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CONTENTS

| ARTICLES

Peace as the Absence of Militarized Conflict: Comparing the Democratic and Territorial Peace 5
John A. Vasquez and Emily E. Barrett

The Global Security Management Crisis 33
Patrick Morgan

Tectonic Move in 21st Century International Relations: Ukrainian Territorial Crisis, Realignments of Major Powers, and Implications for the World 55
Yi Feng and Jacek Kugler

The Consolidation of the Euro-regional Territory and Its Consequences: The Case of the Galicia-North of Portugal Euro-Region 77
Enrique Varela, Censo Cancela and Constantino Cordal

The EU External Edges: Borders as Walls or Ways? 97
Marie-Laure Basilien-Gainche

The Use of Force at Sea in the 21st Century: Some Reflections on the Proper Legal Framework(s) 119
Efthymios D. Papastavridis

Geopolitics and Conflict: Reconciling Spatiality, Borders, and Sovereignty in the Modern World System 139
Harvey Starr

| REVIEW

A Flexible Expansion of Space to Resolve Conflict Borders 149
Youngkyu Shim

Peace as the Absence of Militarized Conflict: Comparing the Democratic and Territorial Peace

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Abstract

Peace has mostly been defined in terms of the absence of war. In this study we define peace between two countries as never resorting to the threat or use of militarized force. In technical terms, peace is neither side ever having a militarized interstate dispute (MID) with the other. This study tests two propositions. The first is that MID-free dyads consist of states that do not have territorial claims. The second is the democratic peace claim that MID-free dyads are those consisting of joint democracies. The relative impact of the territorial peace and democratic peace hypotheses are assessed. Based on the territorial explanation of war it is predicted that the first proposition will account for more cases of peace than the second proposition (on democracy). It is also predicted that a main reason joint democracies might be MID free is that they do not have territorial issues in the first place. This is due to the fact they have settled their border and territorial issues with their neighbors *before* they become joint democracies. All politically relevant dyads are compared on the basis of those that have never had a MID with those that have had at least one. The analysis is conducted on the 1946-1989 and 1990-2001 periods.

Keywords

peace, militarized interstate disputes (MIDs), territorial peace, democratic peace, MID onset

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THE THEORETICAL APPROACH

The causes of war are an intricate labyrinth of issues and conflict. However, out of all sources of severe conflict, the territorial explanation of war contends issues over territory are the most apt to lead to war (Vasquez 1993, chapter 4). Research on interstate conflict from 1816-2001 shows territorial disputes having a higher probability of escalation to war than other kinds of disputes (Vasquez 1993, chapter 4; Hensel 1996; Senese 1996; Vasquez and Henehan 2001; Hensel 2000; Senese 2005; Senese & Vasquez 2003, 2008). The territorial explanation of war additionally states that resolving this kind of contentious issue removes a significant cause of war. The territorial explanation contends that settling these types of issues allows states to remain peaceful with one another, even if other salient issues arise. Vasquez (1993, 146) argues: "If the territorial divisions among neighbors are not challenged but accepted as legitimate, peaceful relations can govern. Most borders once satisfactorily settled remain so for long periods of time."

The logic here is that the settlement of borders and related territorial claims eliminates one of the most war prone issues from the agenda of a pair of states. Such issues increase the probability of war and act like a sufficient condition, not a necessary condition. Dyads can still fight over other non-territorial issues and they do. Vasquez & Valierano (2010) for instance find that while territorial wars were the most prevalent from 1816-2007 and that wars over territory between neighbors are the modal war in the system, there are still many policy and regime wars—i.e. wars that arise from policy or regime MIDs.

Nonetheless, as Hensel (2006) points out territorial issues tend to be special; they not only increase the probability of conflict, but they poison the entire relationship between states. Removing them not only eliminates a very war-prone issue, but it reduces overall hostility so that other issues can be approached in a more reasonable manner. Hensel finds that resolving a territorial claim not only reduces the likelihood of having a territorial MID, but *any* MID. Likewise, Senese & Vasquez (2003) using a two-stage model find that absence of a territorial claim reduces the likelihood of any MID, while conversely the presence of a territorial claim increases the likelihood of any MID (not just a territorial MID).

This territorial explanation regarding the conditions of peace is the major theoretical difference between the territorial explanation of war and realism. The latter sees war as an inherent struggle for power resulting from systemic anarchy. The territorial explanation is more optimistic and contends that if neighbouring states accept their territorial borders, they can live in peace. The settling of territorial disputes and the establishment of legitimate borders creates a strong source of peace.

Because territorial issues have such a high probability of war removing them should leave a clear trace in the historical record. If one were to look at peaceful dyads in history, one would expect that a large number would not have any territorial disputes (Vasquez 2001, 164, Vasquez 2009, 365), even though territorial issues are not a necessary condition of war. The reasoning for this is a significant and contentious issue is removed from the agenda.

Early research on borders provides evidence that the acceptance of borders leads to peace among neighbors. Kocs (1995) maintains that states that legally accept their borders are less likely to have a war. He finds this to be the case in the data he created for the post-World War II period. Owsiak (2012) further supports this hypothesis with a more precise measure when investigating the entire 1816-2001 period. Gibler (2007) has similar findings based on the presence of stable borders. These findings imply that states with established borders will have fewer continuing territorial claims. Gibler (2007) also argues that stable borders allow for both peaceful relations between states and a fertile environment for the emergence of democracy (see also Hutchison & Gibler 2007). Additionally, Gibler & Tir (2010) find demilitarization derives from settled borders established during a peaceful transfer, which enhances the possibilities for democracy (see also Tir 2003). The association between established borders and peace offers a deeper explanation of the cause and sustainability of peace within the world. These findings and analyses provide an alternative explanation to the democratic peace (see Gibler 2007). For this reason they are referred to as the territorial peace (Gibler 2012).[1]

Some of Gibler's findings corroborate a broad study conducted by Rasler & Thompson (2010, 2011, see also Rasler & Thompson, 2014). They use data from Biger (1995) and find that peaceful relations are more common in areas with settled borders. Additionally, they find democracy is associated with settled borders. Ultimately, all of these studies find that war dramatically decreases when borders are accepted between neighbouring states.

Another study that tests the territorial explanation of war is Henehan & Vasquez (2006). This study shows that periods of history with no wars between major states have few or no territorial militarized interstate disputes (MIDs). This study shows that the absence of war is associated not only with dyads that do not have territorial disputes, but that peaceful periods of history where there are no wars among major states is associated with the absence of territorial disputes. Both these results support the theoretical expectations of the territorial peace.

1 On Gibler's original (2007) see the exchange between Park & Colaresi (2014) and Gibler (2014).

Again note, it is not that the absence of territorial disputes is a necessary condition of peaceful periods, but just that they are associated with them.

Finally, Vasquez (2014) made a direct comparison of the territorial peace and the democratic peace by examining all peaceful dyads that have never fought a war, but have had at least one militarized interstate dispute (MID). The results show that dyads that did not have territorial disputes accounted for just over 80% of the peaceful dyads while joint democracy only accounted for about 7% of the peaceful dyads depending on the time period. This sort of finding shows that peace can be associated with both the absence of territorial disputes and the presence of democracy. Both of these as sufficient conditions of peace are not logically contradictory.

However Vasquez (2014) also found that around 90% of the peaceful democratic dyads also never had a territorial dispute, which suggests that the reason joint democracies do not go to war is that they do not have territorial issues.[2] This latter finding does imply that the territorial peace is a more powerful analysis of peace than the democratic peace because it can account for why democracies do not fight on the basis of its own logic.

Some argue, however, that the reason joint democratic states do not have territorial disputes is that their regime type helps prevent any territorial issues from escalating to the use of force, i.e. from becoming MIDs. Proponents of the territorial explanation have countered that the actual reason democratic states do not have territorial MIDs is due to the settlement of their borders before they are an established democratic state. What this means is that while the state was a "non-joint democratic dyad" they resolved this very dangerous issue. Owsiak & Vasquez (2013) test this claim and find that about 90% of neighbours accepted their mutual borders before they became democracies.

All of the above research is focused on war with peace defined as the absence of war. Some have argued that true peace, or at least a deeper peace, is the absence of any resort to the use of militarized force whatsoever. Some of the early findings on the democratic peace (e.g. Huth & Allee 2002) suggest that one of the reasons democracies may not fight is that they tend not to have many MIDs. Reed (2000) in testing a selection model also finds joint democracies have fewer MIDs than non-joint democracies and that this may be a reason for the absence of war between them. A criticism of Vasquez's (2014) research is that the absence of war is not as good an indicator of peace as the absence of MIDs is. Since joint democracies have fewer MIDs, regime type might still be a better predictor of peace than

2 Roughly the same is true of non-joint democracies that are MID free. This means that regime type is not the key for predicting why dyads do not resort to militarized force. They do not use militarized force because they are not contending over territorial issues.

territory. In addition, early tests of the democratic peace, like Maoz & Russett (1993) used the number of MIDs or crises (measured by ICB data)[3] as a test of the democratic peace.

It must be pointed out, however, that such a claim shifts the dependent variable in most of the literature from the absence of war to the absence of MIDs (i.e. from war onset to MID onset). The territorial explanation in its original formulation (Vasquez 1993, chapter 4; see also Vasquez 1995) did not address peace in terms of the absence of all militarized conflict. Nonetheless, the logic of the explanation can be used to deduce hypotheses with this dependent variable. Since territory is a sensitive issue, it is expected theoretically that states with a territorial issue in the first place would be more likely to have a territorial MID. Territorial issues however are so salient that they can poison a relationship and thereby encourage the resort to force and the emergence of any sort of MID, even if the dispute is not over territory (Senese & Vasquez 2003). From the territorial perspective, dyads that are MID free are those that do not have territorial issues. As for dyads that resort to the use of (militarized) force, they are more likely to have territorial issues. The implication of this explanation is that only certain types of issues are worth the risk and costs of war. Once these issues are off the agenda there may be no reason to go to war or even use militarized force. Grievances are at the heart of conflict, and the more salient the grievances, the more costs, including blood costs, an actor is willing to accept.

There are numerous factors, which contribute to the salience of grievances, but in order to understand territory's role within contentious issues it is important to know how its underlying dimensions cause conflict to occur in a given issue. An aspect of territory, which is key to understanding its full complexity, involves the concepts of tangibility and intangibility (Hensel & Mitchell 2005). Tangible objects are concrete items such as terrain, natural resources, and trade routes. Intangibility is a value assigned to an object that is not visible and involves a certain set of values, beliefs or symbols that are an item, place or set of people (see Barrett 2011). Hensel & Mitchell (2005) find territorial claims imbedded with intangible values (like ethnic concerns) are more apt to give rise to a MID than those without intangible characteristics (see also Hensel et al. 2008). Barrett (2011) finds that the combination of High Tangibility and High Intangibility in a territorial claim greatly increases the chance of the occurrence of MIDs. Therefore, settling territorial issues dramatically decreases the chance of militarized conflict because states

3 ICB stands for the International Crisis Behavior project (see Brecher & Wilkenfeld 1997). It should be noted that when Maoz and Russett used ICB as a dependent variable there was no statistically significant relationship between joint democracy and a low level of conflict.

are resolving both tangible and intangible issues at hand.

This logic is very different from the democratic peace, which emphasizes the tendency of joint democracies dealing with their disagreements cooperatively. The normative explanation of the democratic peace, in particular, emphasizes the use of non-violent bargaining and negotiation or even mediation over the use of force between democracies. This logic is sufficiently different from the territorial explanation. This allows one to set up a crucial test between the two factors, with the democratic peace predicting that regime type is the key to peace and the territorial peace predicting that the issue is the key to peace. In this analysis we will see if the logic of these two different explanations of peace can account for not just the absence of war, but the absence of any kind of militarized conflict.

While there have been some studies on MID onset (e.g. Kinsella & Russett 2002) there have not been any on why some dyads never resort to the use of force. Even the democratic peace, which sometimes examines the frequency of MIDs, (Russett & Oneal 2001) does not explicitly investigate the complete absence of MIDs as a dependent variable. This would involve treating the dependent variable as dichotomous (yes/no) rather than as a continuous frequency of MIDs. Nonetheless, the logic of both the democratic peace and the territorial peace make it easy to derive a clear set of hypotheses as to what is the source of a dyad free of force.

For the democratic peace the place to begin is Deutsch's (1957) concept of a security community. Contrary to realists, who posit a constant struggle for power and periodic war, Deutsch posed the possibility of a community of nation-states where war is not conceivable. Even though some of the states that would not consider going to war but might consider using force, at least some of the logic that would make war unthinkable might cross over and make the use of force unlikely as well. For the democratic peace, these factors are the same as outlined in the normative and structural explanations (see Maoz & Russett 1993); namely, the presence of norms that encourage negotiations and non-violent behaviour between joint democracies, or domestic structures that restrain leaders from using force.[4]

Having outlined the different logics of the two explanations, we now derive some testable hypotheses from the two.

4 In many ways a more nuanced explanation of the democratic peace than the normative or structural explanations of Maoz & Russett (1993) is that of Bueno de Mesquita et al. (1999, 2003). For our tests we do not need to take account of these different theoretical analysis because the basic prediction we make that peaceful dyads are associated with joint democracy would be made by all three.

HYPOTHESES

For the purpose of this analysis peaceful dyads are defined not only as dyads that are free of war, but dyads that have never threatened or used military force against each other. In data terms, we define peaceful dyads as those that are MID free. This analysis will identify dyads that have no MIDs and test two explanations of why they do not have any MIDs.

Four hypotheses will be tested to see whether the territorial peace or the democratic peace better predicts the absence of militarize force between states. The territorial peace predicts that peaceful (MID-free dyads) are those who do not have territorial issues; i.e. those who do not have outstanding territorial claims against each other. The rationale for this hypothesis is that dyads that do not contend over highly salient issues will be less willing to use militarized force. This occurs because non-territorial issues are not typically worth these sorts of costs. Of course, this rationale is probabilistic since territorial disputes, although more likely to go to war, are not a necessary conditions of war. Likewise, territorial issues are not a necessary condition of the use of force, even though they are more likely to give rise to the threat or use of force. This analysis gives rise to Hypothesis 1.

Hypothesis 1: Peaceful dyads (i.e. those that are MID free) should consist predominantly of dyads that do not have territorial issues (claims).

The democratic peace predicts that the use of force is not a function of the issue under contention, but the predilection of regimes to handle an issue in certain ways. For the democratic peace, joint democracies are considerably less likely to use militarized force against each other regardless of the issue under contention. The rationale is that joint democracies due to either the norms that guide their behaviour or because of domestic structural constraints (Maoz & Russett 1993) have a much lower probability of employing force against each other. From these theoretical expectations Hypothesis 2 can be derived.

Hypothesis 2: Peaceful dyads (i.e. those that are MID free) should consist predominantly of joint democracies.

The above two hypotheses compare the predictions of the territorial peace with those of the democratic peace. As they stand even if they both pass testing, the results do not mean that one explanation is more powerful than the other. They both could be complementary even. The last two hypotheses are more evaluative. Hypothesis 3 says that the territorial peace is more useful because it can successfully predict more cases of peace. Hypothesis 4 goes further and implies that the territorial explanation is more powerful because it can explain why joint democracies do not fight.

The third hypothesis provides a comparative test between the two explanations. It posits that dyads without territorial claims will account for more peaceful (MID-free) dyads than joint democratic dyads. It is assumed that comparing the % of successful predictions of each explanation provides an empirical way of determining which explanation can better predict which dyads are peaceful. In other terms, we want to know what % of a population or sample of peaceful dyads are consistent with the theoretical expectations of the two explanations. If a joint democracy only makes up a low percentage of "MID free" dyads, then other factors are contributing to a larger percentage.

Hypothesis 3: When territorial claims are absent from a claim, it will correctly predict more instances (and an increased percentage) of peaceful dyads compared to joint democracy.

Hypothesis 4 goes a step further and posits that the very reason a joint democracies are MID free is that they do not have territorial claims against each other. The reasoning here is that joint democracies are peaceful because they do not raise life and death issues with each other, which differs from the notion that they can handle the issues better because of who they are. This implication is that territorial issues will be absent from a significant portion of jointly democratic peaceful dyads. This hypothesis will permit us to see if the absence of territorial disagreement is a contributing factor as to why joint democracies are free of militarized conflict. This gives rise to Hypothesis 4.

Hypothesis 4: Joint democracies that are MID free will have few territorial claims.

The tests of Hypothesis 4 will also examine non-joint democracies to see how many of these peaceful (MID-free) dyads are also free of territorial claims. If the non-joint democracies are also generally free of territorial claims this will indicate that territory or issue type is more important than regime type.

RESEARCH DESIGN

Dependent Variable

This study seeks to identify peaceful dyads that never use or even threaten the use of force against each other in a given historical period.[5] This study examines the reasoning as to why this is the case by testing two explanations of peace in the literature—the territorial peace and the democratic peace. Investigating why states never use force against each other would be a monumental task if data on

5 Maoz (2004) is one of the few who does that for dyads that never go to war with each other.

militarized conflict did not already exist. The MID project of the Correlates of War project back in the 1970s began to collect data on every threat or use of militarized force among legally recognized nation-states from 1816 on (Wallace 1972; Gochman & Maoz 1984). The MID 3.1 data which goes through 2001 (Jones, Bremer & Singer 1996; Ghosn, Palmer & Bremer 2004) will be used as the basis of all tests. These data record which states had MIDs and against whom. These data will be re-configured to look at the history of MIDs between each dyad in the system. The larger project (Vasquez 2014), of which this is a part, does this for the full period, but the data are also divided into three historical periods: 1816-1945, 1946-1989, and 1990-2001. This adds to the robustness of the test because these periods are historically quite different and it would be possible for certain dyads to be MID free in one period but not another. Across the three time periods there are 951 dyads that have at least one MID. Because of the dearth of joint democracies in the 1816-1945 period only two time periods—1946-1989 and 1990-2001 will be analysed here.

Case Selection

To get at the cases that are MID free it is necessary to compare the list of dyads with at least one MID to a list of all the dyads in the system. One problem with this procedure is that some of the cases will be at peace simply because they have no contact and hence no disagreements. A true sample of peaceful dyads must have the opportunity of the risk of conflict—therefore we look only at politically relevant dyads (Lemke & Reed 2001).[6] Thus, this study will include dyads that are contiguous (by land and sea) since 1816 or their entry into the state system and all dyads between a major and minor state. There were 1,231 dyads that were found to be dyad-free from 1816-2001 and these were attached to the sample of 951 dyads that had at least 1 MID. The latter includes all dyads that have at least one MID at any time from 1816-2001. This means that if a dyad had a MID in 1816-1945 it still appears in the post-World War II samples even if it had no MID in that period.

The Data

To properly test the hypotheses under study data on the history of dyads, as op-

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6 For some of the limits of a politically relevant sample, see Maoz (1996). He finds that some non-contiguous dyads between minor states still have wars and MIDs and thus clearly violate the assumption that non-politically relevant cases do not have severe conflict. These dyads are mostly in the Middle East and Persian Gulf (e.g. Iraq/Iran vs. Israel). We only use a politically relevant sample to identify states with NO MIDs so our analysis is not severely affected by this problem of missing MIDs.

posed to individual disputes, must be collected. For instance, we are interested in Franco-German dyad and whether it ever had a MID; i.e. if it was free of militarized conflict for a period of time. To increase our understanding we collect a "dyad history" data set. These data have one observation for each dyad in a given historical period. It records:

- Whether the pair of states in the dyad ever had a MID
- The number of MIDs the dyad has
- The number of territorial MIDs
- Whether they were always democracies in a given period

These data are quite different from the typical dyadic dispute data that are widely employed. Our data has one observation for every dyad. Dyadic dispute data has one observation for each MID and thus multiple observations for all dyads that have more than one MID from 1816-2001. Dyadic dispute data do not compare dyads to each other, but MIDs. Our data differ even more from dyad-year data, which despite the name does not compare dyads either. It compares the presence of MIDs in a given year. Dyad-year data, although they tell us if in a given year whether a dyad is MID free, cannot be used to compare a dyad that has *never* had a MID in its history (for a given period) with those that have. Vasquez & Leskiw (2001) first implemented dyad history data to study and compare rivals. Subsequently, it was used by Henehan & Vasquez (2001), and Senese & Vasquez (2008). It is also the kind of approach taken by those who compare rivals with non-rivals (Diehl & Goertz 2000; Klein et al. 2006; Thompson 2001)

One problem with dyad history data is: how does one determine when a dyad changes? When do changes in a country warrant the creation of a new dyad? The operational rule used here is that when the Correlates of War project recognized the existence of a new country (e.g. East and West Germany replacing Germany) then a new dyad is created in the data set.

Independent Variables

There are two main independent variables, one to test the territorial peace claim and one to test the democratic peace. To see if states have territorial issues we use the Huth & Allee (2002) data, which looks at whether a state has made a territorial claim against another state.[7] We use this as dyadic data (i.e. one state makes a specific claim on another). Huth & Allee have two bits of data—whether a claim was made and whether it escalated to some use of force. We use only the first por-

7 Huth (1996) refers to his data as territorial disputes. We change that to territorial claims so as not to confuse his data, which consists of claims whether or not they use militarized force, with the MID (militarized interstate *dispute*) data of the Correlates of War project.

tion of data. To determine whether it escalated to force we use the MID 3.1 data. Their data is then re-configured into our Dyad History data to record:

- The presence of territorial issues or claims in the dyad using the Huth & Allee data 1919-1995
- The number of territorial issues in the dyad in a given period

We then compare the dyads that have never had a territorial claim in a period with those that have had at least one. This makes for a main independent variable, which is whether a dyad has a territorial claim by one party against the other or has no territorial claims.

The second major independent variable is whether the dyad is a joint democracy or not. Policy IV data (Jaggers & Gurr 1995) is applied to make this determination. The "weak link" measure of Dixon (1993) is employed with a 6 or above to determine what is a democracy. The "weak link" score takes the lowest result within the dyad as determinative. Thus, if one side has a 6 and the other a 5, this is treated as a non-democratic dyad because the score of 5 for the one side does not reach the 6 cut-off.

To determine if a given dyad is a joint democracy, the policy scores were used to determine if the two countries were "always" a joint democracy in a given period or "ever" a joint democracy. Since we are comparing dyads that never had a MID to those with least one, it makes sense to use only the "always" joint democratic score. This way we know that for a given period the dyad is always free of MIDs and always a joint democracy.[8] A list of dyads that are always a joint democracy in a given period is provided in the appendix.

Test Design and Statistics

It is assumed that the absence of a disagreement pertaining to borders or other territorial questions would make for "MID free" dyads. Gibler (2007) states, stable borders have fewer MIDs between neighbours. To analyze the impact of joint democracy and the absence of territorial issues, two main questions will be asked: a) How many of "MID free" dyads are joint democracies and b) how many "MID free" dyads do not have territorial claims. As noted earlier, to confirm that the dyads that have no MIDs have the capability of severe conflict, a politically relevant sample is used.

A second test is also conducted to see if the lack of MIDs over conflict-prone issues (namely territorial) is a contributing factor to why joint democracies might

8 If one used the "ever" a joint democracy it would be possible that the MID that occurred could have been during a time when the dyad was not a joint democracy and this would be an incorrect test of the hypothesis.

be MID free. In this test we examine the joint democracies that are MID free and see whether they have territorial claims. If most do not have territorial claims, this suggests that they do not resort to force because the issue under contention is not inherently prone to violence. To see if this is also true of non-democracies, we examine the non-joint democracies to see whether they have territorial claims. If the results show that joint democracies do not have many territorial claims, this implies the territorial peace can subsume the democratic peace because it can account for why joint democracies are peaceful.

All of the four hypotheses we examined can be tested by using 2x2 contingency tables with a chi-square significance test. We find the latter heuristically useful so we have reported it, even though the percentages and raw number make the results clear. We turn now to our findings.

FINDINGS

Tables 1-6 report the results. In these tests what we are asking, is if “MID free” dyads, i.e. those which never have a single resort to the threat or use of force, are more accounted for by the absence of territorial issues or by the presence of joint democracy. Findings for each of the different time periods are reported.

Table 1 reports the outcomes on the tests on the territorial peace. Since there is just one joint democracy in the 1816-1945 time period, only the Cold War and the Post-Cold periods are examined. During the 1946-1989 Cold War period there are 1068 dyads that never use force against each other and as can be seen in Table 1, 94% (1004/1068) of these dyads have no territorial claims against each other. This strongly implies that if dyads do not have territorial claims they are not likely to use military force against each other.[9]

There are similar findings for the Post-Cold War 1990-1995 period. Here about 91% (1557/1707) of the peaceful (MID-free) dyads have no territorial claims. Not having territorial issues with another state seems to be an excellent predictor of being free of militarized conflict and hence peaceful.[10]

The findings in Table 1 provide evidence highly consistent with Hypothesis 1. Dyads that are free of force tend to be those that do not have territorial claims

9 Nonetheless, one can still be conflict free and have territorial claims, although this is rare. Only about 6% of the dyads that are peaceful have territorial claims.

10 As in the Cold War period about just 9% of the peaceful dyads have territorial claims and do not resort to force as a way of handling them. Why these dyads do not resort to force is an important area of future research.

Table 1. Tourism and Palestinian Suicide Attacks: Pooled (Palestine)-Level Regressions (Hypothesis 1)

A. 1946-1989	Territorial Claims (Huth & Allee)		
Any MID	No	Yes	Total
No MIDs	1,004	64	1,068
	(94.01%)	(6%)	
MIDs	333	129	462
	(72.08%)	(27.92%)	
Total	1,337	193	1,530

ChiSq(1)140.7 Pr.<.000

B. 1990-1995	Territorial Claims (Huth & Allee)		
Any MID	No	Yes	Total
No MIDs	1557	150	1,707
	(91.21%)	(8.79%)	
MIDs	218	71	289
	(75.43%)	(24.57%)	
Total	1,775	221	1,996

ChiSq(1)62.5 Pr.<.000

against each other. This supports the claims of the territorial peace. Over 90% of these MID-free cases are accounted for by the territorial peace. We turn now to how well the democratic peace does.

Table 2 looks at joint democracies and peaceful dyads. The top part of Table 2 examines the 1946-1989 Cold War period. There are 1068 MID-free dyads. Only about 7% of the MID-free dyads are jointly democratic. Thus of the 1068 MID-free dyads that never use force, only 74 are joint democracies. On the other hand 994 are non-joint democracies that never use force against each other either.

The results for the Cold War period also show that joint democracies are not likely to use force against each other. There are 82 joint democracies and around 90% (74/82) that never have a MID. However, it can also be seen that a large number of the non-joint democracies never use force against each other; about 2/3 do not resort to force (994/1448). While this is evidence that generally joint democracies are more peaceful, this also means that most politically relevant dyads in history do not use militarized force against each other. Peace is actually much more prevalent than one would expect from a realist analyses.[11]

11 Morgenthau (1978, p.42) says: "All history shows that nations active in international politics are continuously preparing for, actively involved in, or recovering from organized violence in the form of war." (see also Mearshemier 2001).

Table 2. MID Free Dyads and the Presence of Joint Democracy

A. 1946-1989

Any MID	Non-Joint Democracies	Joint Democracies	Total
No MIDs	994	74	1,068
	(93.07%)	(6.93%)	
MIDs	454	8	462
	(98.27%)	(1.73%)	
Total	1,448	82	1,530

ChiSq(1)17.17 Pr.<0.000

B. 1990-2001

Any MID	Non-Joint Democracies	Joint Democracies	Total
No MIDs	1330	377	1,707
	(77.91%)	(22.09%)	
MIDs	272	17	289
	(94.12%)	(5.88%)	
Total	1,602	394	1,996

ChiSq(1)40.96 Pr.<0.000

The bottom part of Table 2 examines the Post-Cold War world; what is noticeable here is the great increase in democracies from 82 to 394. Many of these are young and have lasted barely a decade, if that. The increase in joint democracies makes for a higher percentage of the MID-free dyads that are accounted for by joint democracy going to 22%. Still this means that over 75% of the peaceful dyads are non-joint democracies.

In this period we see that about 95% (377/394) of the joint democracies do not use force against each other, which is up from 90% in the Cold War era. This is only comparatively more conflictive since 83% (1330/1602) of the non-joint democracies never use force against each other in the Post-Cold War period. Looked at from another way, roughly 4% (17/394) of the joint democracies are initiating MIDs against each other, compared to 17% (272/1602) of the non-joint democracies.

Nonetheless, on the whole these findings do not provide evidence consistent with Hypothesis 2. Joint democracy only accounts for 7% to 22% of the peaceful MID-free dyads. This means that roughly 93% to 78% of the "MID free" dyads consists of non-joint democracies. In light of the support for Hypothesis 1, Hypothesis 2 is rejected.

In terms of Hypothesis 3, it is seen that in fact the territorial peace accounts for more cases of peaceful MID-free dyads than the democratic peace. The territorial peace accounts for slightly over 90% of the peaceful cases in the two time

Table 3. How Many of the "MID Free Dyads That Are Joint Democracies Do Not Have a Huth & Allee Territorial Claim?

A. 1946-1989	Territorial Claims (Huth & Allee) Joint Dems Only		
A MID	No	Yes	Total
No MIDs	65	9	74
	(87.84%)	(12.16%)	
MIDs	5	3	8
	(62.5%)	(37.50%)	
Total	70	12	82

ChiSq(1)3.71 Pr.<0.054

B. 1990-1995	Territorial Claims (Huth & Allee) Joint Dems Only		
A MID	No	Yes	Total
No MIDs	318	59	377
	(84.35%)	(15.65%)	
MIDs	8	9	17
	(47.06%)	(52.94%)	
Total	326	68	394

ChiSq(1)15.84 Pr.<0.000

periods, while the democratic peace accounts only for 7%-22% of the cases depending on the time period. The % successful predictions of the territorial peace are overwhelming compared to the democratic peace. On this basis, Hypothesis 3 has passed testing. Regime type does not account for many of the cases of peace in history, but the type of issue under contention does.

We now turn to Hypothesis 4. Is it possible that the reason joint democracies are as peaceful as they are has to do with the issues over which they contend? Mitchell and Prins (1999) showed that democratic states tend to have mostly maritime and not territorial issues. Hypothesis 4 posits that most joint democracies actually will not have territorial issues. Table 3 looks at whether joint democracies are peaceful because they do not have territorial issues. The top part of the table examines the cases that are both joint democracies and MID free during the Cold War. There are 74 such cases. It can be seen that 65 (or 88%) of the cases do not have territorial claims. This supports the claim that democracies do not fight because they do not contend over territorial issue. The bottom part of this table examines the Post-Cold War period. Here there are 377 joint democracies that are MID free. About 84% (318/377) of these dyads have no territorial claims against each other. Again the findings show that conflict-free dyads are those that do not have territorial disagreements. This implies that the reason democracies do not fight each other is that they do not have serious issues that divide them.

Table 4. How Many of the "MID Free Dyads That Are *Non-Joint* Democracies Do Not Have a Huth & Allee Territorial Claim?

A. 1946-1989 Territorial Claims (Huth & Allee) Non-Joint Dems Only

Any MID	Non-Terr. Claim	Terr. Claims	Total
No MIDs	939	55	994
	(94.47%)	(5.53%)	
MIDs	328	126	454
	(72.25%)	(27.75%)	
Total	1,267	181	1,448

ChiSq(1)140.69 Pr.<0.000

B. 1990-2001

Any MID	Non-Terr. Claim	Terr. Claims	Total
No MIDs	1239	91	1330
	(93.16%)	(6.84%)	
MIDs	210	62	272
	(77.21%)	(22.79%)	
Total	1,449	153	1,602

ChiSq(1)66.52 Pr.<0.000

Table 4 tests Hypothesis 4 by examining—non-joint democracies that are MID-free. If the non-joint democracies are MID-free and do not have territorial issues, this suggests that regime type—whether it be democracy or non-democracies—is less important than territory. We see in the Cold War period there are 994 dyads that are MID-free and non-joint democracies. Of these about 95% have no territorial claims. For the Post-Cold War period the results are similar—93% of the 1330 peaceful conflict-free dyads do not have territorial claims. The fact that both joint-democracies and non-joint democracies that are MID free and do not contend over territory supports the territorial peace rather than the democratic peace. These results are clearly consistent with the theoretical expectations of the territorial peace and Hypothesis 4.

What is theoretically interesting in this analysis are the anomalies—those cases where joint democracies have territorial issues but do not resort to using force (Table 3). These cases if investigated might tell us something about how regime type helps avoid the use of force. In the Cold War there are 9 such cases (12% of 74 MID-free dyads). Some of these cases involve former territorial struggles, like Finland-Sweden, the UK-Ireland, Netherlands-Belgium, and Netherlands-Germany. Others are colonial in nature like Canada-UK, US-Netherlands, UK-Netherlands, and UK-Mauritius. Each will have to be investigated on their own merits to see what they can tell us about democracy and territorial issues. In the

Post-Cold War period there is a jump to 59 cases. Future case studies on these issues will reveal more about the role of regime characteristics that promote peace.

Table 4 also lists the cases of non-joint democracy that have territorial claims but do not resort to force. These are interesting because they show it is not only joint democracies that resist the use of force. In the Cold War there are 55 such cases and in the Post-Cold War 91—generally between 5-6%.

CONCLUSION

The four hypotheses tested in this study produce evidence that compares the relative potency of the territorial peace and the democratic peace. Although the analysis shows that joint democracies tend not to resort to the use of force against each other, it is also shown that dyads that do not have territorial claims do not use force against each other. On the whole, the latter accounts for more of the peaceful dyads. Two time periods—the Cold War and Post-Cold War—were examined to identify peaceful dyads, which were defined as dyads that never used militarized force against each other (i.e. were MID-free). It was found that approximately 90% of the peaceful dyads were those that had no previous territorial claims. In contrast it was found that roughly 7%-22% of the peaceful dyads were joint democracies in the two respective periods. This means that the territorial explanation accounts for a large number of the cases while the democratic explanation accounts for under 25%. From this it can be concluded that territory is a more important factor than regime type in predicting peace, although the absence of territorial issues is not seen as a necessary condition of peace.

Additionally, it was found that a possible reason that joint democracies are peaceful is they rarely contend over territorial issues. In the Cold War 88% of the joint democracies do not have territorial claims against each other and in the Post-Cold War period 84% do not have territorial claims against each other. An examination of non-joint democracies that have no MIDs also revealed a similar pattern suggesting that regime type is not as important as territory or issue type in determining peaceful relations. While there are still a variety of tests and empirical probes that can be done, the research here provides evidence that peaceful dyads that are free from the use of militarized force are those that do not have territorial issues and that this characteristic is more prevalent than both sides being democratic in the population of peaceful dyads. These results are very similar to the findings on the absence of war where it was found that the joint democracies that never have wars rarely have territorial MIDs (Vasquez 2014). Further testing will see if these results will be sustained with other data and time periods, but for the time being the territorial peace has been given credence.

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Appendix

Table A1. Dyads That Remain Jointly Democratic Their Entire Existence 1816-2001

Country Code A	Country Name A	Country Code B	Country Name B
2	United States	20	Canada
2	United States	666	Israel
52	Trinidad and Tobago	101	Venezula
200	United Kingdom	666	Israel
325	Italy	349	Slovenia
565	Namibia	571	Botswana
740	Japan	910	Papua New Guinea
750	India	910	Papua New Guinea
N=8			

Table A2. Dyads That Remain Jointly Democratic from 1816 to 1945

Country Code A	Country Name A	Country Code B	Country Name B
2	United States	20	Canada
N=1			

Table A3. Dyads That Remain Jointly Democratic from 1946 to 1989

Country Code A	Country Name A	Country Code B	Country Name B
2	United States	20	Canada
2	United States	200	United Kingdom
2	United States	225	Switzerland
2	United States	305	Austria
2	United States	380	Sweden
2	United States	666	Israel
2	United States	740	Japan
20	Canada	375	Finland
20	Canada	740	Japan
52	Trinidad and Tobago	101	Venezula
94	Costa Rica	740	Japan
200	United Kingdom	210	Netherlands
200	United Kingdom	225	Switzerland
200	United Kingdom	305	Austria
200	United Kingdom	375	Finland
200	United Kingdom	380	Sweden

200	United Kingdom	385	Norway
200	United Kingdom	390	Denmark
200	United Kingdom	666	Israel
200	United Kingdom	740	Japan
210	Netherlands	211	Belgium
210	Netherlands	740	Japan
305	Austria	325	Italy
385	Norway	390	Denmark
385	Norway	900	Australia
740	Japan	900	Australia
740	Japan	910	Papua New Guinea
740	Japan	920	New Zealand
750	India	910	Papua New Guinea
910	Papua New Guinea	940	Solomon Islands

Table A4. Dyads That Remain Jointly Democratic from 1990 to 2001

Country Code A	Country Name A	Country Code B	Country Name B
2	United States	20	Canada
2	United States	91	Honduras
2	United States	92	El Salvador
2	United States	93	Nicaragua
2	United States	95	Panama
2	United States	100	Columbia
2	United States	101	Venezuela
2	United States	130	Ecuador
2	United States	140	Brazil
2	United States	155	Chile
2	United States	200	United Kingdom
2	United States	220	France
2	United States	225	Switzerland
2	United States	230	Spain
2	United States	255	Germany
2	United States	305	Austria
2	United States	310	Hungary
2	United States	315	Czechoslovakia
2	United States	325	Italy
2	United States	350	Greece
2	United States	355	Cyprus
2	United States	380	Sweden
2	United States	640	Turkey
2	United States	666	Israel
2	United States	740	Japan

20	Canada	92	El Salvador
20	Canada	220	France
20	Canada	230	Spain
20	Canada	255	Germany
20	Canada	310	Hungary
20	Canada	325	Italy
20	Canada	355	Cyprus
20	Canada	375	Finland
20	Canada	740	Japan
52	Trinidad and Tobago	101	Venezuela
91	Honduras	92	El Salvador
91	Honduras	93	Nicaragua
91	Honduras	200	United Kingdom
91	Honduras	255	Germany
91	Honduras	325	Italy
91	Honduras	740	Japan
92	El Salvador	93	Nicaragua
92	El Salvador	255	Germany
92	El Salvador	325	Italy
92	El Salvador	740	Japan
93	Nicaragua	94	Costa Rica
93	Nicaragua	100	Columbia
93	Nicaragua	255	Germany
93	Nicaragua	325	Italy
93	Nicaragua	355	Cyprus
93	Nicaragua	740	Japan
94	Costa Rica	95	Panama
94	Costa Rica	255	Germany
94	Costa Rica	325	Italy
94	Costa Rica	740	Japan
95	Panama	255	Germany
95	Panama	325	Italy
95	Panama	740	Japan
100	Columbia	101	Venezuela
100	Columbia	130	Ecuador
100	Columbia	140	Brazil
100	Columbia	155	Chile
100	Columbia	200	United Kingdom
100	Columbia	220	France
100	Columbia	255	Germany
100	Columbia	325	Italy
101	Venezuela	155	Chile
101	Venezuela	200	United Kingdom
101	Venezuela	210	Netherlands

101	Venezuela	220	France
101	Venezuela	255	Germany
101	Venezuela	325	Italy
101	Venezuela	740	Japan
140	Brazil	145	Bolivia
140	Brazil	160	Argentina
140	Brazil	200	United Kingdom
140	Brazil	220	France
140	Brazil	255	Germany
140	Brazil	325	Italy
140	Brazil	740	Japan
145	Bolivia	155	Chile
145	Bolivia	160	Argentina
145	Bolivia	255	France
145	Bolivia	325	Italy
145	Bolivia	740	Japan
155	Chile	160	Argentina
155	Chile	200	United Kingdom
155	Chile	220	France
155	Chile	255	Germany
155	Chile	325	Italy
155	Chile	740	Japan
160	Argentina	165	Uruguay
160	Argentina	200	United Kingdom
160	Argentina	220	France
160	Argentina	255	Germany
160	Argentina	740	Japan
165	Uruguay	200	United Kingdom
165	Uruguay	255	Germany
200	United Kingdom	210	Netherlands
200	United Kingdom	220	France
200	United Kingdom	225	Switzerland
200	United Kingdom	230	Spain
200	United Kingdom	235	Portugal
200	United Kingdom	255	Germany
200	United Kingdom	305	Austria
200	United Kingdom	310	Hungary
200	United Kingdom	315	Czechoslovakia
200	United Kingdom	325	Italy
200	United Kingdom	350	Greece
200	United Kingdom	355	Cyprus
200	United Kingdom	368	Lithuania
200	United Kingdom	375	Finland
200	United Kingdom	380	Sweden

200	United Kingdom	385	Norway
200	United Kingdom	390	Denmark
200	United Kingdom	640	Turkey
200	United Kingdom	666	Israel
200	United Kingdom	740	Japan
210	Netherlands	211	Belgium
210	Netherlands	220	France
210	Netherlands	255	Germany
210	Netherlands	740	Japan
211	Belgium	255	Germany
220	France	230	Spain
220	France	235	Portugal
220	France	255	Germany
220	France	310	Hungary
220	France	315	Czechoslovakia
220	France	325	Italy
220	France	350	Greece
220	France	355	Cyprus
220	France	368	Lithuania
220	France	380	Sweden
220	France	640	Turkey
220	France	740	Japan
220	France	900	Australia
220	France	920	New Zealand
225	Switzerland	255	Germany
230	Spain	235	Portugal
230	Spain	255	Germany
230	Spain	325	Italy
235	Portugal	255	Germany
255	Germany	305	Austria
255	Germany	310	Hungary
255	Germany	315	Czechoslovakia
255	Germany	325	Italy
255	Germany	350	Greece
255	Germany	355	Cyprus
255	Germany	366	Estonia
255	Germany	367	Latvia
255	Germany	368	Lithuania
255	Germany	375	Finland
255	Germany	380	Sweden
255	Germany	385	Norway
255	Germany	390	Denmark

255	Germany	640	Turkey
255	Germany	740	Japan
255	Germany	900	Australia
255	Germany	920	New Zealand
260	German Federal Rep	315	Czechoslovakia
290	Poland	366	Estonia
290	Poland	367	Latvia
290	Poland	368	Lithuania
305	Austria	310	Hungary
305	Austria	315	Czechoslovakia
305	Austria	325	Italy
310	Hungary	315	Czechoslovakia
310	Hungary	325	Italy
325	Italy	349	Slovenia
325	Italy	350	Greece
325	Italy	355	Cyprus
325	Italy	368	Lithuania
325	Italy	380	Sweden
325	Italy	390	Denmark
325	Italy	640	Turkey
325	Italy	900	Australia
325	Italy	920	New Zealand
350	Greece	355	Cyprus
350	Greece	640	Turkey
352	Cyprus	640	Turkey
352	Cyprus	666	Israel
355	Bulgaria	640	Turkey
385	Norway	390	Denmark
565	Namibia	571	Botswana
732	South Korea	740	Japan
740	Japan	840	Philippines
740	Japan	900	Australia
740	Japan	910	Papua New Guinea
740	Japan	920	New Zealand
750	India	910	Papua New Guinea

N = 225

The Global Security Management Crisis

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Abstract

A preliminary outline of a larger work, this article briefly describes the history of global security structures in international politics as an introduction to the contemporary, very complicated, global security structure largely shaped by the United States and West, and then discusses the deterioration of this structure in recent years. It suggests that this is becoming an important crisis brought on to a considerable extent by the Western states that created and run it. It briefly reviews possible alternatives ranging from reconstituting and reinvigorating the existing system to possible other global security arrangements along realist lines, around regional security centers, or based on the original UN arrangements, or a reinvigoration and reconstruction of the existing global security management relied on since the Cold War.

The Journal of Territorial and Maritime Studies Volume 2 Number 1 (January 2015) pp. 33-53

Territorial and maritime activities, practices, conflicts, interchanges, and the like are deeply affected by the international system, particularly its political and security dimensions and developments. The global level of that system, particularly the political and security components, are of great relevance in this regard. States have numerous interactions, interests, and conflicts within the system and the system in turn strongly affects, helps shape, what states do and why. An increasingly important component of the international system is security management at the regional and global levels. Often also referred to as maintaining world order, it clearly pertains to both territorial and maritime matters, such as in the containment of disputes over boundaries, ethnic and religious clashes, or severe domestic violations of international norms.

The system emerging in Europe around 1,500 took considerable time to become truly global, replacing predominantly regional systems that preceded it (Watson 2009). The European system was centralized, or nearly so, only for short periods. Unlike in other regions of the world decentralization was its norm, particularly with regard to military security.[1] In the 20th century that characteristic incited using the term and concept of "anarchy" to describe the system's fundamental dynamics and explain states' behavior. But in the 19th and 20th centuries efforts were mounted to try to give it centralized security management. Recently it has had a proactive global security management capability that has often and readily penetrated states deliberately, sometimes forcibly. That specific capability has been a major factor in the behavior of many states and societies, in territorial and maritime dimensions and activities, since the Cold War.

The security element in international politics today is relatively centrally overseen by what can be termed, for our purposes here, the contemporary Global Security Management System (GSMS). The GSMS can have an immense impact, good and bad, on members of the system and their citizens. It has been an important aspect of the world's rising interactions and interdependence. It stands out because it has been a surprising and increasingly difficult management capacity and structure to create and effectively operate, and somewhat underestimated, probably because of analysts tending to emphasize the anarchical character of the system, treating that as responsible for much of the incidence of warfare—even its primary cause—and responsible for a supposed lack of security management.

Thus security management was taken seriously primarily as a regional or local level concern. The European states system, relatively soon after Columbus,

1 In much of the world empires arose that for a time controlled what their rulers believed was most of the civilized world, empires ruled via a high degree of centralization.

gained almost global reach in a modest and primitive form and then steadily expanded on it, achieving ever more global reach and a gradually expanding global impact. But what that involved was a far cry from a GSMS until relatively recently. In fact European system expansion brought considerable *insecurity* to many societies, and a number of its members engaged in wars not only in Europe but often out in parts of the rest of the world. Britain came closest to supplying global management on security through its maritime dominance and the enormous extent of its empire but its control and management fell short of being global. For instance, despite the empire it was often not the most powerful state in Europe.

But centralized security management at the global level may have a longer history than this suggests. An alternative conception has been developed by World Systems Analysis advocates. Most relevant here is the George Modelski-William Thompson approach, which defines the historical global system as consisting only of states able and willing to operate on a global scale, confining that system to a handful of states for most of its history and seeing it as often rather detached from the heart of international politics in Europe. Its few members lived in two systems at different levels simultaneously, systems that were different (Modelski 1987; Modelski & Thompson 1988).

They claimed that the truly global system had usually operated differently than the European system. A dominant actor, a hegemon, would remain dominant for several decades, giving the system considerable security management and stability under a unipolar arrangement. It would then experience a period of gradual decline in its hegemony, in its power relative to rising competitors, again over several decades. This would eventually give way to a third period of growing conflict and disarray, culminating eventually in a period of major war between the top two or three states—a war that drew many other states into the fighting, making it a kind of systemwide war. In the end either the dominant state would triumph and restart the cycle again as the system hegemon, or the rising competitor or a third party would become the hegemon instead, rule for several decades or more until going into the same relative and gradual decline with another ensuing huge systemwide military conflict, and the same result. Over those 500 years, the recurring global system cycles had lasted a bit more than 100 years each, with the last period of systemwide warfare in 1914-1945 making the US the global system's dominant state. What was most significant in their analysis was the conclusion that the era of hegemony was a period of security, of progress, of development and overall management. Thus there has been significant *global* security management periodically, in lengthy eras with security provided by a dominant actor at its peak or while facing decline but still very potent and maintaining significant control over the system. It was in the periods that central security management was weakening, that developments led ultimately to the emergence of severe conflict and widespread war. The dominant factor determining the unfolding of the cycle was the power distribution among the few global level competitors, but instead of the constant power shifting and power balancing of the European system, the global system experienced periods of real management, progress, and stability, of significant evolution toward elevating the general quality of life in international politics and its members, albeit being regularly punctuated eventually by an era of devastating conflict.

The Modelski world system approach fits the contemporary international system only unevenly. On the one hand, the US dominance which resulted from World War II persisted for quite a while and then began to decline as would be expected. But the main challenger then fell into a premature decline and a disastrous collapse well before past cycles would have predicted (fortunately without a systemwide war). And while at first this was followed by a new surge in US hegemony, that period has been too short for the first phase of a Modelski world system cycle. Instead, the US is now often depicted as facing a serious rising competitor or competitors. The result is one standard view today that US hegemony is ebbing and will continue to do so. If so, there should be evidence of a decline in global security management, and there are now numerous signs that this may be happening, with many observers and analysts citing increasing disarray within and among numerous states around the world (again with no signs of an imminent great war). But from the outset of US post-Cold War hegemony, the US—as renewed hegemon—promptly began pressing strongly for major improvements in the global system, particularly with regard to security management, as the Modelski approach would expect. Thus the Modelski world system model remains somewhat useful as a template for exploring how a global security management system can exist and perhaps how it can be sustained or deteriorate.[2]

In contrast to that approach, the field of international politics has largely pursued the subject of security for states and others by seeing the international system as having emerged initially in Europe, then significantly developing there and spreading elsewhere over a considerable period of time. As a result the world experienced the expansion of an anarchical or at least semi-anarchical system. As noted above, that kind of system has been typically described as regularly beset by

2 One possibility: US post-Cold War hegemony was just a relatively short interruption in the gradual decline normally experienced by the hegemon in a Modelski long cycle after about 25-30 years and extending another 25-30 years, followed by the really serious decline and system disarray that sets in which leads ultimately to a major period of warfare. Therefore the end of the Cold War was not the end of a long cycle and the onset of a new one, but rather roughly the mid-point in the current long cycle instead, with a further deterioration in system management to come from now on.

conflicts and suffering periodic stretches of devastating major warfare, the result of the decentralization of states within anarchy—a system of independent states preoccupied with sustaining their existence because there is no higher authority to provide rule. The system has been seen as largely operated by the most powerful states, at the global level or in particular regions, within the framework of power balancing in theory and practice, and as experiencing, as a result, considerable conflict, both peaceful and violent, among members. This conflict and resulting insecurity has been explained as either the natural *empirical* result of actors struggling to expand their power and thus their security, or as a *logical* result of governments seeking to cope with an anarchical environment by expanding their power, with both explanations citing constant struggles and warfare among members. Security management in the system has been seen as episodic, conducted mainly for the benefit of the most powerful participants, and as providing an uneven and often unpredictable security.

Nevertheless, the 19th and 20th centuries saw the emergence of notable efforts to establish an enduring global security management that was expected to prevent wars among great powers; limit wars between great powers and lesser states, or among lesser states, and thus provide a secure international environment. In effect the goal was to combine the best periodic feature of a Modelski system—a dominant concentration of institutionalized power at the global level to provide security and stability—with efforts to elevate security throughout the system as well. The major initial version was the Concert of Europe among European great powers after the Napoleonic wars. Composed of only the great powers, its major objective was preventing wars among them and containing situations that might lead to such wars, using conferences when necessary to work out effective solutions to dangerous situations. It had notable results for several decades but by the middle of the 19th century it had been substantially eroded in leverage and effectiveness. The second effort at achieving an institutionalized global security management was the League of Nations, meant to cancel great-power wars and install security for other states through a potent collective deterrence of wars and potent collective military intervention to stop them once they began. It also took an interest in enhancing internal security for some states and their societies by curbing domestic violence. From its inception this security system suffered from serious defects. While it had some successes it began deteriorating after roughly a decade and eventually collapsed within another decade.

The third serious try was the establishment of the United Nations, with responsibility for maintaining security lodged primarily in the UN Security Council, which was dominated by several great powers and thus resembled the Concert of Europe. Severely handicapped from the start by lack of agreement among the

Council's five veto-wielding members, the Council and the larger UN have nevertheless compiled a lengthy but mixed record of success. After the Cold War, UN efforts to promote peace and security expanded markedly not only for dealing with interstate wars but also with intrastate fighting and its prevention. Eventually, though wars continued to occur their numbers, the resulting deaths very significantly declined, particularly after the end of the Cold War, which was results the UN has contributed to (Goldstein 2011).

However, the Security Council continued to be handicapped by lack of consensus among the permanent members. A potent but very unusual additional approach to global security management emerged as the Cold War got under way, which was the Cold War itself. The chief contestants in the Cold War had the capacity to be considerably more potent, effective, and applicable in maintaining a modicum of system security. The UN had been unable to dominate and operate security management, almost from the start, at the global level and often at lower levels of the international system. So the critical problem, the Cold War, quickly became at the same time the dominant factor in security management as well, containing the conflict between the US and Soviet blocs via an updated version of power balancing. In the new version, the core component in sustaining peace was the *deterrence* provided by the two bloc's nuclear arsenals and elaborate conventional forces. Also important for inhibiting lesser conflicts was US and Soviet control over their respective blocs, keeping some lower level conflicts from escalating into major wars. Security and stability of sorts was the result because no vastly destructive war occurred—because it would have been intolerable.

Unfortunately, this situation, plus the veto system in the Security Council, meant that global security management rested primarily on enormously dangerous weapons and an intense East-West political rivalry that had many actors in constant risk of penetration, manipulation, and military harm from the great powers directly or from proxies the great powers backed in fights among lesser states, or in the serious internal political and military struggles between factions they supported. The term "Cold War" captured quite effectively the peculiar, highly unsatisfactory "security" management for many members of the international system for decades. In effect, it was security on the brink of a cliff. It is not surprising that at the end of the Cold War there was an almost immediate revision in security management after much of this security structure disappeared.

THE CONTEMPORARY GLOBAL SECURITY MANAGEMENT SYSTEM

After the Cold War the United States, with the West, significantly altered global security management. But not via careful advance planning and extended consultation. At the outset the US was not really sure what it was doing and what results to expect. Without bipolarity, security management via power balancing among highly competitive great powers was out of date. The basically unipolar political situation allowed the US and its associates to extend their dominance in global security management to more parts of the world and in a more penetrating fashion. Efforts at doing this soon appeared in various ways in Europe (Bosnia, Kosovo), the Middle East (Iraq, Libya), and East Asia (East Timor, Kampuchea), and later on in East Africa (Somalia) and South Asia (Afghanistan and Pakistan) as well, while the US continued as dominant on security in Central America and the Caribbean and, in a more distant fashion, in South America. From the start the US had support primarily from long-time friends and allies. Global security management became significantly Western and moderately collective in character. The end of the Soviet bloc threat led to an obvious major shift in orientation, with a notable de-emphasis on security matters in Europe, and with the US in particular paying more attention to the Middle East, portions of South Asia, North Korea, and the rise of China militarily, culminating in the early stages of the so-called "pivot to Asia."

How was this done? The most important initial step was the US decision, almost from the outset, to maintain its alliances and its other traditional security-related associations around the world for an indefinite period, even though they had been created for dealing with the now defunct Cold War. In part, especially early on, that decision was made because many of allies and associates strongly requested it. They had no clear sense of how their security situations would develop, what threats they might face. They naturally delighted in enhanced security via continuity—political, military, and institutional—to help cope with a major international environmental shift of unknown ultimate dimensions. However, the US soon realized that it needed to alter the primary focus of these alliances and associations away from just defending the allies and toward other missions and activities. The world was changing and without adaptation the alliance structure would soon look unnecessary and out of touch. For example, as the saying went with regard to NATO, now that Europe was much more peaceful NATO's focus "had better be out of area or it would soon be out of business" (Danielson & Widerberg 2014).[3]

In the US, there was real concern in the Pentagon and elsewhere about a rush to rapidly reduce and withdraw US armed forces abroad and at home. After

3 The phrase was coined by Senator Richard Lugar. See Danielson & Widerberg (2014).

all this was what had occurred to varying degrees right after World War II, the Korean War, and the Vietnam War, leaving the nation ill prepared to meet threats later on. Sustaining a significant American military presence abroad might help slow such developments, which it did up to a point.

However, all this was far from certain to work for very long. Many governments, analysts and observers at the time felt that after the Cold War US alliances would more or less dissolve, including NATO, and began preparing for it (Mearsheimer 1990; Walt 1998/1999).[4] Others looked forward to it. This was, and remains, the very strong Russian preference on NATO, and the strong China preference on American East Asian alliances (which also continues), and they weren't alone. Reinforcing these predictions, hopes, or expectations was the fact that the US and most of its allies/associates were soon facing shrinking military resources, just as expected. Defense budgets began shriveling, there was a rapid decline in the perceived necessity for and salience of nuclear weapons, and a widespread political desire to secure major new financial resources by cutting military budgets and forces.

But rather than dismantling the military components of Cold War security management across the board the US, somewhat surprisingly, led Western efforts at remodeling them into what soon became basically an American Global Security Management System (AGSMS) with other Western participation. The main Western allies were somewhat or strongly interested in participating, at least on paper. Key elements on the military side included maintaining the alliances and other military associations (such as with Taiwan) intact, and moving toward substantially enlarging NATO. The US also introduced steps to make the shrinking forces of the governments involved significantly more flexible, mobile, and capable. The idea was to get allied forces in far better shape to integrate with US forces in operations when necessary, more readily prepared for operations jointly with the US. This was spurred on by how inadequate the US found NATO members' capabilities, especially in Bosnia and in the air during the war with Serbia, for working alongside American units. There was expanded US aid in allies' implementation of the elements of the Revolution in Military Affairs US forces had been undergoing since the Vietnam War. This included, for allies, upgrading and standardizing not only various military equipment, training, weapons, communications, transportation, etc. but also instilling greater military professionalization. The US also retained and even improved its vast military transport capacities to move forces,

4 Mearsheimer (2001) also predicted the reemergence of standard competitive and dangerous great-power politics. Huntington (1996) offered a similar prediction but with the main actors being nationalities.

including those of its allies, capabilities that could be at the disposal of allies when necessary. The US was soon into seeking to build a fairly integrated military expeditionary capability for upholding regional and global security virtually everywhere against threats and violence international or internal.[5]

In doing all this, one US advantage was how it had always insisted in treating its main alliances as largely *communities*, partners or associations rather than temporary military cooperation arrangements.[6] The American term for US-European relations has always been the Atlantic "Community" and for NATO, the North Atlantic "Community." That curbed inclinations to let NATO just dissolve. The same was true of the US alliances with Japan and South Korea, Australia and the Philippines. Thus expanding the alliances or shifting their focus and the nature of the cooperation involved became more plausible.

But there was another, new, dimension to security management added after the Cold War, one only partly due to governments. It was a contribution coming not only from within the US but many other countries including friends, allies, and third parties. This was yet another effort to enhance security, independently of the US alliance system and often generated outside the UN as well. It became very influential in partially reorienting both the AGSMS and the UN. It rested on redefining and expanding the concept of security, embracing domestic security matters in particular. It involved an explosively widespread and growing movement on expanding the promotion in multiple ways of:

- Democracy
- Protecting human rights, particularly for women and minorities
- Expanding economic development and economic interaction
- Improving health and welfare in many societies
- Curbing violent ethnic and religious conflicts
- Ending terrorism
- Battling international criminal activity

The underlying rationale was that human security involved more than safety from military harm. People everywhere were threatened by many other dangerous things when lacking or losing the valuable items above. The term for mounting efforts on bettering the human condition everywhere was "*securitization*," the point being that they would combat security problems too and should be treated

5 Seldom recognized as such, this created an alternative to the UN rounding up forces when needed, a more or less standing military expeditionary force for UN and non-UN operations - a force envisioned for the UN initially but never seriously pursued.

6 The US aversion to alliances went back to George Washington, so the insistence on "communities" was not just a ploy.

as such, that efforts to deal with these problems should get the kinds of attention and resources, at least to a greater extent, normally lavished on armed forces. This was especially attractive to pursue when military forces nearly everywhere were being cut—pressure mounted to put some of the newly available resources into dealing with these, and related, kinds of "security" threats. The resulting efforts were linked into enhancing the roles and capabilities of international organizations and related institutions, as well as being taken up by a vast surge of private entities, and portions of national governments.

Bolstering all this was a vigorous expansion in efforts at promoting the acceptance, authority, and application of international norms pertaining to the many facets of this enhanced concept of security. The surge of interest in gaining greater support for these norms, to make them much more influential now that the Cold War was over, was also closely linked to revitalizing the UN and other international organizations. Thus the expansion of what many people saw as a major element of international security, had a corresponding parallel growth in people and organizations seeking important roles in it.

This fit in well with natural American perceptions and objectives. The United States has, almost from its beginning, felt it embodies and pursues values and a political and economic way of life that should be available to everyone else, and would be readily acceptable to them. That what the US ultimately stands for should be promoted vigorously and will be widely accepted. This has often shaped its policies in a central fashion since Woodrow Wilson. What was new after the Cold War was an explosion of interest in these things, and in helping to help others obtain them, in many places around the world. It seemed that these American expectations were about to be achieved, relatively easily.[7]

And the results? First, it was apparent that such humanitarian efforts had huge appeal across the western world and elsewhere, and they mushroomed. Second, it soon became clear that collectively these were enormous, quite complicated, and very difficult tasks for the US, allies, friends, and others to pursue and particularly complicated to get much of the rest of the world to undertake, at least in terms of Western understanding of what should be done to implement them effectively. They turned out to be much more costly, controversial, onerous, and violent to pursue as well.

The result is well known—numerous unevenly effective military interventions, often primarily organized and led by the US and in keeping with its im-

7 This is a major theme throughout Kissinger (2014), particularly in discussions focused on the decades from Woodrow Wilson on.

mediate interests and concerns, such as terrorism, particularly the ill-defined and badly conducted wars in Iraq and Afghanistan that were therefore eventually badly received in the US and elsewhere. There was also a huge jump in interventions on broader international humanitarian concerns such as development, ethnic conflicts, and human rights. As we know, these interventions have often been controversial to nonparticipants and participants, and very uneven in results (Stewart & Knaus 2012).

All this became part of the global security management structure, and it has contributed to how that structure has come to be in serious difficulty. What should be of serious concern now is how Western states and societies have become, almost universally, less supportive of all these activities, even though they remain attractive in principle, and that this lack of support is particularly noticeable when military operations are involved. This is a very serious development since Western societies and governments have been the bulwark of that security management. They are not abandoning the goals, nor the norms from which the goals spring, and remain disturbed in particular about serious cases of violence or damage to people in other ways. But they dislike the costs, particularly from military actions, in trying to do something about them, and this has been strongly reinforced by the global recession.

They are disappointed with the negative reactions often expressed by non-western governments and elements in their societies, and having to confront many criticisms from Western and non-Western analysts and observers. They have been badly stung by the level and kinds of violence involved, especially in view of the costs, the limited success or downright failure in many instances, whether as a result of their efforts and actions or the ensuing behavior in states and societies they sought to help. As a result Western governments and societies are tired—more introverted, less supportive of global security management and pursuit of related improvements, more skeptical about what will be achieved, less accepting of migrants and refugees, far less confident that newly installed governments and political systems, economies, etc. will work.

Next, many people in the West have concluded that other states and societies must find their own way to improve their situations and thus their security, because as they are now they are not worth caring about. They put their ethnic, religious, caste, tribal, and personal elements ahead of seeking comprehensive social cohesiveness, rule of law, even simple health care, education, good government, even decent diet and sanitation concerns. Many in the West are tired not only of trying to fight for their betterment, but tired of fighting for people who will, in the end they think, return to being as they were. Such harsh attitudes are widespread.

The natural response in the West has been to cut military forces at home and abroad, and interventions abroad, and military spending, while limiting the scale of interventions. Public opinion polls show that this is what citizens want. On top of this Western and other analysts often assert that efforts to promote modernization, improve societies and governments, and the like, have been badly designed, implemented, and received. The efforts are often considered by those targeted for assistance and support as imperialist: arrogant, threatening, and insensitive. Popular now among analysts, western and nonwestern, is the notion that modernization must be left largely to societies and governments themselves to undertake and implement. Again, the greatest disapproval is often reserved for foreign military intervention.

Particularly salient is the widespread view that the US is already moving to retreat from its leadership role in all this. Others expect that to happen soon or suspect it is going to happen, as do many American analysts. Whether it does so or not, many American officials, leaders, and analysts believe this is what the US ought to do. Analysts in the realist school in particular see this as the best course, asserting that now US resources are overextended to no good purpose. And citizens across the West, especially with the recession in mind, have called for focusing instead on domestic problems and political leaders have taken note. As have major states in various parts of the world exacerbated about Western domination of the international system and eager to play a greater role themselves in its management.

THE CORE PROBLEM

Why and how did this occur? Several factors have been prominent. Foremost, is that Western efforts to deal with standard security problems rooted in fighting—international and internal—are typically conducted simultaneously with trying to handle the expanse of security concerns elevated in prominence by securitization and related efforts. The former has primarily involved force—military intervention, with hopes it can be applied relatively precisely and briefly, thus inexpensively. The latter readily led to confronting other societies, cultures, political systems, and religious beliefs and practices with huge challenges to their legitimacy, leading to involvements that can take decades to resolve. The additional complication in this two-sided endeavor is that often the two security problems are considered interdependent—one cannot be successfully handled without dealing also with the other. Internal and interstate conflicts often have deep roots in the nature of societies and their political institutions and practices that need extensive modification or even elimination so as to spread elements of modernization that can help in reducing the conflict. But modernization of those societies is considered impossible unless something is done to repress or eliminate the particularly corrupt and vicious regimes and military forces or terrorist groups behind the security problems. US and allied military forces in Iraq and Afghanistan were under great strain in having to attend to aspects of nation-building, community development, relaxing ethnic conflicts, etc. and soon were appealing for waves of civilians to take on these activities. Of course, it was difficult for civilians to do their work if military forces were not around to protect them. But then the people to be helped often felt they were living in an oppressive environment, inhibiting their cooperation.

Second, however, the result of all this is that many regimes and societies tend to see global security management as Western imperialism rationalized in a new way—in fact, some Western analysts agree with them. This makes the resulting perceived threat virtually existential—the Western presence represents a serious threat no matter what the real objective behind it is. Even efforts to promote physical security—get fighting stopped, for example—is therefore condemned as attempted Westernization at work, not security management per se. And if the threat is not seen as Westernization, it may well be characterized as outsiders seeking to steal the nation's territory, resources, and wealth. The result, in various places around the world, is serious resistance to Western-driven globalization, to security links to the US and the West, plus a strong desire to obtain nuclear weapons, with treatment of Western rules and norms as unacceptably intrusive and dangerous, and so on (Kissinger 2014, 365).

This means that pursuing global security management in a classic fashion, using deterrence threats and military interventions when necessary, can be harshly incompatible with undertakings promoted under the heading of humanitarianism. Both are intended to broaden and improve security in the widest sense, yet each can often make the other much harder to achieve. People in the West have not found a way to blend the two, nor how to readily separate them. Moving to suppress a vicious regime or civil war, or a nasty interstate conflict, leads almost immediately to demands back home to do something to also suppress ethnic or religious discrimination, the mistreatment of women, authoritarian rule, etc. on grounds that nothing will come of efforts to end the violence without getting at the roots of it—the fighting, the exploitation, or the corruption will just erupt again. The flaws in conducting one will sooner or later erode the other, repeatedly.[8]

Third, while Western societies and governments have roughly similar norms

8 Perhaps the most notable example was the US move after occupying Iraq to dissolve the Iraqi armed forces and Baathist elements in the bureaucracy, which seriously alienated very important sectors of the population.

and objectives or preferences, when pursuing global security they have clashing interests and great variations in available resources. The former make it difficult to either act or, having acted, to continue the effort until real success is achieved. The latter make it difficult for many Western states to meet the costs and burdens involved so, from the start, the efforts may be underfinanced, under sustained, and thus somewhat incomplete. Western coalition states are far from having equal intensity behind security endeavors for foreigners. The US, notably former Secretary of Defense Robert Gates, has often strongly objected to this with little success (Matlary 2014).

Fourth, as a result many Western analysts and officials, analysts and commentators, are eager to resume classic balance of power thinking in which international politics is shot through with spheres of influence and preoccupation with narrowly national interests, with major nations turning to offshore balancing, leaving other states and societies to go their own ways as long as they do not threaten Western security in the classic sense. In terms of global security management, this is understandable but almost certainly out of date. The American propensity to promote American ideals and values has deep roots and is now reinforced by similar elements in other Western nations. It is simply not going to go away. The West would have to forego global security management almost completely which is probably impossible politically. And the world is getting smaller; it will be steadily more difficult to see very serious developments elsewhere as not posing any significant threat to a great many others.

All this contributes significantly to a final disturbing condition. The United States remains the only government and society in international politics, and has been for quite a while, that readily thinks globally. Not all the time, but more than any other society and government. It has responsibilities globally; resources globally; friends and associates globally, and worries globally. It despairs globally. Not just in security matters but in economic affairs, global warming, norms, its national image.… Russia, China, Arab states and Iran, to name a few, continue to challenge the international system out of familiar, distinctly regional and national preoccupations. And while the West has dominated the effort to sustain a new global security management system, in many Western societies and governments the commitment to this is rather limited. This is an unfortunate but understandable situation, particularly when serious fighting or very substantial expenses are involved, and it cannot readily be changed—it must be accommodated somehow within the existing global security management system. Thus the United States has to play the major role in any global security management effort. If its willingness to do so declines further no one else will step forward in its place, at least not in the foreseeable future.

Given the decline in Western support for participating in global security management, particularly when it involves military intervention, and the irritation or opposition it often generates, it is not surprising to see a more belligerent North Korea, the continuing Arab Spring disasters, the disturbing Western relationship with Russia, the expanding Chinese belligerence vis-à-vis its neighbors, and the difficult conflicts in Africa. The present situation resembles the 1930s, when a serious depression helped erode the energy, resources, and commitment necessary to sustain the security management arrangements set up after World War I. This led almost inevitably to rising tension and friction, increasing belligerency from autocratic states, and radical attacks on the democracies ideologically, politically, and eventually militarily, with not much done to stop it until it was too late.

THINGS TO KEEP IN MIND

Many of the endeavors and objectives noted above—military and otherwise—have indeed not worked out well, but the global security arrangements since the Cold War have had some success. Great power relations have been much less conflictual, with no wars among them and no situations where a war seemed possible until the recent conflict over the Ukraine. This has been a quarter century of unusually pacific interactions—a kind of pluralistic security community—among major powers while their interactions and interdependence steadily expanded. The world's nuclear weapons have been reduced by more than 75%; many of the remaining ones are in storage, deactivated, or on their way to being dismantled. There has been a modestly integrated international effort by the major states to halt nuclear proliferation. The incidence of interstate wars in general has fallen sharply (Mueller 1989). Until recently that had been true of internal wars as well. Loss of life from warfare in general had declined significantly, until recently. Norms opposing outright interstate territorial seizures have been largely upheld—Russia and China being the primary violators presently.

To a considerable extent this progress has been generated or facilitated by the GSMS put in place after the Cold War predominately by the (mostly) democratic and (mostly) Western states. This coalition has repeatedly sought to get other states to join if they are willing to cooperate in keeping with its norms and practices, but with only modest success. Many target states and their citizens oppose this coalition and its arrangements, primarily out of seeing it as a classic pursuit of domination or Westernization, but also due to lack of interest or concern about the costs and other burdens. If its security arrangements continue to erode, numerous harmful consequences seem more likely than not to result. Several states will continue seeking to impose their own approach in trying to become the dominant actors in their regional security matters. The Ukraine crisis displays elements of what this will look like. These states may well deserve to be dominant in their regional systems, but a crazy quilt pattern of very different international systems alone, with no global management to effectively provide restraint and standards, would be periodically disastrous. Next, we could very well see the return of interstate fighting. Fear of this, or the desire in various governments either to dominate security matters in their neighborhood or prevent an opponent from doing it, has led to nuclear proliferation in the past and could well increase the pressure for it to expand further, and to a weakening of organized efforts to prevent it. There will be declining cooperation for and intervention on upholding the other post-Cold War dimensions of global security that have been playing a prominent role.

This will presumably generate serious reverberations, particularly because the international system is a steadily shrinking social construction. Linkages and interactions among states and societies are proliferating and deepening, due to increasing flows of all sorts. As a result there is a rising level of internal disturbances or other serious conflicts as well: disruptions, greater flows of migrants and refugees, more environmental damage, enhanced ethnic, religious, and cultural clashes. That will likely be accompanied often by insufficient or ineffective responses to nonmilitary threats and failures in nonmilitary security situations.

One result will be a serious strain on deterrence, the most important component of effective global *security* management. Not just in deterrence that prevents violent outbreaks and grievous disruptions poised to explode (immediate deterrence) but deterrence that curbs and suppresses such behavior well before it gets to the point of exploding (general deterrence). Deterrence is the spine of global security management. It is the fundamental product of an effective security system whether from a unipolar structure, a stable balance of power, an institutionalized international management, or a potent cluster of powerful influential states with cohesive integrated norms and values. The basic contribution of such systems, when successful, is the consistent presence of effective deterrence that prevents or strongly discourages outbreaks of violence, suppresses it when it erupts, and backstops other efforts to enhance security at many levels.

The US and its associates more or less ambled into generating, then maintaining, the current global security management system. They are now, more or less, ambling out of it, and may well continue doing so. This is being led, in large part, by the US but it has plenty of company. What do we have to replace it?[9]

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9 For a more optimistic view of the current state of security management and its prospects see Kagan (2012).

OPTIONS?

It would be good to have a handy substitute or alternative for providing the military backup necessary to sustain the current global security system, but nothing like it is currently in sight. There are no alternative collective arrangements, military and otherwise, that can reasonably contain the outbreaks of violence we now see in too many places. There is no agreement on what a good one would look like. There is nothing like a consensus on what it should be and how it should operate. There is also a dearth of decent IR theory pertaining to this. The existing system is slipping away with no replacement at hand.

The most obvious alternative would be a modified "realist" one, as many international relations analysts suggest, "modified" because no one really wants a classic realist world reborn. The realist alternative today would stress entering into fewer military interventions in general, by stressing standard national interests and downplaying somewhat humanitarian concerns. For example, the realists' reaction in the US to the Ukraine situation has been that the West should not have expanded NATO into Eastern Europe, particularly Ukraine, because it had no serious interests at stake there. All it did was threaten Russian interests, to which Russia naturally reacted very strongly—verbally at the start and now more physically as that government sees the existing security management system slipping away and thus vulnerable to being challenged.

How effective would this security management be? History suggests such arrangements can work for considerable periods of time if the states primarily involved in disagreements emphasize maintaining a reasonable level of order and avoid excessively threatening each other's interests. But it also suggests that such arrangements too often begin to break down, and in the contemporary international system that seems rather likely. The whole point of seeking systemwide security management, since the Concert of Europe, has been to reduce relying on classic power balancing because it is too unreliable, which is too costly when it begins to deteriorate. On the other hand, If the major states in particular combine modest nuclear arsenals with resting world order on decent respect for each other's interests, including collectively suppressing other nuclear arsenals, perhaps stability would be suitably sustained.

A second alternative would be to return to taking the UN seriously. That means an end to Western states maneuvering around Chinese and Russian vetoes and other objections so they can run global security management as they wish, and an end to their maneuvering around the UN entirely at times. Instead the major powers would have to do as much as possible collectively, with general agreement, to manage security and settle for what the limits on consensus provide. That would revive the way the Security Council worked during the Cold War, something the West lost patience with decades ago. One result would be the growing devolution of security management responsibilities to dominant regional powers.

Thus a third option, attractive to various governments, is a world managing security matters largely at the regional level, primarily through the dominant regional powers. The UN would have even less relevance, even if those powers had permanent seats on the Security Council. Each would carefully protect its regional fief, using the Security Council to reinforce its right to do so. The study of regional international systems has gained ground in the past few decades, and that might contribute to enhancing security in many of them (Paul 2012). And each regional leader might be more readily satisfied having its own bailiwick, enough to create broad world order. Of course, there could be very serious conflicts instead inside regional systems, like the terrible fragmentation associated with the Arab Spring and the rising frictions between China and its major neighbors, or conflicts between regional systems as in the speculation about a serious US-China conflict eventually.

These options envision a less centralized global security management. The main theory of *global* security management is liberal. It asserts that the Western approach to international politics among Western nations and their closest associates, a kind of Deutschian community,[10] will continue spreading, however slowly, because of the appeal of the West and its ways, the appeal of the related international norms, and the effects of rising interactions around the world. It takes seriously the need to attend to major security threats domestically in states. It envisions an expanding conglomeration of states being drawn into promoting global security management collectively. There is no necessary anarchy in international politics because international interdependence is eating away at it, and the resulting level of community in international affairs is too powerful, appealing and pervasive to fall victim to retreats from it (Ikenberry 2014).

The necessary basis for this would be US determination to lead it, including willingness to use its military power when necessary, and the US getting suitable military and other backing from more than just Western states. With the present day Western malaise, this seems unlikely, but it is not impossible. After all, on several occasions the US seemed determined to step well back from the dominant position it eventually assumed after World War II, but in each case it ended up keep-

10 This means having what Karl Deutsch called a "pluralistic security community" in referring to the emerging European community back in the 1950s, where actual fighting among the members becomes virtually inconceivable.

ing and enlarging its alliances and other associations and eventually expanding its security responsibilities. Maybe this will happen again, but is it very likely? After all the trouble spots could continue to multiply, and the West might be partly the cause because Western societies are not going to abandon their humanitarian and normative inclinations. The US pursuit of a democratic, free enterprise, prosperous, and tolerant world via a decent world order is now some 100 years old—since Woodrow Wilson sought to make it the heart of American foreign policy—and many major societies have since joined the club. How can this be kept from frightening and antagonizing many other parts of the world?

Global security management has to be taken very seriously now, as a major priority, because it is heading toward a serious crisis.[11] The other alternatives for dealing with the situation at present have little appeal. The US has a history of waiting too long in situations like this, leading to unfortunate outcomes. And while the current global security management system has some attractive elements, it is inadequately designed and operated. The UN has security responsibilities that include Security Council authorizations of military interventions, but less potently than the overlapping security responsibilities assumed by the US and the West. Nuclear deterrence remains an important component of global security management but is practiced by too many states. Efforts to control proliferation are being pursued by major states that lack true harmony about the problem. Meanwhile, a vast array of private or semi-private entities and NGOs are entangled with governments, the UN, and other IGOs in conducting an immense assortment of attacks on major nonmilitary threats that frequently antagonize many states, ethnic or religious groups, and entrenched elites. Traditional military arrangements for providing global level military security have to be somewhat disentangled from the many humanitarian endeavors but there is no clear path toward how to do this. The latter must be handled in ways that often soft-pedal what is being sought and how if we are to have fewer violence-prone reactions to them.

Starting over—having developed a new global security management structure with great bursts of energy and promise—would almost certainly be too complex and difficult to arrange now, not practical, not really possible. The best approach seems to be to continue taming the most serious military security problems today, however difficult, so as to halt, then reverse, the deterioration of the existing security management system. Otherwise it is likely to continue deteriorating due to the costs. Halting that would hopefully buy time for reconsideration and recon-

11 For an early anticipation of this see Kaplan (2001).

struction of the presently very unwieldy system.

But if it turns out that we have to start over, it should begin to happen soon. "…the world awaits the distillation of a new regional order by America and other countries in a position to take a global view" in the Middle East, which would be a stepping stone to arriving at "a concept of order that transcends the perspective and ideals of any one region or nation," (Kissinger 2014, 145, 373) and the basis for security in international politics. That in turn suggests we badly need to be rejuvenating theoretical explorations of security *management* at the global level, not just theoretical explorations of what world order will look like. New thinking about international security management is indeed in need.

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Tectonic Move in 21st Century International Relations: Ukrainian Territorial Crisis, Realignments of Major Powers, and Implications for the World

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Abstract

This essay discusses the recent Ukrainian territorial crisis in the context of power transition theory and explores its implications to international relations in the 21st century. According to the theory, the status-quo leader chooses to enlarge the power differential against the opponents and over a rising power. Because of the position by the West on Ukraine, Russia will seek support from other countries politically and economically. As a result, a Euro-Asian grouping that includes Russia, China and others may present alternatives to the status quo of the West.

Keywords

Ukraine, territorial dispute, power transition theory

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Certain demarches act as catalysts, shaping relations among nations, transforming lives across the world and changing destinations of societies. They define coalitions and alliances, set off multinational wars and recalibrate or even alter world order. Tracing the initiation of major events such as the First and Second World Wars, as well as the Cold War, we can identify catalysts that set in motion the reconstruction of the relations among major powers. The 2014 Ukraine territorial conflict represents a landmark in international relations that has the potential for producing shifts in the dominant and challenging alliances, thus determining and shaping the future world order.

The Ukraine crisis unfolds with an accelerating speed. For years Ukraine was trapped in a tug of war between the West and Russia, between international liberalism and geopolitics, between market economic reform and dependence on Russian energy. Finally, these factors moved the move the country into a crisis. On 21st November 2013, President Viktor Yanukovych abandoned the popular pro-EU strategy. In December, protesters occupied Kiev City Hall and Independence Square; conflict intensified between the protesters and the government. Numerous people were killed in the violence at the capital on the 20th and 21st February 2014. On 22nd February, Mr. Yanukovych fled, and the parliament called an election. On 27th February, a pro-Russian Crimean militia rose in arms. On 6th March, Crimea's parliament decided to join Russia through a vote. On 16th March, the majority of the Crimean population chose to secede in a referendum. On 17th March, the Crimean parliament declared independence and officially asked to join Russia. Afterwards, conflict arose in the Eastern part of Ukraine, centered in Donetsk. On 11th of May, referendums were held in Donetsk and Lugansk. Separatist leaders announced that a large number of voters wanted to secede from Ukraine and establish their own governments. On 24th May, the two separatist regions officially merged into a confederation under the name of the Federal State of Novorossiya.

While in the West, the administration and mass media issued the strongest condemnation denouncing the involvement of Russia in annexing Crimea and supporting the separatist military campaign in East Ukraine. John Mearsheimer, a leading scholar in world politics, however, argues that it actually was largely the fault of the West that had resulted in the territorial crisis over Ukraine. “The United States and its European allies share most of the responsibility for the crisis.” Mearsheimer writes in an article recently published in *Foreign Affairs*. “The taproot of the trouble is NATO enlargement, the central element of a larger strategy to move Ukraine out of Russia's orbit and integrate it into the West”

(Mearsheimer 2014).[1] He continues, "The West's triple package of policies—NATO enlargement, EU expansion, and democracy promotion—added fuel to a fire waiting to ignite" (Mearsheimer 2014). The current crisis has the potential for causing protracted disruptions and antagonisms between Russia and the West. As a solution, he suggests that, "The United States and its allies should abandon their plan to westernize Ukraine and instead aim to make it a neutral buffer" (Mearsheimer 2014).

In this paper, we present a theoretical structure for the understanding of the genesis and consequences of the territorial crisis in Ukraine and analyze the processes as well as potential outcomes ensuing from the conflict between the West and Russia over Ukraine. While we conduct historical and policy analysis in this essay, a portion of our writings is in the domain of making predictions about the future, based on a coherent theoretical foundation. Only the passage of time will provide support or rebuttal of our predictions.

HISTORICAL OVERVIEW: THE TRAGEDY OF LOCATION

Ukraine has been a central protagonist in a number of major global restructurings. Kiev was destroyed in 1237, prior to the Mongol incursions into Eastern Europe and the Middle East. Following the collapse of the Mongol empire, after a short period of semi-independence, Ukraine became part of the Polish-Lithuanian Commonwealth between 1569 and 1648. Another short tenure of semi-independence followed the Khmelnytsky uprising, after which a large Ukrainian group established the Cossack Hetmante, only to be integrated into the rising Russian empire, while Turks and Russians competed over control of portions of Ukraine's territory. After the Partitions of Poland in 1772, 1793 and 1795, the westernmost region of Ukraine was annexed into Austria-Hungary, while the rest fell under the Russian Empire.

Ukraine took the proscenium again in some of the most noticeable confrontations in Eurasia. The Crimean War of 1854 started as a conflict between Russia and Turkey over the domination of the Black Sea and Ukraine. The hostilities escalated and eventually involved the major European powers. Despite the occupation of Sevastopol in Crimea after a long fight, Western powers withdrew, and Russia eventually re-consolidated its conquest of both Crimea and Ukraine.

1 From *Foreign Affairs* electronic version. http://www.foreignaffairs.com/articles/141769/john-j-mearsheimer/why-the-ukraine-crisis-is-the-wests-fault

During the First World War, Ukraine was the center of the eastern front. Her forces were split between a majority that fought with the Imperial Russian Army and a minority that fought for the Austro-Hungarian Empire. Many of the military campaigns took place in Ukraine, which played a decisive role in the birth of the Soviet Union. The Russian Revolution originated in Sevastopol in 1917, launching a civil war that destroyed the Tsarist regime and ended Russia's participation in World War I. Untold atrocities occurred during that civil war as Red, White, Polish, Ukrainian, and foreign armies marched back and forth across Ukraine. After Lenin's death, Stalin inflicted even greater destruction on Ukrainians, targeting the Kulaks, affluent farmers opposing collective farms. At the same time, opposition from the Kazaks and Tartars in Crimea was brutally repressed. The loss of lives between war casualties and famine were estimated at 25 to 40% of the population. During the Russian Revolution, attempts by Ukrainians to establish their own state failed. Ukraine and Crimea became separate republics within the USSR (Snyder 2010).

During World War II, fighting on the eastern front once again centered on Ukraine. The early German invasion found limited resistance from Ukrainians, some of whom joined the German forces. Following the Battle of Kursk during July and August 1943, which was the largest tank engagement between German and Soviet forces on the eastern front, close to the current border of Ukraine, Ukrainians endured the long and bloody retreat of German forces. After World War II, sections of Eastern Poland were incorporated into Ukraine. Crimea remained an autonomous region within the USSR until 1954, when Khrushchev decided to incorporate it into Ukraine. The 1989 collapse of the USSR and the end of the Warsaw Pact led to the recreation and formation of quite a few nation-states, among which was Ukraine.

In 1991, Ukraine was declared a free state with Sevastopol having its own administration. Most East European nations were in favor of the EU and NATO. Though earlier opportunities existed to integrate both Russia and Ukraine into the EU and NATO, this path has been thwarted and foreclosed first by the war in Georgia, and now, far more decisively, by the ongoing Ukraine crisis. In the next section, we discuss the territorial dispute of Ukraine in the context of an international relations theory and analyze the rationale of the conflict that involves Ukraine, the West, and Russia.

THEORETIC CONTEXT OF THE UKRAINIAN TERRITORIAL DISPUTE[2]

Power transition theory is an international relations theory that studies the structural conditions under which major wars break out.[3] Under power transition theory, parity between the incumbent leader and its challenger increases the likelihood of war, while preponderance of power is conducive to peace. Countries gain power through economic development and technological innovation, instead of focusing on alliance formation alone. This is particularly true of major powers, for instance, the Netherlands in the 17th century, Britain in the 18th and 19th centuries, the United States in the 20th century, Soviet Union in the 20th century, and China in the 20th and 21st centuries.

Power transition theory has two dialectical and contrasting components: power and preference. On the one hand, it predicts war as a result of competing and conflicting dyads when the power of the two sides is at or close to parity. One the other, when preferences converge between the “challenger” and the “leader (defender),” peace may prevail during power transition. For instance, if two countries benefit from the continuation of world order and share the same outlook about international norms and rules, the incentives for military solutions regarding the succession of world leadership decrease. Given the inevitable rise of a challenger, the defender may benefit from cooperating with, rather than fighting against, the challenger when their fundamental interests converge. Historically, power transition occurred either with conflict or peace. In conflict, the Netherlands overthrew the domination of Spain. In peace, the United States took over world leadership from the United Kingdom. Shared interests between the incumbent leader and the challenger determine the mode of transition (Tammen et al. 2000, 23, 44-60). In addition, Efird, Genna and Kugler (2003) both theorize and measure the conditions under which transitions happen peacefully or violently. A key factor is the satisfaction with the status quo by the challenger.

Table 1 summarizes the implications of power transition theory. The likelihood of a major war is lowest when a dominant leader shares a great deal of preferences with a weak challenger. In this case, the challenger is not capable of, or interested in, fighting the leader. Similarly, if the two nations enjoy significant overlapping preferences, even when they are relatively equal in power, they will not have much interest in going to war with each other. The chance of major con

2 Part of this section is from and draws upon Feng (2013).

3 There is a large body of literature on power transition theory. This work mainly draws upon Organski & Kugler (1978; 1980), Tammen et al. (2000), and Tammen (2008). For a critique of the theory, see DiCicco & Levy (1999), which details the development of power transition theory.

Table 1. Peace, Power, and Preferences

	Preference Convergence	Preference Divergence
Power Parity	Accommodation	War
Power Preponderance	Peace	War

flict also remains low when the challenger holds an opposing interest against the leader but is too weak to fight the latter.

In Table 1, the most dangerous juncture is when the challenger and leader disagree on the rules of the game and when they are relatively equal in power. The challenger is in a position to make demands on the leader to change the structure of international relations or norms of commercial activities, and the leader will resist and combat these demands, as they compromise and reduce the leader's gains from the world system it manages. The likelihood of major conflict intensifies when the gains perceived by challenger outweigh the expected losses from relinquishing the use of force.

Far from a leadership position, Ukraine cannot be recognized even as a regional power. However, the role played by Ukraine, willingly or unwillingly, in world politics and military conflict, cannot remain unnoticed. As summarized earlier, Ukraine endured many atrocities, because it was in the path of the pursuit for power by major countries. As the challenger catches up or as the leader declines, or the relative distance between the leader and the challenger shortens, alliance may become a critical factor. Woosang Kim and James Morrow (1992) find that alliances play critical roles, changing capacities and affecting the timing and probability of war onset.

While power transition theory emphasizes in general the power of the defender and the challenger, rather than that of allies to the leader and the challenger, alliances play important roles in the process of power transition, particularly when the defender is faced with the prospect of phase-out. Between a leader and its alliance, it is the leader that sets the norm and order of the world structure, making rules and dictating rationale. In the formation of preferences, the leader gains a collection of allies and supporters who benefit from the norm and structure that the leader enacts and protects. The allies have their vested interest in espousing and fighting for the course of the leader. They may enjoy a free ride on the leader when the leader is strong, but will defend the alliance and the leader when the latter is on decline.[4] This scenario particularly applies when a powerful

4 See Snidal (1985) for a theoretical discussion on the strategic interactions between the hegemon and its followers.

challenger pursues interests opposite to those of the leader and her alliance.

The deterioration of the leader's position threatens the benefits of the leader and its allies, causing the alliance to improve the chance of collective survival. This assumes that the challenger has a very different set of preferences from the leader. If the leader and the challenger share much the same outlook, then the allies of the incumbent leader would not have misgivings about world leadership transition. Chae-Han Kim (2007) argues that trust and distrust also play roles in conflict. He finds that conflict arises when nations mutually dislike each other and when a nation's ally does not trust the target nation. In our context, trust and distrust are based on preferences. When a nation's allies differ from a third party in terms of interests and preferences, potential for conflict increases.

An alliance under an effective and strong hegemon attracts new members that hope to benefit from the economic market shared by the leader and its allies and to enjoy the military protection that the leader and the alliance offer. The new members add to the complexities of alliance management; however, they also amplify the collective power of an alliance. Ukraine has been such a case.

Upon the demise of the Soviet Union and loss of some of its republics to independence, the European Union absorbed former allies or erstwhile components of the Soviet Union: In 2004, the EU accepted the Czech Republic, Estonia, Latvia, Lithuania, Poland, and Slovakia. The second wave of EU eastward enlargement gained a momentum in 2007, with Bulgaria and Romania becoming the new additions. In 1999, the Czech Republic, Hungary, and Poland joined NATO. The year 2004 found Bulgaria, Estonia, Latvia, Lithuania, Romania, Slovakia, and Slovenia receiving the membership of the military alliance of the West. On the list of the candidates for EU are currently Albania, Montenegro, Serbia, and Macedonia, with Bosnia and Herzegovina and Kosovo as potential candidates.[5]

A significant share of people in Georgia and Ukraine desire to join the EU and NATO so as to reap the security as well as economic benefits of the West-led alliance. All this could have played well to the strategy of the western alliance under the leadership of the United States so that the status quo of the current world order could be strengthened, but after the Helsinki Summit of 1997 between Clinton and Yeltsin failed to produce an agreement regarding Russia's participation in NATO, the level of trust required to achieve cooperative breakthroughs declined. Physically, Georgia and Ukraine are too close to Russia for any economic action alone that the West can take to rein in Russia, a country that has regained much power the Soviet Union lost and is now under the leadership of a decisive leader.

5 http://europa.eu/about-eu/countries/index_en.htm.

The fundamental reason for the West to expand NATO after the collapse of the Soviet Union was to maintain its power preponderance over the rest, including Russia and China. According to power transition theory, the leader of the world system will try to enlarge the power differential over its rivalries. In other words, power transition seeks to build a large alliance of satisfied nations that will ensure the status quo. Russia's reaction has so far proven by its move into Ukraine that the NATO/EU expansion was unproductive, if not counter-productive, at least in the short run. Russia took the West's support for Ukraine as a move not in favor of the interest of Russia, but causing security threat to Russia. We agree with Mearsheimer that US actions prior to this crisis during the expansion of NATO—particularly at the 1997 Helsinki Summit—could have been more sensitive and could have laid out conditions for the incorporation of Russia into NATO. We however disagree fundamentally with Mearsheimer's (2014) assessment of conditions and solutions surrounding the Ukraine crisis. He proposes Ukraine to be a buffer state that would insulate the West with Russia. This is a position under balance of power theory, which argues that the balance of power between the leader and the challenger would deter conflict and conduce toward peace. Power transition argues the very opposite.

On the grounds of logic of struggle for power and based on historical evidence, we believe that balance of power is not a means toward peace, but a precondition toward conflict. The need of the countries to "balance" and "counterbalance" each other reflects the circumstances of power transition, raising the probability of severe conflict. Balance of power is an unstable and unsustainable "equilibrium." The incumbent leader would delay this moment as much as she could and the rising challenger would want to pass it as a winner in the shortest possible time.

In terms of power transition theory, Russia and the West do not share the same value of liberal democracy and hold different strategic interests in the world. In light of the same theory, the power of Russia and the West is far from equal, although Russia remains a major state with a nuclear arsenal. Barring some suicidal acts involving the use of nuclear weapons, Russia would not be a threat to the Western alliance under power transition theory. A mobilized NATO has overwhelmingly superior capabilities. However, international politics is dynamic, and the true implications of the Ukraine crisis have to be understood in the global context. In the next section, we delineate some scenarios showing how the Ukraine territorial dispute can create the largest shift in the political influence of the world since the end of the Cold War. It will analyze the implications of the Ukraine territorial crisis to the relations between Russia and China as well as the new competing dynamism relations between the East and West.

DYNAMICS OF THE UKRAINIAN CRISIS WITH GLOBAL CONSEQUENCES

Power transition theory suggests that to insure peace, the United States and its allies need to incorporate Russia and Ukraine into both the EU and NATO, and then extend the membership to China (Tammen et al. 2000). Within the enlarged coalition, even if power transition takes place, the preferences and value system of the alliance would preserve peace, and the world could avoid a costly and bloody power transition. Power transition theory implies that Ukraine can be a bridge for Russia and eventually China to join the satisfied coalition. Balance of power theory to which Mearsheimer subscribes, argues the opposite.

The choice made by the West and Russia over Ukraine has moved the scenario away from what power transition theory would prescribe as an optimal outcome by which an augmented alliance would ensure a peaceful leadership transition when it happens, but the opposite is now true. Upon the declaration of Crimean secession, the European Union imposed sanctions against Russia. On 17th March, 2014, the EU issued the first travel bans and asset freezes against Russia. The EU restricted from entries into its territories 119 people and 23 institutions. It adopted a prohibition on imports originating in Crimea and Sevastopol. In addition, trade and investment restrictions were installed in the areas of transport, telecommunications, and energy as well as the exploitation of oil gas and minerals. Key equipment for these sectors was banned in the direction of Crimea and Sevastopol. "EU nationals and companies may no longer buy or sell new bonds, equity or similar financial instruments with a maturity exceeding 90 days, issued by major state-owned Russian banks, development banks, their subsidiaries outside the EU and those acting on their behalf or under their control. Services related to the issuing of such financial instruments, e.g. brokering, are also prohibited. An embargo is in place on the import and export of arms and related material from/to Russia. Exports of dual use goods and technology for military use or for a military end user are prohibited. Export licenses will be denied if products are destined for deep-water oil exploration and production, arctic oil exploration or production and shale oil projects in Russia."[6] Politically, instead of the G8 summit in Sochi, the G-7 nations met without Russia in Brussels in June, 2014. EU countries also canceled discussions on Russia's joining the OECD and the International Energy Agency. The EU-Russia summit was called off, and EU member states vowed not to continue regularly scheduled bilateral summits with

6 http://europa.eu/newsroom/highlights/special-coverage/eu_sanctions/index_en.htm.

Russia. Bilateral negotiations with Russia on visa issues were discontinued.[7] On 12th September, 2014, the EU issued a new round of sanctions that extended to blocking the export of services and deep-water technology concerning Russia's oil industry. Three major Russian state oil firms were the targets: Rosneft, Transneft, and Gazprom Neft, whose access to financial markets was to be restricted. Large Russian state-owned banks were banned from getting loans with a maturity longer than one month; they would no longer receive other financial services in and from the EU.

On the same day and in perfect coordination, the U.S. adopted similar sanction measures against Russia. The U.S. denied Sberbank and Rostec their access to the U.S. financing market; while Sberbank was Russia's largest bank by assets, Rostec was a manufacturing conglomerate. The U.S. sanctions also banned U.S. companies from exporting goods or services to five Russian energy companies in projects concerning deep water, Arctic offshore, and shale. David S. Cohen, Under Secretary for Terrorism and Financial Intelligence, announced to reporters, "Today's actions demonstrate our determination to increase the costs on Russia as long as it continues to violate Ukraine's territorial integrity and sovereignty. The United States, in close cooperation with the European Union, will impose ever-increasing sanctions that further Russia's isolation from the global financial system unless Russia abandons its current path and genuinely works toward a negotiated diplomatic resolution to the crisis."[8]

In Asia, earlier, Japan imposed its own sanctions on Russia, freezing any assets in Japan belonging to two organizations and 40 the people who had been targeted by U.S. and EU, though "[a]nalysts called the measures largely symbolic since Japan does not import much from Crimea, and it is unclear how many, if any, assets the targeted people hold in Japan."[9] In response to the sanctions by the West, in return, Russia banned food and agricultural imports, including meat, fruit, vegetables, and dairy products from the European Union, the United States, Australia, Canada, and Norway. In the face of the new sanctions, Russia also threatened to close the airspace over the Russian territories to civilian airplanes of the West. What has happened in Ukraine lately may lay a foundation for a new round of realignment in international relations and world politics. One

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7 See http://europa.eu/newsroom/highlights/special-coverage/eu_sanctions/index_en.htm.

8 http://www.thewire.com/business/2014/09/us-officially-increases-sanctions-against-russia/380115/.

9 Martin Fackler, "Japan Imposes New Sanctions on Russia but Keeps a Diplomatic Door Open." *New York Time*. August 5, 2014. http://www.nytimes.com/2014/08/06/world/asia/japan-keeps-door-to-russia-open-while-imposing-sanctions.html#.

rising power, China, has been arguing for political solutions of the Ukraine crisis and is opposed to the use of economic sanctions to put pressure on Russia. As a target of economic sanctions by the West for many years, China had the first-hand experience of how sanctions may or may not work. However, in the case of the Ukraine crisis and the subsequent conflict between the West and Russia, China may emerge as a beneficiary.

During the Cold War period, the Soviet Union was a key reason for the reconciliation between the United States and China, as landmarked by President Nixon's visit to China in 1972. Today, two factors define, at least in the short term, the relations among the United States, Russia, and China and in the long run, the world power structure. The first factor is about what Russia perceives as an encroachment on its security with the NATO enlargement and EU expansion toward its border. The other factor is what China perceives as containment to its rise, headed by the United States and boosted by Japan, along with other countries with which China had territorial disputes, for example, India, Vietnam, and the Philippines.

Over the course of the last three decades, China's rise has resulted in significant part from international liberalism that favors international investment and trade. The economic relations between China and the United States are deep and wide. As the world's largest two economies, their prosperity depends on each other. However, the political and military relations between them lag far behind their economic relations. While economic cooperation may lead to gradual improvement in political and security coordination, lack of strategic trust and true partnership will hamper long-run economic cooperation. By contrast, the relationship between Russia and China is anchored on strategic partnership that emphasizes not only economic but also security benefits. If the relationship between the United States and China was powered by economics, then Russia and China was bonded in security interests.

The 1980s and 1990s have witnessed profound social transformations in Russia and China. From 1985 to 1991, the Soviet Union under the leadership of Gorbachev moved along to its closure and ushered in its rebirth as Russia with diminished territories. During the same period, China expanded its economic reform from the countryside to its urban areas and after 1991, accelerated the deepening of its market economy. Since the dissolution of the Soviet Union in 1991, Russia and China, instead of parting and going in different directions, have found in each other a strategic partner with common interests. Despite the fundamental difference in their national agendas and political systems, the two countries entered into a partnership that has become stronger and stronger.

The strategic relations between the two countries can be found in three key areas: security, regional cooperation, and economic relations. Sequentially, the relations between Russia and China have evolved over three stages, with security taking the lead, followed by regional cooperation, and boosted by economic relations.[10] During the first stage, from 1991 to 1997, Russia and China focused on the settlement of their territorial disputes and the elimination of military confrontation along the Sino-Russian border. In 1997, most of the contested territories along the border between the two countries were resolved. During this period of time, the two countries put forth much urgency and energy to resolve the border dispute and to develop a "good neighbor" relationship. Without the solution of the border issues, the two countries would not have been able to establish a security and political foundation, on the basis of which they could develop their economic relations and achieve consensus on their common strategic goals. In the Sino-Russia relations, security has been the key, from which economic and technology cooperation naturally ensues.

The second stage (1996 through 2001) involved the establishment of regional cooperation among six countries that eventually formed the Shanghai Cooperation Organization (SCO) in 2011. SCO is a regional organization that aims at both regional security and economic cooperation. It proclaims coordination in fighting three interest groups (三种势力): "terrorism," "separatism" and "extremism." Except China, all members also belong to the Eurasian Economic Community. China has proposed that SCO become a free trade area. The six member states account for 60% of the land mass of Eurasia and its population comprises a quarter of the world's population. With the five observer states (Afghanistan, India, Iran, Mongolia and Pakistan), SCO would account for about half of the world's population and three out of the five the BRICS countries (India, China and Russia).

During the third and current stage, following security improvement and regional cooperation, the two countries have strengthened their economic relationship. In 2011, the relations between China and Russia assumed a new name: "comprehensive, strategic, and cooperative partnership," which was an upgrade from "constructive partnership" (1994) and "strategic and cooperative partnership" (1996). Economic cooperation between the two countries has become a major component of this "comprehensive, strategic, and cooperative partnership." The deepening of the economic relationship between China and Russia follows their military and regional cooperation, which means that the two countries may conduct their economic exchanges without as much security concerns as the

10 It should be noted that the authors' designation of these stages is only relatively and may involve overlapping.

United States may have when it trades with China or Russia. With respect to economic cooperation between China and Russia, energy products stand out. Russia's vast resources in natural gas and petroleum fuel and power China's rise; in return, China's consumer products support the Russian market. Immediately following the Crimea crisis, Russia reached an agreement with China to provide 38 billion cubic meters of natural gas each year to China over thirty years with the total bill as high as 400 billion U.S. dollars.

Such comprehensive security, economic, and military cooperation between Russia and China will weaken any attempts by the West to change Russia's behavior by economic sanctions. We anticipate that China-Russia interactions will continue to increase, particularly in the face of what they both perceive as the threat by the West. The size of their joint territories, vast populations, abundant natural resources, and technology will mark the two countries as a dominant force in world politics and international economy.

BEYOND UKRAINE

In today's world, following power transition logic, an overtaking of the US is bound to happen as no world leader has held to supremacy forever. It would be of great interest to identify the next possible global leader. Among the current allies of the United States, no one can take the role that the United States has played since the end of the Second World War. The only likely candidate that has the capacity to take over leadership is the European Union, but currently the latter lacks independent military capacity outside of NATO and, from time to time, appears reluctant to coordinate policies with the U.S. and unwilling to escalate a confrontation against Russia.

Among the non-Western countries that are identified as potentials for hegemony, we have the so-called BRIC countries—Brazil, Russia, India, and China. Among the four, in 2013, China was the second largest GDP producer following the United States only, with Brazil, Russia, and India being the 7^{th}, 8^{th} and 10^{th} place respectively (in nominal terms).[11] As we write, according to an IMF report, the Gross Domestic Product of China has just surpassed that of the United States on the basis of purchasing power parity.[12] If GDP, denominated in purchasing

11 http://en.wikipedia.org/wiki/List_of_countries_by_GDP_(nominal). Using the Purchasing Power Parity, China is still the second, following the US, ahead of India (3^{rd} place), Russia (6^{th}), and Brazil (7^{th}). http://en.wikipedia.org/wiki/List_of_countries_by_GDP_(PPP).

12 http://rt.com/business/194264-china-surpass-us-gdp/.

power parity, were the only indicator for power, then power transition would have happened already, though the leadership transition has not. The United States surpassed the United Kingdom in GDP in the latter half of the 19th century, but it took another half century for the United States to assume the helm of world affairs. The next half century is likely to witness shifts in influence and leadership.

It is in this broad historical trend that the Ukraine crisis erupted. Currently, the military and economic power of Russia cannot balance that of the United States, let alone the entire Western alliance. However, the perception of threats from the West, combined with Putin's ambition to rebuild Mother Russia, compels Russia to mobilize and make territorial claims along its border. Consistent with its strategic goals, Russia acted as it did in the Ukraine crisis. The West, consistent with its support for the status quo, imposed a range of sanctions against Russia. In defiance, Russia issued its counter sanctions against the West. It would be still difficult, however, for Russia alone to counter the West and maintain a "balance."

China is the critical decider. Instead of supporting the West and isolating Russia, China chose to deepen her cooperative relationship with Russia. Far from showing acceptance of the rules set by the U.S. in world politics, China has demonstrated its independence in dealing with major international issues such as the Ukraine crisis. The Ukraine crisis is from this perspective a critical turning point because China and Russia are likely to broaden and deepen their strategic relationship, particularly when both parties are faced with the increasing opposition to them by countries that are being supported by the United States: liberal democracies in Europe and Japan in Asia. Our theoretical and analytical focus is not how long the crisis will last. Given that it has happened, we look into how the relevant nations have positioned themselves around the crisis. The crisis is only part of the process, and it is the dynamic relations among various nations in the process and the eventual likely outcomes that have the potential for restructuring the world.

Russia and China occupy most of Eurasia. The largest landmass of any other two countries combined. Politically, they have put aside their differences in ideology. Militarily, Russia's technology has been buttressing the capacity of the People's Liberation Army. China and Russia no longer see each other as foes, but as important partners to advance their national interests. Economically, Russia and China complement each other well. Russia's energy will continue to drive China's industrialization and urbanization. China's consumer products will help sustain the market demand by the Russians. The commerce along the Sino-Russian boarder is nothing but brisk and can grow exponentially. The cooperation in research and development, for example, in space technology, has much room for expansion between the two. Due to the combination of vast territories, deep human capital, diverse economies, large market size, and abundant strategic resources, they have much to enjoy each other and to influence the rest.

This assessment does not overlook the differences between the two countries. China and Russia have different political systems, but they are not divided by the issues about which the West is concerned, such as human rights and currency policies. What they have in common is the need of each other to advance the interest of the less developed nations that is consistent with their own national development agendas. Combined, China and Russia could challenge for the leadership of the global system. Despite their strategic relationships, Russia and China may not become military alliance as defined by NATO or Warsaw Pact—but they can become security partners as the role they have been playing in The Shanghai Cooperation Organization (SCO). While the two countries will not declare alliance against the West without further and sufficient conflict, they could coordinate and help each other in the areas of their own security concerns and in the interest of their complementary economies.

The limitation is that both are developing nations that need the world market and international capitalism to keep their economy going. The denial of the Western market to Russia over the Ukrainian crisis will push Russia further toward China. If China increases its support for Russia at the expense of the status quo, the West may move away from China, though doing so will hurt the economies of the West as well as China and may not be effective in the long run. China's rise in its power status was not based on ideology or doctrine, communist or otherwise. It was fueled, powered, and driven by market institutions and incentives centered on international investment and international trade, and sustained by domestic investment, consumption, and urbanization. With or without Russia, China will continue to move under the guidance of market economy, finding and working with various economic partners around the world, including the United States, EU, BRIC and other countries.

What the Ukraine crisis suggests is a process of deep realignment, of which China and Russia will emerge as dissatisfied challengers to the status quo, based on their technology, productivity, demography, and economic growth, as well as security coordination and cooperation.

Clearly, China's stake in the Ukrainian crisis is much lower than that of Russia. Strategically, China probably does not want to get directly involved in the crisis as doing so would harm her relations with the West.[13] China has tried, as we mentioned earlier, to conduct her foreign policy independently and in accordance with her national interest. Developing and sustaining her economy remains

13 We thank an anonymous reviewer whose comment has made us clarify this point.

a fundamental national objective for China. While China's economic reforms have benefited from international liberalism and market economy of which the United States and the other Western countries have been the champions, there is still a huge gap between the two in political values and governance. Unless the differences in their respective value systems attenuate and disappear, the world may see a dissatisfied realignment of developing nations facing a satisfied grouping of developed ones. These are the preconditions that power transition identifies as probable precursors of severe conflict including wars: a scenario that in the nuclear era, no one wishes to consider but seemingly no one wishes to prevent either.

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Appendix

China-Russia Relation Chronology (1991-2014)

Time	Description of the Event
May 16, 1991	The two countries signed the Sino-Russian Border Agreement distributing controversial territories during the Soviet Union era. The agreement did not address the sensitive parts, but provided practical solutions to deal with the cross-border problems, such as joint exploration of Zabaykalsky Krai and the declaration of Vladivostok as an open city (Akihiro, 2004).
December 23, 1992	Russian President Boris Yeltsin made his first official visit to China; he signed a Joint Statement on the Foundation of Mutual Relations with Chinese President Yang Shangkun. According to the Statement, "the two countries pledged to establish good-neighborly, friendly and mutually beneficial relations. The officials also signed 24 joint statements, documents and memoranda of understanding on cooperation across a range of issues, such as border demarcation and reduction of troops near boundaries" (Kile, 1999).
November 9, 1993	Russian Defense Minister Pavel Grachev and Chinese Defense Minister Chi Haotian signed a five-year defense cooperation agreement; the two countries will enhance the military cooperation in future (Kile, 1999).
September 3, 1994	At the end of a summit meeting in Moscow, Yeltsin and Chinese President Jiang Zemin signed a joint statement defining the bilateral relationship as a "constructive partnership" (Kile,1999). Besides, "a demarcation agreement was signed fixing the boundary along 55-km stretch of the western Sino-Russian border" (Kile, 1999).
April 26, 1996	The heads of states of China, Russia, Kazakhstan, Kyrgyzstan and Tajikistan gathered in Shanghai; they signed the *Treaty on Deepening Military Trust in Border Regions* which marked the establishment of Shanghai Five (Declaration of Shanghai Cooperation Organization, 2001). China and Russia also announced that the two countries shall form a "strategic partnership of coordination" (Xia, 2000).
November, 1997	Yeltsin visited China and signed an agreement with Jiang Zemin, "settling the demarcation of the controversial 4300 kilometers of the border on the eastern sector of the Russian-Chinese border in accordance with the provisions of a May 1991 demarcation agreement between China and the Soviet Union" (Chen, 1999).
May 3, 1998	The foreign ministries of China and Russia confirmed the establishment of the telephone Hotline link between the presidents (Kile, 1999).
June 15, 2001	The heads of Shanghai Five and newly admitted Uzbekistan met in Shanghai, they signed the *Declaration of Shanghai Cooperation Organization*, which marked the formal establishment of Shanghai Cooperation Organization (SCO) (Boland, 2011).

July 16, 2001	China and Russia signed the *Treaty of Good Neighborliness and Friendly Cooperation*," a twenty-year strategic, economic, and an implicit military treaty, which formalized the close cooperation between the two countries" (Treaty of good neighborliness and friendly cooperation between china and Russia, 2001).
September, 2004	Chinese Premier Wen Jiabao visited Moscow and signed an agreement with Russian Prime Minister Mikhail Fradkov. According to the agreement, "Russia will set the route of a proposed pipeline from Eastern Siberia to the Pacific, and increases rail oil exports to China to 10 million tons in 2005 and 15 million tons in 2006" (China, Russia in Energy Pact, 2004).
October 14, 2004	The two countries signed a Complementary Agreement on the Eastern Section of the China-Russia Boundary, which means that the border issue has been finally resolved. According to the Agreement, "Russia transfers Yinlong Island, half of Bolshoy Ussuriysky Island, a part of Abagaitu Islet and some adjacent islets to China" (Mitchell, 2009).
April, 2008	Chinese Vice Premier Wang Qishan and his Russian counterpart Igor Sechin initiated discussions in energy cooperation, starting the mechanism of energy meetings (Major Events of China-Russia Energy Cooperation, 2013).
June, 2009	This year is 60th anniversary of established diplomatic relations between China and Russia; over 40 contracts worth roughly $ 3 billion have been signed (Russian, Chinese businesspeople sign 40 contracts worth $3 bln, 2009). President Hu Jintao and President Dmitry Medvedev held conferences three times in four days at the Shanghai Cooperation Organization summit in Yekaterinburg, marking the peak of the Sino-Russia relations (Chinese and Russian relations the best ever, 2009).
August, 2009	Wang Qishan and Sechine signed a China-Russia Intergovernmental Agreement on Oil Cooperation, including pipeline construction and oil trade (Major Events of China-Russia Energy Cooperation, 2013).
September, 2010	"President Putin affirmed that Russia will be a good partner of China in terms of nuclear and energy cooperation" (Russia begins filling ESPO spur to China with oil, 2010). However, Russian officials are still reluctant to transfer advanced energy technology to China, which casts doubts on whether Russia is a reliable energy partner for China (China-Russia relations and the United States: At a turning point?, 2011).
November 23, 2010	The Russian Prime Minister Putin and the Chinese Premier Wen Jiabao announced that the two countries shall replace US dollars with their national currencies as payment in bilateral trade (China, Russia quit dollar, 2010).
April, 2012	The China-Russia electricity transit line with 500 kv started formal operation. And the two countries signed four documents in the area of energy cooperation (Major Events of China-Russia Energy Cooperation, 2013).

February 25, 2013	Wang Qishan and Russian Deputy Prime Minister Arkady Dvorkovich reached an agreement on increasing bilateral oil trade, affirming that Russia shall provide 3.8 trillion cubic meters of natural gas to China through China-Russia Eastern Pipeline. The two sides also agreed to conduct further studies on liquefied gas projects and natural gas cooperation on the western side of the two countries (Wang Qishan and Dvorkovich Hold China-Russia Energy Cooperation Committee Chairmen Meeting, 2013).
May 21, 2014	China and Russia reached a 30 years natural gas agreement that "Russia would supply 38 billion cubic meters of natural gas each year to China" (China and Russia reach 30-Year gas deal, 2014).
September 12, 2014	China's President Xi Jinping attended the 14th summit of Shanghai Cooperation Organization in Dushanbe, Tajikistan, where he met heads of Russia and Mongolia, and put forward a three-way economic corridor which connects China's Silk Road economic belt, Russian Trans-Eurasia railway and Mongolia's passage to grassland, strengthening the infrastructure and multilateral trade (Xi calls for economic corridor with Russia and Mongolia, 2014).

The Consolidation of the Euro-regional Territory and Its Consequences:
The Case of the Galicia-North of Portugal Euro-region

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Abstract

The Euro-regions are the institutional expression of a particular way of cross-border cooperation between/among Member States of the European Union. They create organizations, policies, public services, processes and interactions of various entities, but also among citizens. That diversity allows us to analyze in the context of the borders of Spain and Portugal (one of the oldest border spaces in Europe) different types of cross-border cooperation, including models of formal and material cooperation, as well as informal and intangible processes that the residents of both sides of the border have developed throughout past centuries. To study these models and processes of cross-border cooperation we will focus the analysis on the regions of the North-West of the Iberian Peninsula, comprising Galicia and North of Portugal as political and administrative realities, asymmetric but complementary, in a community space as that of the Galicia-North of Portugal Euro-region. The objective is to analyze if after those interactions we can conclude that the emergence of a cross-border governance strengthens the European multilevel governance; a question that we will try to answer by analyzing some elements of the Euro-region path dependence and some specific policy problems of this Euro-regional space.

Keywords

cross-border cooperation, Euro-regions, governance, formal-informal, material-immaterial, institutions, citizens

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Some political scientists and experts on issues of governance and public administration believe that their approach is complementary although necessary for the study of interdependence and cooperation processes that occur along a border space. Even more when we understand that the world has changed a lot since the signing, in 1864, of the Lisbon Treaty, a treaty that has singular importance in the Euro-regional analysis that we expound below.

Considering the global transformations produced during the last century and a half that have led to changes in the structures of states, governments and different multilevel administrations that coexist in a space of border which some refer to as post-modern (Kim 2014, 5-9), what question will guide our reflection on international borders? It relates to the evolution of border institutionalization from the 19th century until nowadays. How are we going to address such a challenge? From the categories of political science and the science of the administration, as in our case it could not be otherwise. We are going to rely on the historical neo-institutional analysis (Steimo 2008), in addition to the paradigm of multilevel governance (Hooghe & Marks 2001). Then, we will go beyond Deutsch, Burrell and Kann's (1957) classic approach of the "post-Westphalian state" on the informal interactions (interdependence) and the creation of spaces of social and political mobilization (Deutsch 1961, 634-647). Because, we consider that approach, in our days and in the current European Union, free of armed conflicts, as a necessary but insufficient classification to understand the complexity of formal and informal, material and immaterial cross-border cooperation and governance.

Our objective is to defend the good governance approach, applied to cross-border spaces, or cross-border governance (Varela 2010; Varela 2013, 329-356; Aguilar 2013, 103-115), from the case study methodology, focused on the analysis of the Euro-region Galicia-North of Portugal. This choice has to do with the fact that we consider the Euro-region Galicia-North of Portugal as a metaphor and a device of the Government and its agents, which aims to organize formal, institutional and material activities on a fraction of the border between Spain and Portugal.

We think that only a part of the possibilities for cross-border cooperation has been developed through this institutional construction, leaving aside those that have to do with other entities comprising the everyday elements of exchange and interdependence; intangible and informal cooperation which constitutes the core, the raison d'être of cross-border cooperation in the current European Union (EU). Thus, the Euro-region is a metaphor that expresses the technocratic and institutional development of these two post-Westphalian states central governments that traditionally rule the border, in a context where Lipset & Rokkan's (1967, 1-67) center-periphery "cleavage" continues to dominate the political, territorial and administrative power relations although less and less, because of the social,

Table 1. Borders, Euro-Regions and the Political Science Perspective

Type of power	Type of government	Type of state	Social model	Goods	Administrative Expression	Type of cooperation	Institutional formulas
"Hard power"	Traditional government	Post-Westphalian state	"Solid"	Public/ Private	Diplomacy and bureaucracy	Formal-material	Working Communities
"Soft power"	Governance	Multi-level state	"Liquid"	Public/ Private/ Common	Para-diplomacy and governance	Informal-immaterial	Euro-regions

economic and political transformations. These transformations involve an evolution of the state ("solid"), which represents Keohane & Nye's (1998, 81-94) "hard power," bureaucracy and diplomacy, towards another type of state, multilevel and more "liquid" (following Bauman's expression), based on the "soft power," governance and para-diplomacy (Aldecoa & Keating 1999). The solid part would be exemplified by the Working Communities, who practice formal and material cooperation; while, the liquid part, representative of informal and intangible cooperation, would be exemplified by networks of cities, Euro-cities, everyday exchanges among citizens, etc. All of them take place in the metaphorical space of the Galicia-North of Portugal Euro-region. In the following table, we present the logical map of our working thesis:

This expanded analysis shown in the table above allows us to study the classic institutions that interact in the borders. While it reveals changing lines and cleavages where Euro-regions integrate types of formal-informal and material-immaterial cooperation (Varela 2014), that, besides generating new "policy problems," are able to put in the cross-border agenda "policy windows" that present new institutions, through new public and private models of government and management of borders within the EU.

To prove our thesis we will rely on a brief narrative structure on the evolution of the borders in Europe in the last two centuries. We continue with a brief presentation on the most recent management mechanisms of these borders and their interdependencies within the EU. Afterwards, we focus our case study in the Euro-regional model and its application to the northwest area of the Spanish-Portuguese border. Finally, we will refute or deny our starting analysis of the Euro-regional institutionalization, its limits, possibilities and consequences, through an exploration on the Galicia-North of Portugal Euro-region and some of its impacts in the construction of old-new cross-border institutions. We leave for the final paragraph, or epilogue, a few summary thoughts on new approaches to the study of the government and management of borders.

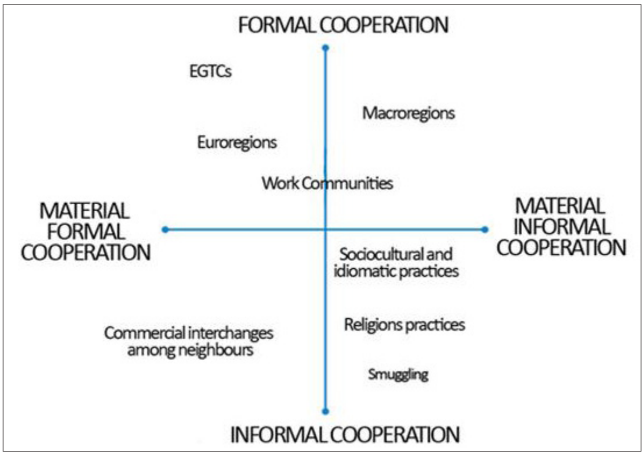
EUROPE AND ITS BORDERS: WHO WE ARE, WHERE WE COME FROM AND WHERE WE ARE GOING

Europe and its borders are a political and social reality that has more than 2,500 years of history (starting in classical Greece). The Greeks already practiced active management of borders from the mythology and its famous “abduction of Europe.” They made a formal and informal logic that defined the pacts among its city-states as *isopoliteia* (horizontal links that generated mutual citizenship rights in those territories) and *sympoliteia* (agreements between institutions that generated shared structures) (Pascual 2007, 167-186).

In our present consideration, the *isopoliteia* would reflect what we define as informal and intangible cooperation based on citizens practices and interactions; while the *sympoliteia* would link to the more formal and material practices driven by the institutions of multilevel government and administration in Europe.

This formulation of practices of formal-material and informal-intangible cross-border cooperation (see graph below), on which we will insist later, implies a new approach on interdependence, cooperation and governance. We understand that this is necessary to address the growing complexity of the government and management of borders, cross-border governance ultimately, from the 19th century until the present.

In fact, as conventional wisdom says, winners write history. In this context, the winners are, mainly, the political and administrative power structures, in the end, post-Westphalian states. It is true that this has happened since the death rattles of the French Revolution in Europe, where treaties were the expression of an



Source: Cancela, Cordal, Domínguez & Varela 2012, pp.61-73.

Figure 1. "Axes" of the Formal and Informal Cooperation in the European Union

agreement between/among parties representing themselves, within a framework of absolute domination and without "checks and balances" of any kind. The Westphalian states and not the citizens were the ones who agreed to treat what, how and when to do it, leaving the administrative aspects in the background (Committee of Limits), forgetting the social aspects and the participation of citizens.

In the case of Europe, Spain and Portugal, treaties are suitable instruments to the configuration as imperial and pre-modern nation-states and they remain so even in our postmodern community. The "main difference" between yesterday and today is that the citizens are now the nation-state, being subjected all of them (with royal exceptions) to the law. In this sense we could even say more, because today nation-states and their government and management instruments have to be subjected not only to the laws, but also to the codes of legitimacy that are built around socio-political ideas and values of the citizens. In such a way that the activities and the treaties of a nation-state may be legal, but, at the same time, barely legitimate. This happens with the treaties that have to do with the regulations of an agreement on border limits between nation-states (like the Lisbon Treaty of 1864). Certainly, they are legal, even 150 years later. Nevertheless, are they legitimate? If so, where does the legitimacy come from? Who are the actors who legitimize them and which others don't?

The study of these type of treaties, like Badajoz (1267), Alcañices (1297), Alcáçovas (1479), Tordesillas (1494), Madrid (1750), Lisbon (1864) or, the most recent, Valencia (2003), on cross-border cooperation, helps us to draw the step from "hard" to "soft," from the post-Westphalian state to the multilevel state, from the center to the periphery, from bureaucracy to governance. In the end, from a solid model of understanding relations between states to a more liquid model of comprehension of the interdependences among entities that also are parts of the state, like the regional and local governments, business entities, and even, why not?, the citizens. In Lange's words (2012, 45):

> "This border [Portuguese-Spanish border] is considered to be one of, if not the, oldest border that remains to this day practically unchanged and stable. It was defined in the Alcanices Treaty of 1297, what could be considered a 'pre-modern time'. However, the actual demarcation of the physical territory only occurs in the XIXth century, presumably when both countries (just like today's modern states) felt the need of a boundary that was more precisely identified (Daniels et al. 2001)."

During the last two millennia, Portugal and Spain have formed as kingdoms, and even as empires. They have lived together (1580-1640), separated, demarcated and delimited, with continuous practices of bordering and un-bordering (Cairo & Lois 2011, 11-22).

However, Spain and Portugal, far from solving their problems with the Lisbon Treaty of 1864, continued to hold disputes over their limits during the last two centuries, as we could see in the cases of Couto Mixto (López 2005, pp.177-183), in the 19th century, and Olivenza, throughout the 20th and at the beginning of the 21st century. Apart from the positions between the two states, citizens who were initially considered vassals, later the managed ones and now, with some audacity, citizens-customers, never participated in the decision-making of those treaties, not even in the most recent one; because, those treaties are deeply rooted in the model of Nation-state that no longer exists. At least since the breakthrough in Europe of the practices of cross-border cooperation which began at the beginning of the last decade of the last century, a result of the policies and instruments of the European cohesion, and the successive administrative complements to the treaties, such as the cross-border cooperation agreements.

The Management of Borders in Europe: From the States to the Citizens

This brief review of the post-Westphalian state framework and one of its "hard power" instruments, such as the treaty, does not mean we should forget the instruments of "soft power," which have been launched by several non-central governments or sub-national actors, as in the case of the regional and local governments in Europe, and even by citizens, in an informal way.

Thus, the conventions of cross-border cooperation between Spain and Portugal started with the creation of the Galicia-North of Portugal Working Community (1991), by focusing the analysis in this part of the Spanish-Portuguese territory. This kind of agreements allows us to glimpse another way of understanding a more plural cross-border cooperation, considering the number of actors, above all regional (*Xunta de Galicia* and *Comissão de Coordenação e Desenvolvimento Regional do Norte*, CCDR-N)[1] and local, especially municipalities and associations of municipalities (*Eixo Atlântico do Noroeste Peninsular and Uniminho*).[2]

With the entry of sub-national actors, a new space is generated in parallel to the formal, central and diplomatic spaces, creating a network that is formal, but also peripheral and "paradiplomatic" (Keating), where interdependencies and co-

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1 *Xunta de Galicia* is the Galician government and *Comissão de Coordenação e Desenvolvimento Regional do Norte* (CCDR-N) is the North of Portugal administration (in Portugal there are not political regions).

2 *Eixo Atlântico do Noroeste Peninsular* means Atlantic Axe of the Northwest of the Iberian Peninsula; created in 1992, integrates the main Galician and Portuguese cities. *Uniminho* is an association of municipalities in the river Miño/Minho valley, created in 2006.

operation enrich themselves, multiplying and, in some cases, producing impacts through successive initiatives of cross-border, inter-regional and territorial cooperation (e.g., INTERREG). It is the case of the Declaration of Porto in 1992, which gave entry into the scene of cross-border cooperation to *Eixo Atlântico* (as a local associative entity of Galicia and North of Portugal, but through the Portuguese private law). Also, the most recent creation of the European Groupings of Territorial Cooperation (EGTC; first in Spain, that of Galicia-North of Portugal; Cancela 2013, 89-102) or the Eurocities Chaves-Verín and Tui-Valença (Lois 2013, 309-327). Even the emergence of wider public and private networks of entities of cooperation such as the Iberian Network of Cross-Border Entities (*Red Ibérica de Entidades Transfronterizas*, RIET).

It is true that the control of borders continues to remain under the responsibility of the central governments. Nevertheless, in parallel to the formal and institutional cooperation of different signs and conditions (under the umbrella of the funds and programs of the EU), there are sediments that have always figured in the cross-border spaces. Informal and intangible practices that coexist in the territory with the more formal and material, proposed by the Government (Cairo, Godinho & Pereiro 2009).

Even before the existence of kingdoms and empires, including borders among them; during the construction of the Spanish liberal state of the 19th and 20th centuries; prior to the construction of Europe and its enlargement processes, which fitted Spain and Portugal in 1986; exchanges, interactions and interdependencies already existed between both sides of the border. Legal and illegal practices carried out by those who inhabit the border (Varela 2013, 329-356).

This expanded vision of cooperation allows us to see how formal structures coexist with the informal ones, how the states continue to carry out part of their functions while the citizens continue to develop part of their lives. Although, sometimes, states and citizens come into conflict, as it happened in the municipality of Olivenza, where an international conflict generated an opportunity of cross-border and multilevel cooperation (Declaration of Olivenza, 2008). As is still happening in the management of European funds and programs that the central governments of both Member States negotiate in Brussels.

The main issue consists in knowing if, despite this "mixture" of Member States, multilevel states and citizens, there are changing lines allowing new institutions in the border spaces that can let us think about a cross-border governance, where all kinds of actors and private or public cooperation structures could fit.

EURO-REGIONS: BETWEEN OUTCOMES AND IMPACTS IN THE GALICIA-NORTH OF PORTUGAL EURO-REGION

For some authors like Perkmann (2003, 153-171), Rojo (2009, 87-121) or Cancela (2013, 89-102), the Euro-regions in Europe's borders are part of a different, asymmetric and novel institutional setting, from which it is possible (Domínguez & Pires 2014, 23-47) to reformulate, even, Europe (Rojo & Varela 2011, 1-16).

At the bottom, the Euro-regions, as borders, are conceptual constructions that make up "new territorial scales" (Perkmann 2007, 253-266). We could even say that they are "Foucaultian devices" of power expressing the need for the periphery to provide their cross-border management structures with a political structure, something difficult to achieve within the framework of the states. The Euro-regions introduced the regions and municipalities, their governments, administrations and citizens in the European multilevel space. Without them, the Europe of the States, Regions and Cities decapitates itself. The involvement of sub-national entities in European governance can increase its legitimacy and enhance its social perception, gradually. Because we already know that multilevel and cross-border governance is the method that best allows us to manage the conflict (Rojo 2005, 5-30; Rojo 2006, 119-142), or at least so it is reflected in the latest Report on Cohesion of the European Commission (Sixth Report on Cohesion 2014).

Today, the positioning of the sub-national actors in the international arena, as well as the strengthening of the structures of cooperation in an enlarged EU, allows paradiplomacy to explain the role of the sub-central actors in the world. Achieving new forms of social and political participation, as well as the management of services by citizens on common problems (Domínguez & Pires 2014, 23-47). Because a few years ago some authors confirmed the possibility of the existence of nations without a state (Keating 2001) and currently some researchers defend a democracy without nations (Filibi, Cornago & Frosini 2011). Others say, that in addition to public and private goods, there are also common goods (Ostrom 1990); and, finally, we have the ones that see Euro-regional spaces as the places to construct Europeanization (Oliveras, Durá & Perkmann 2010, 21-40). Ultimately, all these authors express the consolidation of the paradigm of multilevel governance promoted by the European Commission since 2001 and the Committee of the Regions since 2009, collected and updated in the current EU 2020 Strategy and in its Cohesion Policy for the 2014-2020 period.

However, the Euro-regions represent the political power of the Government in the territory, which continues to control the sovereignty of all multilevel political communities; leaving these instruments at the level of management, rather than the political; at the same time, they are an expression of the process of Europeanization that Europe has lived during the past 25 years. Because as we have seen, although there are Working Communities, European Groupings of Territorial Cooperation, Initiatives Cabinets, Networks of Cooperation... Nevertheless, decisions on what to do or what not to do in a border depend on the Iberian Summits, sovereign meetings where the two states and their respective central governments of Madrid and Lisbon agree on the Spanish-Portuguese border line.

How is the scene that has left the consolidation of the Euro-regions and the consequences of cross-border cooperation in Europe? In our opinion, we should focus the analysis on one of them, since the territorial, political, administrative and socio-economic diversity is especially asymmetric at the regional level (Charron, Lapuente, & Dijkstra 2012, 1-26; Cordal 2010). Because the context of the current crisis also limits the successes of the Cohesion Policy and their formal instruments of cross-border cooperation (CBC; Scott 2014, 81-93), and as a result, at least partially, the process of Europeanization that has been taking place in our continent since the late 19th century. On this subject, the words of Scott (2014, 93) are quite revealing:

> "Reflections on CBC within the EU thus must take into consideration the longue durée nature of creating cross-border political practices at the local and regional level. Indeed, CBC has rarely produced rapid results in terms of economic growth and regional development. Furthermore, local and regional actors develop cooperation mechanisms situationally and in ways that reflect both political opportunities and social and structural constraints. Despite all the shortcomings of the EU's model of institutionalised CBC, institutional change elicited by EU policies and funding mechanisms has led to a degree of Europeanisation of co-operation contexts and thus of spatial planning and development dialogue. This is evident in the discourses, agendas and practices of cross-border actors; they very often legitimise their activities by referring to the wider political, economic and spatial contexts within which their own region must develop. Nevertheless, actual patterns of CBC practices indicate a rather disjointed and complex reality. The European Union itself cannot provide a central template for de-bordering Europe. This will rather depend on how a post-national Europe is interpreted, negotiated and constructed "at the margins"."

The Galicia-North of Portugal Euro-region: A Case, Various Experiences in Cross-border Cooperation

This case is paradigmatic in the Iberian context, since its area of influence leads the processes of cross-border cooperation along the Spanish-Portuguese "*raia*" (borderline), and, we could even say, along all the Spanish borders (including the ones with France and Morocco). This leadership is owing to the starting political impetus of the responsible politicians of *Xunta* and CCDR-N in the 1990s. Also to the number of their formal structures of cooperation and the amount of funds managed in the last periods of community programming, or to the flows of companies and people in the cross-border space. In addition to the sustainability of some of its actors and structures of cooperation, as it is the case of *Eixo Atlântico* (Domínguez 2008, 13-48) or the recent consolidation of the Euro-City Chaves-Verín through its conversion into a European Grouping of Territorial Cooperation in 2014.

This Euro-regional space is especially innovative. It includes good practices of sustainability (Local Agenda 21, implementation of local digital agendas), stimulus of technical management structures of European funds (EGTC, Galicia-North of Portugal) and other local cooperative networks centered in the Euro-region (*Eixo Atlântico*), besides the rest of initiatives in the whole Spanish-Portuguese border (RIET).

Despite the Euro-regional innovation, we do not find a clear reflection in the social and territorial cohesion of their territories and citizens, or at least not as much as expected after the last three periods of Community programming, especially after the beginning of the INTERREG initiatives, 1990-1993, that invested billions of euros in cross-border cooperation. This seems to be the opinion of the citizens, who hardly perceive the effects of the cross-border cooperation in an increase in the GDP of each of its regions in comparison with the rest of EU regions. Simply because they are unaware of what is the Galicia-North of Portugal Euro-region (only 3% of Galician people know it, by 8% of the Portuguese).[3] The consequence is that Euro-regions hardly appear in the public debate (with a few exceptions), and if they do they are only a part of the discourse of certain political and administrative elites (when electoral campaigns of the different levels of government take place).

Before summarizing the consequences of the institutionalization of the Euro-regions, at least in the case of the Galicia-North of Portugal Euro-region, we consider that it is essential to differentiate between results ("outputs") and impacts ("outcomes"). This traditional political distinction implies separating the process of a public policy from its real impact on the targeted collective of citizens. This is a key question to understand the change of course of the European Commis-

3 This percentage increases when inquiring about their relative knowledge: Q.7: "Have you heard of the Galicia-North of Portugal Euro-region?" The 63% of Galician people claim to have heard of it, only 40% of the Portuguese (Ferreira, Vieira & Domínguez 2012, 365-382).

sion design of cohesion policies for the present period, 2014-2020. Until today, in the general programming of Community funds and cross-border cooperation initiatives, it was fundamental to get candidatures, and ultimately to implement them; focusing the analysis on the process and not on the impact that should have in the improvement of the citizens' quality of life. But, from the analysis of the last period of Community programming, 2007-2013, the European Commission proposed a change of course, precisely based in multilevel governance; all of this, after a highly critical analysis of the real effects of the cohesion policy on the citizens, affected, without any doubt, by the 2008 financial crisis and the growing political disaffection and euro-skepticism.

Next, we are going to expound as a "policy problem" a case that exemplifies these differences between outputs and outcomes, and that encourages us to propose new theoretical and practical institutions that can help us to understand cross-border governance.

The Cross-Border Mobility as a Euro-regional "Policy Problem"

Within Euro-regional spaces we find a good number of cases, projects, programs and community actions that speak of successes and failures, good technical results and low social impacts; where all of them contribute to the institutionalization or dis-institutionalization of cross-border cooperation.

Because, as we have seen in the previous section, different public policies and many public services show the outputs of the formal and material cooperation, although not its outcomes or at least many of them having to do with improving the citizens' quality of life and social and territorial cohesion.

This argument can be sustained by analyzing changes in cross-border governance that have taken place, for example, in the Galicia-North of Portugal Euro-region, from some specific "policy problem"[4] within this border area.

Thus, with the purpose of assessing, although in an exploratory way, the consolidation of the Euro-region Galicia-North of Portugal, we will look at the problem of cross-border mobility from the formal-material perspective explained previously. Our starting point on this issue is that this mobility seems to be an unsatisfied need that has to be covered by the public operators and those other that have gained responsibility on its management due to outsourcing processes of policies and public services. In addition, if we choose some of the governmental devices that have been created over the past twenty years in the Euro-region

4 We understand public problems as the questions considered by the stakeholders as of general interest, that are introduced into the agendas of the different multilevel governments, by the stimulus of public decision-makers (public agenda) or by the pressure of stakeholders for a public policy (systemic agenda).

Galicia-North of Portugal, in both sides, obviously funded by Brussels and the central governments, we find some reasons to think that the outputs have little to do with the outcomes of this mobility policy. Because it is indeed a problem with multiple dimensions, solutions and results, as much in regards to land mobility by road as by plane or train. Furthermore, mobility is a basic element of the different treaties of the European Communities, a universal right in a society so supposedly advanced as the European society.

However, the institutional framework and the reality of the Euro-regional implementation are different issues. We can analyze this implementation through the processes of commercialization of public services and the study of the disaffection of the citizens. Also through the influence that some "styles" of public management ("New Public Management") have on community services and policies. Styles that have persuaded presidents of governments, ministers, EU Commissioners and even Parliamentary Committees in the European Parliament to consider that the best way to manage borders (up to now areas of public domain) is to leave them in the hands of those who most know about management: the private companies.

Because, although it is true that citizens visit both sides of the Galician-Portuguese border when they pass through any of the bridges that cross the river *Miño/Minho*, financed by European funds during the last two decades. It is also true that, although cross-border mobility has improved, intra-border mobility has worsened, at least for the populations (Tui-Valença) at both ends of the only bridge that joins Spain and Portugal in the final stretch of the river *Miño/Minho* in its journey towards the Atlantic Ocean.

In the case of the construction of road infrastructures (freeways and highways), a classic model of formal and material cooperation, the development of alternatives has been monumental. Although with the commercialization of the same and the difficulty to make interoperable systems of electronic payment of tolls (the owners are Spanish and Portuguese banks), the result has not been positive. It created a diplomatic conflict between the two countries and caused the fall of tourist movements from Galicia to the North of Portugal, by the insecurity that produced the Portuguese modality of tolls payment, indeed outsourced to a private company (SCUTS). Only the claims of some mayors of the North of Portugal region to their own government in Lisbon, as well as the pressure exerted by Portuguese associations, got to improve the management of this form of payment. In this issue, the leaders of the process were *Eixo Atlântico* and RIET, doing an exercise of bottom-up cross-border governance.

With regard to airports, we have an example that is significant of the logic of competition and not of complementariness that central governments of Madrid and Lisbon have imposed on their cross-border peripheral territories, always with the complicity of their regional multilevel structures (*Xunta* and CCDR-N). This strategy was clear in the extensions of the regional airports in Galicia and the consolidation of a large international airport in Porto (Sá Carneiro). Thus, Porto has become an international "hub" with direct flights to Latin America and the main "hubs" that have their headquarters in the EU. While Galician airports have dedicated themselves to compete for a regional market (Galicia-Spain), rather than articulating a system of Euro-regional complementariness. The result is that Sá Carneiro has become the international airport of the Euro-region Galicia-North of Portugal by the way of the facts, and without cooperation agreements among Galician local operators, who can see how every year the number of passengers decrease in favor of the Portuguese airport.

A last example to help us to understand the consequences of a poor Euro-regional consolidation, based on competition strategies and not on complementariness, we can find it in land passenger transport by train. In this occasion, we have a model of cross-border mobility, forgotten by public and private institutions. All of this despite the Convention on Oporto-Vigo Railway Connection signed by the *Xunta* and CCDR-N in 1999. Why do we consider this Atlantic axis so important? Because most of the citizens of the Euro-region are in these 150 kilometers maritime strip, as well as its tourists and business that enter and leave Galicia, Spain, *Região* Norte and Portugal through its airports. The issue of the railway was included in the Euro-regional agenda through the back door, after not having been able to solve the transport of passengers between the cities of Porto and Vigo within the framework of the Spanish fast lines map. Again, the local actors (*Eixo Atlântico* and RIET) found a solution to the reduction in displacement of Galician and Portuguese citizens to either side of the border. Before the lack of an alternative to the tolls, they pressured their regional and central governments, raising more economic options to high speed: electrification of the railways, a decrease in number of stops and a continuity in the journey from Vigo to Porto (without changing trains at the border). This solution, called *Tren Celta*, was included in the XXVI Iberian Summit agenda of cross-border cooperation for the coming years.

In the three examples on cross-border mobility, it is possible to confirm a slight change from the government paradigm to multilevel governance, in the form of a public-private partnership (SCUTS) and the promotion of local networks to be involved in Euro-regional public issues (*Eixo Atlântico*-RIET). In any case, there is a long way until governance will become a cross-border governance and the Euro-regional actors are able to design joint and complementary policies in which citizens will fit in permanently. Then we will move from technocratic logics to the democratic ones, from the outputs to the outcomes.

To conclude we address the problem of future analyses on borders in the EU and the new problems and institutions that are taking shape from the merger of the formal-informal, material-immaterial cooperation.

EPILOGUE: CBC, A "PERFECT STORM," OR SIMPLY NEW APPROACHES TO THE MANAGEMENT AND GOVERNMENT OF BORDERS?

The crisis of the post-Westphalian states in the 1970s caused a tsunami on the government structures and on the multilevel administration of their territories. The European Community was part of the solution to this problem. Four decades later, and partly as an effect of a deep financial crisis that has become systemic in the advanced welfare democracies, the tsunami has resulted in a "perfect storm," but now the EU is part of the problem.

In the case of the Euro-regions, specifically in Galicia-North of Portugal, it has been possible to analyze the evolution of cross-border cooperation institutions and their results in a context of sustained growth of funds and projects. Regional Development and Cohesion Funds, in particular the Community Initiatives, have favored a sustainable model, although incremental, of cross-border cooperation, which has supported the Europeanization of the Members States system and, to a lesser extent, one of regional and local governments.

In fact, this model has increased the complexity of public problems, with the same institutions but with different names and formulas of public management: Euro-regions, European Groupings of Territorial Cooperation, Euro-cities; at the same time that private operators have been incorporated to such management, in addition to other sub-central levels of government. In general, citizens were out of these processes of formal and material cooperation, so they have opted to strengthen their traditional processes of interaction through informal and intangible initiatives of cross-border cooperation.

However, the "perfect storm" that has taken place in Europe, and which has left devastating effects in the Galicia-North of Portugal Euro-region, in the form of emigration (especially, youth), increased rates of unemployment and a reduction of the industrial fabric, has also led to a "policy window" for the renewal of the models and the institutions of cross-border cooperation. Thus, in the Galicia-North of Portugal Euro-region the incorporation in the 1990s of *Eixo Atlântico* (local stakeholder) to the Galicia-North of Portugal Working Community (regional stakeholder) created an inertia of interaction that allowed them to cooperate in the creation of the Chaves-Verín Euro-City, in the last decade. In part, because local and regional agendas have been converging, led from local bottom-up processes, due to the regional inaction at both sides of the border. In this way, *Eixo Atlântico* has positioned itself as a key stakeholder in the definition of public problems that rely on formal and material cooperation processes. How? Practicing the lobbying exercise in the different political centers (Madrid-Lisbon, Santiago de Compostela-Porto and Brussels) and elaborating strategic reports through its Service of Studies and Publications, which legitimized speeches and strategic positions for all the actors in the Galicia-North of Portugal Euro-region.

Thus, it was possible the creation of the RIET (network) and the impetus of the same to the new strategy of mobility in the Galicia-North of Portugal Euro-region and in all the Spanish-Portuguese "*raia*" (borderline), which allowed the introduction of mobility as a policy problem in the 2013 Iberian Summit agenda.

Finally, after decades of strategies based on competition, governments analyze the Euro-regional public problems from perspectives of complementariness. Therefore, it is possible that, 20 years after the signing of an International Agreement between Spain and Portugal on the Galicia-North of Portugal Euro-region,[5] we have a train that connects the main artery of its territory in less than an hour, leaving the 19th century behind definitively.

We do not know yet if this is the general trend of cross-border cooperation in the Galicia-North of Portugal Euro-region or just a short-term illusion resulting from the need of institutional survival of technocratic elites after the passage of the "perfect storm." Actually, it looks possible to see how, at least sometimes, formal-material cooperation institutions are in accordance with those others who develop informal-immaterial cooperation for sustainable projects. In any case, and beyond the EU magic date of 2020, we should have a new model in Europe that overflows the states, regions and cities, and puts citizens in the center. If not, we simply have changed everything, so everything remains the same.

These and other questions should lead us to think of new axes of problems or cleavages and renewed approaches to the analysis of cross-border cooperation. To study more pluralist methodologies based on cross-border and polycentric governance (Ostrom 2010, 1-33), to the implementation of management resources of

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5 Already in 2014, they agreed to have a joint action instrument on the subject of Community funds for the current Community programming period: "Plan of Joint Investments of the Galicia-North of Portugal Euro-region (PIC, 2014-2020)"; the first one really of Euro-regional character in Europe. This plan was dealt among the regional governments of Galicia and North of Portugal and the *Eixo Atlântico,* key actors of the Euro-region, who agreed to have a unique strategic document that faces the investments for the whole period of programming community 2014-2020. For the preparation of the final document they consulted other local and managerial actors of both cross-border territories, among others: AECT Vale do Tâmega, CEG, CEP, CEO, Euro-city Chaves-Verín, FEGAMP, AiMinho, ZAS-NET, CIMs do Norte de Portugal.

public and common goods from a perspective of citizen co-production, and not always from approaches to outsource public services to private companies.

Only in this way, citizens, subjects of rights living in metropolitan areas, medium-size cities or small villages may be incorporated to the definition of the Galicia-North of Portugal Euro-region, no longer as a metaphor, but as an institution of government and administration, inside more liquid and virtual environments. Without them, it will be impossible to connect the technocratic logic necessary to organize the complexity, to refresh public policies ("reframing"; Rein 2006, 389-405), to provide legal security and to manage proximity policies and services... At the same time, some citizens who return every summer to their places of origin, as simple tourists, will have the opportunity to become new players in their territory, their culture and their identity; thus, achieving the re-legitimization of these proximity spaces through their daily interactions, as their ancestors have been doing for centuries.

These innovative perspectives should help to transform the cross-border political culture, based on the identity, language and sense of belonging (Douglass 1994, 43-50), of a Euro-region that existed already two thousand years ago (*Gallaecia*) and should become part of the common political *acquis* of the men and women who live and want to continue doing so there. The words of Domínguez and Pires (2014, 46) confirm the sense of these reflections:

> "Cross-border cooperation and, in general, the process of European construction have, incontestably, brought citizens on both sides of the border closer. But bringing closer does not mean closeness. That is, bringing closer does not imply willingness to share resources and public policies because, despite optimistic messages on the part of Community institutions, cognitive barriers are still present."

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The EU External Edges: Borders as Walls or Ways?

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Abstract

The "Area of Freedom, Security and Justice" (AFSJ), that was established in Europe by the 1997 Treaty of Amsterdam, can be understood as an ambitious attempt to complete the freedom of movement of persons, one of the four liberties that were the core components of the 1957 Treaty of Rome, which gave birth to the European Economic Community. Most EU member States participate in the Schengen area and appear eager to abolish the internal borders between them and to define European common external borders. With the successive enlargements of the European Union, these borders have moved eastward and southward and have also become more complex. This paper argues that due to the exploitation of the technologies of digitalization, the borders and their control have turned out to be more fluid and mobile, more normative and reticular, toughening the development of processes of categorization between the desirable migrants and the undesirable ones. Thus the borders appear to be pathways (ways) for the former and barriers (walls) for the latter.

Keywords

Europe, external borders, immigration, fundamental rights, sovereignty

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Are the European Union (EU) external borders "ways," that is to say pathways that promote the movement of Third Country Nationals (TCNs) from the outside to the inside in order to stimulate economic trade, scientific projects, cultural development, family reunification and refugees' international protection? Or are the EU external borders "walls," in other words barriers that prevent TCNs from entering the territory of EU member States? Such a question can be asked because the surveillance of the EU borders has genuinely evolved during the last two decades, so much so that a real dichotomy has appeared between the desirable ones that are encouraged to come into the EU and the undesirable ones that are kept as far away as possible from EU territory. Different tensions are highlighted when dealing with this issue: the confrontation between the basic principles (the four liberties of free movement) and the substantial values (the protection of fundamental rights) that the EU polity is asserted to rely on, and the consequences (the violation of fundamental rights of the migrants) and the worrying effects (the dissolution of the rule of law) that EU policies engender. Also evident is the opposition between the integration process that characterises the EU project and the fragmentation effects that result from the member States' propensity to preserve their sovereignty.

The Treaty of Lisbon, which came into force on 1 December 2009, confirms and consolidates the evolving definition and the surveillance of the EU borders over the last two decades. The Treaty consolidates formerly dispersed policies on Justice and Home Affairs under one heading "Area of Freedom, Security and Justice" (AFSJ). Specifically this 'area' covers judicial cooperation both in civil and criminal matters and police cooperation, together with provisions concerning border control, asylum and immigration (Acosta Arcarazo & Murphy 2014). While the Lisbon Treaty established a new legal foundation for the European border control regime, the multi-annual Stockholm Programme adopted on 11 December 2009 by the Council of the European Union defines the political guidelines for legislative and operational planning within the AFSJ from 2010 to 2014,[1] as the Tampere 1999 Programme[2] and The Hague 2004 Programme[3] did for previous

1 EUROPEAN COUNCIL, Brussels, 10 & 11 December 2009, Presidency Conclusions; Stockholm Programme. An Open And Secure Europe Serving And Protecting Citizens, *Official Journal of the European Union*, C 115 of May, 4 2010.

2 EUROPEAN COUNCIL, Tampere, 15 & 16 October 1999, Presidency Conclusions, SN 200/99, Brussels, 1999.

3 EUROPEAN COUNCIL, Brussels, 4 & 5 November 2004, Presidency Conclusions; The Hague Programme. Strengthening Freedom, Security and Justice in the European Union, *Official Journal of the European Union*, C 53/1 of March, 3 2005.

periods (that is to say from 1999 to 2004 and from 2004 to 2009, respectively).

Such an "Area of Freedom, Security and Justice" (AFSJ) might be understood as an effort to complete the free movement of persons, one of the four liberties that were the core components of the 1957 Treaty of Rome, which gave birth to the European Economic Community (ECC). Yet amongst these four liberties of movement of goods, capitals, services and persons, the last one is particularly difficult to establish, with systematic identity checks remaining in place at the borders between most of the EU member States. While the Single European Act (SEA)[4] was negotiated in order to create an internal market between ECC member States, five of whom decided to conclude an agreement outside the ECC scope to overcome the lack of consensus regarding the gradual abolition of border checks within the European Community's internal borders. Belgium, France, Luxembourg, the Netherlands and Germany signed the Schengen Agreement on 14 February 1985, which was supplemented by the Schengen Convention signed on 19 June 1990 in order to organize the complete abolition of border controls between member States of the Schengen area, to issue common rules on visas and to promote police and judicial cooperation.[5] The rules governing the movement of persons across the Schengen area borders were clarified and consolidated in 2006, thanks to the adoption of the Schengen Borders Code[6] that constitutes the com-

4 The Single European Act was signed in Luxembourg on 17 February 1986 by the nine ECC Member States and on 28 February 1986 by Denmark, Italy and Greece; it entered into force on 1 July 1987.

5 Since the Treaty of Amsterdam, the Schengen treaties (the Agreement and the Convention) are incorporated into the European Union law: they are part of what is known as the "*acquis communautaire*." Therefore, the new EU member States do not sign the Schengen Treaties as such, but are bound to implement the Schengen rules as part of the pre-existing body of EU law, which every new entrant is required to accept; and the legal acts setting out the conditions for entry into the Schengen Area are now enacted by majority vote in the legislative bodies of the European Union according to the ordinary legislative procedure. However, it must be emphasized that opt-outs have been provided for the only two EU member States which had remained outside the Area: Ireland and the United Kingdom and that Denmark, even though it signed the Schengen Agreement, can choose whether or not to apply any new measures that constitute a development of the Schengen "*acquis*."

6 Regulation (EC) n° 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders (*Official journal of the European Union* (*OJUE*), J L 105 of 13 April 2006), as it has been amended by Regulation (EC) n° 296/2008 of the European Parliament and of the Council of 11 March 2008 determining the implementing powers conferred on the Commission (*OJUE*, L 97 of 9 April 2008), Regulation (EC) n° 81/2009 of the European Parliament and of the Council of 14 January 2009 concerning the use of the Visa Information System (VIS) under the Schengen Borders Code (*OJUE*, L 35 of 4 February 2009), Regulation (EC) n° 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas (*OJUE*, L 243 of 15 September 2009) & Regulation (EU) n° 265/2010 of the European Parliament and of the Council of 25 March 2010 amending the Convention Implementing the Schengen Agreement and Regulation (EC) no. 562/2006 as regards movement of persons with a long-stay visa (*OJUE*, L 85 of 31 March 2010).

mon corpus of binding legislations for all the Schengen area member States.

Article 2 of the Schengen Agreement states that "internal borders may be crossed at any point without any checks on persons carried out." Yet the abolition of internal border controls and the renewal of freedom of movement within European space is based on the obligation of the country that is the first point of entry to verify an individual border crosser's compliance with a series of criteria. According to article 5.1 of the Schengen Borders Code, national authorities are required to examine the following entry conditions applying to TCNs "for stays not exceeding three months per six-month period": 1) possession of a valid travel document or documents authorizing the crossing of the border; 2) possession of a valid visa, in light of the conditions stipulated in the Code on Visas; 3) justification of the purpose and conditions of the intended stay and "sufficient means of subsistence for the duration of the intended stay and for the return to their country of origin"; 4) whether the individual is subject to an alert in the Schengen Information System (SIS) for the purpose of refusing entry into the Schengen territory; and 5) whether the person is considered a "threat to public policy, internal security, public health or the international relations of any of the member States." Afterwards, those TCNs who fulfill all the conditions detailed, in article 5.1 of the Schengen Border Code can move freely in the Schengen area.

The abolition of the EU's internal borders shouldn't come at the expense of security. Since no checks are carried out at the borders between member States of the Schengen area, two assumptions were never questioned; "the myth of the loss of control and the supposed security deficit that comes with it" (Moreno-Lax 2014, 154). Hence EU States have decided to join forces to attain the dual objective of improving security through more efficient external border controls, while facilitating access to those having a legitimate interest in entering EU territory. According to this logic, security appears as a necessary precondition for the establishment and the expansion of free movement in the EU. The quest for security, however, can never be completely fulfilled, since this is an inherently subjective and unstable condition. As a result, the security issue feeds more security disposals that generate more security problems, in a cumulative process that can potentially go on *ad infinitum*. One of the side effects of this securitization is that the policies it entails can be considered as essentially repressive, since they are aimed at sealing off Europe from potential threats, hence putting in jeopardy the principles of liberty and the protection of rights (Carrera & Balzacq 2013).

Indeed, although most European States seem to have the ambition of overcoming the traditional legal perspective, creating the European Union, abolishing its internal borders, and defining common European external borders, these States have revealed their wish to remain genuinely attached to their sovereignty.

Hitherto this has depended on a strong relationship between the territory (geography), the bureaucracy (government) and the *demos* (population); insofar that a necessary condition of statehood is for the State to possess a monopoly over both the legitimate use of violence within the territory and the legitimate means of movement into and out of such a territory. So the concepts of inclusion and exclusion from territory, bureaucracy and *demos* are inherent in the opposition between citizens or nationals on one side and immigrants or third country nationals (TCNs) on the other side, with the existence of physical borders making it possible to check passports to distinguish between nationals and TCNs. Therefore the distinction between the inside and the outside, between the insiders and the outsiders, seems to correspond to the geographical boundaries of the State's territory, to the physical limits of the polity's shape.

Nevertheless, it has become necessary to rethink the relationship between control and borders. Major changes at the borders have taken place and the essential qualities of the borders have been transformed. The successive enlargements of the EU have led to substantial modifications in the size and shape of its borders, with the Schengen area gradually expanding to include nearly every EU member States.[7] Nowadays, it encompasses most EU States (except Bulgaria, Croatia, Cyprus, Ireland, Romania and the United Kingdom)[8] and even non-EU member States (Iceland, Norway, Switzerland and Liechtenstein). The 2004 and 2007 enlargements, which incorporated twelve new States with 130 million inhabitants, were particularly important because they caused EU territory and the Schengen area's external borders to shift in an eastward and southward direction. The external borders of the new member States, particularly those in the southern Mediterranean and in south-eastern Europe, became the external borders of Schengen territory. So these new member States were now responsible for determining the lawfulness of TCNs crossing into the entire Schengen area.

This situation created new and more complex EU external edges (8,000 km land borders, 43,000 km sea borders and 600 airports with extra-Schengen flights) which led EU member States to strengthen their surveillance of the people crossing them. In practice, efforts to promote cooperation in justice and police matters were intensified, as were efforts to uphold the harmonization of the right of asylum, to regulate labor migration, to manage family reunification, to fight against illegal immigration, to establish partnerships with third countries, to con-

7 Italy signed the Schengen Agreement and the implementing Convention on 27 November 1990, Spain and Portugal joined on 25 June 1991, Greece followed on 6 November 1992, then Austria on 28 April 1995 and Denmark, Finland and Sweden on 19 December 1996.

8 Bulgaria and Romania are currently in the process of joining the Schengen Area.

clude return programs, and to toughen border controls (Faure Atger 2008; Guild, Carrera & Balzacq 2008). The EU external edges have been redefined and the ways they are controlled have been reshaped (Zapata-Barrero 2010). The development of processes of categorization (I) and channels of digitalization (II) have modified the nature of the borders, making them less geographic and territorial, more normative and reticular, so much so that the EU's external frontiers accordingly appear as open doors (ways) for desirable migrants and barriers (walls) for the undesirable ones.

THE REDEFINITION OF THE EU'S EXTERNAL BORDERS: THE PROCESSES OF CATEGORIZATION

According to the Schengen Borders Code, there is a major distinction between EU-citizens (nationals of the EU member States) and Third Country Nationals (TCNs), who are submitted to different levels of control when crossing an external border. EU-citizens undergo a minimum check, which is carried out to establish their identity on the basis of their travel documents; TCNs are subject to thorough controls. The EU external borders surveillance regime is based upon security and safety concerns, which not only create a division between citizens and non-citizens, but also a discrepancy between safe and potentially "risky" individuals (Hansen & Papademetriou 2014). Yet the EU simultaneously pursues the aims of eliminating terrorism, preventing illegal immigration, and fighting against international organized crime. Hence the distinction between the politically suitable and the potentially "risky" immigrants and between allegedly safe and possibly dangerous individuals appears to be both obviously unclear and normatively uncertain, generating an implicit association of immigrants with criminals. It must be emphasized that, in such a perspective, regulating the movements of TCNs across EU external borders are increasingly conceived and treated as security issues aimed at preventing criminal activities and not—as they ought to be—as humanity problems in order to guarantee the rights protection.

The expressions often used by EU documents, such as "organized terrorists," "lone wolves" and "illegal immigrants" reveal that EU's external border controls are genuinely based upon the surveillance of individuals and that these individuals' categorizations are essentially related to the political construction of threats (Ceyhan 2010; 2012). According to some authors, the TCNs are thus submitted to different levels of controls according to their supposed level of riskiness, and can therefore be considered via a complex typology that relates to different forms of exclusion (Bigo, Carrera, Guild & Walker 2010). The categories are multiple and permit different types and levels of rights. First, there are the TCNs who are inside the Schengen area who are divided between the TCNs with short stay or long stay resident status, the TCNs benefiting from the international or subsidiary protection, the TCNs recognized as asylum seekers, or the TCNs considered as illegal immigrants. Second, there are the TCNs who are outside the Schengen area who are divided between those who require visas to enter the Schengen area for a three-month stay and those who do not. The EU's classification system not only defines certain groups and determines whether an immigrant does or does not have access to European territory and rights; it can also justify how the European States control migration flows across their external borders, above and beyond (Basilien-Gainche, forthcoming a). EU external borders controls are undergoing extra-territorialization (A) and an intra-territorialization (B).

The Extra-Territorialization of the EU's External Borders

The border-free Schengen area cannot function efficiently without a common visa policy consisting of a general understanding of the conditions required for issuing a visa, as well as a list of countries whose nationals are exempt from this requirement.[9] When issued by one of the Schengen area member States, the Schengen short stay visa entitles its holder to travel throughout the 26 involved States for up to three months within a six-month period.[10] The member States participating in the Schengen project agreed in 2001 that it was necessary to harmonize the lists of countries whose citizens must have a visa when crossing external borders (mandatory visa requirement);[11] countries whose citizens are exempt from that requirement (visa exemption situations);[12] and countries whose citizens need to

9 Regulation (EC) n° 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas (Visa Code).

10 Visas for visits exceeding that period remain subject to national procedures.

11 The application of mandatory visa requirements involves prior scrutiny by the destination State of the personal situation and the trip purpose of the traveler. The scrutiny aims at ensuring that the planned trip is legitimate and does not jeopardize the security of the Schengen area member States. The visa requirement applied to nationals from a total of 125 countries and territories as well as to certain groups of persons from British overseas territories. See Council Regulation (EC) n° 539/2001 of 15 March 2001 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement, and its successive amendments.

12 Decisions on visa free access to the Schengen Area result from bilateral negotiations. They are based on the progress made by the concerned countries in implementing major reforms in areas such as the strengthening of the rule of law, combating of organized crime, corruption and illegal migration and improving of administrative capacity in border control and security of documents. For the nationals of those countries targeted by visa exemption schemes, no prior check on purposes of travel and personal capacity of the traveler need to be carried out. In the EU, the prime requirement for benefiting from visa exemption is to fulfill the condition of reciprocity. Read in conjunc

obtain a visa when crossing external borders but can get this visa in the easier way (visa facilitation situations).[13]

Yet the EU is accustomed to negotiate and conclude visa facilitation agreements with third countries (Trauner & Imke 2008), as well as readmission agreements (Billet 2010; Cassarino 2010)[14] or mobility partnerships (Triandafyllidou & Maroukis 2013), in order to secure its external borders. These agreements create "a zone of prosperity and friendly neighborhood"[15] that is aimed at stabilizing the States adjacent to European territory and at strengthening their cooperation with EU member States. But they are also conceived, since 1995 and systematically since the 2002 Seville European Council, to prompt these neighboring States to contribute to the management of migration flows and to readmit migrants who unlawfully enter Europe. Development aid, trade, and visa facilitations are used as incentives or conditions on neighboring countries' effective participation with EU external borders controls (Ghazaryan 2014). The EU immigration policies and norms have thus developed an external dimension—the so-called "global approach"[16]—that is focused on preventing the arrival of migrants by outsourcing border controls to third States (Pascouau 2012a). The EU and its member States have thus transferred the responsibility for monitoring their external borders to third countries, hence extra territorializing these EU's external edges.

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tion with the principle of solidarity among EU member States, this approach implies that all of the Schengen participating countries need to benefit from visa exemption in a third country for the EU to consider relaxed rules for the entry of its nationals. The EU aims at achieving full visa reciprocity with the non-EU countries whose nationals are exempt from the visa requirement. Thus, EU citizens would not need a visa either for travelling to these non-EU countries. The nationals of a total of some 43 countries and territories are exempted from the visa requirement to entry to EU countries.

13 In the EU, visa facilitation consists of relaxing the visa requirements for certain categories of people. The content of each visa facilitation agreement concluded by the EU with a third country reflects the kind of relations it wishes to pursue with the benefiting third country. Nevertheless, they are characterized by similar elements, related to reduced procedural requirements: simplification of documentary evidence, lowering or waiving of the visa fee, quicker processing time, and wider issuance of multiple-entry visas. Depending on the visa facilitation agreement, different categories of citizens are identified as eligible for these relaxed rules. Such may be the case for members of official delegations, businesspersons, journalists, scientists, students and professors, and relatives of EU residents. For each category, documentary evidence justifying the purpose of the journey must be presented. So visas are still required even though the application procedure has been made easier and quicker. So far, the EU has concluded visa facilitation agreements with nine non-EU countries.

14 Report from the Commission to the European Parliament and the Council, *Evaluation of EU Readmission Agreements*, COM (2011) 76 final, 23 February 2011.

15 Communication from the Commission to the Council and the European Parliament, *Wilder Europe—Neighbourhood. A New Framework for Relations with our Eastern and Southern Neighbours*, COM (2003) 104 final, 11 March 2003, p.4.

16 Report from the Commission to the European Parliament and the Council, *Implementation of the Global Approach to Migration and Mobility*, COM (2014), 96 final, 21 February 2014.

Consequently, pressed as they are to meet such European requirements, neighboring countries modify their norms and their practices. They implement ethnic profiling at border crossings, confiscate travel documents, detain people in centres or even in prisons, submit them to inhuman and degrading treatments, and engage in pushbacks to countries where the migrants will be again exposed to inhuman and degrading treatments. Moreover they tend to prevent the departure of people suspected of wanting to apply for asylum in Europe, hence depriving them of their right to leave a country, as Niels Muižnieks, European Council Commissioner for Human Rights, put it in the Issue paper untitled *The Right to Leave a Country* (Muižnieks 2013). Therefore, violations of fundamental rights are occurring, even though the considered rights are recognized and protected by international conventions with binding effects. Particularly, most of the migrants who try to come to Europe in the hope of a better life are not able to benefit from the right of asylum, or even their right of life (Goodwin-Gill 2011; Di Filippo 2013). The Eritrean, Somali and Syrian migrants who venture out on the Mediterranean sea to escape persecutions stemming from the internal conflicts that plague their country of origin, are not ordinary migrants but genuine refugees. They come from countries that are either themselves subject to extreme political conditions or neighbors of such countries, and they consequently lack the opportunity to find protection in their own country or in neighboring countries (De Bruycker, Di Bartoloméo & Fargues 2013; Fundamental Rights Agency 2013). Notwithstanding, the EU and its member States avoid the international, European and national legal obligations relative to such human rights protection, they are supposed to be based upon (Basilien-Gainche 2010) and they have to respect when their external borders controls are intra-territorialized.

The Intra-Territorialization of the EU External Borders

The situation created by the abolition of the internal borders controls underscores the continuity between the external and the internal borders of the EU, and contribute to the evaporation of the opposition between the inside and the outside. Yet the strengthening of the external border checks of the Schengen area means that surveillance is exercised before an individual reaches the territorial borders. Nevertheless, it also signifies that control can be implemented within the territory of the member States. Actually, the Schengen Borders Code does not differentiate clearly between the external borders and the internal ones, as it defines the latter by the former.[17] Furthermore, insofar that the abolition of the internal borders controls is

17 According to the Schengen Borders Code, "internal borders" means: (a) the common land borders, including river and lake borders, of the member States; (b) the airports of the member States for internal flights; (c) sea,

not supposed to affect the exercise of member State's police powers under national law, surveillance is maintained in border zones in the same way as elsewhere in the territory, as long as it does not take the form of border checks (Carrera 2005; Guild 2005). Thus the Schengen area member States have been able to intensify their internal police activities, by hardening the identity checks of potentially undesirable individuals and by tracking them inside the Schengen area territory, in order to return them to their country of origin or transit. That is why this paper argues that the EU external borders are intra-territorialized.

Moreover, there is always the possibility of the temporary reintroduction of border controls in case of serious threat to public safety or internal security. The reinstatement of such temporary checks at the EU's internal borders have been used in order to protect political leaders during international sport events (for instance, the Football World Cups) or international summits (G20 summits). They have not been used to prevent serious crimes or to tackle illegal immigration flows. Indeed, identity controls at EU internal land borders are not considered by the EU member States as an effective instrument to deal with criminal activities and migration flows, but are exploited for their highly symbolic function: showing that they are sovereign States capable of protecting their citizens against undesired events and undesirable people (Groenendijk 2004). Such a reference to the essential sovereignty of the member States was in particular crucial during the aftermath of the Arab Spring. The position adopted by some member States was clearly aimed at putting pressure on the EU Commission, in order to push for a reform of the Schengen area (Basilien-Gainche 2011; Cornelisse 2014).

Italian authorities, for example, issued temporary residence permits for humanitarian reasons to undocumented North African immigrants coming from Tunisia, who arrived on their national territory before 5 April 2011. These residence permits granted them an automatic right to move freely within the Schengen area. Some EU member States, such as Austria, Belgium, and Germany, expressed concerns about the Italian measures; and France reintroduced checks at its border with Italy and returned hundreds of migrants trying to come from Italy. The diplomatic dispute that blew up between Rome and Paris, and the European wrangle that rose between the member States and the Commission, revealed the weakness of the principles upon which the Schengen area regime is supposed to be founded: the principles of solidarity, fair sharing of responsibility, sincere and loyal cooperation, and the respect of fundamental human rights (Carrera, Guild,

river and lake ports of the member States for regular ferry connections. Concerning the "external borders," they are defined in a negative manner as the member States' land borders, including river and lake borders, sea borders and their airports, river ports, sea ports and lake ports, provided that they are not internal borders.

Merlino & Parkin 2011). If border controls are to be implemented in the interests of all the Schengen area member States, rather than only in the interest of the member State whose national authorities operate them, then participating member States must develop a high degree of mutual trust, a situation that now appears to be insufficient and deficient (Pascouau 2012b), especially in a time of xenophobic and nationalistic political discourse (Parkes & Schwarzer 2012).

Border surveillance is performed wherever the individuals are, creating a continuum between the external and the internal borders, between the outside and the inside. Migrants see their personal situation controlled and their administrative status defined. First, in their own country of origin where they submit a Schengen visa demand, at each stage of their trip from their country of origin to the Schengen area member State they aspire to go to, and in the territory of each member State of the Schengen area (Ugur 1995; Moreno-Lax 2013). Henceforth, the EU external edges seem to be, for the TCNs considered as undesirable, as ways bristling with walls, as routes studded with fences. Moreover they do not appear as geographic and territorial, but as normative and personal. The border is the migrant. Such a change in the cultures of border surveillance (Zaiotti 2011) and in the nature of European frontiers is based on the establishment of a common EU categorization of individuals, which in turn relies on the digitalization of EU border controls.

THE CONTROL OF THE EU EXTERNAL BORDERS: THE CHANNELS OF DIGITALIZATION

The current feature of the European border surveillance regime relates to use of new technologies of information and communication: the controls are numerous and remote; the borders are digital and smart.[18] Henceforth, the social sorting of individuals is maintained by the computer-assisted scrutiny of the people who want to cross European borders, as the differentiation between the desirable and the undesirable travelers is easier to achieve, as is the determination of administrative status and thus the possibility of accessing their diverse rights. Yet there are cars, boats, helicopters, and airplanes that assure the control of the EU external borders. There are also heat sensors and carbon dioxide detectors that aim to verify the presence of human beings, and DNA, X-rays and biometric tests that involve

18 Communication from the Commission to the European Parliament and the Council, *Smart Borders—Options and the Way Ahead*, COM (2011) 680 final, 25 October 2011.

the very body of the monitored migrants (saliva, hair, bone, fingerprints and iris). Finally, there are databases that give the authorities the ability to process and conserve personal information concerning the migrants, and satellites that ensure all the data is shared among national authorities and European agencies. Such use of new technologies is assumed worthwhile: they are thought to guarantee that borders are monitored more powerfully, that applications are dealt with more rapidly and that procedures are followed more efficiently.

Yet the belief that internal and external security issues are best answered by technical solutions is not confirmed by analyses, it is even expose as erroneous by examples of the unreliability of these high tech mechanisms—for instance the deficiencies of the age determination through bone scan, and the shortcomings of recorded personal data—(Preuss-Laussinotte 2006). Nevertheless the goal that the EU and its member States are pursuing consists of creating a digital grid over the space they wish to control (Besters & Brom 2010; Dijstelbloem & Meijer 2011). This is accomplished by using databases by streaming cooperation between the different regional and national authorities involved in police and security matters, and through the interoperability established between these common databases. Numerous are the databases that the EU Agency for large-scale IT systems (EU-Lisa) has to manage. They are composed of the following: Visa Information System;[19] Schengen Information System;[20] European Electronic System of Travel Authorisation;[21] *Entry/Exit System*;[22] Register Traveller

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19 The Visa Information System (VIS), operational since December 2010, covers the biometric data of persons who have applied for a visa to any member State-Council Decision (JHA) n° 2004/52 of 8 June 2004 establishing the Visa Information System (VIS).

20 The Schengen Information System (SIS) became operational in 1995. It contains data on persons wanted for arrest or extradition, missing persons, people who have been refused entry, stolen vehicles and firearms, and stolen or misappropriated identity cards. This information can be used to refuse to process visa applications at embassies, or entry at the European external borders. The second generation of Schengen Information System SIS II, which became operational in the first part of 2013, contains biometric data (photographs and fingerprints). It is designed to be not only a reporting system but also an investigation system with open access for EU authorities within the field of Justice and Home Affairs, such as Europol and Eurojust. Yet, the Supplementary Information Request on National Entry (SIRENE) system allows member States to exchange additional data.

21 The European Electronic System of Travel Authorization (ESTA) is based on the model implemented in the USA. It will be used to collect personal and passport information before the departure of TCNs who are not subject to a visa requirement.

22 The Entry/Exit System (EES) would allow Member States' border agencies to take fingerprints and other data from third-country nationals entering the EU in order to calculate the authorized stay of those entering the EU with short-term visas; to assist in the identification of any person who may not, or may no longer, fulfil the conditions for entry to, or stay on the territory of the Member States; to support the analysis of the entries and exists of third-country nationals; and to issue an alert to national authorities

Programme;[23] and the Eurodac system.[24] Thanks to such technologies, the borders and their controls are not constrained by geography anymore: as the relevant authorities are able to access all the collected data wherever they want. The surveillance of the movements of people crossing the external frontiers does not need to take place at the physical borders, but can also occur before the person arrives and after she/he arrives in European territory. So, one more time, we can observe that the differentiation is blurred between the inside and the outside. Notwithstanding, the development of digitized borders creates problematic issues. These include the protection of the individuals' dignity (A) and the preservation of the States sovereignty (B).

The Protection of the Individuals' Dignity?

Crossing borders, individuals are confronted with digitized controls and intrusive technologies (Foucault 1966; 1975; Bert 2007; Potte-Bonneville 2012). Thus the migrants are internalizing—embodying— the borders in the proper meaning of the term; meanwhile they are interiorizing the controls, leading them to develop some proactive contributions to their own surveillance. Such a situation reveals that the migrants appreciate their (un)desirability, so much that they are auto-evaluating the representation the EU and its member States have of their potential (un)riskiness for European societies (Broeders 2007). Thus the technological characteristics of the border controls challenge and reshape the position of individuals, particularly concerning their rights (Boehm 2009). From a legal perspective, it must be considered whether controlled migrants are aware that they have rights (for instance, the ones attached to data protection guarantees), and to know how to make such rights effectively respected (for instance, asking about available remedies). There are issues both politically and legally problematic about this, as the digitalization of the borders and of their controls tend to be deployed in an allegedly "state of exception," according to which the relevant national authorities

when there is no exit record by the expiry time. In this way, the system will also be of assistance in addressing the issue of people overstaying their short term visa.

23 The Registered Traveler Programme (RTP), revealed in a communication 2010 and in a proposition in 2013, is supposed to facilitate the fluid access to the EU of pre-screened travelers, without undermining security. It would offer simplified, automated border checks to non-EU nationals complying with certain criteria and an Entry/Exit System that would make it possible to identify over-stayers (people who entered the EU lawfully, but have stayed longer than they were entitled to).

24 The Eurodac system, operational since 2003, collects the fingerprints of all individuals aged over 14, who apply for asylum in an EU country, or who are found illegally present in EU territory. The system aims to prevent the so-called asylum shopping by harmonizing responses to asylum claims within the EU. - Council Regulation (EC) n° 2725/2000 of 11 December 2009 establishing Eurodac.

assert they can restrain the fundamental rights of the supposedly dangerous migrants (Huysmans 2006; Basilien-Gainche 2013).

It must also be highlighted that the use of technology for collecting, processing and sharing information in order to reinforce external border controls has contributed to blurring the boundaries between the management of asylum and migration on one hand, and the fight against crime and terrorism on the other, as well as erasing the differentiation between the internal and the external dimensions of national security (Bigo 2010). There seems to be a pattern whereby databases, which were originally introduced to handle movements across borders, are increasingly being exploited in criminal investigations and committed to security issues. Meanwhile, as the Schengen Information System identifies most of the TCNs reported as "unwanted aliens," an implicit but worrying link is established between migrants and criminals even terrorists. Indeed, some databases are even conceived in order to both identify immigrants and investigate criminality. In particular, the recast of the Eurodac Regulation[25] in article 1.2 states that the national and European police authorities can access this database of asylum-seekers fingerprints when invoking the fight against organized crime and terrorism. This association of the migrants who apply for international protection, consecrated by the 1951 Geneva Convention relating to the Status of Refugees, with criminals and terrorists, paves the way for violations of the principle of non-discrimination and infringements of the fundamental rights of these individuals.

The digitalization of border controls raises obvious problems regarding the respect of the migrants' rights (Parkin 2011; Bigo 2014). First, collection, registration, exploitation and conservation of personal data are all problematic (Jones 2014; European Data Protection Supervisor 2014). Concerning the data collection, two remarks can be made: member States dispose of a wide margin of appreciation relatively to the grounds for registration, so much so that discrepancies between them are observed that highlight the weak reliability of the databases. Moreover, registered individuals are scarcely informed or aware of their registration and henceforth of their right to challenge such a registration in case of unlawfully or incorrectly collected data. Data access and use are also tricky, insofar

25 Regulation (EU) n° 603/2013 of the European Parliament and of the Council of 26 June 2013 on the establishment of Eurodac for the comparison of fingerprints for the effective application of Regulation (EU) n° 604/2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person and on requests for the comparison with Eurodac data by Member States' law enforcement authorities and Europol for law enforcement purposes, and amending Regulation (EU) n° 1077/2011 establishing a European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice (recast).

that EU institutions do not have real control over the authorities who can acess the databases and exploit the registered information, because these authorities are determined at the national level. Moreover, the data is often stored beyond the legal retention period and the lack of data destruction procedures compounds the question of the effective proportionality of data conservation. The right to the protection of personal data, as it is consecrated by article 8 of the Charter of Fundamental Rights of the EU, seems to be in jeopardy. Also, other fundamental rights are at stake, such as the rights to an effective remedy, to claim international protection, and to leave any country. Obviously the preoccupation of EU member States is not in ensuring that migrants can access their rights and protections, but is focused on decreasing TCNs arrivals, allegedly in order to preserve their sovereignty. Paradoxically, this sovereignty is also negatively affected by such a border control policy.

The Preservation of the States Sovereignty?

Since the borders are traditionally considered as the limits of State power, the surveillance of their crossing is assumed to be one of the main attributes of a sovereign State (Pickering & Weber 2006). This is why EU member States have been focusing so much on European external border controls. By opting to digitalize their external borders, EU member States appear to consider technology as the means for achieving their securitization aims. Yet, in doing so, they have forgotten that technology requires mediations and henceforth implies limitations (Latour 1999), so much so the method that has been chosen to assert their sovereignty appears to be simultaneously the one weakening it. The borders of the sovereign States are blurred indeed, as sensitive databases concerning justice and home affairs are widely interconnected, as genuine cooperation between numerous public actors is obviously needed, and the coordination of diverse private actors is clearly required. In such a context, the sovereignty of a State seems to be rather deteriorated. It depends on the intervention of independent agents in a wide and long chain of decisions, making any control difficult to achieve and any accountability challenging to assess (Bigo, Carrera, Hayes, Hernanz & Jeandesboz 2012).

The European Border Surveillance System, Eurosur, offers a particularly interesting illustration of this issue.[26] Established to prevent unauthorized border crossings, to counter cross-border criminality and to support measures against persons who illegally crossed EU external borders, Eurosur tends to provide to

26 Regulation (EU) n° 1052/2013 of the European Parliament and of the Council of 22 October 2013 establishing the European Border Surveillance System (Eurosur).

relevant national and European authorities a common information sharing environment. It relies on the interoperability of the national and European databases and on a rationalized cooperation between all the actors that collect, exploit, conserve, and manage the considered data (Jeandesboz 2011). These involved public operators are numerous, including the national justice and police authorities, the relevant European authority responsible for the management of Eurosur, the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (Frontex),[27] and all the actors with whom Frontex cooperates, such as European organs,[28] and even the customs authorities of third countries that Frontex has concluded working agreements with.[29] Private operators are also associated with this surveillance hub. They include groups or individuals that lead the research and development programs, the ones that develop the basic technological systems and tools, the ones that process visa applications on behalf of consulates, and so forth.

The sovereignty of States is challenged in another way too. How can they be considered sovereign if they deny their own responsibilities? Yet, EU member States refuse to be accountable for the violations of human rights that were and are committed during the border surveillance operations performed by Frontex (FIDH 2014). The purpose of these operations are to localize and to apprehend migrants before they arrive in European territory. In order to redirect them to their country of departure or transit, the interceptions can take place in international waters or in the territorial waters of third countries, thanks to the cooperation with the police authorities of these partner States—under working agreements that are concluded and implemented by Frontex regrettably without any monitoring.[30] Thus the issue of the violations of human rights during such interceptions is very complex (Carrera 2007; Perkowski 2012). These gaps in EU norms have not yet been filled by

27 Council Regulation (EC) n° 2007/2004 of 26 October 2004 establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union, as modified by Regulation (EC) n° 863/2007 of the European Parliament and of the Council of 11 July 2007 establishing a mechanism for the creation of Rapid Border Intervention Team, by Regulation (EU) n° 1168/2011 of the European Parliament and of the Council of 25 October 2011, and by Regulation (EU) n° 1052/2013 of the European Parliament and of the Council of 22 October 2013 establishing the European Border Surveillance System (Eurosur).

28 In particular, Europol, Eurojust, the European Police College (CEPOL), the European Asylum Support Office (EASO), the Fundamental Rights Agency (FRA).

29 Those States are mainly those that have been identified as a source of irregular migration or part of the transit route for such an irregular migration, such as Russia, Ukraine, Belarus, Libya, and Morocco.

30 European Ombudsman's own-initiative inquiry into the implementation by Frontex of its fundamental rights obligations, OI/5/2012/BEH-MHZ.

the case law of the Luxembourg Court (CJEU, Grand Chamber, 5 September 2012, *Parliament v. Council*, C-355/10). However, the Council of Europe has asserted its positions. The Strasbourg Court found Italy in violation of its extra-territorial human rights obligations under the European Convention of Human Rights, reminding the country of its responsibility to exercise its jurisdiction over a vessel flying its flag and receiving shipwreck victims on the high seas (ECtHR, Grand Chamber, 23 February 2012, *Hirsi Jamaa v. Italie*, Req. n°27765/09). The Parliamentary Assembly has dealt with the problem of *Lives Lost in the Mediterranean*, asserting that European member States are to be considered responsible for such tragedies (PACE 2012).

CONCLUSION

Europe's borders, as they have been digitalized, have turned out to be more fluid and mobile, more normative and personal, strengthening the development of processes of categorization. As William Walters asserted, "borders are becoming more and more important not as practices but as spaces and instruments for the policing of a variety of actors, objects and processes whose common denominator is their 'mobility' or more specifically, the forms of social and political insecurity that have come to be discursively attached to these mobilities" (Walters 2006, 197). Indeed, the use of personal data has contributed to dematerialize the borders, their control, and the people atttempting to cross them. Thus, when the migrants are put at a distance, they are put far away from the obligations to take care of them according to national, regional, and international legal instruments, which European States have a responsibility to implement these controls. As they are far away from our eyes, they remain far away from their rights. According to this perspective, the Regional Protection Programmes RPPs, that are supposed to increase the number of potential asylum countries in the world, raises the problem of European temptation of shifting the burden of taking care of the most vulnerable asylum seekers. Meanwhile the differentiations between internal and external security policies are erased, and the boundaries between foreign policy, migration management and development aid are removed, and the borders between the "we" and the "others" are fortified (Crépeau 1995), so much so that the paradigm of the *banopticon* has emerged. Its purpose is not to *discipline and punish* as the *panopticon* does (to quote the title of the famous Michel Foucault's book), but to discipline and return (Bigo 2008; Basilien-Gainche forthcoming b).

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The Use of Force at Sea in the 21st Century: Some Reflections on the Proper Legal Framework(s)

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Abstract

Even though states often resort to the use of force in the maritime domain, there is certainly ambiguity as to its legal justification. States and international scholars oscillate between justifications provided under the *jus ad bellum* and self-defence or under the rules on law enforcement. At the same time the relevance of traditional law of naval warfare is heavily questioned. The present article attempts to delineate the legal contours of the use of force at sea and demonstrate that it may be subject to different and discrete legal regimes.

Keywords

use of force, law of the sea, law-enforcement operations, sovereign rights, human rights law

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The use of force at sea has been traditionally approached from the perspective of the law of naval warfare, i.e. the laws that govern the armed hostilities at sea. It is truism in international law to distinguish the law of recourse to force (*jus ad bellum*) from the law governing the conduct of hostilities (*jus in bello*) (Stahn 2006). The latter addresses the reality of a conflict without considering the reasons for or legality of resorting to force and its application is triggered by the existence of an armed conflict, whether international and non-international.[1] Indeed, many international instruments, such as the 1907 Hague Regulations, govern legally armed hostilities at sea. Nevertheless, there have been considerable doubts as to whether the traditional law of naval warfare remains intact in the post-Charter era (Lowe 1991, 130).

What about peacetime? Leaving aside the case of maritime interdiction operations pursuant to SC Resolutions authorizing the use of force for the implementation of the relevant sanctions (Soons 2000), states also employ force in the course of everyday law-enforcement operations at sea. These operations aim either to counter threats to maritime security, such as maritime terrorism or to fight organized crime at sea, like piracy, illicit trafficking in narcotic drugs or smuggling of migrants as well as to safeguard states' maritime sovereign rights, e.g. sovereign rights over their continental shelf. Is this use of force subject to the rules on the use of force (*jus ad bellum*)?

According to article 2(4) of the UN Charter, all members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any manner inconsistent with the purposes of the United Nations'. Article 2(4) thus prohibits all threats to use force, as well as the actual use of force. It is the first treaty provision by which international community disavows comprehensively forcible action by States, since in an earlier attempt in 1928, the so-called Kellogg-Briand Pact (or Treaty of Paris), the signatories merely 'condemned recourse to war' and 'renounced it as an instrument of national policy.' The exceptions to this fundamental principle of the post-Charter era are the use of force in self-defence (article 51 of the UN Charter) and the authorization of armed force by the Security Council under chapter VII of the UN Charter.

Accordingly, any use of force, including the use of force at sea, to be justified should come under the scope of one of these exceptions (the so-called *jus ad bellum* or more aptly *jus contra bellum*). Otherwise, it is questioned whether it may

1 For a definition of 'armed conflict' see *Prosecutor v Tadić*, Case no. IT-94-1-T, Decision on Defence Motion for Interlocutory Appeal on Jurisdiction, 2 October 1995, paragraph 70.

fall under the scope of a different set of rules, namely the rules governing law-enforcement operation. Moreover, is there any room for the application of human rights law in this regard? These questions have arisen in many cases before international tribunals and they have significant legal repercussions also in contemporary world politics. Incidents like these occurring in the South China Sea (Zou 2014) highlight the need for clarity in the applicable legal framework. It is one thing to consider every instance of the use of force in the maritime domain as a potential breach of article 2(4) of the UN Charter and another to consider it as inherent in law enforcement and thus subject to the rules of engagement of policing operations.

It is the purpose of the present paper to discuss these questions concerning the use of force at sea against the background of the relevant rules of international law. First, the relevance of the armed conflict paradigm today will be critically assessed; then, the use of force in peacetime will be canvassed in light of the pertinent jurisprudence. The assertion will be that there is a fundamental distinction between the use or threat of the use of force in the course of the protection of sovereign rights and the respective use of force in every-day law-enforcement operations. Finally, the rules applicable in law-enforcement operations at sea will be analyzed.

THE LAW OF ARMED CONFLICT AT SEA IN CRISIS

It is a truism that the law of naval warfare has lost considerable part of its steam in the contemporary international legal discourse. This is mainly because the legal framework governing armed hostilities at sea dates back to the 1907 Hague Regulations and has not recently been revisited.[2] Other relevant international instruments are equally dated: the Paris Declaration of 1856,[3] the Declaration of London

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2 The relevant Hague Regulations are the following: The Hague Convention for the Pacific Settlement of International Disputes (1907); The Hague Convention VI Relating to the Status of Enemy Merchant Ships at the Outbreak of Hostilities (1907); The Hague Convention VII Relating to the Conversion of Merchant Ships into Warships (1907); The Hague Convention VIII Relative to the Laying of Automatic Submarine Contact Mines (1907); The Hague Convention IX Concerning Bombardment by Naval Forces in Time of War (1907); The Hague Convention XI Relative to Certain Restrictions With Regard to the Exercise of the Right of Capture in Naval War (1907); The Hague Convention XIII Concerning the Rights and Duties of Neutral Powers in Naval War (1907). These conventions are compiled in Ronzitti (1988).

3 The Declaration of Paris represented the first codification of the rules of maritime war to be generally accepted among maritime states; see Declaration Respecting Maritime Law, 16 April 1856, 1 AJIL (Supp 1907) 89.

of 1909,[4] and the London Protocol relating to the Rules of Submarine Warfare of 1936. In view of the considerable age of the Hague Regulations and of the other instruments, it is obvious that they might be ill-suited to meeting the realities of modern weaponry and contemporary methods and means of naval warfare (Politakis 1998, 643). As Roach observes "[t]here is virtually no modern treaty law governing the use of force in naval warfare" (Roach 2002, 368).

Furthermore, the absence of serious interest in naval warfare may be due to the simple fact that major naval powers are not anymore conducting warfare operations; or at least, that is what they claim. Naval warfare is squeezed between action in "self defense" and "law enforcement operations" (Sergis 2014, 524). On the one hand, the relation between *jus ad bellum* and *jus in bello* in the context of naval operations is not well defined, with self-defense serving as a panacea for military action, displacing regulation of the conduct of hostilities.[5] On the other, modern naval operations are primarily focused on the enforcement of public order at sea. Navies' modern role is to conduct Maritime Interdiction Operations (MIOs), fighting for example piracy, combating drug-trafficking, dealing with migrant-smuggling and enforcing Security Council's Resolutions.

Nonetheless, the basic principles the traditional naval warfare are still generally recognised as reflecting customary international law (Heinegg 2006, 154). Recently, two texts have been produced by private bodies, namely the San Remo Institute[6] and the International Law Association,[7] which even though they have no formal status, are both widely considered, in the most part, as restatements of the contemporary customary law applicable to armed conflicts at sea (Dinstein 1994, 350). Green has commented in respect of the San Remo Manual that 'although it is an unofficial statement, it is generally regarded as expressive of accepted customary law' (Green 2008, 45). Moreover, the US has submitted before the International Court of Justice that 'most of [the San Remo Manual's] provisions reflect

4 The London Declaration Concerning the Laws of Naval Warfare (1909) was the first and only exhaustive, yet ill-fated compilation and codification of all the aspects of maritime warfare. See JB Scott, 'The Declaration of London of February 26, 1909' 8 AJIL (1914) 274.

5 As A. V. Lowe argues "in essence, there appear to be two almost entirely distinct bodies of law and principle—the traditional laws of war and neutrality, and "Charter" rules on self defense—which may be used as criteria of legality, neither of which is clearly established in international law to the exclusion of the other" (Lowe 1989, 199).

6 See International Institute of International Humanitarian Law, San Remo Manual on International Law Applicable at Armed Conflicts at Sea, paragraph 118 (hereinafter: San Remo Manual).

7 See ILA, Helsinki Principles on the Law of Maritime Neutrality (hereinafter: Helsinki Principles).

customary international law.'[8]

In any case, the question remains whether the law of armed conflict at sea is still relevant in the 21st century, notwithstanding the fact that States scarcely invoke its rules today. The arguments against its contemporary application revolve mainly around the idea that this legal framework has been superseded either by the UN Charter or by the law of the sea.

In more detail, there is the argument that since the outlawing of the use of force by the UN Charter, no 'state of' war' can lawfully arise. Accordingly, 'the criterion for the applicability of the Laws of the War cannot be met, the legality of all uses of force henceforth being judged by reference to the terms of the Charter' (Lowe 1991, 130). Nevertheless, 'other scholars maintain that the much-acclaimed prohibition of resort to the force in article 2(4) or *jus ad bellum*, is basically unconnected with the laws of war properly so called, or *jus in bello*, and therefore the traditional laws remain unaltered by the Charter limitations on the use of force' (Politakis 1998, 7). The merits of these opposing arguments have been canvassed *in extenso* elsewhere and this task will not be repeated here (Ronzitti 1994, 138); nonetheless, it is submitted that, in principle, a state's use of force at sea is subject to the basic rules governing naval hostilities, as amended and qualified by the collective security system of the Charter (Doswald-Beck 1995, 197).

In any event, from the moment armed force is used between two or more states, the customary international law of armed conflict at sea applies to all the parties to the conflict, irrespective of who was the aggressor and who is acting in self-defence. As M Bothe rightly underscores, 'once an armed conflict has started because aggression has occurred, it is not possible to ask the question, whether there is an armed attack or a situation of self-defense, for each individual shot fired. Within the framework of an armed conflict, the legal yardstick for the individual act of violence is the law of war only and not the *ius contra bellum*.' (Bothe 1991, 393). Equally, the San Remo Manual stipulates that 'the parties to an armed conflict at sea are bound by the principles and rules of international humanitarian law from the moment armed force is used' (San Remo Manual, paragraph 1). When the resort to force is the outcome of a decision of the Security Council under chapter VII, the UN Member States are obliged to abide by the terms of the decision and support a United Nations action. (San Remo Manual, paragraphs 7-9). As stated in the San Remo Manual, 'neutral States are bound not to lend assistance other than humanitarian assistance to that State,' i.e. the state against

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8 *Oil Platforms* (*Islamic Republic of Iran v United States of America*) (Counter-Memorial and Counter-Claim Submitted by the United States of America) 23 June 1997, 130 fn 2925; available at <www.icjcij.org/icjwww/idocket/iop/ioppleadings/iop_ipleadings_19970623_countermem_us_04.pdf>.

which the Resolution was adopted (paragraph 7).

Significant in these modern restatements of the law of naval warfare is the lack of any reference to the traditional distinction between international armed conflicts and non-international armed conflicts. The San Remo Manual speaks mainly of international armed conflicts, although it leaves open the possibility for the application of its principles to non-international armed conflicts, as in paragraph 1, it refers vaguely to the 'parties to an armed conflict,' without further distinction. According to the Commentary to the Manual, 'although the provisions of the Manual are primarily meant to apply to international armed conflicts at sea, this has intentionally not been expressly indicated in paragraph 1 in order to dissuade the implementation of these rules in non-international armed conflicts involving naval operations.' Hence, it is assumed that the law of naval warfare applies *in toto* to armed conflicts, regardless of whether the conflict is international or non-international.

A second issue concerns the impact of the UN Convention on the Law of the Sea[9] on the laws of naval warfare. As Natalie Klein reports: 'the arguments have varied from one extreme to the other—from considering that UNCLOS is not applicable during the armed conflict, to UNCLOS being applicable because the laws of naval warfare are no longer relevant with the changes in laws relating to when States may lawfully resort to force. As may be expected, a more moderate position whereby "the maritime rights and duties States enjoy in peacetime continue to exist, with minor exceptions, during armed conflict' is the most tenable view' (Klein 2011, 259).

Indeed, although it is common ground that the UNCLOS does not directly bear on the law of naval warfare,[10] it has an extensive impact on the rules defining the 'regions' of naval operations, and especially the extent of these regions. Belligerent measures may be exercised on the high seas, the EEZ or in the territorial seas of belligerents, but not in areas under the sovereignty of neutral states (Heinegg 1995, 19).

The San Remo Manual sets out in this respect that 'hostile actions by naval forces may be conducted in, on or over (a) the territorial sea and internal waters,

9 United Nations Convention on the Law of the Sea, 1833 *UNTS* 397; entered into force 16 November 1994; as at 10 January 2014, LOSC has 166 parties, including the EC; see at <http://www.un.org/Depts/los/reference_files/chronological_lists_of_ratifications.htm#The United Nations Convention on the Law of the Sea>.

10 While none of the 1958 Geneva Conventions expressly so provide, it is true that the International Law Commission, which prepared draft articles on the subject, intended the articles to apply in time of peace; see YbILC (1956-II) 256. The UNCLOS is similarly silent, although here, too, it was understood that the Conference was concerned with the peacetime law of the sea.

the land territories, the exclusive economic zone and continental shelf and, where applicable, the archipelagic waters, of belligerent States; (b) the high seas; and (c) subject to paragraphs 34 and 35, the exclusive economic zone and the continental shelf of neutral States.' As regards the EEZ and the continental shelf of neutral States the Manual makes explicit reference that the belligerents shall have due regard for the rights and duties of the coastal States.[11] Of significance is a plea that the drafters of the Manual make concerning the protection of marine environment; according to paragraph 11 of the Manual 'the parties to the conflict are encouraged to agree that no hostile actions will be conducted in marine areas containing: (a) rare or fragile ecosystems; or (b) the habitat of depleted, threatened or endangered species or other forms of marine life. Truly, this appears more a wishful thinking rather than a pragmatic prediction. Finally, in view of the special legal status of the high seas and of the rights that neutral states continue to enjoy on them, belligerents are obliged to pay due regard to these aspects and refrain from interference therein (San Remo Manual, paragraph 12).

Having ascertained that neither the UN Charter nor the UNCLOS has overruled the law of naval warfare, it is apt to refer to the relevant state practice in support of the continuing significance of this category of international law. First, mention should be made to the Falklands Islands/Islas Malvinas conflict (1982) (Coll and Arendt 1985), even though every single episode of the conflict, as well as the establishment of the relevant war zones, namely the Maritime Exclusion Zone and the later Total Exclusion Zone (TEZ),[12] was justified by the British exclusively in terms of self-defence.[13] This was also the reason given for the sinking of the *General Belgrano* while it was steaming south-west and well outside the 200 nautical mile exclusion zone.[14]

It is beyond the scope of the present enquiry to have regard to the legal merits of this incident. Suffice to note, however, that the *Belgrano* incident, assessed against the background of the classical laws of naval warfare, would pose no legal problem; it involved nothing more than a warship being spotted and sunk on sight by an enemy vessel on the high seas. However, 'when an unprovoked attack, even against hostile warships, comes to be appraised with self-defense standards,

11 See also Hague Convention XIII article 2 and 5 and Helsinki Principles paragraph 2.1.

12 In the course of the two-month conflict, the UK established four different types of war zone in succession; see Politakis 1998, 77.

13 See eg the statement of the UK Representative, A Parsons, in the course of the UN Security Council debate of 22 May 1982, 53 BYIL (1982) 551-553.

14 On 12 May 1982, the Argentine cruiser *General Belgrano* was torpedoed and sunk while steaming some 36 nautical miles outside of the Total Exclusion Zone.

it is no longer free of legal objections' (Politakis 1998, 85). In other words, it would be more consistent with both the *jus ad bellum* and *jus in bello* to avoid the claim of self-defence in this regard, as well as to abstain from imposing self-limitations upon the theatre of war. This serves as an illustration of the unnecessary legal problems created by the conflation of these two normative categories.

Another conflict in which the rules of naval warfare, such as the belligerent right of visit and search, were of relevance was the war between Iran and Iraq (1980-1988). Neutral vessels were systematically stopped and boarded, mainly by Iranian forces at the entrance of the Persian Gulf, and eventually diverted and detained in Iranian ports (Momtaz 1993, 24). It is of importance to note that several foreign governments, amongst them, the US, Italy, the Netherlands, France and the Soviet Union, through various statements, acknowledged the belligerent right of visit and search, as well as the doctrine of convoy.[15] Moreover, most legal commentators were of the view that the Iranian practice of boarding and diverting neutral vessels was in keeping with the customary law of naval warfare, and reaffirmed the continued validity of established principles on the subject.

However, it is the view of the present author that it was the recent "*Mavi Marmara*" episode which corroborated that the law of naval warfare should find application in the 21st century. It is beyond the scope of the present article to narrate the events of the 31st May 2010 concerning the interception by the Israeli forces of the flotilla bound for Gaza, which resulted in the death of nine people, and have been already extensively dealt with.[16] Rather, we will focus more on the serious legal issues that this incident raised in relation also to the above discussion over the application of the law of naval warfare.

The various Commissions that dealt with the matter oscillated between the

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15 See relevant references in Politakis, 544 and D Guilfoyle, 'The Proliferation Security Initiative: Interdicting Vessels in the International Waters to Prevent the Spread of Weapons of Mass Destruction' 29 *Melbourne University Law Review* (2007) 733, 744.

16 Turkey and Israel conducted their own independent inquiries. The Turkish Commission released its report, hereafter 'Turkish Report,' in February 2011 (Turkish National Commission of Inquiry, 'Report on the Israeli Attack on the Humanitarian Aid Convoy to Gaza on 31 May 2010,' available at http://www.mfa.gov.tr/data/Turkish%20Report%20Final%20-%20UN%20Copy.pdf, visited 2nd September 2012). The Israeli Commission, known as Turkel Commission published its report, hereafter 'Turkel Report' in January 2011 (The Turkel Commission, 'The Public Commission to Examine the Maritime Incident of 31 May 2010,' available at <http://www.turkel-committee.gov.il/files/wordocs/8808report-eng.pdf>. These two national reports were reviewed by a high level committee appointed by the UNSG which issued its report, hereafter 'Palmer Report,' in September 2011 ('Report of the Secretary-General's Panel of Inquiry on the 31 May 2010 Flotilla Incident,' available at <http://www.un.org/News/dh/infocus/middle_east/Gaza_Flotilla_Panel_Report.pdf>. The UN Human Rights Council also established an independent Fact Finding Mission., which released its report, hereafter FFM Report in September 2010 (UN Doc A/HRC/15/21 available at <http://www2.ohchr.org/english/bodies/hrcouncil/docs/15session/A.HRC.15.21_en.PDF>.

law enforcement and the armed conflict paradigm. In accordance with the Turkish Report, the armed conflict paradigm had no application in the incident; therefore the interception should have been evaluated by the law enforcement paradigm.[17] In sharp contrast, the Turkel Report and more importantly, the Palmer Report gave preeminence to the armed conflict paradigm and the naval blockade.[18]

The Report took the view that the blockade of Gaza was legal; however, Israel was found to have used 'excessive and unreasonable' measures in boarding the *Mavi Marmara*, resulting in 'unacceptable' loss of life; and to have subsequently engaged in 'significant mistreatment' of those detained.[19]

It is beyond the scope of the present enquiry to address extensively the merits of the Palmer Report or whether Israel had the lawful right to declare and enforce a naval blockade (Guilfoyle 2011). The Report itself, based on 'the facts as they exist on the ground' (paragraph 73), considered that 'the conflict should be treated as an international one for the purposes of the law of blockade. This takes foremost into account Israel's right to self-defence against armed attacks from outside its territory' (paragraph 73). In the appendix of the Report, its authors laid down the 'Applicable International Legal Principles,' in which it was argued that, even if the conflict in Gaza is not designated an international one,[20] 'the law of blockade would also be applicable in non-international armed conflicts in which the parties and/or neutral countries recognize each other as belligerents' (appendix I, paragraph 23). This assertion was premised, on the one hand, upon the *Prize* cases during the US Civil War[21] and was inferred, on the other, from the silence of the San Remo Manual on the question of the applicability of the law of naval warfare in non-international armed conflicts (appendix I, paragraph 24).

Whether international or non international the conflict in question, what is of significance for present purposes is that the Palmer Report re-introduced in the contemporary international legal discourse the law of armed conflict at sea. Thus as long as naval warfare remains a possible method of warfare, the need for its

17 Turkish Report, Conclusions no. 29 and 30, at 115. That is why the report speaks about the "laws of peace time" that govern the high seas and the "long-standing universally accepted rule" of the freedom of navigation on the high seas." The drafters of the report devoted the eight pages (from 50 to 57) in order to analyze the law enforcement paradigm during peace time.

18 Palmer Report, paragraphs 69-82, at 36-45 and Turkel Report, paragraphs 29-55, at 38-61.

19 See Palmer Report, paragraphs 117, 134, 145.

20 Nonetheless, it is also argued that a conflict becomes international if it takes place between an Occupying Power and rbel or insurgent grups-whether or not they are terrorist in character- in occupied territory,' such as in the Palestinian Occupied Territories'; see Palmer Report, appendix I, paragraph 20.

21 See *The Prize* cases 67 US (1863) 635, 666-669.

regulation will be essential for the international community and it should not be considered as in desuetude.

THE USE OF FORCE AT SEA IN PEACETIME

Using Force in the Course of Maritime Interdiction Operations (Law Enforcement Paradigm)

The question of the permissibility of the use of force in the course of peacetime naval operations, mainly maritime interdiction operations, has been long discussed both in theory and practice (Guilfoyle 2009, 271-298). At the outset, it is evident from the face of article 110 of UNCLOS, which regulates the right of visit on the high seas that the pertinent provision of UNCLOS fails to provide a concrete answer to this question. According to Shearer, the sole reference to the degree of force to be used in enforcement measures under the 1982 Convention appears in article 225, which states:

'In the exercise under this Convention of their powers of enforcement against foreign vessels, States shall not endanger the safety of navigation or otherwise create any hazard to a vessel, or bring it to an unsafe port or anchorage, or expose the marine environment to an unreasonable risk' (Shearer 1986, 342).

With regard to the relevant multilateral or bilateral treaties, they have scarcely addressed the topic of the use of force. Article 22, paragraph 1(f) of the 1995 Straddling Stocks Agreement, for example, states:

> 1. The inspecting State shall ensure that its duly authorized inspectors:
> …
> (f) avoid the use of force except when and to the degree necessary to ensure the safety of the inspectors and where the inspectors are obstructed in the execution of their duties. The degree of force used shall not exceed that reasonably required in the circumstances.[22]

The 2003 Caribbean Agreement includes a final savings clause providing, inter alia, that nothing in the treaty impairs the exercise of the inherent right of self-defence and requiring that the discharge of firearms against or on a suspect vessel

22 See UN Agreement for the Implementation of the Provisions of the UNCLOS of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks 1995, 2167 UNTS 88.

is to be reported as soon as possible to the flag state (article 22),[23] while a similar provision is included in the 2008 CARICOM Agreement. Article XIV stipulates that 'the use of force pursuant to this Agreement shall in all cases be (a) in strict accordance with the applicable national laws and policies and (b) the minimum reasonably necessary under the circumstances.'[24] Only the reference to the use of force in these treaties entails that it should not be disallowed *ipso jure*.

According to the preponderant view, the intercepting state may, in principle, use force but in extreme moderation and in strict accordance with the requirements of necessity and proportionality (Lowe 1991, 162). This is not without resonance in the jurisprudence of international courts and tribunals. In the *I'm Alone* arbitration, the incidental sinking of a vessel in the course of efforts to board, search and seize a suspect vessel was considered acceptable, but the intentional sinking of such vessel was not justified.[25] The *Red Crusader* incident also considered the legitimate use of force to stop a vessel. There, a Commission of Inquiry considered that firing without warning of solid (as opposed to blank) gunshot and creating danger to human life on board was in excess of what was necessary in pursuit of a fishing vessel fleeing arrest.[26]

The nature of the use of force in law-enforcement operations at sea was clarified by the International Court of Justice in the *Fisheries Jurisdiction* case (*Spain v Canada*). In rejecting Spain's argument, the ICJ had stated that the

'Court finds that the use of force authorized by the Canadian legislation and regulation falls within the ambit of what is commonly understood as enforcement of conservation and management measures...*Boarding, inspection, arrest and minimum use of force for those purposes are all contained within the concept of enforcement of conservation and management measures* according to a 'natural and reasonable' interpretation of the concept.'[27]

As to the content of such enforcement measures, the *locus classicus* in this regard has been the judgment of the International Tribunal for the Law of the Sea

23 See Agreement Concerning Co-operation in Suppressing Illicit Maritime and Air Trafficking in Narcotic Drugs and Psychotropic Substances in the Caribbean Area, concluded on 10 April 2003, at San José, Costa Rica and entered into force on 18 September 2008.

24 CARICOM Maritime and Airspace Security Cooperation Agreement, signed at Bolans, Antigua and Barbuda on 4 July 2008; available at <www.caricom.org/jsp/secretariat/legal_instruments/agreement_maritime_airspace_security_cooperation.pdf>.

25 See *I'm Alone* case 3 *Reports of International Arbitral Awards* (1949) 1609.

26 See *The Red Crusader* (*Commission of Enquiry Denmark v United Kingdom*) 35 ILR (1962) 485.

27 See *Fisheries Jurisdiction* (*Spain v Canada*) Jurisdiction of the Court, Judgment, ICJ Reports 1998, 432 (emphasis added).

(ITLOS) in the *M/V Saiga* (*no. 2*) case (1999). The Tribunal expressed the view that

'international law requires that the use of force must be avoided as far as possible and, where force is unavoidable, it must not go beyond what is reasonable and necessary in the circumstances. Considerations of humanity must apply in the law of the sea, as they do in other areas of international law.'[28]

The Tribunal also set out the applicable *modus operandi*:

'The normal practice used to stop a ship at sea is first to give an auditory or visual signal to stop, using internationally recognized signals. Where this does not succeed, a variety of actions may be taken, including the firing of shots across the bows of the ship. It is only after the appropriate actions fail that the pursuing vessel may, as a last resort, use force. Even then, appropriate warning must be issued to the ship and all efforts should be made to ensure that life is not endangered.'[29]

The *Saiga II* principles were reiterated in the last Judgment of ITLOS in the *Virginia G case* (April 2014).[30] In that case, Panama contended that Guinea-Bissau violated the principle that the use of force should be avoided, and that even when it cannot be avoided, it should not exceed what is reasonable and necessary." In more detail, Panama stated that:

'[t]he use of force and intimidation used during the boarding and inspection was unjustified and went drastically beyond what was reasonable. The FISCAP officers boarded the vessel without identifying themselves, they acted in a forceful, inconsiderate and intimidating manner, brandishing weapons, and confined the crew at gunpoint even though no resistance was made by the crew.' (paragraph 351).

Nevertheless, the Tribunal was of the view

'that the information provided to it by the Parties does not indicate that excessive force was used against the *M/V Virginia G* and its crew. The Tribunal considers that the standards referred to by the Tribunal in the *M/V "SAIGA"* (*no. 2*) *Case* were met and therefore does not find that Guinea-Bissau used excessive force leading to physical injuries or endangering human life during the boarding and sailing of the *M/V Virginia G* to the port of Bissau.' (paragraph 362).

In concluding, the ITLOS as well as other arbitral tribunals have clearly set out the principles applicable in the course of maritime interdiction operations or

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28 ITLOS, *M/V 'SAIGA'* (no. 2) (Saint Vincent and the Grenadines v Guinea) case, 1 July 1999, paragraph 155.

29 *Ibid*, paragraph 156.

30 ITLOS, *Virginia G case* (Panama v. Guinea Bissau) (Case no. 20), Judgment of 14 April 2014.

under the law-enforcement paradigm. The use of force is not prohibited, yet it must be in strict compliance with the principles of necessity and proportionality. More importantly, the use of force in this context should be considered as a *lex specialis* case, and not falling within the ambit of the generic prohibition of the use of force under article 2(4) of the UN Charter. As the authoritative *Simma's UN Charter Commentary* states,

'Although the terms "territorial integrity" and "political independence" are generally not intended to restrict the scope of the prohibition of the use of force they lend an argument in favour of the widely accepted view that certain cases of the threat or use of force within the law of the sea are not comprised by article 2(4)' (Randelzhofer 2002, 124).

Instructive for the assessment of the legality of the use of force in the course of interception operations would also be certain soft law instruments that apply in relevant cases, such as the Code of Conduct for Law Enforcement Officials or the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials. The former was adopted in December 1979 by the UN General Assembly and consists of eight articles, which reiterate the fundamental principles of proportionality (force to be used only to the extent required) and necessity (force to be used only when strictly necessary).[31] The latter were adopted by the Eighth UN Congress on the Prevention of Crime and the Treatment of Offenders (1990) and embodied 26 principles concerning the use of force by law enforcers.[32]

Using Force to Protect Sovereign Rights

A different assessment of the legal regulation of the use of force at sea is called when states use or threat the use of force in order to protect their sovereign rights in maritime zones, such the continental shelf. This has been evidenced in the arbitration between *Guyana and Suriname* (2007),[33] in which the ad hoc arbitral tribunal had to consider whether acts of Surinamese gunboats seeking to prevent drilling activities in a disputed maritime area could be viewed as law enforcement activities. The Tribunal accepted

'the argument that in international law force may be used in law enforcement activities provided that such force is unavoidable, reasonable and necessary.

31 See Code of Conduct for Law Enforcement Officials; UNGA Resolution 34/69; 106th pl mtg (17 December 1979).

32 See the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials; adopted by the 8th UN Congress on the Prevention of Crime and the Treatment of Officers adopted in Havana, Cuba (27 August-7 September 1990); available at www2.ohchr.org/english/law/firearms.htm.

33 See *Guyana-Suriname Award* 47 ILM (2008) 164.

However in the circumstances of the present case, this Tribunal is of the view that the action mounted by Suriname on 3 June 2000 seemed more akin to a threat of military action rather than a mere law enforcement activity' (paragraph 445).

Similar arguments concerning the acts of States in disputed maritime areas were put forward in the Nicaragua-Colombia dispute before the International Court of Justice. In more detail, Nicaragua's Agent contended that Colombia has been using force since 1969, in order to "keep Nicaragua locked" inside the 82nd meridian.[34] This was refuted by the Counsel of Colombia and the Court did not make any reference to the 'use of force' in its 2012 Judgment. Nevertheless, the fact remained that states may perceive patrolling a maritime disputed area as falling within the ambit of the 'use or threat of use of force.'

It is the view of the present author that these cases, especially the Guyana/Suriname award is markedly different than the previously mentioned cases The reason is clear: the Guyana/Suriname and Nicaragua/Colombia cases pertain to the assertion of sovereign rights in disputed areas of EEZ/continental shelf and the 'threat of the use of force' was, arguably, in order to protect such sovereign rights. Such assertion fundamentally differs from the right of visit of a foreign vessel on the high seas or from the enforcement measures taken within an undisputed EEZ, like in the *Saiga II or the Virginia G cases*, which are 'policing' rights ascribed to flag states by the law of the sea and not a 'sovereign' right, in close connection with the 'territorial integrity and political independence' of a coastal state. In other words, the distinction between cases like *Guyana/Suriname* and cases of interception on the high seas lies in the rationale behind the resort to the use of force: in the former case, it is the protection of 'sovereign rights' and in the latter, the advancement of the interests of international community (Papastavridis 2013, 71).

In any event, as Milano and Papanicolopulu, in commenting on the *Guyana/Suriname case*, assert,

'the limited use of force that may be needed in order to enforce the legislation of the coastal State in maritime areas claimed by it is conceptually different from the use of force in international relations prohibited by article 2 paragraph 4 UN Charter. While in the latter case the use of force is the content and the end of the action by the State, in the former case the use of force is instrumental to another activity, consisting in applying the legislation of the coastal State' (Milano & Papanicolopulu 2011, 622-623).

Moreover, the explicit reference to the exercise of a minimum use of force

34 See *case concerning the* Territorial and Maritime Dispute (Nicaragua v. Colombia) CR 2012/8, p. 23, paragraph 40 (ii) (Argüello). The author is indebted to the anonymous reviewer for this reference.

in the above-mentioned treaties lends credence to the view that such use of force does not fall under article 2 paragraph 4 of the UN Charter; otherwise, such reference would have amounted to a flagrant violation of the said provision, which reflects a peremptory norm of international law, and, as a result, the relevant treaties would have been null and void pursuant to article 53 of VCLT.[35]

Another line of argumentation to the same end could be based upon the premise that article 2(4) of UN Charter purports to regulate or proscribe the use of force, which is not provided for or sanctioned by a permissive' rule of international law. Such rule, however, exists in the present context, i.e. a minimum use of force is positively permitted in law enforcement operations by warships. Thus, it is submitted that the use of force in such cases does not fall within the scope of the negative scope of article 2(4), but rather it is intrinsic to the primary rule permitting the right of visit on the high seas (article 110 of LOSC).

In a similar vein, Douglas Guilfoyle, even though he does not disassociate the use of force in interception operations with the prohibition of article 2(4), avers that

'Article 110 represents the prior consent of States to their vessels being interdicted in certain cases, not a non-exhaustive list of police powers. A 'police action' is not something other than a use of force; consent may simply render it not a *prohibited* use of force (Guilfoyle 2009, 276).

In conclusion, the *Guyana/Suriname case* and *Nicaragua/Colombia cases* warrant the assertion that in peace-time the use of force at sea is regulated twofold: on the one hand, the use of force in the course of 'everyday' policing of the seas will be subject to the canons governing law-enforcement operations, as set out in the *Saiga II case* as well as subject to international human rights law. On the other hand, the use or threat of the use of force to protect sovereign rights in disputed areas of continental shelf/EEZ, as those in East Asia, should be assessed against the backdrop of articles 2(4) and 51 of the UN Charter or, otherwise under *jus ad bellum* or, more apposite, *jus contra bellum*. Noteworthy is, however, that in both cases the same principles would apply, namely the principles of necessity and proportionality.

The Application of International Human Rights Law

As stated above, the rules governing policing on the high seas have been authoritatively put forward by ITLOS in the *Saiga II case* as well as by various soft-law in-

35 Article 53 of VCLT provides that 'A treaty is void if, at the time of its conclusion, it conflicts with a peremptory norm of general international law.'

struments. In the assessment, however, of the legality of such policing operations, there is another category of norms that should be taken into account, i.e. international human rights law. Human rights law has also application in the context of international humanitarian law. The International Court of Justice first affirmed the applicability of international human rights law during armed conflicts in its 1996 Advisory Opinion on the Legality of the Threat or Use of Nuclear Weapons:

"The Court observes that the protection of the International Covenant of Civil and Political Rights does not cease in times of war…' (paragraph 25).[36]

The right that is in need of protection in the course of maritime interdiction operations, in which force is used in order to interdict a vessel and arrest the suspects on board the vessel, is undoubtedly the right to life. All universal and regional human rights treaties provide for the protection of the right to life, which is considered as customary international law; for example, article 6 paragraph 1 of the International Covenant on Civil and Political Rights (ICCPR, 1966) declares that 'Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.'[37]

The right of life forbids States intentionally to deprive someone of his or her life unless it is 'no more than absolutely necessary,' amongst others, 'in defence of any person from unlawful violence' or 'in order to effect a lawful arrest.' Therefore, when States engage in law enforcement operations at sea should do 'no more than absolute necessary … to effect a lawful arrest.' The fundamental tenets of necessity and proportionality are the cornerstones on which each and every case of lethal force would be assessed. As held by the European Court of Human Rights in the landmark case of *McCann and others v. United Kingdom* (1995),[38] deprivations of life must be subject to the most careful scrutiny, particularly where deliberate lethal force is used, taking into consideration not only the actions of the agents of the State who actually administer the force but also all the surrounding circumstances. In addition, as held by the same Court in *Osman v United Kingdom* (1999), article 2 requires States not only to restrain from causing death, but also to take measures to protect the lives of individuals within their jurisdiction.[39]

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36 See also the 2004 Advisory Opinion on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, ICJ Rep (2004) paragraph 2.

37 See article 6 of the International Covenant on Civil and Political Rights, 19 Dec 1966, 999 UNTS 171. See also article 2 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (November 4, 1950, 213 UNTS 221).

38 See *McCann and others v. United Kingdom* (1995), 27 September 1995, EHHR Series A no. 324.

39 See *Osman v United Kingdom* Application no. 87/1997/871/1083, Grand Chamber Judgment of 28 October 1998, 29 EHRR 245.

In the case-law of the Strasbourg Court, there has been only one case, in which a violation of article 2 of ECHR was invoked and which was relevant to the law of the sea, namely the *Xhavara et al. v. Albania and Italy case*. In this case, 16 Albanian refugees, who had survived the *Katar I Rades* incident, but had lost several family members, claimed that the Italian vessel had deliberately hit their boat and brought a complaint against both Italy and Albania, primarily for a violation of the right to life. The substance of the applicants' complaint under article 2 was that they had been deprived of a proper investigation of the Italian state's actions which led to the deaths of their parents. Even though ECtHR held that Italy did not act contrary to the right of a person to leave one's country (article 2(2) Protocol no. 4), it did rule that the interception activities which extended to international waters and to the territorial waters of Albania fell under Italian jurisdiction and that Italy therefore, had to take 'all the necessary measures to avoid, in particular, drowning.' Nonetheless, complaints under articles 2 and 3 (which involved substantially the same complaint) were rejected as inadmissible *ratione temporae*.

While it is not surprising that the Court did not rule upon the alleged violation of article 2 in the above-mentioned case, in light of the admissibility issues involved, it is surprising that in another relevant case, i.e. the *Medvedyev v. France case*, in which lethal force was used, the applicants did not raise any complaint under article 2 of the ECHR. In more detail, in the latter case, the French frigate had to fire some warning shots across the bow of the *Winner* in order to make it stop. In addition, the boarding team exchanged shots with members of the crew, which caused an individual to be wounded, resulting in his death a week later. It was reported in this respect that the deadly injury of a crewmember was an accident.[40] Even so, the firing of weapons into open doors as well as the firing of 'warning' shots against the crew casts doubts on the proportionality of the use of force *in casu*, especially in contemplation of the 'elementary considerations of humanity' applicable in law enforcement operations.[41]

What seems to be odd, however, is that neither the applicants nor the Court made any reference to this issue. The applicants did not even submit any complaint for violation of article 2 of the Convention. The same holds true in the *Rigopoulos case*, in which there was an exchange of fire between a Spanish warship and several members of the crew of a drug smuggling vessel *Archangelos*, who

40 When they boarded the *Winner*, the French commando team used their weapons to open certain locked doors. When a crew member of the Winner refused to obey their commands, a 'warning shot' was fired at the ground, but the bullet ricocheted and the crew member was wounded'; (paragraph 13).

41 See *M/V'SAIGA'* (no. 2), at paragraph 155 and also *Corfu Channel Case* (United Kingdom v Albania) Judgment of April 9 1949, ICJ Rep 1949 4, 22.

had barricaded themselves into the engine room.[42] This could be construed as a *sub silentio* acknowledgment that the *de minimis* use of force in law enforcement operations at sea is in full accord with the Convention; i.e. it is an intrinsic part of the "lawful arrest" under article 2. Nevertheless, it is submitted that the legality of the use of lethal force in such cases should not be lightly presumed. It would have been interesting to see what the Court would have ruled, should the applicants in the *Medvedyev* have brought up a complaint under article 2.

CONCLUDING REMARKS

When states act in the maritime domain, either in the context of an armed conflict or in peacetime, it is inevitable that they will use force. This force may be justified under the pertinent rules of international law; if not, such use force would give rise to the responsibility of the wrongdoing state. It is readily apparent that it is of outmost importance to have a clear set of rules applicable in each and every case.

Depending on the circumstances of each case, the applicable rules of international law may be the following:

i) when the use of force in question occurs in the context of an armed conflict, either international or non-international, such as in the case of *Mavi Marmara*, the law of naval warfare applies, including human rights law, as the ICJ has repeatedly held.

ii) when the use of force takes place in the context of policing operations at sea, such as those taking place on an everyday basis to fight transnational organized crime (e.g. drug trafficking, illegal fishing, migrant smuggling, piracy etc), the rules governing law-enforcement operations do apply, including human rights law. Instructive in this regard are, amongst others, the pertinent treaties (e.g. 1995 Straddling Stocks Agreement, the 2003 Caribbean Agreement), the *Saiga II principles* and the relevant soft-law instruments (e.g. Code of Conduct for Law Enforcement Officials).

iii) if the use of force or threat of the use of force, as in the case of *Guyana/Suriname*, aims at protecting sovereignty or sovereign rights, such as the right to explore the natural resources of the continental shelf, especially in disputes maritime areas, then article 2(4) and article 51 of the UN Charter comes into play.

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42 See *Rigopoulos v. France case*.

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Geopolitics and Conflict: Reconciling Spatiality, Borders, and Sovereignty in the Modern World System

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Abstract

This essay provides a brief overview of how geopolitics and spatiality relate to borders, and, in turn, the role of borders and proximity to the study of conflict. The author's research program is used to provide examples of these relationships. The continued relevance of borders is examined within the context provided by the contemporary world of transnationalism, globalization, and increased interdependence, as well as the different perspectives given by the "borderless world discourse" and the "security discourse."

Keywords

conflict, territory, borders, sovereignty, Realism

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International relations scholars are keenly aware of the role of temporal dynamics in understanding phenomena of international politics, and the influence of temporality is acknowledged in works adhering to diverse methodological traditions. It is important, however, in both refining extant theories of global politics as well as in developing new theories from evolving realities, to be attentive to the contexts of those theories and the phenomena to which they pertain. World politics must be contextualized not only in time (across history) but also across space. Whether the units of analysis being studied are world systems, regions, states, or other international actors, the external and internal contexts must include time as well as space and place. Broadly, *space* includes the spatial dimension of how things stand in relation to one another across physical space, the various ways in which the distance between and among them may be conceptualized and measured, and the meaning of spatial factors. Similarly, *place* is about where people live, where things are located, and the ways in which people give meaning to those places and draw their identity from them.

Temporality by itself offers an incomplete framework for understanding international relations. In my work on geopolitics—contiguity and borders, diffusion, proximity and conflict, as well as in the theme of the 2014 annual meeting of the ISA, "Spaces and Places: Geopolitics in an Era of Globalization," and in my most recent book, 2013's *On Geopolitics* I have tried to devote more explicit and extensive attention to the spatial elements, or the spatial contexts, of socio-political phenomena. I have tried to encourage the exploration of the importance of space, the relationship between space and time, how space and place can be studied, and the continuing challenges of combining the study of spatiality and time in our analyses of world politics. Moreover, these relationships have been emerging and converging in an increasingly globalized world, one in which the very meanings of space, distance, and place are called into question as technology—along with the growing and deepening of the interdependence it engenders—challenges traditional patterns of interstate interactions.

Indeed, especially in my work on borders I think scholars of international relations must ask whether many of the foundations of the Westphalian system are still relevant, and in what ways. We are driven to address issues such as: the impact of borders and their meaning (or lack thereof); the relationships between place and identity; the tensions between place as local with the push and pull of globalization; the relationships among the concept and reality of sovereignty, law and legal borders, and the context generated by the cross-border workings of modern technology, economics, and transnational actors.

PROXIMITY, BORDERS AND CONFLICT

While much of my earlier work on borders, proximity, space and geopolitics has been summarized in the 2013 book, *On Geopolitics* (Starr 2013),[1] a short comment in Starr and Thomas (2005, 123) may suffice here:

> The location of states, their proximity to one another, and especially whether or not they share "borders," emerge time and again as key variables in studies of international conflict phenomena: from major power general war, to the diffusion of international conflict, to the analysis of peace between pairs of democracies (see, for example, the recent survey by Hensel 2000). From Boulding's (1962) ideas of "behavior space," "loss-of-strength gradient," and "critical boundary" to the simple but profound concern of geographers that humans interact most with those to whom they are closest (Zipf 1949), there are powerful theoretical reasons to be interested in borders and how they affect international relations.

It will be of no surprise to those familiar with my work that these "powerful theoretical reasons" are based along opportunity and willingness. Territoriality, proximity, and spatiality have all played central roles in the study of international conflict. Proximity, especially through borders or contiguity, is important because states (or any other social units) that are close to each other, are better able to interact. Simply, they have the possibility or opportunity of interacting with one another—an "interaction opportunity" argument that is central to the spatial aspects of opportunity.

A second reason why we should be concerned with distance is willingness: because states (or any other social units) that are close to each other are also *perceived* as important or salient to each other. Greater perceptions of threat or gain, or of interdependence, are ways in which proximity can generate salience. Such views affect willingness through the expected utility calculations of policymakers. Willingness to interact and to manage subsequent conflicts in different ways, for example, will depend on the importance or salience of an issue or an opponent. Proximity makes states (or other social units) that are close to one another "relevant" to one another through some combination of both opportunity and willingness.

We can identify some broad ways in which proximity through territory can

1 See also Starr (2005).

be related to conflict via opportunity (ease of interaction) and willingness (importance or salience). A large literature on territory may be summarized by looking at the role that territory plays in international politics. Territory serves at least two distinct purposes in the study of international relations. First, by defining the territorial extent of political units, territory creates spatial arrangements among the units indicating the physical-geographic distance between those units. This "distance" is dynamic, in that the "time-distance" between the units changes with changing technologies of transportation and communication. But the physical-geographic distance between states may also change with changes in the arrangements of the units through alliances, or with the merging of units through conquest or voluntary integration; or with the splitting up of states whether through civil war or non-violent agreements. Second, as the place where people live, territory provides an important component of "group identity" and becomes endowed with extraordinary symbolic importance to people.

In turn, we can also identify two broad ways in which territory plays a causal role in conflict, drawing on the work of Paul Diehl (e.g. 1991, or Goertz & Diehl 1992). Importantly, Diehl categorizes the literature by breaking the empirical studies of territory and war into two groups: (1) territory as a facilitating condition for conflict, and (2) territory as a source of conflict. The first may be represented by increased opportunity, or ease of interaction, while the second represents willingness to engage in conflict because of the importance of territory—the stakes of territory whether in terms of resources/capabilities/wealth or the symbolic importance of group identity.

Both of these relationships are of great causal import, which often co-exist and interact—for example, group identity and the drive for self-determination are both linked to territory (which then provides the geopolitical setting of neighbors and regions). Because of the individual and joint causal impact of these factors, a large literature has demonstrated the various relationships between proximity and the onset of conflict, proximity and the diffusion, spread, or growth of conflict, and both the frequency and intensity of conflict. A quick overview of some of my own empirical analyses can illustrate these relationships. With the exception of the path breaking studies of Lewis Richardson (1960), my work with Benjamin Most presented some of the earliest research linking the numbers and types of borders with the frequency of the onset of interstate war (for example, Starr & Most 1976; 1978). This work involved our creation of one of the first systematic data sets on world borders that was available to other scholars, which included the contiguous land borders of states, across-water borders between states, and the borders between the colonial territories of states. Along with the growing large-N quantitative literature on war, we also produced some of the earliest work on the diffusion of war, focusing on the positive contagion effects that borders had on the spread of wars—particularly contiguous homeland borders, but also the borders between the territories/colonies of states (e.g. Most & Starr 1980). Along with Randolph Siverson this diffusion research was extended to demonstrate the positive effects of alliances in the growth of ongoing wars as well (Siverson & Starr 1991).

While the existence of contiguous land borders has been demonstrated to be positively linked to the onset of interstate war, so much so that contiguity is regularly used as a control variable, the literature has been primarily focused on the number of borders, or the simple dummy variable of whether or not there was such a border between two countries. While mostly supportive, studies of the effects of the length of borders have produced mixed results. My research on the nature of borders, creating a new border data set based on one of the first uses of GIS in international relations, attempted to probe how useful it would be, and for what questions, to go beyond the simple "yes/no" of the presence of territorial contiguity (e.g. Starr 2002). My work with Glenn Thomas (Starr & Thomas 2002; 2005) demonstrated that we could go beyond simple contiguity, and that coding specific arcs (or borders) or border segments for "ease of interaction" (opportunity) and "salience" (importance related to willingness) could provide additional explanatory power to the relationship between borders and conflict, and *how* borders promoted conflict. We found that for the existence of crises, escalation, and the onset of violent conflict, the GIS data set could show there was not a strict "more proximity-→ more conflict" relationship. We demonstrated that the nature of contiguous borders could help explain the relationship between proximity, the number and type of interactions, but importantly, also the *positive effects* of interdependence related to integration; (for a discussion of borders, cooperation, and integration, Starr 2013, chapter 8). For some of the questions relating to diffusion and the recurrence of conflict, the effects generated by the simple existence of contiguous borders could not be improved upon. Note that my ongoing project on borders has allowed us to look at both "space" and "place" as defined above.

BORDERS IN AN INTERDEPENDENT, GLOBALIZED WORLD OF

"SOVEREIGN" STATES[2]

What do territory and borders mean regarding location and place in a globalized world where people, things, and information seemingly move about without constraint? Even in today's post-Cold War world of growing democracy, interdependence, and globalization, borders still serve a wide variety of functions across the areas of security, economics, politics, and social interactions. Despite a broad set of contemporary challenges to sovereignty, borders delineate areas of legal competence, encompassing the territoriality necessary to the concept of the sovereign "state." Borders are central to a spatial approach to international politics, by setting out the location and arrangement of states, and their distances from one another. Borders both facilitate and constrain human interaction. They continue to be intimately related to the security of states and the analysis of interstate conflict, but affect interstate cooperation as well.

Two significant ways to view borders between sovereign states derive from Realist approaches to international relations. The first way involves borders as *legal* phenomena—the legal boundaries which were provided to the nation-states that emerged subsequent to the Thirty Years War. These states were seen to have a *territoriality* dimension that had been largely lacking in the system of feudal organization which it replaced.[3] The legal condition of sovereignty gave the "prince's" government complete control over the territory and people on that territory, with no external authority having the legal right to order the state how to act. The state's boundaries—borders—determined the crucial *legal* boundaries between what was internal (or domestic) and external (or the realm of foreign relations). The whole basis of international law is *jurisdiction*: what actions were permitted to which governments on what territory and to which groups of people/or individuals; what was to be considered domestic and what was external. Borders provided the answer.

While international law and legal concerns have never been key components of Realism, territoriality was, as a central component that defines a state. And territoriality has long been seen as a central component of state security, because it is fundamental to the *geo-political setting* (or context) which affects the security of states. Thus, the second broad way to view borders within a Realist perspective is that borders have been seen as intimately related to the security of states, as the

2 This section is based on Starr (2013, chapter 4) and Starr (2006).

3 Although, see Bueno de Mesquita (2000) for an alternative perspective that challenges this view by proposing that the process of instituting territorial rights began 500 years before Westphalia.

borders of states both represented, and *were*, the "hard shell" promised by the (legal) phenomenon of sovereignty (e.g. Herz 1957).

Non-Realist approaches such as liberalism, transnationalism, pluralism, and more recently globalism as a successor to neo-Marxism and world systems theory—all strongly based in international political economy— raised questions about the importance and role of state borders. As with the strongly non-Realist theories of integration, transnational theories explicitly looked at the interaction between internal factors as well as the external relations of states, and argued that military security did not always sit at the top of state interests, on all issues or for all states. By looking within societies and governments, and denying security a primacy of importance to all states at all times, this perspective violated core assumptions of Realism.

Economic issues, for a variety of reasons, were seen as important (or even more important) areas than military security for large numbers of state and non-state actors. Interdependence, and especially economic interdependence are built around ideas of externalities, collective goods, and the problems of collective choice (e.g. Starr 1997; Ostrom 1990). Ultimately, these approaches argued that states did better taking care of longer term collective interests, than their short-term self interests. Only in this way could states deal with the prisoner dilemma situations that were produced by interdependence and collective goods or common pool resources (such as the "tragedy of the commons"). All of the non-Realist approaches, for different theoretical reasons, question the degree to which borders can still provide any form of "hard shell" around a state, and given the thick web of interdependences, whether they even should. Today, it is clear that technological developments in weaponry, communications, and transportation, as well as the growth of democracy in the world system, and cooperation promoting international organizations, have indeed made borders far more permeable, penetrated, and porous than ever.

A FURTHER WORD ON BORDERS AND CONFLICT

I concluded an earlier article (Starr 2006, 9) by saying. "Borders matter... While not the only element of spatiality borders continue to be a significant factor in the spatial analysis of human relations." They have meaning for legal reasons and security reasons. They have meaning for both the "security discourse" and the "borderless world discourse." They are critical to the identity of groups, and how the different identities of groups separated by borders (or *not* separated by borders!)

affects their social, political, or security relationships.[4]

The liberal position noted above, relating borders to positive interdependent relationships and integrative processes, and based on the "borderless world" perspective, is reflected in the politics of the European Union. However, even here there is a border-conflict relationship. The 1985 Schengen Agreement(s) for the free movement of the nationals of signatory states (with these agreements becoming part of the EU legal framework in 1999, through a protocol to the Treaty of Amsterdam.), which removed cross-border barriers such as border checks and border posts, and created a common visa policy for signatories—exemplify the "borderless world discourse" and the non-security orientation of a "zone of peace" (or better, a pluralistic security community as defined by Karl Deutsch). But even here, scholars such as David Newman (2006, 6) can note that "Borders constitute institutions that enable legitimation, signification and domination, creating a system of order through which control can be exercised. Management procedures are central to this process…" Such *management* involves allowing or preventing physical movement and access.

As such, borders still affect interaction—people can be let in or kept out—with ensuing ethical questions as well as political conflict. For example, while movement within the Schengen area has been facilitated, in some cases the restrictions on non-Schengen nationals in regard to entering the area have been substantially tightened. This is what Basilien-Gauche (2014) has called, "the harmful extra territorialisation of European borders." The role of borders is not to protect the ownership of territory, or the resources that exist on a territory. Here, they are more closely related to identity issues. And despite the globalizing effects of economics, here borders exist to "protect" (that is, "constrain") elements of economic relations (and the economy of states) through legal means.

A liberal view of the world does take into account the "territory as identity" issue, and with conflict over this issue within (or between) democracies essentially being handled in non-violent ways. Examples would include the referendum in Canada over the independence of Quebec, or the dissolution of Czechoslovakia into the Czech Republic and Slovakia. These examples could be contrasted dramatically to the current situations of violent (identity-driven) conflict in autocracies (or at best, anocracies) such as Syria, Iraq, and some of the post-Arab Spring countries.

Thus the Realist/security view of borders continues to be reflected in both the internal and external relations where one or more of the states involved are autoc-

4 But, as noted by John Vasquez at the Workshop, we must be careful *not* to confuse or conflate identity and nationalism.

racies (or anocracies). Especially with autocracies borders continue to be seen as the demarcation between *sovereign* states. But, at the same time, issues of identity have quite often been employed as an excuse for the military violation of that sovereignty. Two obvious examples are the behavior of Russia towards Georgia in the Russo-Georgian War of 2008, and similar Russian actions in the current ongoing conflict with/within Ukraine.

In regard to conflict borders do still count. The liberal perspective is important in that it represents a large segment of the contemporary international system where states and international organizations struggle to finds ways to reconcile the legal role that borders still play in the face of the interdependence, transnationalism, and globalism which penetrate (or jump over) the traditional "hard shell" security role that borders had represented for centuries. The Realist perspective is important as it represents areas where the more traditional security views of borders (and geopolitics in general) remain relevant in terms of sovereignty; where borders serve as key elements in either deterrence or defense. The liberal view tends to work in the zones of peace dominated by groups of democratic states; the Realist view in areas dominated by autocracies and anocracies. Ironically, more conflict may be generated when these different states, with different ways of looking at borders have to interact with, or react to, the behavior of the other.

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REVIEW

A Flexible Expansion of Space to Resolve Conflicting Borders: The Demilitarized Zone of the Korean Peninsula

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A proposal for DMZ monumental park. *Space* 153-155 (1980).
Projects with architecture, art, and performance. *Space* 273 (1990).
Resurrection of the DMZ peace park. *Space* 555 (2014).

Architectural design employs concepts and programs to construct a building in a particular form, which in turn becomes a domain as it establishes a relationship with the ground. Architecture only becomes complete once it establishes a sense of 'place' within nature.

The purpose of architecture may be described as the creation of space, rather than the construction of objects that function as space. As 'space' has come to be recognized universally as the main objective of architecture, floors, ceilings and walls are none other than a means and method to establish 'space.' Rather than being a void, 'space' can more specifically be defined as a state of being empty. Such emptiness is coherent with opportunities for diverse acts to occur within. The architect must not only take into consideration how to complete the construction of a building; the consequent processes and actions that arise with the passing of time are also key to characterizing the space. As such, the making of a work of architecture is the creation of a 'space' mixed with 'time.'

Space, a South Korean architecture monthly, has spanned 34 years in its somewhat sporadic but nevertheless diverse coverage of the De-Militarized Zone (DMZ) of the Korean peninsula, since first featuring the topic in 1980. In domestic circles, the DMZ has long been a hotbed for discussion, with public consensus divided between development and preservation. From an architectural perspective, the prevalent opinion has been to support the creation of a physical space, favorably in the form of a peace park. The public may misunderstand this as a threat to the natural ecology of the DMZ, as if it is the stance dominantly taken by avid real estate developers. Yet, in reality, the stance taken by architecture is more in line with recognizing how to form and modulate relationships with the surrounding nature. Therefore, the vacant state of the DMZ may combine with on-site events and the passing of time to yield greater significance. Finding such meaning is perhaps a more urgent task than designing any physical constructions as part of a peace park. The DMZ, both as a border and a place of collision between the mutually hostile parties of North and South Korea, can then undertake a more flexible role, potentially connecting different entities by functioning as a buffer zone. Architecture can facilitate the expedition of such a role. This review will serve as a chronological narrative of the discussions presented by *Space* about the DMZ through the ages, to suggest possible directions to be assumed by future generations.

SPACE AND SPACE AND THE DMZ

The DMZ of the Korean peninsula spans regions pertaining to North and South Korea, yet the significance of its territory is not exclusively relevant to the nations it divides. As one of the few remaining countries to have been separated due to the Cold War, the Korea peninsula remains to this day as a potential war zone, and the land that lies between has been made inaccessible to civilians since 1953, essentially returning the land to nature's domain. The DMZ has purportedly become 'the center of worldwide attention,' as the territory gains recognition not only as a 'symbol,' but also as a potential 'passageway' of peace. Hence, a more urgent task than preserving the natural resources, or limiting the extent of development, may actually be to draw out a future path for the DMZ.

Despite this, difficulties persist in finding accumulated or continued studies about the DMZ of the Korea Peninsula from the past 60 years. This is because the DMZ itself is an area of conflict between the North and South, where political ideologies clash and the academic environment fluctuates according to political situations. *Space* has covered this issue sporadically, also without an accumulated or continued approach.

Space is recorded as the first civilian entity to suggest introducing the concept of a peace park at the DMZ, with the article, 'The DMZ Should Be Made into a Natural Peace Park' in March 1980 (Vol.153). After this initial stage, the second phase continues in 1989 and 1990, as *Space* oversaw the development of a media campaign as a 'cultural movement.' Then, in the aftermath of the 1st Summit between North and South Korea in June 2000, as diplomatic relations on the peninsula thawed, the magazine revisited the issue in May 2001 by hosting an international academic symposium on the subject of the DMZ. This year, coinciding with the 34 year anniversary since *Space*'s first introduction of the topic, the current Park Administration is actively promoting the construction of a peace park. In lieu of such plans, *Space* revisited the topic of the DMZ in February and again in May, with the theme of 'Resurrection of the DMZ.' This was followed up with a series of articles outlining different approaches taken by other theoretical fields in the August, October and November issues. By revisiting 34 years of contents touching upon the topic of the DMZ by *Space*, a concise but comprehensive understanding of the issue can be acquired, including different paradigms and approaches to the DMZ, as well as value judgment of what to do about the DMZ, and changes in the respective movements with the tide of time.

THE FIRST APPROACH: BORDERS AS A PHYSICAL PARK AND A FRAGMENTED APPROACH

The media campaign in 1980 started by *Space*, stemmed and illustrated the issue more on the level of curiosity or interest, as the area was entirely inaccessible. Thus the first media campaign provided a fragmented approach, that indirectly introduced the former academic studies coming from abroad, rather than a more direct approach.

Space's media campaign, that was first planned to run for a year by Kim Swoo Geun, was first presented to the public as 'A Proposal for DMZ Monumental Park' in March 1980 (Vol.153). Unfortunately, this was at a time when the Korean peninsula was under the international spotlight following the assassination of President Park Chung Hee on the 26th of October, 1979. References to the planning of this project stem back to the 4th of July, 1972, when the political situation suggested a more harmonious future for North and South Korea, due to the joint declaration by the two countries on; and again in the mid 1970's, when the pages of *Space* featured promising projects like the Kumgang Mountain Development Master Plan.

The March issue of 1980 sketched the vice-president of SPACE group at the time, the architect Kim Won-suk. However, in its entirety, this broadly sketched initiative lacked specificity, due to the ambiguous extent of its scope, in trying to represent the DMZ in its entirety, as 'the waist' of the Korean peninsula that stretches from the West to East coast.

In the following month, Kang Yeongseon (director of the Korean Association for Conservation of Nature, and a professor of Seoul National University) contributed the article 'The DMZ is Full of Great Waves of Life,' which included vivid color photographs of the DMZ. At the time, all media outlets and publications in Korea were subject to censorship before being put to press, but the government authorized the feature on the grounds that it provided an academic approach to an otherwise politically charged region.

The foreign academic case studies introduced, due to limitations in researching the topic directly, are as follows. The article, contributed by François Bourliere (chairman, The Nature Conservancy), 'Sanctuaries Astride Frontiers' summarizes the many cases of peace parks in different conflict areas around the world. While the Tatra National Park between Poland and Slovakia, Vanoise National Park between France and Italy, and the Serengeti Maasai Mara National Reserve between Tanzania and Kenya can all be reached almost instantly in virtual reality, at the time, such materials were exceedingly rare. Sketches provided by Song Keeduck, the former chairman of the Korea Institute of Registered Architects, went a step further to actually designate specific sites and regions within the DMZ. The sketches include elaborate illustrations of tourist facilities including hotels and, youth hostels, and entertainment facilities including a monorail and a horse riding club. From the records, it is apparent that the idea of a peace park was regarded more as a sort of comprehensive leisure town at the time, rather than as a conceptual space.

Next in order, should naturally have been the introduction of more specific approaches and plans for each of these regions. Yet here, the series of the ambitiously planned *Space* DMZ media campaign were discontinued due to a sudden period of strict censoring by the authoritarian Korean government in response to the 5.18 Gwangju People's Uprising.

As the first campaign skidded to a halt, so did any architectural approaches analyzing the DMZ as a border. After 9 years, (at the time of Cho's article) the second campaign started, yet, this time, rather than building upon the content developed by the initial campaign, the campaign changed its course to be reborn as a 'cultural movement.' While *Space* maintained its place as the proponent of such discussions, the depth of these discussions have been somewhat compromised due to there being no way to guarantee the continuation of the editor or experts in charge. This situation persists to this day, revealed through the relative lack of quality in the discussions, compared to the sheer amount.

THE SECOND APPROACH: CHALLENGES AND LIMITATIONS AS A NEW CULTURAL CAMPAIGN

If the first campaign in 1980 was mostly about overall master plans of a peace park or methods to approach the issue, enthusiastically joined by philosophers, journalists and architects alike, the second campaign from the late 1980s to 1990 was more similar in its form as a 'cultural movement' with active participation by artists. This was at a time when the Cold War had ended, with the US and the USSR participating in the Olympics together for the first time in the 1988 Seoul Olympic Games. As the iron curtain was cast aside, West and East Germany reunited in 1990. The second media campaign that took place in 1989, was a time when the Roh Administration's diplomacy with North Korea was gaining stride.

Perhaps it was due to the atmosphere of the time that the issue turned towards becoming a 'cultural movement,' yet such a change was unfortunate for the overall discourse surrounding the DMZ. It became a discontinuation of the formerly established discourse on physical space and urban issues. Like a bird must fly from left to right, cultural movements must also be held simultaneously with established academic thought.

An article titled 'What to do about the DMZ' by So Heungyeol went beyond simply providing an ecological viewpoint, attempting to specifically observe space from the framework of the entire national territory in its entirety, from a historical and cultural viewpoint, overcoming the limitations of being confined to a simply ecological viewpoint. The cultural movement that was spawned thereafter can be defined as the second approach to the DMZ.

An attempt to view the issue of the DMZ as a 'cultural movement' was actively started by a handful of artists in 1987, 16 years after Lee Hyunggo had informed the world of the threat of losing an array of cultural artifacts across the civilian control line through the newspaper in 1971. Lee Bahn, at the time a professor at Duksung Women's University, headed this movement, and his works, both as an artist and as an academic, were introduced in the March issue of 1989 (Vol.259). 'Images drawn of the 88 Seoul Olympic Poster' were a reinterpretation of the 88 Seoul Olympics poster.

Space, which had changed its course towards becoming a comprehensive arts magazine starting from the late 1970s, was known for featuring a wide scope of art, in art theory, education and reviews.

However, in the November 1990 issue, *Space* made the error of allotting too many pages, 16 pages, to this single artist, for his one performance 'Intermarriage Ritual of Water and Soil, from Halla to Baekdu.' All texts and photographs were reproduced by the artist, inviting criticism that the feature did little more than advertise the artist's work. Also, despite such efforts, the cultural campaign's influence remains small today. Art is intrinsically conceptual, and is thus limited to becoming a 'one-time' event as it cannot be represented or reproduced as a specific building, physical space or place. While it is true that the performance was immensely popular at the time, it is regretful that there was little to differentiate it from other art events that took place at the DMZ.

THE THIRD APPROACH: PARADIGM CHANGES IN DEFINING BORDERS AND FUTURE PROSPECTS

Despite this frenzy of activity by cultural circles in the 1990s, the DMZ still remains as an uncharted object of mystery, and remains subject to development by many architecture, landscape and economic professionals. Until 1995, the DMZ and its surrounding border regions were viewed only as an ecological repository, hence yielding the prevalent opinion that the area should remain subject to preservation alone. Yet, after 1996, this concept of 'preservation' shifted towards a concept of 'development.' In place of unconditional preservation of the DMZ, two new issues of 'limited development' and 'sustainable development' in an environmentally friendly manner rose to the fore. The majority of prior proposals, such as creating an ecological park, hosting international non-profit organizations, constructing a peace city, or a North and South Korean distribution base, various remembrance halls and museums, tourist resorts, and a plaza for north and South Korea, etc. All stemmed from the desire of competitive and reckless real estate developers. The vast majority of the public was supportive of such development, as well as proposals for a tourist resort or a massive investment region. As these development strategies clashed with those wishing to preserve the natural ecology of the zone, concepts like 'limited development' and 'sustainable development' surfaced. These concepts first appeared in the World Commission on Environment and Development in 1987, and the concept of sustainability is defined in the Brundtland Report as "meeting the needs of the present without compromising the ability of future generations to meet their own needs." By maximizing the efficiency of given natural resources, so that everybody can benefit, it is possible to view 'sustainable enhancement' as a more apt expression than 'sustainable development.' Thus, it can be evaluated that reckless investment, and the construction of mass scale privately funded social facilities would wreak havoc in the DMZ, without any plausible blueprint of the DMZ. It is also thought that whatever sort of development does happen, it should take place as slowly as possible.

A MULTI-FACETED APPROACH: THE EXPANSION AND DECONSTRUCTION OF BORDERS

Amidst such discussions, *Space* revisited the topic of developing the DMZ in a new manner in January 2009 (Vol.494), again after almost 9 years. Yet, such perspectives were limited to the fact that they stemmed from the curiosity of those outside the Korean Peninsula, rather than from perceptions from within.

Anna Grichting who had worked in the Aga Khan foundation of Geneva as an architect and urban planner, contributed the article 'The Korea DMZ, a Ready Made Paradise Park or a Laboratory of Ecological Planning?' She discussed how the DMZ is no longer a fixed and physical, limited border, but proposes that it be viewed from a macroscopic point of view, as an expanding and fluid entity. Such a perspective could not be founded on domestic discussions, both in architectural and academic circles, as their discussions were limited to choosing between development or preservation, or unnecessary emphasis on creating a 'cultural campaign.' Nevertheless, this perspective is valuable, as relevant academic studies are generally hindered for domestic scholars due to changing political situations and are thus limited in the scope of their research.

It is thought that with the DMZ taking on new significance and expanding, it can move beyond being a physical and political space, assuming the possibility of taking on a pivotal role in reconciliation between North and South Korea. This can be seen as a sort of 'expansion of the role and spatial significance of the DMZ,' making the peace park an ecological space of cooperation, rewriting the topographic map of the bordering regions, and becoming a buffering zone to prevent future conflict. Hence, the DMZ is not simply seen as a piece of land spanning 248 km, but through its regional aspects such as the new order that involves the diverse paths, the complexities, and the uncertainties of the present day North East Asian region. Only then may realistic and sustainable strategies be established. With the surfacing of unprecedented new geopolitical discussions and ecological aspects, efforts have also been seen to understand the DMZ as a 'North East Asia Eco-Zone,' from a more macro perspective. The region's geographical accessibility, the changing weather patterns with the passing of seasons, migration of birds and animals are all taken into consideration to change a local issue into an issue transcending its borders. Also, to understand external viewpoints towards the DMZ, a variety of international workshops, academic events, and international competitions have since been held. This has provided a more wide-sighted view as to how we may view the linear characteristics of a space defined as a border. All of these facets go beyond suggesting a physical construction for a peace park; using the concept of a border to define metaphysical future roles for the DMZ.

At this stage, international workshops have also vibrantly popped up, relating to the DMZ. In 2009, the Harvard Graduate School of Design opened a workshop related to the DMZ. This initiative was held to gather the fields of landscape, urbanism and architecture, to study the DMZ, and design new knowledge and visions. In the earlier stages, the politics, culture, history and geographical background of North and South Korea were studied in lieu with the DMZ's physical existence as a linear buffering zone, providing a base for future design. As such, relative approaches to the DMZ were complemented with a variety of different models. Also in 2008, Seo Yehre started her project 'parallel utopias.' By making the rare decision to determine an actual site, she gathered resources, and designed various political, social and economic scenarios that could work in accordance with changes in the human ecological system and nature. Started in 2008, the project expanded in 2011 into an optional studio of Columbia University Graduate School of Architecture, and through visits to the surrounding border regions and joint studies with the Gyeonggi Research Institute, a specific plan was drawn up. This study was first presented in the DMZ Forum hosted in the United States in 2011, and in the World Conservation Congress of the International Union for Conservation of Nature (IUCN) in 2012, and will be further developed with the Seoul National University Graduate School of Environmental Studies from the latter half of 2014.

As the conceptual meaning of the DMZ border is changing, it expands accordingly, and with research now expanding into many different countries, its width and depth are intensifying. Borders are formed not through lines, but the space that lies between, and as this 'in between space' expands, the space becomes a multifaceted existence with many different meanings. In other words, viewing borders as an 'in between space' rather than as a line separating the interior and exterior, the border is no longer a simple closing mechanism, but a veritable existence that can be used to form a relationship. It is a universal fact that space is a three dimensional existence, in which volume has been added to a two dimensional plane. Moreover, in architecture, which is basically a human intervention, a temporal aspect can be added to this three dimensional space to yield a four dimensional space. Deconstructing the specific form of the three dimensional space will unbundle the space, transforming it into a multidimensional being. Borders as separating lines can thus be abolished if the cortex of the three dimensional space is treated as a comprehensive self-completing mechanism, rather than being determined as a means of national defense.

A FUTURE ROADMAP FOR THE YET TO BE COMPLETED DMZ PEACE PARK

The third attempt by *Space* to deal with the issue of the DMZ took place over two issues in February and May of 2014, in the 'Resurrection of the DMZ' (Vol.555) and 'Future Roadmap of the DMZ,' (Vol.558), as fresh initiatives to channel new discussions about the DMZ. Yet, at the special feature of May, the part of 'Limits of Architecture and the Role of Architects in the Metaphysical DMZ' and the urban proposal for the border area of the DMZ only concentrated on Gyeonggi-do, and is thus not critical enough to be seen as an architectural proposal.

While *Space* has dedicated its pages to the DMZ for the past 34 years, there are definitely limits too. All of its discussions appear to be fragmented in a sporadic manner, as if to list information, rather than being a continuation of its own. The first media campaign that started in 1980 fizzled to a stop, as its ambitious plans were stopped by external pressure. Discussions on the DMZ after the 1990s overtly focused on the perspective of art and culture, clearly favoring certain artists over others. The special features and series carried out by *Space* in 2014 is living proof of both expert opinion from inside and outside architectural circles, and of the difficulties in bringing new perspectives into the discussion.

In the same manner that experts criticize the qualitative rather than quantitative aspects of the discussions surrounding the DMZ, domestic discussions often remain as repetition of what has been brought to the table before. The quality of these discussions regrettably falls short of the minimal requirements to certify them as valid, making the accumulation of such discussions even more infeasible. Thus, reinterpreting these discussions by comprehensively combining these trends and discussions may actually imply discussions valuable to the DMZ. Repeated discussions are as such to emphasize their importance, more so because the issue has conquered the tests of time, reappearing time and again in the discussions of others. Hence there is a true need to establish and develop the values and roles of how to define a peace park in its most fundamental sense, by putting such faded discussions aside.

NEED FOR ARCHITECTURAL INTERVENTION TO PROMOTE INTERACTION AT A HOSTILE BORDER

In the introduction, 'space' was defined and introduced as the main objective of architecture, in which actions to take place must be placed within it; rather than being defined as a state of emptiness or a state of being confined within physical walls. The future architecture that is to be designed for the DMZ must focus on the potential for it to function as an agent for environmental design, based on the mechanism of the environmental, social, and political ecosystems of those regions, in times of political or military negotiation over tension-arising borders. In other words, rather than suggesting a simple program through a stationary physical space that provides for superficial and predictable actions, more specific methods are needed to create flexible borders to actively counter the diverse environmental changes that will take over the DMZ.

Under the premise that a peace park will be built at the DMZ, it is more important to consider the actions that could take place, rather than the form of the future park. For example, even for the simple act of observing, it is needless to say that little can come from a superficial observation platform that only provides a place to stand and view the park from far away. Merely hosting cultural activities or events at the platform may also be insufficient. Combining the aspect of time with the act and object of observation can potentially create a space in which people from North and South Korea can visit and face each other in the single site, yet ironically not touch or meet (for example, a bridge with a wall or a observation platform divided in the middle). It is also possible to use the platform to consider the state of loss. Rather than utilizing the site as a simple meeting place in which the families torn apart by the war can reunite, or performance halls or receptions, and meeting rooms, it is important to dwell upon the meaning of loss. One method could be to gather, preserve, commemorate and exhibit objects that symbolize loss to people from both North and South Korea. People can also consider the act of 'dwelling.' Creating a park in the relatively small space of 1km width, designing a new landscape and adding benches, simply so that people can walk to and fro may not be significant. As the DMZ is a temporary construct, it may be more effective to envision ever changing forms and programs such as temporary pavilions, as they will eventually have to be packed up and taken down.

Eventually, in the final stage of political negotiations, the space should be established as an agent to encourage its visitors to actively do something, rather than a passive park composed of simple symbolic acts. Amidst the complex tangle of multilateral interest groups for national security and politics, architects will play a pivotal role in the future of the DMZ. Architecture will inevitably be the means that will define the fate of the DMZ, and thus should shoulder the responsibility to suggest future direction for how humans and nature can coexist. Only then can new relationships form between nature and space, allowing the space to expand into the nature, and abolishing the borders that once separated each side. The key to good architecture lies in opening up such space.