security, providing that the guarantee of security is the responsibility and obligation of the Government and that defence policy and the capabilities of the Armed Forces, which constitute the backbone of the institutional defence system, should make a unique contribution to National Security⁴⁰.

2. DEFENCE AND SECURITY STRATEGY AT SEA

The adjective *maritime* refers to the sea; it is a broad term that encompasses and includes everything related to the sea; '*naval*', however, is a more specific term. It refers to ships as instruments that exploit the liquid medium. If we use the adjectives mentioned in relation to strategy, in the case of maritime strategy, the marine environment has traditionally been associated with all activities carried out at sea; the word '*naval*' in naval strategy, however, gives the term an exclusively military character and strengthens the predominant role of warships as complex weapons systems⁴¹.

We prefer to use the term defence and security strategy at sea to describe, in the current context, the creation, planning and implementation process whereby certain capabilities are targeted at meeting defence and security interests in the maritime field.

Any new defence and security strategies at sea should continue to be supported by two basic pillars: national security and defence (exclusively national interests) and shared security and defence (allied or collective interests). It seems we have to choose between one of the following options: command over the sea, or limited control,

marcha, Cuadernos de estrategia, no. 155, Madrid, Ministerio de Defensa, Dirección General de Relaciones Institucionales, 2011, p. 29.

39 ALLI TURRILLAS, Juan Cruz: "Seguridad nacional, defensa y Fuerzas Armadas", in *Parte especial del Derecho administrativo: la intervención de la Administración en la sociedad*, Colex, Madrid, 2012, p. 417.

40 Directiva de Defensa Nacional 1/2012, de 31 de julio, *por una defensa necesaria, por una defensa responsable*, p. 2, <http://www.iecee.es/Galerias/fichero/Varios/DDN-2012.pdf>.

41 PARENTE RODRÍGUEZ, Gonzalo: *La estrategia marítima y su evolución: evolución de la estrategia marítima desde la II Guerra Mundial hasta nuestros días y su proyección en el próximo siglo*, Madrid, Editorial Naval, 1992, p. 23.

where time and space is concerned, over an area of interest.

Classical naval strategic thought⁴² has found itself overwhelmed by a new type of warfare: asymmetrical warfare. New dangers, risks and threats call for a coordinated response from the civil and military organisations and groups concerned if they are to tackle problems that require a solution bordering on the military and the political⁴³, and which arise when it is impossible to ignore initiatives to the contrary or it seems impossible to nip the problem at the bud⁴⁴.

2.1. *The global maritime community*

Much has been written on the subject of general risks in the 21st century, but the subject has rarely been approached from a maritime perspective⁴⁵. Recent years have seen a worrying increase worldwide in certain types of crimes at or in connection with the sea (international terrorism movements, the proliferation of weapons of mass destruction, piracy, drug trafficking and illegal immigration, etc.), which pose a clear threat to the security and stability of the international community.

A number of maritime zones are frequently the scene of unlawful activities due to their inadequate control by riparian states. These areas, known as ‘failed seas’ are located in geographical areas far away from Spain, but they can have a harmful direct or indirect impact on national interests and the safety of our fellow citizens⁴⁶.

Another cause for serious concern is international terrorism, for which there is no universally accepted definition. This phenomenon, together with failed seas and states, has hitherto remained a great distance from the world’s centres of gravity: the

42 COUTAU-BÉGARIE, Hervé: *La potencia marítima: Castex*, Ediciones Ejército, Madrid, Servicio de Publicaciones del EME, 1987, pp. 83 and 84. SALGADO ALBA, Jesús: “Evolución estratégica de la Marina española entre las dos guerras mundiales”, in *Les armées espagnoles et françaises: modernisation et réforme entre les deux guerres mondiales*, Madrid, Casa de Velázquez, 1989, p. 138. ALBERT PERRERO, Julio: ¿Existe la estrategia naval?, Supplement to *Revista General de Marina*, no. 7, 2007, pp. 1-6.

43 LACOSTE, Pierre: *Estrategias navales del presente*, Madrid, Ediciones Ejército, Servicio de Publicaciones del Estado Mayor del Ejército, 1987, p. 389.

44 FERNÁNDEZ DIZ, Aurelio: “Algunos factores de permanencia en una estrategia naval necesariamente flexible”, *Cuadernos de Pensamiento Naval*, no. 7, 2007, p. 20.

45 RETUESTA BOTELLA, José Antonio: “La presidencia española de la UE: del concepto de seguridad marítima a la estrategia de seguridad global en el ámbito marítimo global”, Real Instituto Elcano (ARI), no. 101, 2010, p. 2, http://www.realinstitutoelcano.org/wps/portal/rielcano/contenido?WCM_GLOBAL_CONTEXT=/elcano/elcano_es/zonas_es/europa/ari101-2010.

46 *Relevancia actual de la seguridad marítima*, p. 2. Available at <http://www.armada.es>.

sea and the oceans⁴⁷. The origin of failed states⁴⁸ lies in the realignment of international relations following the Cold War. The East/West ideological and military divide has shifted to a North/South economic divide. Certain dictatorships, which were overly dependent on foreign aid from the two superpowers in the political, economic and military arenas, very quickly became non-viable states in the aforementioned arenas⁴⁹.

Aside from risks and threats, one of the most complex factors at play in the current maritime scenario is the large number of agencies and organisations exercising their powers at sea. These may be civil or military, national or international, public or private bodies, which is why different forums have repeatedly underscored the need for interoperability between civil and military agencies⁵⁰.

All transnational threats are not the result of contemporary globalisation, but globalisation has increased both the range and effects of these activities by providing the physical means to transcend even the most surveilled borders and to move across ever-increasing distances⁵¹. As Gray has pointed out, it is not clear what needs to be assured in the global context, what would guarantee this security and how this goal could be achieved⁵². In the maritime field, the effects of globalisation on the USA, which can also be extrapolated to other countries, are the following, among others: an increase in maritime traffic and trade; greater military presence, including naval/maritime presence, and intervention in places not previously considered to be of vital interest, and new, unpredictable effects on alliances and coalitions and their maritime components.

The action taken to address maritime threats aims to achieve a compromise between the freedom of navigation and an appropriate level of protection in order to ensure

47 RETUESTA BOTELLA, José Antonio: “Seguridad marítima: tendencias y retos”, in *Impacto de los riesgos emergentes en la seguridad marítima*, Cuadernos de estrategia, IIEES, Madrid, Secretaría General Técnica del Ministerio de Defensa, 2009, p. 85.

48 ROTBERG, Robert: “The new nature of Nation-State failure”, *The Washington Quarterly*, XXV-3, 2002, p. 86.

49 FERNÁNDEZ FADÓN, Fernando: “África Occidental: el fenómeno de los mares fallidos y los riesgos para el entorno marítimo español”, *Revista General de Marina*, no. 8 and 9, 2006, pp. 253 and 254.

50 *Maritime operational concept*, 13 August 2010. Chiefs of European Navies (CHENS MOC), p. 10, http://www.chens.eu/products/CHENS_MOC_2010.pdf.

51 THACHUK, Kimberley and TANGREDI, Sam: “Transnational threats and maritime responses”, in *Globalization and maritime power*, Washington DC, Institute for National Strategic Studies, National Defense University, 2002, p. 1.

52 GRAY, Colin: “Global security and economic well-being: a strategic perspective”, *Political Studies*, no. 1, 1994, pp. 27 and 29. ANNAWITT, Philipp: “Global security and regional responses: conflict management in a fractured world”, Geneva Centre for Security Policy, Conference Series, no. 18, 2010, pp. 7-19.

compliance with legislation, protect citizens and safeguard national and international interests. According to Kraska and Wilson, common interest and the capabilities of allied nations are influenced by the interests of the international community, and have global implications; indeed, such is the case that we can speak of a *global maritime society* that not only includes naval forces, but also the capabilities of civil and law enforcement departments, agencies, private companies and non-governmental organisation carrying out activities and maritime strategies based on cooperation and collaboration⁵³.

2.2. *The need for a civil-military response to emerging risks in the maritime field: the Spanish view*

Emerging risks in the maritime field include a variety of phenomena that share a common trait, which is the danger they pose for the world's population, and particularly for Spain as a country that is highly dependent on the sea (its shores and maritime borders) and its maritime interests have historically not been affected by these phenomena. Of the aforementioned risks, which require new responses, the following are of particular relevance: illegal immigration, trafficking in people, drugs and arms, including weapons of mass destruction, support to terrorist organisations, and the resurgence of piracy⁵⁴.

The need to integrate capabilities at sea can be approached from several perspectives. From a purely national perspective, we can step up collaboration and undertake essential coordination with the agents responsible for implementing state action at sea. From an international perspective, the response could take the form of cooperation in certain areas (security, surveillance and exchange of maritime information) within the framework of international initiatives and organisations in which Spain is a party.

Considering the new paradigm for the management of international crises, the comprehensive approach concept was devised in the middle of the last decade to address the problems posed by crisis management operations involving civil and military and national and international actors⁵⁵. To solve problems of coordination and avoid duplication of effort, the comprehensive approach aims to coordinate the

53 KRASKA, James and WILSON, Brian: "The global maritime partnership and Somali piracy", *Defense & Security Analysis*, no. 3, 2009, p. 226.

54 ZARAGOZA SOTO, Sebastián: "Introducción", in *Impacto de los riesgos emergentes en la seguridad marítima*, Cuadernos de Estrategia, no. 140, IEEE, Madrid, Secretaría General Técnica del Ministerio de Defensa, 2009, p. 13.

55 FRIIS, Karsten and JARMYR, Pia (eds.): *Comprehensive approach: challenges and opportunities in complex crisis management*, Oslo, Norwegian Institute of International Affairs, 2008, p. 2.

strategies, capabilities and activities of all those involved in the resolution of the conflict. Coordination has to exist at all stages and areas of operation: from its initial conception and subsequent operations planning, to its implementation in the field and final evaluation.

If there is one area where it is necessary to take a comprehensive approach, it is in the maritime field, where situations are neither completely military nor manageable with an exclusively civilian approach. In this respect, when the Minister of Defence appeared before the Joint Commission for the European Union on 5 July 2010 to report on Spain's presidency of the Council of the European Union, she stated that it was necessary to ensure synergy between the civil and military capabilities at the disposal of the EU⁵⁶.

The promotion of civil and military synergy was one of the objectives of the Spanish presidency of the Council of the European Union in the first half of 2010. Following in the footsteps of the Swedish presidency, a major effort was made to share information and intelligence, and to develop a security policy within the EU Integrated Maritime Policy with a view to drawing up a European Maritime Security Strategy that encompasses both civil and military aspects. Spain took this comprehensive approach to addressing piracy and the threat it poses to European interests.

In the aforementioned speech by the Minister of Defence, the security of maritime areas was highlighted as a key aspect of the comprehensive approach. Previous presidencies had already laid the foundation for what was to become a common information sharing environment to keep all parties informed of what was happening at sea at all times. Information, however, is not enough, if it is not able to counteract the risks and threats. Accordingly, Spain promoted the development of a European maritime security strategy that encompasses civil and military aspects. After stating that the problem of piracy was a priority, it was stressed that a comprehensive approach to security should include the participation of non-European states (initiative 5 + 5) and, in particular, countries with which we share risks and threats⁵⁷. In his speech to the Defence Committee of the Congress of Deputies on 17 July 2012, the then Minister outlined the direction of the defence policy and stressed the need to determine the human, material, civil, military, public and private resources needed to equip our country with the capabilities required to face risks. And to achieve an adequate level of deterrent at the national level, he highlighted the Government's role in developing

56 Speech of the Minister of Defence, Carmen Chacón, to the Joint Commission for the European Union on 5 July 2010 to report on the Spanish presidency of the European Union, *Diario de Sesiones de las Cortes Generales*, año 2010, IX Legislatura, no. 133, p. 5.

57 Vid. Speech of the Minister of Defence at the Joint Commission for the European Union on 5 July 2010. pp. 5 and 6.

inter-ministerial coordination⁵⁸.

2.3. Maritime aspects of the National Security Strategy: a shared project

2.3.1. Background: the Spanish Security Strategy

The document approved by the Council of Ministers on 24 June 2011, with the title *Spanish Security Strategy: everyone's responsibility*, represented a milestone in the history of strategic thinking and planning in Spain. It went beyond the model followed thus far, where strategic reference documents were prepared by the ministers most involved in security affairs (the Ministry of Defence)⁵⁹.

The new document was based on the premise that the boundaries of external and internal security should be abolished in a new globalised world, given the increase in the international movement of people, information, goods and services; a multi-polar, complex and ever-changing world in which Spain had to be prepared to take on unforeseeable challenges in the area of security. Spanish security was underpinned by the basic comprehensive approach concept, among others. The aim was to achieve the appropriate combination of military and civil resources. Another basic concept that was considered, and which is closely linked to the previous one because of the desire for integration, was coordination. It was pointed out that cooperation and collaboration between the Public Authorities is essential if we are to get the most out of the resources available, and it also pointed to the need for cooperation between the state and the business sector, as well as collaboration with the public and social organisations⁶⁰.

References in the document to the maritime field were minimal. It portrays an environment in which risks and threats (armed conflict, terrorism, emergencies and

58 Diario de Sesiones del Congreso de los Diputados, 148, año 2012, X Legislatura, Sesión 9 (extraordinaria), held on Tuesday, 17 July 2012. Speech by the Minister of Defence (Morenés Eulate), p. 6.

59 Análisis comparativo de la Estrategia Española de Seguridad: una responsabilidad de todos, IEEE, Documento de Análisis, no. 17, 2011, p. 1, http://www.ieee.es/Galerias/fichero/docs_analisis/2011/DIE_EEA17_2011EstrategiaEspanolaSeguridad.pdf. Estrategia española de seguridad: una responsabilidad de todos, <http://www.lamoncloa.gob.es/NR/rdonlyres/9BD221CA-A32A-4773ACB7-ECD3FC6C-9B9E/o/ESTRATEGIAESPANOLADESEGURIDAD.pdf>.

60 The six basic concepts of Spanish security are set out in *Estrategia Española de Seguridad*, pp. 9 and 10.

LISTA BLANCO, Fernando: *Seguridad y enfoque integral*, Real Instituto Elcano (ARI), Madrid, no. 20, 2012, p. 5, <http://www.realinstitutoelcano.org>.

disasters like the sinking of the *Prestige*, which is expressly mentioned⁶¹) can materialise. However, because of the discontinuity of national territory and dependence on maritime traffic, protecting this area is of central importance⁶². The strong desire for integration is reflected throughout the Strategy, and can be summarised as follows: “at national and European level, maritime surveillance and security must be addressed through the efficient integration of civil and military resources”⁶³.

To overcome excessive compartmentalisation, overlapping and duplications, a new institutional structure was created, in which the Spanish Security Council is the highest political body responsible for advising the prime minister and managing crises⁶⁴.

In these types of initiatives, we see a basic shortcoming: the absence of an organ to address matters relating to maritime security in a comprehensive manner.

2.3.2. The National Security Strategy

⁶⁵The aforementioned document provides a general overview of national security, and openly promotes citizen engagement and public-private sector collaboration.

Starting with Chapter I, entitled *A comprehensive view of National Security*, where National Security⁶⁶ is described as a “public service under State policy that requires the collaboration of society as a whole”⁶⁷, the matter is addressed in a specific and satisfactory manner; Chapter 3 looks at the issue of vulnerability in the maritime area and Chapter 4 is devoted to maritime security.

The formal and material correction of the comprehensive approach to National

61 Estrategia Española de Seguridad, p. 75.

62 In the interview with Javier Solana, no. 275, *Revista Española de Defensa*, 2011, p. 14.

63 Estrategia Española de Seguridad, p. 35.

64 It should be pointed out that, pursuant to the provisions of Article 1.a of Royal Decree 436/2002, of 10 May, (BOE no. 113, 11 May), the head of the National Intelligence Centre (CNI), with the rank of Secretary of State Director of the CNI, is appointed by Royal Decree at the proposal of the Minister of Defence.

65 Available at the following website: http://www.lamoncloa.gob.es/NR/rdonlyres/oBB6tAA9-97E5-46DA-A53E-DB7F24D5887D/o/Seguridad_1406connavegacionfinalaccesiblebpdf.pdf. The National Security Strategy was approved on 30 May 2013.

66 LABORIE IGLESIAS, Mario: *La Estrategia de Seguridad Nacional (mayo 2013)*, Documento de Análisis 34/2013, IEES, http://www.ieee.es/Galerias/fichero/docs_analisis/2013/DIEEEA34-2013_EstrategiaSeguridadNacional-2013_MLI.pdf.

DEL VADO, Santiago: “Nueva estrategia de seguridad nacional”, *Revista Española de Defensa*, no. 297, pp. 6-11.

67 Vid. Estrategia Española de Seguridad, p. 5.

Security contained in the Strategy is plausible, and it is defined as “State action aimed at protecting the freedom and well-being of its citizens, ensuring the defence of Spain and its constitutional principles and values, and contributing to the fulfilment of our international commitments⁶⁸. However, we do not agree with the affirmation that national security is a “public service”, at least in the technical-legal meaning of the term, as this is based on a legitimate motive which, in our opinion, does not apply to the present time.

The authors who saw National Defence and, by extension, National Security as a public service allege that the essential function of the State, that which justifies its existence, is the provision of public services⁶⁹. The origin of this conception possibly goes back to the theory of public service developed by DUGUIT⁷⁰, among other French jurists, which was subsequently redefined as an individual service provision to citizens⁷¹. BARCELONA LLOP objects to this theory, arguing that the essential characteristics of the public service concept are not transferable to defence because defence is not articulated through techniques that characterise the public service provision, nor can it be identified materially with the activities embodied in this notion⁷². In an attempt to distinguish between the public service and what we call public functions, VILLAR PALASÍ has stated that “to start with, and on this point doctrine seems to agree, the distinction is made in the understanding that the latter somehow involve the exercise of a power that is part of a state’s sovereignty (such as the Law or national defence), while underlying the public service concept is the idea that it is a kind of business service that is not necessarily directly managed by the

68 Id. p. 7.

69 DE SOTO, Jean: *Grands services publics et entreprises nationales*, París, Montchrestien, 1971, pp. 204-218. In Spain, GARCÍA OVIEDO, Carlos y MARTÍNEZ USEROS, Enrique: *Derecho administrativo, acción administrativa especial y justicia administrativa*, Madrid: Edersa, 1968, pp. 971-974. GUAITA MARTORELL, Aurelio: “La Administración militar”, *Revista de Administración Pública*, no. 7, 1952, p. 121, states that there is nothing wrong with embracing this general opinion and defining national defence as a public service in the broadest sense of the term, as Spanish doctrine does, provided military service is made as an exception.

70 DUGUIT, León: *Les transformations du Droit public*, París, Armand Colin, 1953, pp. 33 et seq. VILLAR PALASÍ, José Luis: *La intervención administrativa en la industria*, tomo primero, Madrid, Instituto de Estudios Políticos, 1964, p. 158, explains that it was the idea of general usage that gave rise to the concept of public service by hypostatizing and extricating itself from the public domain. Before this nominalisation, public services with no public basis raised the need for express definitions.

71 COSCULLUELA MONTANER, Luis: *Manual de Derecho administrativo*, Madrid, Civitas, 1999, p. 45. PARADA VÁZQUEZ, José Ramón: *Derecho administrativo I*, parte general, Madrid, Marcial Pons, 1994, p. 434, defines a public service as the care provided by the Administration.

72 BARCELONA LLOP, Javier: “La organización militar: apuntes jurídico-constitucionales sobre una realidad estatal”, *Revista de Administración Pública*, no. 110, 1986, p. 102.

Administration”⁷³. If, as MEILÁN points out, the distinguishing feature of the public service is its configuration as a legitimate form of administrative authority or, in other words, justification of acts of government authority in general, we do not believe that this definition can be applied to services directly related to Defence and National Security, the latter being based on the ideas of sovereignty and public authority, and even more so if we consider the economic and indirect management elements of the public service, which are essential in its original configuration⁷⁴.

In general, the document recognises the significant strategic value of the marine area because of its use as a means of communication and transport, and it also mentions the recent increase in seabed exploitation. More specifically, it sets out in writing that the sea is of unique strategic value to Spain, considering that “almost ninety percent of our imports and just over sixty percent of our exports are transported by sea”⁷⁵.

Furthermore, it accurately identifies the risks and threats that are characteristic of this environment, stating that these are: piracy, trafficking by sea (drugs and illegal immigration), and believe that maritime security is a basic requirement for guaranteeing energy supplies, maintaining freedom of navigation and the continuous operation of ground infrastructure, given its direct impact on economic and energy security.

In addition, the fact that the document makes specific reference to the protection of human life at sea and safe navigation is highly appreciated, as is the reference to the protection of Spain’s maritime interests through the conservation of its underwater archaeological heritage.

In the area of maritime security, the document sets out a broad and realistic objective that encompasses everything from protection of the freedom of navigation and maritime traffic, to the protection of the environment and our underwater archaeological heritage. Recognition of the Spanish reality and the complicated maritime environment are reflected in four strategic activities, namely, the adoption of a comprehensive approach and the promotion of coordinated action and cooperation between the large number of Public Administration departments, bodies and agencies in the resolution of problems affecting maritime security, the optimisation and efficient use of the limited resources available and the fostering of cooperation with the international community

73 VILLAR PALASÍ, José Luis y VILLAR EZCURRA, José Luis: *Principios de Derecho administrativo*, tomo III, Contratación administrativa, Madrid, Sección de Publicaciones de la Facultad de Derecho de la Universidad de Madrid, 1983, p. 318.

74 MEILÁN GIL, José Luis: “El servicio público como categoría jurídica”, *Cuadernos de Derecho Público*, núm. 2, 1997, pp. 76, 84 and 85. GARRIDO FALLA, Fernando, PALOMAR OLMEDA, Alberto, y LOSADA GONZÁLEZ, Herminio: *Tratado de Derecho administrativo*, volumen I, parte general, Madrid, Tecnos, 2010, p. 148.

75 Id. p. 36.

and the private sector.

2.4. *The National Maritime Security Strategy: a broad and comprehensive view of maritime security*

Following its approval by the National Security Council, the must-anticipated National Maritime Security Strategy⁷⁶ came into force as a secondary strategy on 5 December 2013. The preamble set out a number of the elements *underpinning Spain's ambitions in the maritime field*, that is to say, fisheries; sea transportation, particularly in relation to energy supply and foreign trade, and marine biodiversity. Recognition of the difficulty of control in a huge globalised environment like that of the sea was the first step in the creation of an institutional framework that is conducive to coordination and cooperation between the different stakeholders.

The approach taken by the National Maritime Security Strategy (hereinafter, the *Strategy*) and enshrined in the declaration of principles in Chapter One, aims for the consolidation of a key aspect for maritime security, that is to say, the integration of public and private resources and capabilities, as well as those of organisations, at every level and working top-down.

Although the concept of maritime security is not univocal in doctrine⁷⁷, the Strategy – aiming, in our opinion, to overcome the sterile conceptual differences between the notions of *maritime safety* (*seguridad/sécurité*) and *maritime security* (*protección/sûreté*)⁷⁸ - embodies an inclusive definition that encompasses both the risks and threats endogenous to ships (technical and operational inspections, the regulation of maritime traffic, etc.) and the environment in which it moves, i.e., the factors affecting security in navigation and the marine environment, as well as others of exogenous origin, and derived from the deliberate commission of unlawful acts.

76 *Estrategia de Seguridad Marítima Nacional*. http://www.mpr.gob.es/NR/rdonlyres/6F45Bo28-29F6-4862-A7B7-3Bo4C2AD0247/255435/20131333_completo_05dic13_1130h.pdf.

77 Among many others, vid. ZAMORA ROSELLÓ, María Remedios: *Régimen jurídico de la seguridad marítima*, Santa Cristina (A Coruña), Netbiblo, 2009, p. 3. SOBRINO HEREDIA, José Manuel: “La protección marítima, nueva dimensión de la política marítima de la Unión Europea”, *Revista de Derecho Comunitario Europeo*, no. 277, 2007, pp. 419. DOMÍNGUEZ CABRERA, María del Pino: “Concepto e instrumentos legales de protección marítima”, *Anuario de Derecho Marítimo*, no. 28, 2011, p. 163. ODIER, Françoise: “La sécurité maritime: une notion complexe, le rôle des organisations internationales dans son élaboration”, *Annuaire du Droit de la Mer*, tome 3, 1998, pp. 235-243

78 BOISSON, Philippe: “La sûreté des navires et la prévention des actes de terrorisme dans le domaine maritime”, *Droit Maritime Français*, no. 640, 2003, p. 723.

International initiatives in relation to security at sea are set out in what is perhaps an overly general and brief way, taking the general legal framework laid down in the United Nations Convention on the Law of the Sea as the primary reference. However, the Strategy provides no insight into Spain's stance on the thorny issue of the military activity (manoeuvres and drills, hydrographic surveys, placement of devices and installations, etc.) carried out by third states in maritime areas under Spanish jurisdiction or sovereignty. It is precisely the absence in the Convention of a regulatory framework for military activities carried out by foreign warships in the aforementioned maritime zones of the riparian state that has triggered numerous conflicts, created a profound divide in doctrine, and a heterogeneity of responses in state practice, only a few of which have been resolved by the International Court of Justice and the International Tribunal of the Law of the Sea⁷⁹.

What draws our attention is that the international maritime landscape sketched in the Strategy makes no reference to other regulatory instruments of this nature, but which are indispensable in security, such as the SUA Conventions and Protocols relating to the fight against maritime terrorism to which Spain is a party⁸⁰; and current international regulations on the smuggling of migrants⁸¹, drugs and narcotics⁸² by sea.

Special importance is attached to the idea of security organisations to which Spain is a party - both global (the UN) and regional (NATO) - joining forces, without over-

79 In the International Court of Justice: Court Internationale de Justice, année 1986 (arrêt), 27 juin, Rôle général núm. 70, *Affaire des activités militaires et paramilitaires au Nicaragua et contre celui-ci (Nicaragua c. États-Unis D'Amérique)*. *The Red Crusader, Denmark v. United Kingdom*, International Law Reports, vol. 35, 1962, etc. In the International Tribunal of the Law of the Sea: *The M/V Saiga Case (no. 2)*. *Saint Vincent and The Grenadines v. Guinea*. 1999. *The M/V Saiga Case (no. 1)*. *Saint Vincent and The Grenadines v. Guinea*. 1997. *Rôle des Affaires: No. II. Affaire du «Volga» (Fédération de Russie c. Australie)*. *Demande de prompt mainlevée*. Arrêt, 23 décembre 2002. *The MOX plant case (Ireland v. United Kingdom)*. *Request for provisional measures*. Order, 3 December 2001, etc.

80 Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation (SUA) and the Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf, of 10 March 1988. Both the Convention and the Protocol of 1988 were ratified by Spain in a ratification instrument and published in BOE issue no. 99, 24 April 1992. The SUA Convention and Protocol were substantially amended in London on the 14 October 2005 and ratified by Spain in a ratification instrument dated 31 March 2008; the revised wording of the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation and the 2005 Protocol on the same subject were published in BOE issue no. 170, 14 July 2010.

81 Such as the *Protocol against the Smuggling of Migrants by Land, Sea and Air*, which sets out specific measures against the smuggling of migrants by sea (Article 8), and which was ratified by Spain in a ratification instrument dated 21 February 2002 (BOE issue no. 295, 10 December 2003).

82 Such as the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, Article 17 of which is devoted to trafficking by sea, done at Vienna on 20 December 1988 and ratified by Spain in a ratification instrument dated 30 July 1990 (BOE issue no. 270, 10 November).

looking the commitments Spain has undertaken by virtue of its membership of the European Union.

In our opinion, the risks and threats posed by the sea have been adequately identified in Chapter Two of the Strategy and, more importantly, as mentioned previously, a broad view of these risks and threats has been taken (illegal trafficking, piracy, terrorism, protection of the marine environment and the underwater cultural heritage, maritime accidents, etc.); furthermore, the ten national interests from the perspective of maritime security⁸³ have been analysed and a number of courses of action that appropriately involve all the resources of the state and private sector proposed. Nevertheless, it is surprising that, while the Strategy recognises that Spain is a major player in world container traffic, a fact that should heighten the need for a thorough analysis of the phenomenon of illegal trafficking⁸⁴, no reference has been made to stepping up US-led initiatives that have been in operation in our country for several years, such as the Container Security Initiative (CSI)⁸⁵, targeted at increasing security for container cargo shipments and the Proliferation Security Initiative (PSI)⁸⁶ aimed at countering illegal trafficking in weapons of mass destruction.

A certain dose of arbitrariness is evident throughout Chapter Three of the Strategy; specifically in relation to the more theoretical than realistic objective of achieving coordinated and cooperative action between the different Public Administrations through the signing of inter-departmental agreements and the inter-operability of the different communications systems (action lines 1 and 2).

In our opinion, at least in crises affecting maritime security, the current ineffective situation based on the signing of partnership agreements (between the different territorial-based administrations in Spain) and inter-organ agreements (between different departments under the same administration) has to be overcome, and a system similar, for instance, to that of France, created which is based on a single commander (Maritime Prefect)⁸⁷ who is responsible for all available civil and military

83 Estrategia de Seguridad Marítima Nacional (Fig. 1), p. 15.

84 Id. p. 22.

85 *Container security initiative: in summary* [online], May 2011, U.S. Customs and Border Protection, available at http://www.cbp.gov/linkhandler/cgov/trade/cargo_security/csi/csi_brochure_2011.ctt/csi_brochure_2011.pdf.

86 WINNER, Andrew C.: "The proliferation security initiative: the new face of interdiction", *The Washington Quarterly*, volume 28, Issue 2, 2005, p. 131. GUILFOYLE, Douglas: "The Proliferation Security Initiative: interdicting vessel in International waters to prevent the spread of weapons of mass destruction", *Melbourne University Law Review*, volume 29, 2005, p. 733.

87 Défense et Sécurité nationale: Le Livre Blanc [online] (2008), O. Jacob (ed.), tome 1, 2^e partie, La documentation française, juin 2008, Paris, p. 177, under the title La sauvegarde maritime, menciona como misiones relativas à l'accion de l'État en mer: protection des interêts nationaux, sauvegarde

resources and their operative management, or the British and Australian models where there is one expert commander, exempt from liability, to manage crises affecting the marine environment - the Secretary of State Representative for Maritime Salvage and Intervention (SOSREP)⁸⁸ and the Maritime Emergency Response Commander (MERCOCOM)⁸⁹ respectively.

Recognition of the importance of promoting collaboration with the private sector (action line 4) with a view to exploiting synergies and enhancing security at sea is of special interest, and although it is not mentioned in the Strategy, the Naval Cooperation and Guidance for Shipping (NCAGS)⁹⁰, a military organisation where civil membership is voluntary, is a tool that should be promoted in order to achieve the highest possible level of security.

Within the National Security System, the maritime security architecture described in the Strategy is based on two dedicated bodies that are to be set up in the future, namely, the Specialised Maritime Security Committee and the Specialised Situation Committee, whose respective functions are to advise the National Security Council and the Prime Minister in the management and coordination of National Security Policy in this area, and strategic/political management of maritime security crises. Consistent with the comprehensive approach underlying the whole Strategy, the aim of the aforementioned bodies is to strengthen relations between the different Administrations, and between the public and private sectors.

According to our line of argument, if we are to achieve greater efficacy and efficiency in actions relating to maritime security, particularly in critical situations, it will be necessary to introduce, on the one hand, a *National Crisis Management System for Maritime Security*, where the broad and inclusive concept of maritime security is taken as a reference for setting out specific actions at the different stages of crisis management: planning, intervention and recovery and, on the other hand, delegate decision-making to a single body, comprised of one or more persons, but which is necessarily of a technical not political nature.

des personnes et des biens, lutte contre les activités illicites, protection de l'environnement et des ressources naturelles. (<http://lesrapports.ladocumentationfrancaise.fr/BRP/084000341/0000.pdf>). In France, the organisation of state action at sea is regulated by Decree no. 2004-112, of 6 February.

88 STONE, Toby: "The experience of the United Kingdom", in *Places of refuge for ships: emerging environmental concerns of a maritime custom*, Leiden (The Netherlands), Martinus Nijhoff, 2006, p. 439.

89 DAVIDSON, Clive: *Australia's approach to emergency response and towage* [online], 9th Asia Pacific Heads of Maritime Safety Authorities Forum, held in Viña del Mar (Chile) from 18 to 21 April 2006, pp. 3-11 (<http://web.directemar.cl/apec/papers/australia/ETVs.pdf>).

90 BERGOÑOS GONZÁLEZ, Antonio y UGARTE ROMERO, Mariano: "El sistema naval de cooperación al tráfico marítimo", *Revista Prácticos de Puerto*, año XIII, no. 57, 2009, p. 16.

Despite our criticism of the Strategy expressed in this section, our rating of the Maritime Security Strategy is very positive⁹¹, particularly because it marks a starting point in the national strategic landscape, specifically addresses matters relating to the maritime environment and takes a broad and comprehensive approach.

3. FINAL COMMENT

It seems paradoxical that in Spain, an imminently maritime nation because of its geographical situation and longstanding policy of opening up to the sea, no or minimal references have been made to the strategic importance of the maritime area to National Defence. This absence of references is evident in the documents drawn up in the area of Defence Policy, and particularly in the first National Defence Directives.

The shortfall in addressing the defence and security problems posed by or in relation to the sea may be due to the same shortfall experienced when it came to defining the National Defence at sea concept.

There has been a gradual shift from an approach strictly linked to achieving naval dominance as a means of increasing state power in the maritime spaces of sovereignty and jurisdiction, in which defence was given priority in the event of a hypothetical aggression from outside, to the forging of collaborative relations with the many national and international stakeholders in the maritime field.

In general, this shift in approach was prompted by two important factors, among others: firstly, clarification of the role that the Armed Forces were to play in the system designed by the Constitution, which were subsequently assigned by law other duties that are beyond the traditional scope of defending state territory and, secondly, the phenomenon of globalisation, which is particularly evident at sea, given that it cannot be controlled by just one state body, and the inexistence of physical borders, which has meant that the risks and threats that once affected just one state have now taken on a transnational dimension.

The interest in maritime affairs has developed gradually, going from being almost unnoticed to becoming the turning point marked by the National Security Strategy; the latter takes a comprehensive approach to addressing the issues that have arisen in

91 GARCÍA SÁNCHEZ, José Ignacio: *Análisis de la Estrategia de Seguridad Marítima Nacional 2013: La prosperidad y el bienestar más allá de la línea de costa*. Documento de Análisis 66/2013, IEES, http://www.ieee.es/Galerias/fichero/docs_analisis/2013/DIEEEA66-2013_EstrategiaSeguridadMaritimaNacional_IJGS.pdf.

the area of Defence and Security, timidly pointing to the importance of harnessing civil and military synergy in order to achieve the long awaited, much called for, but often elusive efficiency of Public Administration action in a field like the marine environment which is so badly in need of integration and consistency.

Continuing the line taken in the aforementioned Strategy, the current National Security Strategy fully and realistically stresses the need for a comprehensive approach to resolving the issues raised and for defining the specific risks and threats at sea. Furthermore, with a breadth of vision that is commendable, it embraces the broad concept of maritime security by including it among the goals to be achieved in this field - minimisation of the risks and threats posed by unlawful trafficking and navigation and protection of the marine environment.

The trail blazed by the National Security Strategy has given rise to the publication of a National Maritime Security Strategy for the first time in Spain.

While this document fails to address all relevant aspects and its *maritime* character is somewhat diluted by the fact that it is an offshoot of the National Security Strategy, it does take a sound comprehensive approach and a broad view of maritime security when describing Spain's maritime interests, goals and the lines of action designed to achieve these.

It also lays the foundation for Spain's fledgling maritime security system and announces the creation of political bodies with coordination, advisory and management functions. However, given the shortcomings of the aforementioned bodies in the area of technical strength, they are unlikely to achieve the desired goals of efficiency and efficacy in the resolution of crises.

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