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Constitutional Control of Foreign Affairs and Strategic Risk: Morocco and Germany in Comparative Perspective

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ABSTRACT

This article examines how constitutional law structures foreign-affairs decision-making under conditions of strategic risk through a comparative analysis of Morocco and Germany. It argues that foreign affairs should not be conceived as a sphere lying beyond law merely because they are shaped by urgency, uncertainty, and geopolitical pressure. On the contrary, they constitute a particularly revealing site of constitutional ordering, since they expose how legal systems organize the exercise of external power when the need for effective action is at its highest. Adopting a doctrinal and comparative public-law approach, the article analyses the allocation of foreign-affairs powers, the legal filters governing executive action, and the forms of parliamentary participation and judicial review that frame accountability in each system, with particular attention to military deployments, sanctions and embargoes, energy-security arrangements, and migration instruments. The article shows that the central divergence between Morocco and Germany lies not in the existence of legal constraint, but in its structure, timing, and institutional location. Germany reflects a model of dense ex ante legality, characterized by prior authorization, procedural discipline, review mechanisms, and, where relevant, the normative force of European Union law. Morocco operates within a more centralized constitutional architecture in which executive predominance is combined with treaty-based controls, constitutionally defined forms of parliamentary assent, and the possibility of prior constitutional review. The article ultimately proposes a comparative framework for assessing legality in foreign affairs under strategic pressure.

Dış İlişkilerin Anayasal Denetimi ve Stratejik Risk: Fas ile Almanya'nın Karşılaştırmalı İncelemesi

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ÖZET

Bu makale, Fas ve Almanya'nın karşılaştırmalı analizi üzerinden, anayasal hukukun stratejik risk koşulları altında dış ilişkilere ilişkin karar alma süreçlerini nasıl yapılandırdığını incelemektedir. Çalışma, dış ilişkilerin yalnızca aciliyet, belirsizlik ve jeopolitik baskı altında şekillenmesi nedeniyle hukukun dışında kalan bir alan olarak değerlendirilemeyeceğini ileri sürmektedir. Aksine, dış ilişkiler, etkili hareket etme ihtiyacının en yoğun olduğu anda hukuk düzenlerinin dış yetkinin kullanımını nasıl örgütlediğini ortaya koyduğu için, anayasal düzenin özellikle açıklayıcı bir görünüm alanını oluşturmaktadır. Doktrinel ve karşılaştırmalı kamu hukuku yaklaşımını benimseyen makale, dış ilişkiler alanındaki yetki dağılımını, yürütme işlemlerini yöneten hukukilik filtrelerini ve

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Yönetişimi, Fas, Almanya.

her iki sistemde hesap verebilirliği çerçeveleyen parlamenter katılım ile yargısal denetim biçimlerini, özellikle askerî konuşlandırmalar, yaptırımlar ve ambargolar, enerji güvenliği düzenlemeleri ve göç araçları bakımından incelemektedir. Makale, Fas ile Almanya arasındaki temel farkın hukuki sınırlamanın varlığında değil; onun yapısında, devreye giriş anında ve kurumsal konumunda bulunduğunu göstermektedir. Almanya, önceden yetkilendirme, usul disiplini, denetim mekanizmaları ve gerektiğinde Avrupa Birliği hukukunun normatif etkisiyle belirginleşen yoğun bir ex ante hukukilik modelini yansıtmaktadır. Fas ise yürütmenin baskın konumunu antlaşma temelli denetimler, anayasal olarak tanımlanmış parlamento onayı biçimleri ve önleyici anayasal denetim imkânı ile birleştiren daha merkezi bir anayasal yapı içinde hareket etmektedir. Sonuç olarak makale, stratejik baskı altında dış ilişkilerde hukukiliğin değerlendirilmesine yönelik karşılaştırmalı bir çerçeve önermektedir.

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INTRODUCTION

The contemporary international environment is marked by instability, strategic rivalry, and the multiplication of transnational threats capable of reshaping the external conduct of States. Armed conflict, terrorism, irregular migration, sanctions regimes, economic coercion, energy dependency, and environmental disruption no longer operate as isolated phenomena. They interact, overlap, and generate cumulative vulnerabilities for public authorities. In such a context, foreign affairs cannot be understood solely as a sphere of political discretion, diplomatic symbolism, or geopolitical adaptation. They must also be examined as a legally structured domain of public authority, in which decisions are framed by constitutional allocations of competence, procedural constraints, parliamentary participation, and judicial review[1]. In that sense, external action is not merely a projection of state interest abroad; it is also a constitutional exercise of public power. The legal architecture of foreign affairs therefore becomes especially visible when the State is required to react rapidly to external threats while remaining bound by norms of competence, procedure, and review[2].

This legal perspective is essential. In constitutional systems governed by the rule of law, foreign affairs do not evolve outside legality. They are mediated by norms that distribute powers, authorize commitments, constrain executive discretion, and organize responsibility. The central question is therefore not merely what States seek to achieve externally, but who may lawfully decide, under which constitutional conditions, through which procedures, and subject to what forms of accountability. Moments of strategic pressure are particularly revealing in this respect. Far from

[1] Bradley, Curtis A. "What is Foreign Relations Law?" *The Oxford Handbook of Comparative Foreign Relations Law*, edited by Curtis A. Bradley, OUP, New York, 2019, pp. 3–4.
[2] McLachlan, Campbell. *Foreign Relations Law*. CUP, Cambridge, 2014, p. xxi; Ginsburg, Tom. "Constitutions and Foreign Relations Law: The Dynamics of Substitutes and Complements." *AJIL Unbound*, Vol. 111, 2017, pp. 326–330.

suspending legality, strategic risk tests the solidity of legal frameworks and exposes the way in which constitutional systems seek to reconcile responsiveness with institutional discipline.

Foreign policy has traditionally been regarded as one of the principal instruments through which States establish, conduct, and adjust their relations with the outside world[3]. It is commonly associated with the pursuit of influence, security, stability, and national interest through diplomacy, treaties, cooperation, and, where necessary, coercive instruments. Yet, for legal scholarship, such a definition remains incomplete if detached from the normative structures that make external action valid, reviewable, and accountable. For the purposes of this article, foreign affairs are therefore approached not as a general field of State strategy in the abstract, but as a legal process through which public authority is exercised beyond the national sphere. Strategic risk is treated here not merely as a policy or managerial category, but as a legally relevant condition of decision-making, one that tests the resilience of constitutional procedures under pressure.

This issue is especially significant in comparative public law. Constitutional systems may pursue similar external objectives while organizing legal responsibility in very different ways. Some constitutionalize foreign affairs primarily through ex ante legality, that is, through prior authorization, parliamentary consent, information duties, and judicially enforceable limits. Others rely more heavily on executive centralization, treaty-making procedures, and forms of a priori or subsequent review[4]. The central comparative problem is thus not whether foreign affairs are legal or political, but how law and politics are institutionally articulated when the State acts under conditions of strategic risk.

It is within this analytical framework that the comparison between Morocco and Germany becomes especially fruitful. At first sight, the two States differ profoundly in constitutional form, regional environment, institutional structure, and legal embeddedness. Germany is a federal parliamentary democracy deeply integrated into the legal order of the European Union[5]. Morocco is a constitutional monarchy whose external action is shaped by the central constitutional role of the King, the treaty provisions of the 2011 Constitution, and a distinct articulation between executive initiative, parliamentary participation, and constitutional review. These differences do not weaken the comparison; on the contrary, they illuminate two coherent yet distinct models of constitutional control over foreign affairs.

The legal relevance of the Moroccan–German comparison is reinforced by the fact that the bilateral relationship between the two countries is neither incidental nor recent. Relations between Morocco and Germany are historically rooted and extend back to the early modern period. Merchant networks associated with the Fugger family were active in the Atlantic port of Safi as early as the sixteenth century. Under Sultan Moulay Sulayman, a commercial agreement was concluded in 1802 with the Hanseatic city of Hamburg in order to regulate navigation off the Moroccan coasts, and

[3] Mballa, Charlie / Michaud, Nelson. *La politique étrangère contemporaine en bons termes : Guide lexical*. Presses de l'Université du Québec, Québec, 2016, p. 76.
[4] Mendez, Mario. "Constitutional Review of Treaties: Lessons for Comparative Constitutional Design and Practice." *International Journal of Constitutional Law*, Vol. 15, No. 1, 2017, pp. 84–90.
[5] *Basic Law for the Federal Republic of Germany*, arts. 23, 24, 59(2); European e-Justice Portal. *National legislation – Germany*.

Lübeck concluded a similar arrangement thereafter[6].

The nineteenth century further consolidated this relationship. In 1872, Bismarck decided to open a German legation in Tangier, marking a more formal diplomatic presence. On 31 March 1905, Emperor Wilhelm II visited Tangier in order to underscore Germany's economic interests in Morocco and to proclaim support for Moroccan sovereignty and independence. These episodes matter not merely as historical detail, but because they show that the Moroccan–German relationship has long been connected to questions of sovereignty, commerce, strategic positioning, and external recognition[7].

This historical continuity gives the Moroccan–German comparison a significance that goes beyond abstract comparativism. The relationship between the two countries has repeatedly unfolded through legally sensitive fields—commerce, diplomacy, sovereignty, migration, security, and strategic cooperation—in which external commitments are not only politically negotiated but also constitutionally framed, implemented, and, where necessary, reviewed. It is precisely this intersection between long-term bilateral engagement and normatively dense external action that makes the comparison particularly valuable for external-relations law.

In the contemporary period, Moroccan–German relations have experienced both cooperation and tension[8]. Economic exchanges are substantial; Germany views Morocco as a strategic partner, particularly in environmental matters and the energy transition, while Morocco benefits from German know-how transfer in industrial and electrical sectors, in addition to security cooperation, notably in counter-terrorism and anti-money-laundering[9]. At the same time, the bilateral relationship has also been affected by disagreement, especially in connection with the Sahara issue. In March 2021, Moroccan diplomacy decided to freeze relations with Berlin on the ground that Germany had adopted a position perceived as hostile to a core national cause[10]. Relations were later restored[11]. This fluctuation is not a merely political detail. It shows that the Moroccan–German relationship is legally relevant precisely because it traverses areas in which constitutional authority, international commitments, executive discretion, and institutional accountability intersect in concrete ways.

Beyond the bilateral dimension, each of the two States faces strategic risks that render the legal organization of foreign affairs particularly significant. Morocco's external policy is shaped by issues relating to territorial integrity, migration, regional instability, and security. Germany's foreign affairs are deeply influenced by the resilience of the European Union, collective security concerns,

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[6] Taghzouti, Youssef. *Die Auswärtige Kulturpolitik der Bundesrepublik Deutschland in Marokko*. GRIN, 2009/2011 preview, cited excerpt.

[7] Fabre, R. "La campagne de Jaurès sur le Maroc. Entre pacifisme et colonialisme." *Cahiers de la Méditerranée*, No. 91, 2015, p. 101.

[8] Ouazzani Chahdi, Hassan. *Le Maroc et les traités internationaux : Tradition et modernité*. L'Harmattan, Paris, 2018, p. 48.

[9] Europol. *International drug trafficking and money laundering network dismantled*. 17 November 2017.

[10] El Barakah, Tarik. "Morocco freezes ties with German Embassy amid Sahara tension." *Associated Press*, 2 March 2021, https://apnews.com/article/donald-trump-africa-morocco-western-sahara-europe-ab791f5580cee896b16b5f6068f3512e.

[11] Reuters. "Morocco sees return to normal diplomatic ties with Germany." *Reuters*, 22 December 2021; Federal Foreign Office. *German-Moroccan joint declaration*. 25 August 2022, https://www.reuters.com/article/markets/commodities/morocco-sees-return-to-normal-diplomatic-ties-with-germany-idUSL8N2T745B/.

sanctions regimes, energy dependencies, and the legal consequences of supranational integration. Yet these divergences do not exclude convergence. Environmental cooperation, migration governance, counter-terrorism, anti-money-laundering efforts, and energy transition policies have brought both countries into sustained and normatively dense interaction. In all these fields, the decisive legal question is not only what the two States seek to accomplish, but how their external commitments are constitutionally authorized, implemented, and reviewed.

The relevance of this inquiry is further reinforced by the fact that strategic risk increasingly places constitutional systems under pressure to reconcile speed with legality. Whether the issue concerns troop deployment, sanctions compliance, energy resilience, or migration governance, the same underlying legal problem reappears: how can the State act effectively in the international sphere without weakening the constitutional safeguards that legitimize such action? The answer depends not only on substantive policy choices, but on the institutional design through which external authority is exercised and controlled.

This article therefore asks how Moroccan and German law organize the constitutional control of foreign affairs under conditions of strategic risk, and how each system allocates legal responsibility between executive action, parliamentary participation, and judicial review. From this overarching problem statement, three subsidiary questions follow: how are foreign-affairs powers constitutionally allocated in Morocco and Germany? Which legality filters govern external action in situations of strategic risk? What forms of parliamentary participation and judicial review structure accountability in each system? These questions shift the inquiry away from general diplomatic description and toward a legal comparison of competence, procedure, authorization, and control.

Positioned within comparative public law and external-relations law, this article treats foreign affairs not merely as a matter of policy choice, but as a legally structured decision process. Its academic contribution lies in showing how constitutional and, where relevant, supranational norms operate as legality filters that pre-authorize, channel, constrain, or review risk-driven external action under uncertainty. By moving beyond description and assessing legal accountability across concrete areas of external action, the article seeks to clarify the analytical value of the comparison, the institutional differences it reveals, and the rule-of-law trade-offs it brings into view.

For the purposes of this article, “legality filters” are understood as the legal thresholds through which foreign-affairs action must pass before it can be treated as constitutionally valid, institutionally accountable, and normatively reviewable. The expression does not refer to a merely political form of restraint, nor to a general preference for prudence in foreign policy. It designates the juridical points at which strategic discretion is translated into legal questions of competence, authorization, procedure, justification, information, assent, and review. A legality filter may therefore derive from constitutional text, ordinary legislation, constitutional adjudication, treaty law, or, in the German case, the normative force of European Union law. Its function is to prevent strategic risk from being treated as a reason for legal suspension. Instead, risk becomes the very condition under which the legal order tests the distribution of authority, the timing of institutional intervention, and the availability of accountability mechanisms.

This concept also has a comparative function. Morocco and Germany cannot be compared on

the assumption that their constitutional institutions are structurally equivalent. They are not. The comparison becomes meaningful only if it focuses on functional legal thresholds rather than identical institutional forms. In Germany, legality filters tend to appear through prior parliamentary authorization, procedural specification, judicially shaped limits, and supranational legal constraint. In Morocco, they are more closely linked to treaty-making procedures, constitutionally defined categories of parliamentary approval, royal prerogatives, and the possibility of prior constitutional review. The concept therefore makes it possible to compare not the same organs performing the same tasks, but different constitutional arrangements responding to the same rule-of-law problem: how external power remains legally framed when the executive is required to act under urgency, uncertainty, or geopolitical pressure[12].

Methodologically, the article adopts a doctrinal–comparative public-law approach. It reconstructs the allocation of external powers and accountability mechanisms in Germany and Morocco as matters of positive law, then examines how these legal frameworks operate across overseas military deployments, sanctions implementation, energy-security agreements, and migration instruments. "Strategic risk" is used here in an operational legal sense. It refers not simply to political uncertainty, but to legally cognizable exposures that affect the State's capacity to act while remaining compliant with constitutional and international obligations. The comparison controls for structural differences, notably Germany's supranational legal embeddedness within the European Union and Morocco's treaty- and statute-based constitutional constraints, while focusing on shared rule-of-law indicators: who may decide, under which procedures, with what information duties, and subject to what form of review.

The article advances the following claim: when legality filters are positioned ex ante—through authorization, information duties, and review—strategic risk becomes constitutionalized and executive discretion narrows in proportion to expected exposure; when legality is concentrated at the treaty-making stage, constitutional control depends more heavily on parliamentary assent in defined cases, a priori review, transparency obligations, and subsequent forms of accountability. The purpose is not to rank one system normatively above the other in the abstract, but to show that each constitutional order resolves the tension between effectiveness and legality through a specific institutional architecture.

To answer this question, the article first examines the constitutional allocation of foreign-affairs powers in Germany and Morocco. It then compares the legality mechanisms through which each system governs external action under strategic risk, with particular attention to parliamentary authorization, judicial review, and accountability structures. Through this two-step analysis, the article argues that the study of foreign affairs becomes most revealing when approached not merely through diplomacy or strategy, but through the constitutional grammar of external action.

12 For broader discussions of legality, institutional restraint, and emergency or crisis governance, see David Dyzenhaus, The Constitution of Law: Legality in a Time of Emergency (Cambridge: Cambridge University Press, 2006); John Ferejohn and Pasquale Pasquino, "The Law of the Exception: A Typology of Emergency Powers," International Journal of Constitutional Law 2, no. 2 (2004): 210–239.

I. CONSTITUTIONAL ALLOCATION OF FOREIGN-AFFAIRS POWERS IN MOROCCO AND GERMANY

The Federal Republic of Germany is a federal State (and a member of the EU) organized as a parliamentary democracy. The Basic Law provides that all public authority emanates from the people[13]. The people delegate this authority to the parliaments (the Bundestag and the parliaments of the Länder) for the duration of a legislative term. Public authority is distributed among the legislative, executive, and judicial branches. The legislative power comprises the parliaments (federal and Länder), and the executive power comprises the governments. The judiciary plays a central role, as the judges of the courts of the Länder and of the federal courts are independent and decide solely on the basis of the law. Germany's highest court is the Federal Constitutional Court, which ensures respect for the Basic Law.

In Germany, the Federal President occupies the first position in the order of precedence, followed by the President of the Bundestag. The Federal Chancellor holds the broadest powers within the political system and sets the general guidelines of policy. The President of the Federal Constitutional Court, the highest court, is likewise among the State's highest representatives.

By contrast, Morocco is a constitutional, democratic, parliamentary, and social monarchy. The Kingdom's constitutional regime is founded on the separation, balance, and cooperation of powers, as well as on participatory and citizen democracy, and on the principles of good governance and the correlation between responsibility and accountability[14].

The King is the guarantor of the country's independence and of the territorial integrity of the Kingdom within its authentic borders. He appoints the Head of Government from the party that placed first in elections to the House of Representatives, as well as the ministers upon the proposal of the Head of Government. He presides over the Council of Ministers, composed of the Head of Government and the ministers. He may dismiss ministers on his own initiative or on the proposal of the Head of Government. He may dissolve both chambers of Parliament or either one of them.

The political and administrative organization of Morocco and Germany is not the same: the former is a unitary State with a constitutional monarchy, while the latter is a federal State with a parliamentary democracy. Nonetheless, the philosophical and doctrinal similarities between the two are numerous. Both are countries anchored in the history of civilizations that champion democracy, the separation of powers, and respect for fundamental rights and freedoms as guiding principles that orient public action.

Our study focuses on the foreign policy of both countries and on the decision-making process.

A. Decision-Making Organs of German Foreign Policy: Constitutional Allocation of External Powers and Risk Governance

Under the Basic Law, Article 59(2) GG[15] conditions the internal validity of certain treaties on

[13] *Grundgesetz für die Bundesrepublik Deutschland* [Basic Law], art. 20.
[14] *Constitution of the Kingdom of Morocco* 2011, art. 1, *Bulletin Officiel*, No. 5964 bis, 30 July 2011.
[15] *Grundgesetz für die Bundesrepublik Deutschland* [Basic Law], art. 59(2).

parliamentary consent, and Article 87a GG[16] frames the deployment of the Bundeswehr. Following the Federal Constitutional Court's Out-of-Area jurisprudence[17], the Parliamentary Participation Act (2005)[18] requires prior Bundestag approval for deployments abroad and imposes information duties. Together, the Basic Law, the Participation Act, and the Court's case law create a predictable legal envelope for risk-laden external action.

Defining "Armed Deployment." The 1994 Out-of-Area line constitutionalized a consent rule for any "armed deployment" of the Bundeswehr abroad. The standard is functional rather than formal: it turns on the mission's foreseeable exposure to the use of force, rules of engagement, and the risk that soldiers may become parties to hostilities. Labels (training, technical assistance, surveillance) do not control; what matters is the real-world configuration of risks and the legal consequences that follow from them. Evacuation or rescue operations can exceptionally proceed on compressed timelines, yet they remain tethered to immediate notification and subsequent parliamentary ratification. This reading turns the ex-ante gate into a risk-management device: it forces the executive to specify the legal basis, aims, intensity, and duration before deployment, enabling targeted conditions, sunset clauses, or outright denial by the Bundestag where proportionality or necessity are not demonstrated.

The Court subsequently tightened the information-and-consent logic. In its **AWACS/Turkey** decision (7 May 2008), it held that stationing German soldiers on NATO AWACS aircraft to monitor Turkish airspace was an "armed deployment" that required Bundestag approval. The judgment clarifies that the government cannot re-characterize deployments as mere technical assistance to avoid parliamentary control and delineates the contours of de minimis exceptions under the 2005 Act[19].

ParlBG Mechanics (consent, information, urgency). Codification in 2005 translated the Court's baseline into operable levers[20]. Government motions must specify the legal basis, objectives, geographical scope, expected intensity, personnel ceilings, time limits, and material costs; significant changes to these parameters trigger renewed approval. Information duties are continuous (prior to, during, and after a deployment), with periodic reporting and ad hoc briefings for material developments. Time-critical situations allow immediate action under narrowly construed urgency tracks, but notification to the Bundestag is immediate and ex post ratification is required. The Act also recognizes narrow cases in which prior parliamentary consent is dispensable because the objective risk of entanglement in hostilities is negligible or because the operation falls within a simplified statutory track; yet such exceptions are read restrictively in light of the statute and the Court's case law[21]. In practice, the architecture does not paralyze decision-making; it channels it,

[16] *Grundgesetz für die Bundesrepublik Deutschland* [Basic Law], art. 87a.
[17] Bundesverfassungsgericht [BVerfG] [Federal Constitutional Court]. *Out-of-Area*, Judgment of 12 July 1994, 90 *BVerfGE* 286.
[18] *Parlamentsbeteiligungsgesetz* [Act on Parliamentary Participation], 18 March 2005, BGBl I 775.
[19] Bundesverfassungsgericht [BVerfG] [Federal Constitutional Court]. *AWACS/Turkey*, Judgment of 7 May 2008, 2 BvE 1/03.
[20] Federal Constitutional Court. Judgment of 12 July 1994, 2 BvE 3/92, 90 *BVerfGE* 286; *Parlamentsbeteiligungsgesetz*, 18 March 2005, BGBl I 775.
[21] *Parlamentsbeteiligungsgesetz*, §§ 2(2), 4(1)–(3); Federal Constitutional Court. Judgment of 7 May 2008, 2 BvE 1/03, 121 *BVerfGE* 135; Federal Constitutional Court. Judgment of 23 September 2015, 2 BvE 6/11, 140 *BVerfGE* 160.

converting strategic uncertainty into auditable legality[22].

Several actors participate in Germany's strategic decision-making vis-à-vis the external sphere. We begin with the most important, the Federal Cabinet. Formed in 1949 with the establishment of the Federal Republic of Germany (West Germany), it later became the executive organ for the entire country after reunification. It is a collegial constitutional body that brings together the Federal Chancellor (*Bundeskanzler*) and the federal ministers (*Bundesminister*)[23].

The Minister of Defense—who exercises command authority in peacetime—has traditionally been among the powerful actors in external relations. The minister is responsible for military policy which, owing to the multinational interdependence between armed forces and the armaments sector, as well as the Bundeswehr's participation in international peace missions, contributes substantially to Germany's image on the world political stage. The Federal Ministry for Economic Cooperation and Development (BMZ), and the Ministries of Finance and of Economic Affairs, are likewise deeply involved in foreign policy. Moreover, practically all ministries conduct their own specialized external policies, since, given Germany's integration into the EU and into some 200 other international organizations and treaty-based regimes, no policy area can dispense with intensive international cooperative relations.

The *Ressortprinzip*, set out in Article 65 of the Basic Law, grants specialized ministers' wide autonomy in the exercise of their responsibilities. In foreign policy, however, such independence often generates coordination difficulties. For example, the Foreign Minister may make commitments without consulting the defense minister, or a member of the government may criticize another country, thereby creating diplomatic tensions that the Foreign Office must then seek to defuse. In addition to the Federal Chancellery and the collegial cabinet, Germany now has a National Security Council at Cabinet level, chaired by the Federal Chancellor, which is intended to coordinate cross-cutting security matters across internal, external, economic, and digital security policy.

Among other federal-level organs, Parliament holds important powers in the field of foreign policy[24]. The German Bundestag and its members may address any issue of foreign policy. The principal fora in this respect are, beyond the plenary sitting, the committees on foreign affairs and on defense prescribed by the Basic Law (Art. 45a), as well as the Committee on European Union Affairs (Art. 45). Pursuant to Article 59(2) of the Basic Law, all international treaties concluded by the Federation must be approved by the Bundestag in the form of a statute (ratification). The Bundestag possesses a particular right of participation with regard to the deployment of German soldiers on military missions.

These participatory rights essentially consist in approving or rejecting proposals submitted by the Federal Government. Thus, a treaty negotiated by the Federal Government cannot be amended by Parliament, but may only be accepted or rejected in its entirety. The same applies to the deployment

[22] Peters, Anne. "Between Military Deployment and Democracy: Use of Force under the German Constitution." *Journal on the Use of Force and International Law*, Vol. 5, No. 2, 2018, p. 246.
[23] *Basic Law for the Federal Republic of Germany*, arts. 62, 65; Federal Government. *Federal Cabinet*.
[24] *Basic Law for the Federal Republic of Germany*, art. 43; German Bundestag. *The Bundestag's role in the foreign, development, and defence policies of Germany*. WD 2 - 3000 - 006/26, 26 February 2026, p. 4.

of armed forces: the Bundestag also cannot directly influence the form of the proposal[25]. Nevertheless, the parliamentary debate preceding the Bundestag's decisions not only guarantees great transparency and publicity for the deployment procedure; it also signals at an early stage to the Federal Government the missions for which parliamentary resistance may be expected—thereby affording the Bundestag an indirect possibility to shape the content of the mandate[26].

In a certain sense, the Bundestag exercises a form of autonomous foreign policy, although this is not fully consonant with the criteria of effectiveness under international law. Members play an active role by participating in the parliamentary assemblies of international organizations, by engaging with foreign political leaders, and by debating current issues—thus helping forge a nuanced image of Germany internationally. The Bundestag can also invite dignitaries to address the plenary and, importantly, mark its independence through its own public positions[27].

Other actors may be added to the list of (indirect) participants: the Federal Constitutional Court, as well as interest groups, civil society, and the media. The Federal Constitutional Court in Karlsruhe is not formally envisaged as an actor in foreign-policy decision-making. Nonetheless, foreign and security policy questions have been, and continue to be, submitted to the highest German court for final legal clarification, in the course of which it proceeds to define and allocate competences among the actors concerned[28].

As to other actors, the complexity of the Federal Republic's foreign-policy profile comprises, beyond the formal attribution of competences to State institutions, a dense network of informal and non-State actors, structures, and avenues of influence. As a *"trading State,"*[29] Germany depends in an existential manner on sound and stable economic relations with as many States as possible. Business associations such as the Association of German Chambers of Commerce and Industry (DIHK) and the Federation of German Industries (BDI), as well as groups representing all major German industrial sectors, therefore endeavor in various ways to ensure that politico-diplomatic relations between Germany and its partners are likewise fruitful for economic cooperation. External economic policy must constantly seek a balance between pragmatic approaches aimed at safeguarding and increasing Germany's prosperity and the political and ethical standards it sets for itself—for example in the field of the arms trade.

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[25] *Parlamentsbeteiligungsgesetz*, § 3(3); Federal Constitutional Court. Judgment of 23 September 2015, 2 BvE 6/11, 140 *BVerfGE* 160.

[26] Staun, Jørgen. "The Slow Path Towards 'Normality': German Strategic Culture and the Holocaust." *Scandinavian Journal of Military Studies*, Vol. 3, No. 1, 2020, p. 84.

[27] For example, during the 2018 debates on arms exports to Saudi Arabia following the murder of Jamal Khashoggi, the Bundestag invited human rights experts and civil society representatives to speak publicly about the risks associated with this policy. This stance, which challenged the government's arms-export strategy, triggered a pronounced conflict between Parliament and the executive, with parliamentary critics denouncing an inconsistency with Germany's international commitments. See von Call, Jara Amira / Maulny, Jean-Pierre. *Le débat en Allemagne sur les exportations d'armement*. Institut de Relations Internationales et Stratégiques [IRIS], n.d., p. 11.

[28] *Basic Law for the Federal Republic of Germany*, art. 93(1); Federal Constitutional Court. *The Court as Constitutional Organ*; Federal Constitutional Court. *Organstreit proceedings* (ET: 22.03.2026); Federal Constitutional Court. *Effect of decisions*.

[29] Staack, Michael. *Handelsstaat Deutschland: Deutsche Außenpolitik in einem neuen internationalen System*. Ferdinand Schöningh, Paderborn, 2000.

Non-governmental organizations (NGOs), often active and networked at the international level, also exert growing influence on foreign policy. Through their work, they substantially contribute to mobilizing public interest in the causes they defend—e.g., human rights and environmental issues—thereby placing pressure on State policy. Within its sphere of activity, the BMZ cooperates with a wide range of NGOs.

Under the auspices of increasing globalization, modern media—ubiquitous in presence—also participate intensively in setting the foreign-policy agenda by transmitting information and images in real time into citizens' living rooms. In doing so, they often influence not only public debates but can also prompt political actors to act—often swiftly.

B. Organs of Moroccan Foreign Policy: Treaty-Making, Royal Prerogatives, and Security Governance

Under the 2011 Constitution, the King guarantees the regular functioning of institutions (Art. 42)[30], chairs the Supreme Security Council (Art. 54) [31], and, together with Parliament, steers treaty-making (Art. 55)[32]. Treaties affecting rights or requiring legislation need parliamentary approval and may be referred to the Constitutional Court ex ante. Article 59[33] provides a circumscribed state-of-exception clause relevant when external shocks spill over into internal security.

Article 55 Triggers and A Priori Review. Morocco's legality filter operates at the level of treaty-making. Article 55 channels categories of treaties to prior parliamentary approval (peace or union treaties; boundary delimitation; commerce and finance; instruments affecting rights and freedoms; treaties that require legislation). Where constitutional doubts arise, a treaty may be referred to the Constitutional Court before ratification—an ex-ante legality screen that prevents international commitments from silently altering the constitutional balance. Executive agreements remain possible, but their validity depends on statutory hooks and compatibility with the Constitution; where an instrument effectively constrains legislative discretion or affects rights, the Article 55 track is the default. Publishing approved treaties in the Official Bulletin secures domestic visibility, while ex-post parliamentary questions and reporting maintain democratic traceability over implementation.

For the purposes of this article, foreign affairs are examined not as a general field of state strategy but as a legally structured domain of public authority. The relevant question is therefore not how the State defines its international objectives in the abstract, but how the Constitution allocates competence, subjects' external action to parliamentary participation where required, and preserves the possibility of constitutional review.

Scholarly literature generally considers that, under King Mohammed VI, Moroccan foreign policy acquired a more proactive and diversified profile. This profile became more visible in the aftermath of the 2011 Arab uprisings and has since been further tested and reconfigured in response

[30] *Constitution of the Kingdom of Morocco* 2011, art. 42.
[31] *Constitution of the Kingdom of Morocco* 2011, art. 54.
[32] *Constitution of the Kingdom of Morocco* 2011, art. 55.
[33] *Constitution of the Kingdom of Morocco* 2011, art. 59.

to recent external crises.[34].

Morocco's foreign affairs primarily emanate from the domain reserved to the King, in a manner that circumscribes the authority of other actors, notably the legislature. As Head of State, the King enjoys broad prerogatives in formulating the general orientations of public policy, including foreign policy. He also presides over most of the supreme institutions and councils.

In the King's relationship with Parliament, the King may request that both chambers of Parliament undertake a new reading of any bill or proposed bill; he also possesses the power to dissolve both chambers[35]. Parliament nonetheless plays a significant—albeit indirect—role in Moroccan foreign policy. This is reflected in particular by:

- **Prior legislative approval for certain international treaties:** Parliament examines and approves by law the categories of treaties and agreements specified in Article 55 of the Constitution. This mechanism gives the institution a legitimating function with regard to major international commitments of the Kingdom[36].
- **Budgetary control and oversight of governmental action:** Through the finance law, scrutiny of governmental action, evaluation of public policies, and the assistance provided by the Court of Accounts, Parliament exerts a concrete influence on the implementation of public policy, including in sectors with an external dimension[37].
- **Parliamentary questions, committee scrutiny, commissions of inquiry, and parliamentary diplomacy:** Specialized parliamentary committees, including those dealing with foreign affairs, participate in the discussion of major external-policy issues; more broadly, parliamentary questions, commissions of inquiry, and parliamentary diplomacy enhance transparency and allow elected representatives to express positions on matters of international relevance.
- **A constitutionally strengthened, though still indirect, role:** The 2011 Constitution strengthened parliamentary oversight mechanisms and expressly recognized a place for parliamentary opposition and parliamentary diplomacy, while preserving the monarchy's central position in strategic state policy[38].

At the governmental level, although the 2011 Constitution strengthened the Head of Government and confirmed the Government's role in implementing public policy, the constitutional architecture leaves the strategic orientations of State policy framed at the royal level, while the Government and the relevant ministries elaborate, deliberate, and implement public and sectoral

[34] Fernández-Molina, Irene. *Moroccan Foreign Policy under Mohammed VI, 1999–2014*. Routledge, London, 2016; Wüst, Andreas / Nicolai, Katharina. "Cultural diplomacy and the reconfiguration of soft power: evidence from Morocco." *Mediterranean Politics*, Vol. 28, No. 4, 2023, p. 554.
[35] *Constitution of the Kingdom of Morocco* 2011, arts. 95–96.
[36] *Constitution of the Kingdom of Morocco* 2011, art. 55.
[37] *Constitution of the Kingdom of Morocco* 2011, arts. 76–77, 100–101, 148.
[38] *Constitution of the Kingdom of Morocco* 2011, arts. 10, 67, 100–101, 148.

policies within that framework[39].

Alongside the King, the Minister of Foreign Affairs plays a strategic role as the principal architect of Moroccan diplomacy. Charged with implementing the royal vision, the Minister conducts diplomatic action, promotes international partnerships, and orchestrates all external relations in accordance with the Kingdom's foreign policy. Decree No. 2-11-428 of September 6, 2011, specifies that the ministry's mission is to protect nationals, as well as Moroccan interests and property abroad, while facilitating the development of their activities and taking responsibility for refugees and stateless persons present on the national territory[40].

Moroccan diplomatic tradition draws upon a rich historical heritage. Formerly known as **وزير البحر (*Viziriat al-Bahr*)**[41], the office embodied the importance of negotiations concerning maritime trade, the fight against piracy, and questions of slavery and manumission. Iconic figures such as Admiral Abdellah Ben Aïcha—who in 1682 negotiated the Treaty of Saint-Germain-en-Laye on behalf of Sultan Moulay Ismaïl with Louis XIV[42]—and Admiral Haj Abdelkader Perez, envoy to London between 1723 and 1724[43], helped lay the foundations of a Moroccan diplomacy recognized and respected on the international stage. Today, the Minister of Foreign Affairs perpetuates this tradition by adapting historical know-how to contemporary challenges, thereby strengthening Morocco's presence and influence in the concert of nations.

Another actor in Moroccan foreign policy is Parliament. The 1962 Constitution and its successors did not explicitly provide for the concept of "parliamentary diplomacy." It is only with the 2011 Constitution—particularly Article 10, which enshrines the constitutional guarantees and rights granted to the parliamentary opposition in "defending the just causes of the nation and its vital interests"—that the obstacles surrounding parliamentary diplomatic work were overcome.

In this context, Parliament no longer confines itself to its traditional role of legislating and overseeing the Government; it also undertakes more complex and strategic missions, supporting, complementing, and defending State policy.

Article 55 of the Moroccan Constitution provides, in its second paragraph, that Parliament has the power to ratify peace or union treaties; those relating to the delimitation of boundaries; trade treaties; treaties that commit State finances or require legislative measures; and treaties concerning individual or collective rights and freedoms, which may be ratified only after legislative approval.

By reference to these provisions, we observe that certain treaties fall within international economic law, others concern human rights, and others still address international disputes, such as peace treaties.

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[39] *Constitution of the Kingdom of Morocco* 2011, arts. 42, 49, 55, 88–93; Kingdom of Morocco. "HM the King Delivers Speech to Parliament at Opening of First Session of 5th Legislative Year of 11th Legislature." 10 October 2025.
[40] Moroccan Decree No 2-11-428 of 7 Shawwal 1432 (6 September 2011) on the Functions and Organization of the Ministry of Foreign Affairs and Cooperation, art. 1, *Bulletin Officiel*.
[41] Ouazzani Chahdi, p. 37.
[42] Ouazzani Chahdi, p. 21.
[43] Ouazzani Chahdi, p. 32.

II. LEGALITY FILTERS AND ACCOUNTABILITY IN FOREIGN AFFAIRS UNDER STRATEGIC RISK

Since the fall of the Berlin Wall in 1989—which marked the end of the Cold War and the confrontation between the two major blocs—global risks and international relations have evolved considerably, a transformation accentuated by globalization[44] and even *hyper-globalization*[45]. For legal analysis, this evolution matters not merely because it altered the geopolitical environment, but because it multiplied the situations in which States must act externally under conditions of urgency, interdependence, and uncertainty while remaining bound by constitutional allocations of power, procedural requirements, and forms of accountability.

Foreign policy functions as a channel of communication among nations that enables the management of power relations between the various actors of international law. Yet, in constitutional terms, it is not only a diplomatic or strategic instrument. It is also a legally structured mode of public action through which treaties are concluded, military force may be deployed, sanctions are implemented, migration arrangements are negotiated, and international commitments are translated into domestic legal effects. The study of foreign policy therefore requires attention not only to its strategic rationale, but also to the legal conditions under which such external action is authorized, conducted, and reviewed.

Our present era would, for **Ulrich Beck**, correspond to a "second modernity," marked by globalization and the proliferation of systemic risks such as financial crises, global epidemics, terrorist attacks, and ecological catastrophes[46].

Risk and crisis are inherent elements in the functioning of international relations. A risk-based approach increasingly dominates inter-State logic, as the definition of a country's foreign policy depends on the nature of the threats and the degree of exposure to them. From a public-law perspective, however, the decisive issue is not simply that risk exists, but how legal systems classify and process it: which risks justify executive initiative, which require parliamentary approval, which affect fundamental rights, and which remain subject to constitutional or judicial control. Since "zero risk" does not exist in international relations, the legal problem is not the elimination of risk, but the organization of lawful state action under conditions of persistent exposure[47].

It is true that risk constitutes a destabilizing factor in international relations; yet it may also generate rapprochement, coalition-building, and cooperation among nations. Legally, this is significant because cooperation in the face of shared threats often takes the form of treaties, security arrangements, sanctions frameworks, intelligence-sharing mechanisms, migration instruments, or environmental commitments, all of which raise questions of competence, ratification,

[44] Caron, Patrick / Chataigner, Jean-Marc. *Un défi pour la planète: Les Objectifs de développement durable en débat*. Éditions Quae, Versailles, 2017, p. 25.
[45] Rodrik, Dani. *The Globalization Paradox: Democracy and the Future of the World Economy*. WW Norton, New York, 2011, ch. 9, esp. pp. 200–201.
[46] Bencherif, Adib / Mérand, Frédéric. *L'analyse du risque politique*. Presses de l'Université de Montréal, 2021, p. 14.
[47] McLachlan, pp. xxi–xxii; Bradley, Curtis A., ed. *The Oxford Handbook of Comparative Foreign Relations Law*. OUP, 2019, p. vii.

implementation, review, and responsibility within domestic constitutional orders[48].

The risks faced by Morocco and Germany are not identical. The question of the "Sahara" is the leitmotif of Morocco's foreign policy, whereas the stability of the European Union is among the strategic drivers of German foreign policy. Conversely, several risks bring Morocco and Germany closer together, including the environment, terrorism, and migration. These differences and convergences are legally relevant not because they merely describe distinct geopolitical contexts, but because they activate different constitutional pathways for decision-making, parliamentary participation, executive action, and judicial scrutiny in each system.

A. Legally Relevant Strategic Exposures in Morocco and Germany

Strategic risk is legally relevant only insofar as it activates a framework of competence, authorization, review, and responsibility. For the purposes of this comparative analysis, the issue is therefore not merely to enumerate the threats faced by Morocco and Germany, but to identify those forms of external exposure that engage constitutional procedures, parliamentary involvement, executive authority, judicial review, or possible interferences with fundamental rights. In that sense, the situations examined here are approached not as geopolitical narratives in themselves, but as legally significant configurations through which the structure of external-relations law in both systems becomes visible. Accordingly, the purpose of this section is not to rank risks by political gravity, but to clarify the legal pathways through which each exposure engages constitutional power, procedural safeguards, and mechanisms of review.

Border-related risks are a central concern of Moroccan decision-makers, not only because of their geopolitical sensitivity, but because they directly implicate questions of sovereignty, territorial integrity, maritime delimitation, treaty practice, security coordination, and the constitutional distribution of external authority. In legal terms, these exposures matter insofar as they shape the conditions under which the Moroccan State may invoke international law, negotiate bilateral or multilateral arrangements, deploy security cooperation instruments, and justify external action in the name of national unity and territorial integrity[49].

The current situation is as follows: to the north, Spain continues to exercise control over Ceuta and Melilla, while Morocco maintains its claim to both territories[50]. The Kingdom also finds itself confronted with a persistent territorial dispute concerning the sovereignty over several small islands off its Mediterranean coast, such as Isla de Perejil (Leila), the Islas Chafarinas, and the Peñón de Vélez de la Gomera, among others. Morocco contests Spain's claims to these territories, maintaining

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[48] Bradley, *The Oxford Handbook of Comparative Foreign Relations Law*. p. vii; Hill, Christopher. *Foreign Policy in the Twenty-First Century*. 2nd ed., Palgrave Macmillan, New York, 2016, pp. 45–48.

[49] *Constitution of the Kingdom of Morocco* 2011, Preamble, arts. 42, 55; Dahir n° 1-20-02 du 11 rejeb 1441 (6 March 2020) portant promulgation de la loi n° 37-17 modifiant et complétant le dahir portant loi n° 1-73-211 du 26 moharrem 1393 (2 March 1973) fixant la limite des eaux territoriales; Dahir n° 1-20-03 du 11 rejeb 1441 (6 March 2020) portant promulgation de la loi n° 38-17 modifiant et complétant la loi n° 1-81 instituant une zone économique exclusive de 200 milles marins au large des côtes marocaines; *United Nations Convention on the Law of the Sea*, adopted 10 December 1982, entered into force 16 November 1994, 1833 UNTS 3, arts. 74, 76, 83.

[50] Gold, Peter. *Europe or Africa? A Contemporary Study of the Spanish North African Enclaves of Ceuta and Melilla*. Liverpool University Press, Liverpool, 2000; Trinidad, Jamie. "An Evaluation of Morocco's Claims to Spain's Remaining Territories in Africa." *International and Comparative Law Quarterly*, Vol. 61, No. 4, 2012, p. 961.

that they form part of its geographic and historical space[51].

This dispute is not limited to a mere question of maritime delimitation; it is situated within a broader context of geopolitical and historical rivalries. The Kingdom argues that, by virtue of proximity and natural continuity with Moroccan territory, these islets should be recognized as extensions of its national domain. Spain, by contrast, maintains its position by invoking legal and historical arguments to justify its sovereignty over these strategic areas.

The dispute highlights the complexity of sovereignty issues in the Mediterranean, where small parcels of territory assume outsized importance due to their strategic, economic, and symbolic value. In addition, recent interest in seabed resources in the Atlantic Ocean, notably around the Tropic Seamount, has added a resource dimension to the unresolved Atlantic maritime delimitation. Spain has pursued a submission concerning the continental shelf west of the Canary Islands, while Morocco has objected that the matter cannot prejudge delimitation in overlapping areas.

To the east, the land border with Algeria remains closed. Moroccan–Algerian relations are sensitive because of the Sahara question. Algeria and the Polisario Front consider it a decolonization issue, maintaining that it falls to the international community to uphold the rights of the "Sahrawi people." Morocco, for its part, perceives the Algerian position as a means to secure an Atlantic outlet and to weaken Morocco regionally[52].

The Sahara question represents the principal challenge Morocco must address, enabling the Kingdom to identify, upstream, its allies and adversaries. It thus serves as a barometer for assessing the degree of friendship and the respect accorded to its sovereignty. As His Majesty stated in his address on the occasion of the 69th anniversary of the Revolution of the King and the People: *"I would like to send a clear message to everyone: the Sahara issue is the prism through which Morocco considers its international environment. It is also, clearly and simply, the yardstick by which we measure the sincerity of friendships and the effectiveness of partnerships that are established."*

From the standpoint of constitutional control, these disputes are not relevant merely because they affect Morocco's strategic posture. They are legally significant because they may influence the conclusion of agreements, the invocation of international legal arguments, the framing of executive responses, and the articulation between sovereign prerogatives and institutional accountability. The "Sahara" question, in particular, functions not simply as a political priority, but as a constitutional and diplomatic matrix through which treaty choices, international representation, and the legitimacy of external commitments are filtered.

Since the beginning of the new century, Morocco has manifested a firm will to extend its outreach beyond its borders in Africa[53]. The continent presents a strategic choice rich in economic

[51] Trinidad, p. 961; de Yturriaga Barberán, José Antonio. "Delimitation of Maritime Spaces Between Spain and Morocco." *Spanish Yearbook of International Law*, Vol. 26, 2022, p. 297.
[52] Abourabi, Yousra. "Les relations internationales du Maroc: le Maroc à la recherche d'une identité stratégique." *Le Maroc au présent: D'une époque à l'autre, une société en mutation*, edited by Baudouin Dupret, Zakaria Rhani, Assia Boutaleb and Jean-Noël Ferrié, Centre Jacques-Berque, Casablanca, 2015, p. 41.
[53] Alaoui, Abdelmalek. *Le temps du Maroc: 2020–2021 – Résilience et émergence du royaume chérifien*. 2nd ed., La Croisée des Chemins, Casablanca, 2021, p. 171.

and political opportunities for the Kingdom. Security risks may nonetheless arise, such as regional conflicts in North and sub-Saharan Africa that can directly affect Morocco and have serious repercussions on regional stability.

For Germany, strategic exposure is legally mediated by a multilevel normative environment. Security crises, sanctions regimes, energy disruptions, and migration pressures are not received as purely political events; they enter a constitutional order already shaped by the Basic Law, parliamentary participation rules, and, in many sectors, the binding force of European Union law[54].

Germany strives to reconcile its European engagement with its national imperatives[55]. German interests are intimately tied to the resilience of the European Union; its dismantling would constitute the ultimate threat—particularly given Germany's demographic weight and the size and influence of its delegation in the European Parliament. The departure of the United Kingdom after forty years of shared membership—under the banner of a "Global Britain" aimed at promoting worldwide ambitions—elicited ambivalent sentiments, mixing concern with a discreet satisfaction among some advocates of a more integrated Europe. These concerns have intensified in the face of successive crises: the euro-area and sovereign-debt crises from 2010; the **2015** migration crisis; the rise of populism and nationalism; terrorist threats; the unpredictability of the U.S. administration; and, more recently, the war in Ukraine, which has upended the continent's strategic balance.

Russia's invasion of Ukraine in February 2022 revealed the fragility of European security and underscored the economic and energy dependencies of several EU Member States, notably Germany. Long dependent on Russian gas, Berlin was compelled to overhaul its energy policy urgently, diversifying supplies and accelerating the transition to renewables. The war has also reinforced European unity, prompting the EU to adopt a firmer posture in defense and foreign policy, with unprecedented military and financial support for Ukraine. At the same time, it has exacerbated internal tensions, notably regarding the distribution of the economic costs of sanctions against Russia and the reception of Ukrainian refugees.

Accordingly, the legal importance of these risks lies in the fact that they trigger questions of competence between the Federal Government, the Bundestag, and the courts; they also test the interaction between domestic constitutional requirements and supranational obligations. Germany's strategic vulnerabilities therefore become especially revealing when they require legally reviewable acts in fields such as sanctions, market regulation, security cooperation, or military participation[56].

Geopolitically, the conflict has marked the return of a logic of bloc confrontation, in which Europe—and Germany in particular—must redefine its role vis-à-vis the ambitions of powers such as Russia and China. The erosion of multilateralism and the weakening of cooperative frameworks have heightened pressure on European States to strengthen their strategic and energy autonomy. This reconfiguration also affects the EU's external relations, including with strategic partners such as

[54] *Consolidated Version of the Treaty on European Union* [2012] OJ C 326/13, art. 29; *Consolidated Version of the Treaty on the Functioning of the European Union* [2012] OJ C 326/47, art. 215.
[55] Lefebvre, Maxime. *La construction de l'Europe et l'avenir des nations*. Armand Colin, Paris, 2013, p. 177.
[56] *Rosneft* (Case C-72/15), EU:C:2017:236.

Morocco, which follows these developments closely and adjusts its diplomacy accordingly.

In this context, the many challenges facing Germany and Morocco bring them closer in their common quest for international stability and peace. The two countries share multiple doctrinal convergences, and their strategic partnership extends to ecology, security, and the economy. The growing salience of energy and geopolitical issues in the wake of the war in Ukraine could further strengthen this cooperation, notably in renewable energies and the energy transition, where Morocco positions itself as a key factor in Africa and the Mediterranean.

Environmental threats, although widely publicized, often remain insufficiently perceived and addressed. Environmental protection is now a global strategic challenge, as ecological harm is no longer a purely local phenomenon: interdependence and globalization require a collective approach to these crucial issues. In this unstable context—where geopolitical crises and environmental challenges intertwine—enhanced cooperation between Germany and Morocco appears necessary to anticipate forthcoming strategic shifts[57].

Climate change is chiefly characterized by the increase in average global atmospheric temperature. A near-consensus of scientists, notably the Intergovernmental Panel on Climate Change (IPCC), attributes this warming to human activity, particularly the increase in greenhouse-gas emissions[58].

The causes and manifestations of this existential risk for humanity include glacier retreat, rising temperatures and sea levels, deforestation, and the excessive use of fossil fuels (coal, oil, gas). Climate change is the principal threat to the planet's sustainability, with harmful effects on all societies, including impacts on global agricultural production. It also destabilizes water security worldwide, leading to droughts, desertification, and wildfires, and driving large flows of migration—lawful or unlawful—and the phenomenon of "climate refugees," as people seek safer territories.

Germany and Morocco are pioneers in managing environmental risks through a plurality of legal instruments (international conventions, EU law, domestic law, federal statutes) designed to counter climate change and reconcile economic development with environmental imperatives.

The constitutional and statutory treatment of environmental protection in both systems shows that climate-related exposure is not merely a matter of policy preference. It raises legally structured questions concerning positive obligations of the State, the reconciliation of environmental protection with economic development, the domestic effect of international environmental commitments, and, more broadly, the justiciability of long-term strategic choices affecting present and future generations.

Article 20a of the German Basic Law provides: *"Mindful also of its responsibility toward future generations, the State shall protect the natural foundations of life and animals by legislation and, in accordance with law and justice, by executive and judicial action".* Analogously, the Moroccan legislator provides for a right of access to a healthy environment in Article 31 of the

[57] Boniface, Pascal. *Comprendre le monde : Les relations internationales expliquées à tous*. 7th ed., Armand Colin, Paris, 2023, p. 217.
[58] Boniface, Pascal. *La géopolitique : 50 fiches pour comprendre l'actualité*. Eyrolles, Paris, 2022, p. 60.

Constitution. This right is reiterated in the framework law establishing the National Charter for the Environment and Sustainable Development, whose Article 3 states that "every person has the right to live and develop in a healthy, high-quality environment that promotes the preservation of health, cultural flourishing, and the sustainable use of the heritage and resources available therein."

The supreme laws of both countries testify to the political will to defend and promote the environment. Both are genuine advocates of the climate cause, which is reflected in the financial resources and know-how deployed in the field of renewables and in the extraordinary intention to reduce dependence on fossil energies.

Under international law, the use of force is considered legitimate when employed for legitimate self-defense and illegitimate when it contravenes the principles governing the international community. States may thus resort to force only where they have a just cause—i.e., when their sovereignty has been violated by another State or is on the verge of such violation. The use of force, violence, and terrorism to achieve political, ideological, or religious ends has disrupted the international environment.

Terrorism is arguably the strategic subject most frequently treated in the media and is presented as the principal threat to State security. There is no doctrinal consensus on the definition of terrorism. Etymologically, the term derives from the Latin *terrere* (to frighten). It is a form of asymmetric warfare to which groups resort in order to circumvent the military power of their adversaries; terrorist attacks remain their principal security vulnerability.

Counter-terrorism therefore constitutes a paradigmatic legally relevant exposure. It forces both systems to determine not only the substantive scope of repression, but also the constitutional limits of surveillance, preventive action, intelligence-sharing, procedural safeguards, and judicial oversight. In both Morocco and Germany, the real legal question is not whether terrorism must be fought, but under which constitutional guarantees the fight may be conducted without eroding the rule-of-law commitments that justify it.

Morocco and Germany have both been the targets of terrorist attacks. They have consequently engaged in counter-terrorism, strengthening governance and cooperation in the field of security. Morocco's Penal Code provides sufficient legal classifications to punish terrorists with the most severe penalties[59]. Morocco has also reinforced its legal framework and adopted measures to comply with FATF (GAFI) standards in order to combat terrorist financing[60]. Germany likewise maintains a robust legislative corpus in counter-terrorism[61], in addition to EU law, which influences the internal legislation of Member States.

Both countries are States governed by the rule of law, which must necessarily reconcile the imperative of countering terrorism with the maximal protection of fundamental rights and freedoms. The processes of anticipation, prevention, response, and repression must respect democratic norms—

[59] Amzazi, Mohieddine. *Essai sur le système pénal marocain*. Centre Jacques-Berque, Rabat, 2013, p. 94.
[60] Dahir No 1-07-79 of 17 April 2007 promulgating Law No 43-05 on Combating Money Laundering, as amended by Law No 12-18 (Morocco).
[61] *Strafgesetzbuch* [StGB] [Criminal Code], § 129a.

eschewing authoritarian or abusive procedures, avoiding any instrumentalization of justice, and proceeding with transparency and fairness. In both countries, those convicted of terrorist offenses have access to rehabilitation (deradicalization) programs aimed at eradicating the culture of extremism and violence and at promoting universal principles of tolerance and acceptance of the other.

B. Legally Structured Mechanisms of External Action under Strategic Risk

Having identified the legally relevant strategic exposures, the analysis must now turn to the mechanisms through which external action is legally structured in each system. The issue is not merely whether Morocco and Germany possess diplomatic, informational, economic, or security instruments, but how the use of such instruments is authorized, framed, supervised, and, where appropriate, reviewed. In other words, these mechanisms matter in law only insofar as they can generate binding commitments, rights-affecting measures, secrecy claims, budgetary consequences, or other reviewable exercises of public authority. The following sub-sections therefore approach these mechanisms not as abstract resources of power, but as legally consequential forms of external action whose operation may engage constitutional competence, treaty law, parliamentary participation, judicial scrutiny, transparency duties, and fundamental-rights constraints[62].

- International Strategic Intelligence (Early-Warning)

International strategic intelligence is legally relevant insofar as it informs public decision-making, supports anticipatory action, and may affect the legality of executive choices in the fields of security, sanctions, migration, and external cooperation. Mastery of information and its networks, and anticipatory capacity, increasingly serve as hallmarks of power[63]. International strategic monitoring is an essential aspect of a country's governance and economic prosperity. States must constantly monitor global developments, analyze economic, political, and technological trends, and anticipate potential risks to take informed decisions. Accordingly, the critical importance of strategic-intelligence mechanisms in ensuring a country's development and competitiveness on the world stage. In its simplest sense, international strategic monitoring is the informational process by which an organization attunes itself to its environment in order to capture weak signals that reduce threats and enable the seizing of opportunities.

The idea of strategic monitoring derives from intelligence, rooted in military theory. Scholars **Nicolas Lesca** and **Marie-Laurence Caron-Fasan** define monitoring—viewed as a systemic process—as *"a global, reflexive, and iterative process that mobilizes informational, technological, organizational, financial, and human resources, with the objective of illuminating strategic and operational decisions"* [64]. Morocco and Germany deploy substantial efforts to "listen" to change, to surveil threats, and to detect opportunities within timeframes compatible with their adaptation horizons—for example, by relying on think tanks or groups of experts tasked with developing or

[62] *Kadi and Al Barakaat International Foundation v Council and Commission* (Joined Cases C-402/05 P and C-415/05 P), EU:C:2008:461.
[63] Dangezana, Essimi. *La diplomatie économique à l'épreuve de nouveaux défis*. L'Harmattan, Paris, 2023, p. 94 – 100.
[64] Masson, Hélène. *L'intelligence économique, une histoire française : Genèse, acteurs, politiques*. Vuibert, Paris, 2012, p. 46 – 49.

advocating reforms favorable to their sponsors[65]. et, from a legal perspective, the decisive issue is not informational performance in the abstract, but the existence of a lawful chain of collection, transmission, retention, confidentiality, oversight, and possible redress. When intelligence feeds executive action in foreign affairs, it may shape legally consequential decisions without itself escaping constitutional discipline.

From a public-law perspective, the issue is not the strategic value of information in the abstract, but the legal status of the information-processing chain on which external decisions rely: which authority collects and uses the information, under what mandate, subject to which confidentiality rules, and with what implications for parliamentary information and judicial review. Strategic monitoring thus becomes constitutionally significant where it conditions the exercise of foreign-affairs powers without itself escaping legality[66].

- Diplomacy:

Diplomacy is not only the strategic lever of foreign policy; it is also one of the principal legal modalities through which the State represents itself externally, negotiates commitments, and structures its participation in the international legal order[67]. Its legal character also stems from the fact that representation, negotiation, signature, ratification, and even certain unilateral declarations are governed by international legal rules and by domestic constitutional requirements allocating the authority to bind the State externally. Diplomacy projects and defends national interests abroad by multiple means—communication, persuasion, and dialogue—to defuse tensions and reconcile conflicting interests. Since the emergence of diplomacy and to this day, three core functions characterize diplomatic practice: representation, information, and negotiation. Strategists and diplomats should contribute to preventing adverse scenarios by relying on credible information in order to forecast probable outcomes of situations or crises, with the ultimate aim of destabilizing the adversary's destructive plans and stopping them in their tracks. Diplomacy is a preventive instrument designed to identify and address potential sources of conflict before they escalate. Diplomats engaged in this task work to create channels of communication, promote mutual understanding, and find diplomatic solutions to emerging problems.

Its legal significance lies in the fact that diplomatic action may lead to treaty commitments, executive arrangements, public declarations with normative effects, and forms of intergovernmental coordination that raise questions of competence, authorization, and accountability. In comparative public-law terms, diplomacy matters not simply because it seeks to prevent conflict, but because it occupies the interface between executive initiative and the legal forms through which the State binds itself externally[68].

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[65] Lenglet, Roger / Vilain, Olivier. *Un pouvoir sous influence : Quand les think tanks confisquent la démocratie*. Armand Colin, Paris, 2011, p. 23.

[66] *Grundgesetz für die Bundesrepublik Deutschland* [Basic Law], art. 45d; *Constitution of the Kingdom of Morocco* 2011, art. 54; *Klass and Others v Germany*, App no 5029/71 (ECtHR, 6 September 1978); Bundesverfassungsgericht [BVerfG]. Judgment of 19 May 2020, 1 BvR 2835/17.

[67] De Raymond, Jean-François. *L'Esprit de la diplomatie : Du particulier à l'universel*. Les Belles Lettres, Paris, 2015, p. 13.

[68] *Vienna Convention on Diplomatic Relations*, adopted 18 April 1961, entered into force 24 April 1964, 500 UNTS 95,

- Soft Power:

Soft power is legally relevant when attraction-based influence is institutionalized through educational, cultural, developmental, or normative instruments that are financed, authorized, and implemented by public authorities within a defined legal framework.

Joseph Nye defines *soft power* as *"the ability to influence the behavior of others to get the outcomes one wants".* It is power by attraction. Soft power anticipates action through mediation and persuasion, implying the adoption of strategic principles that combine symbolic or cultural referents with political or ideological values that reinforce leadership. In other words, soft power recommends the use of seductive persuasion rather than force. A State may thus induce others to adhere to norms and institutions that encourage or lead to the desired behavior. For legal analysis, however, soft power matters only when this attraction is translated into identifiable public instruments—scholarship schemes, cultural institutes, development aid, academic partnerships, broadcasting mandates, or framework agreements—whose financing, administrative implementation, and external representation remain attributable to public authorities and subject to constitutional and statutory constraints.

Morocco and Germany possess solid foundations of soft power. Both have rich histories and emblematic figures—**Johannes Gutenberg, Beethoven, Goethe, Bach**, or, in Morocco, **al-Qarawiyyin** (among the world's oldest universities) [69], **Ibn Battuta**, **Averroes**—who have left a durable cultural imprint on humanity.

Likewise, events such as the **Berlinale** and the **Frankfurt Book Fair** in Germany, or **MAWAZINE** and the **Marrakech International Film Festival** in Morocco, serve as important platforms for cultural promotion. In 1966, Foreign Minister **Willy Brandt** designated foreign cultural policy (**Auswärtige Kulturpolitik**) as the "third pillar" of German foreign policy, alongside security and external economic policy[70]. Similarly, His Majesty King Mohammed VI has repeatedly emphasized the need to deploy soft power to promote the country's image—calling for the establishment of "Maisons du Maroc," cultural centers and services abroad, intensified artistic activities, fairs and exhibitions, and the showcasing of Morocco's civilizational and cultural heritage[71].

From that standpoint, the legal issue is not whether soft power exists, but how such influence is channeled through publicly accountable instruments—cooperation agreements, educational partnerships, development programs, cultural diplomacy mandates, or public-finance mechanisms—and whether these remain consistent with constitutional principles, statutory authority, and

arts. 2–3; *Vienna Convention on the Law of Treaties*, adopted 23 May 1969, entered into force 27 January 1980, 1155 UNTS 331, arts. 7, 11–18; *Nuclear Tests (Australia v France)* [1974] ICJ Rep 253, pp. 267–270, paras. 43–51.

[69] Vauclair, David. *Géopolitique des religions et des spiritualités : 40 fiches illustrées pour comprendre le monde*. Eyrolles, Paris, 2021, p. 172.

[70] Strauss, Dieter. "Auswärtige Kulturpolitik – Welches ist die deutsche Kulturbotschaft?" *Diesseits von Goethe: Deutsche Kulturbotschafter im Aus- und Inland*, adatia Verlag, München, 2009, p. 50.

[71] H.M. King Mohammed VI. "Message to the First Conference of Ambassadors." *Discourses of H.M. King Mohammed VI, 2013–2014*, Rabat, 30 August 2013.

transparency obligations[72].

- Hard Power:

Hard power constitutes the most immediately legalized mechanism of external action, because any recourse to coercive force, military deployment, or security cooperation raises questions of constitutional competence, legal basis, international-law justification, parliamentary authorization, and judicial control.

In general terms, *hard power* denotes a country's capacity to achieve specific objectives through the use of military force and economic influence—a historically rooted vision of power measured by such criteria as territory, population, natural resources, economic strength, military strength, and social stability. Until the end of the Second World War, this form of power was the most dominant; in short, hard power is the ability to impose one's will through military and economic means—power by coercion. In the Global Firepower ranking (2023), Germany is placed 24th[73] worldwide, while Morocco occupies the 61st position[74]. From a legal standpoint, however, comparative military capacity is relevant only indirectly; the decisive questions concern the prohibition of force, self-defense, collective-security mandates, domestic authorization for deployment, and the reviewability of coercive external action.

In this respect, hard power is not merely a strategic instrument; it is the site where constitutional law and international law most visibly converge. Whether the issue concerns the use of force, military assistance, external deployment, or internal spillovers of security threats, the decisive legal questions remain who may authorize the measure, on which legal basis, under what limits, and subject to what review[75].

- Smart Power:

Smart power becomes legally meaningful when the combination of coercive and non-coercive instruments produces composite forms of state action that draw simultaneously on diplomatic authority, economic regulation, security policy, and treaty-based cooperation. Both countries advocate a foreign policy that is adaptable to circumstances and that embraces the doctrine of smart power. In early 2009, Hillary Clinton declared before the U.S. Senate Foreign Relations Committee that the Obama administration would make the United States a "smart power" [76]. Smart power is a combination of hard- and soft-power strategies. Legally, the category is useful because mixed strategies often combine several normative channels at once—diplomatic negotiation, sanctions, export controls, financial restrictions, military cooperation, and technical assistance—thereby

[72] *Convention on the Protection and Promotion of the Diversity of Cultural Expressions*, adopted 20 October 2005, entered into force 18 March 2007, 2440 UNTS 311, arts. 1, 6, 12.
[73] GlobalFirepower. *Germany Military Strength*. https://www.globalfirepower.com/country-military-strength-detail.php?country_id=germany, (ET: 20.06.2023).
[74] GlobalFirepower. *Morocco Military Strength*. https://www.globalfirepower.com/country-military-strength-detail.php?country_id=morocco, (ET: 20.06.2023).
[75] *Charter of the United Nations*, arts. 2(4), 51; *Grundgesetz für die Bundesrepublik Deutschland* [Basic Law], art. 87a; Bundesverfassungsgericht [BVerfG]. Judgment of 12 July 1994, 2 BvE 3/92, 90 *BVerfGE* 28
[76] Delbecque, Éric / Fayol, Jean-Renaud. *Intelligence économique*. 2nd ed., Vuibert, Paris, 2018, p. 59.

dispersing competence across the executive, parliament, and, where relevant, supranational legal orders.

Its legal relevance lies in the fact that hybrid external action often blurs classical categories of competence and control. A combined strategy may involve executive discretion, legislative authorization, budgetary implications, rights-sensitive implementation measures, and judicially reviewable effects. For that reason, smart power should be read not simply as an efficient policy formula, but as a legally composite mode of external governance[77].

- Sharp Power:

Sharp power is legally relevant because manipulative influence, operations especially disinformation, hostile information campaigns, and covert opinion-shaping, directly affect democratic integrity, information security, and the constitutional conditions of public deliberation. Sharp power refers to attempts to manipulate public opinion through the use of misleading information and hostile manipulation—a new form of State influence employing subversive tactics to affect public opinion in other countries. Unlike soft power, which reaches audiences through attraction, sharp power seeks to shape perceptions through manipulation. Analysts have observed that certain States, in particular Russia and China, deploy disinformation, propaganda, and information manipulation to influence public opinion abroad. A key characteristic of sharp power is its subtle and clandestine nature; unlike traditional warfare or open diplomacy, sharp power operates behind the scenes, relying on online disinformation networks and propaganda campaigns to sow confusion and sway public opinion. It is a new form of inter-State conflict whose impacts are often difficult to measure. States that employ this tactic aim to undermine democratic institutions and sow division among citizens. For example, Russia is accused of conducting disinformation campaigns during the 2016 U.S. presidential elections, thereby creating a crisis of confidence in the electoral process.

Its legal relevance lies not only in the existence of manipulation, but in the regulatory responses it may justify: protection of electoral integrity, transparency of foreign influence, due-diligence duties for digital platforms, systemic-risk mitigation measures, and carefully tailored countermeasures compatible with freedom of expression and democratic pluralism[78].

- Lobbying:

Lobbying is legally relevant insofar as it concerns the organized transmission of interests, expertise, and influence into public decision-making processes that remain subject to transparency, registration, and accountability requirements.

Where lobbying intersects with foreign-affairs decision-making, the legal question is not whether influence exists, but whether it is disclosed, traceable, and institutionally reviewable through

[77] Nye Jr, Joseph S. "Get Smart: Combining Hard and Soft Power." *Foreign Affairs*, Vol. 88, No. 4, 2009, pp. 160–163; *Consolidated Version of the Treaty on European Union* [2012] OJ C 326/13, art. 29; *Consolidated Version of the Treaty on the Functioning of the European Union* [2012] OJ C 326/47, art. 215.

[78] Walker, Christopher. "What Is 'Sharp Power'?" *Journal of Democracy*, Vol. 29, No. 3, 2018, pp. 9–23; Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market for Digital Services, arts. 34–35; European External Action Service. *Action Plan against Disinformation*. 3 May 2019.

registration duties, ethics rules, and transparency mechanisms compatible with democratic accountability.

Lobbying professionals or representatives of interest groups provide data and information that illuminate and assist decision-makers in assessing policy options and the often-under-anticipated consequences of their choices[79]. Lobbying is not an immoral or cynical activity but is lawful and legitimate insofar as it is practiced in accordance with the country's ethical and transparency standards. In Germany, the objective is to increase transparency concerning the influence of lobbyists on governmental decision-making in Berlin; natural persons and, in particular, legal entities engaged in lobbying activities are subject to registration and disclosure obligations[80].

CONCLUSION

The comparison developed in this article does not support the familiar but overly simplistic opposition between a legal foreign-affairs model and a political one. Its real significance lies elsewhere. What the Moroccan and German cases reveal is that strategic risk never confronts a constitutional vacuum. It encounters, in each system, a particular legal architecture that determines how external power may be exercised, by whom, under which procedures, and subject to which forms of control. The central issue is therefore not whether foreign affairs escape the law, but how law remains operative when the pressure to act is greatest.

From that perspective, the article's main contribution is to show that legality in external relations must be analyzed as a question of institutional design. In Germany, constitutional discipline appears through a dense configuration of ex ante legality, in which parliamentary participation, procedural requirements, review mechanisms, and the constraints of European Union law collectively narrow executive discretion. In Morocco, the constitutional configuration is more centralized, but not normatively indifferent: executive predominance is framed through treaty procedures, constitutionally defined forms of assent, and the possibility of prior constitutional review. The difference between the two systems is thus not the presence or absence of legal control. It lies in the point at which legality intervenes, in the organs through which it operates, and in the intensity with which it structures external action.

This is why strategic risk matters so much for comparative public law. It reveals, with particular clarity, the true constitutional location of restraint. Under ordinary conditions, legality in foreign affairs may appear formal or even secondary. Under pressure, however, the underlying architecture becomes visible. Moments of urgency show whether constitutional systems preserve meaningful control over executive action or merely postpone accountability until after the most consequential decisions have already been taken. Strategic exposure is therefore not only a geopolitical condition; it is also a doctrinal test of how seriously a legal order treats the rule of law in the sphere where public power is often most difficult to restrain.

The notion of legality filters, as developed in this article, is intended precisely to capture that

[79] Rouault, Frank / Teisseire, Nicolas. *Lobbying 1*. AFNOR, Paris, 2022, pp. 20–40.
[80] *Lobbyregistergesetz* vom 16 April 2021 (BGBl I 818), §§ 1–3; Deutscher Bundestag. *Lobbyregister beim Deutschen Bundestag*.

problem. Its value is not merely descriptive. It provides an analytical framework for identifying the legal thresholds through which foreign-affairs action is transformed from strategic choice into constitutionally framed public authority. These thresholds may differ in source, timing, and institutional location: they may arise from constitutional text, legislation, judicial review, treaty procedures, parliamentary assent, executive reporting duties, or supranational obligations. What matters, comparatively, is not whether Morocco and Germany employ identical institutional mechanisms, but whether their respective legal orders create points of passage through which external action must be justified, authorized, limited, or reviewed. In that sense, the Moroccan–German comparison extends beyond the bilateral case. It suggests a broader proposition: in constitutional states, the legitimacy of foreign affairs cannot be measured solely by strategic effectiveness, diplomatic flexibility, or executive responsiveness. It must also be measured by the capacity of the legal order to retain control at the very moment when reasons of State most strongly invite its relaxation.

Ultimately, foreign affairs do not stand at the edge of constitutional law; they mark one of its most demanding frontiers. They force legal systems to confront the tension between necessity and restraint, speed and deliberation, authority and accountability. The comparative lesson of this article is that this tension is never resolved outside law. It is resolved through law, and the quality of that resolution remains one of the clearest indicators of constitutional maturity.

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