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Borders: Current Challenges and Future Development



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Contents

Foreword	5
Borders: Current Challenges and Future Development	6
L (Navy) Thorben Hoffmeister	
LTC Birgit Albrecht	
The Construction and Deconstruction of Europe's Borders	12
Dr. Bernhard Rinke	
Microphysical borders and fourth-generation warfare: Drawing the lines between geopolitics and biopolitics in the competition for natural resources	18
Juan José Borrell	
Porous Borders in Eastern Europe – The Case of Ukraine	24
M Michael A. Hehn	
Make Law, Not War. Power Politics versus International Law in the South China Sea and the Lesson of Spitsbergen	30
Dr. Enrico Fels	
German Maritime Boundaries – Status and Disputed Areas	44
Thomas Dehling	
The Borders of Hungary in an Evolving Geopolitical Context	52
Gyula Csurgai, PhD	
Fighting Terrorism across Borders – Legal Framework for the Use of Unmanned Systems in the Fight against IS and the Future Perspective of Autonomy	65
Tassilo Singer	

Foreword

The content of this year's Geopolitics annual 2016 was developed in accordance with the lectures of the International Seminar on Geopolitics 2016. The International Seminar on Geopolitics is one of the regular events organized by the Bundeswehr Geoinformation Centre in Euskirchen. The topic was „Borders - Current Challenges and Future Development“. The aim of the seminar was the mediation of geopolitical aspects around the issue of borders.

Experts gave insights into their projects as well as practical experiences, thus enabling a discussion in the geo-political and security policy context.

The contributions of the annual 2016 exclusively give the opinions of the authors.

Borders: Current Challenges and Future Development

Lieutenant (Navy) Thorben Hoffmeister

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The German word “Grenze” (border) is understood as dividing line of different areas in common parlance. Originally, it is a loanword of Old Polish / Old Slavonic provenance denoting private property. The word was coined at a time when borders in large areas were not consistently demarcated but represented by sporadic symbols (e.g. border stones) in the landscape.

While in German basically one word (i.e. “Grenze”) is used, there is a diversified concept in English usage consisting in the triplet of “border”, “boundary”, and “frontier”. The English meaning suggests that “borders” are places of frictions or of assembly. This socio-anthropological definition emphasises the complex relations of spatial distribution due to distance (Szary 2015: 14).

Terms used synonymously in Romanic languages, such as “frontière” in French or “frontera” in Spanish, originally can be traced back to the word “Front” which originates from military lingo. The contemporary usage is rather linear.

Borders define an area or spatial conditions and create an idea of spatial order.

They affect any form of movement that potentially occurs along different paths of communication.

The significance of borders varies as a result of change in the environmental, technological and political sectors since this change may determine the permeability.

Following Rodrigue (2013), the different border types can be understood and told apart as absolute, relative and virtual borders for the anthropogenic use of an area:

Absolute borders comprise all geographic phenomena that completely prevent a sustained path of communication. In road transport, it may e.g. be rivers which can only be crossed through a building.

A relative border is a geographic phenomenon that substantially influences or deflects a path of communication or offers the option to divide the path, as may be the case, e.g., with a mountain range or a strait.

Unlike the two types mentioned before, virtual borders are no topographic or physical obstacles but administrative or security-related barriers, which may include border crossings, customs regulations or civil war areas.

Relative and Absolute Borders

Physiographic regions are characterised by conditions which can be distinguished from each other through their variability, e.g. topography, hydrography or climate.

Plains, valleys or mountain passes can be delimited by their form, were formerly landmarks, constituted visible territorial boundaries and differed in their suitability for exploitation by man. Fertile plains are particularly

eligible for agricultural use even today. Valleys, passes and rivers are areas which, relative to their environment, are the most economic variant for linear infrastructure elements.

The hydrological conditions of an area form the natural basis for the water supply system or for maritime and inland navigation. The character of waterways is greatly determined by their natural course and physical limitations such as shallow waters or straits. The type of coastline was a major factor in the choice of the location where towns and ports were to be established.

As a natural geographic aspect, the climate conditions of an area affect its use too and impose climatic restrictions on it (e.g. in the agricultural and tourism sectors).

The spatial dimension of the absolute and relative barriers of a national boundary exists ashore, on the water, and in the air. It may be represented by natural phenomena such as rivers, and it may be clearly identifiable in the landscape.

These boundaries are frequently perceived as static historical legacy within human time horizons. However, they changed significantly not only in geological periods. The implications of modern-day climate change are becoming manifest even now and increasingly relevant to mankind. Climate change as we face it today was caused by the industrialisation of a small number of European states and North America in the second half of the 18th century, but the effects are global and transcend boundaries. The geofactors dominating the landscape and, thus, the physiographic borders (e.g. climate zones, vegetation zones) will undergo a spatial shift and lead to global change. The rise in sea levels, for instance, is a physical consequence of global climate change. Loss of landmass and changes of coastlines are inevitable. Hence, the territorial borders consisting of land area, territorial waters and airspace are subject to a dynamic shift up to the point of total loss. The existence of natural, settlement and economic areas, of infrastructure, private property, ports and (mega)cities is threatened, and millions of people are affected. If the resilience of states concerned to the stress factors induced by climate change is low, it may have destabilising and conflict-fuelling effects (usually along already existing social conflict lines) and cross-border consequences with, e.g., migration as the response to it.

Virtual Borders

Unlike the two types of borders mentioned before, virtual borders are no topographic or physical obstacles but administrative or security-related barriers. Among these may be border crossings, customs regulations or civil war areas.

The majority of political borders are therefore virtual even if they are inspired by absolute or relative borders.

Virtual borders vary in their spatial manifestation. They can be clearly recognisable and strongly regulated or permeable and/or indistinguishable. They impact the social, economic, cultural and security-related aspects

of areas. The creation and use of virtual barriers serve as an instrument for various players to reach geopolitical goals and can be subject to short-term change. They have the potential to function highly dynamically and vulnerably in a network.

Borders as Reflection of the Socio-economic, Cultural, Religious and Political Context of the Time

Borders can be regarded as reflection of the temporal socio-economic, cultural, religious and political context from which they emerged. Concepts such as “territory”, “area” and “borders” are therefore not ahistorical and must be viewed within their transformation over time.

The temporal dimension of national boundaries is reflected in the redefinition of the border, which, in turn, often sparks conflicts with the adjoining countries (Wood 2000: 73). Yet not only backward looks into history but also the scenarios of the future are important here.

Political virtual borders are the result of human action and exercise different functions for the socio-economic and ecological coexistence (Sohn 2014: 593f):

1. *Limitation of the territorial area of power and of the sovereignty*
2. *Separation and regulation of the amounts of control, selection and protection*
3. *Interface for contact, diffusion, collaboration and confrontation*
4. *Differentiation, e.g. customs territories*
5. *Affirmation, based e.g. on the symbolic character, for political mobilisation and territorial legitimacy*

The indicated purposes are not only served by the modern-day demarcated and cartographically documented borders as we know them.

In pre-modern times, borders were often not clearly defined and can be understood as perceived borders. Borders which are not definitely surveyed or visualised nevertheless exist if they influence spatial action. If these perceived borders do not correspond with a geospheric substrate, they must rather be considered as a border zone. Even supposed historic linear border fortifications such as the Chinese Wall did not serve as an exact spatial borderline but as a border zone (Waldron 1990).

The change in social and economic culture towards more sedentism and territorial types of economy (e.g. farming) lead to an increased development of more robust, fixed borders and more accurate cartography that represented the territory while manifesting the claim for control (Elden 2005: 14). One consequence was (and still is until today) the potential discrepancy between “traditional” and “modern” ownership rights to territorial property. This may result in the emergence of conflict-laden transformations from partially multi-layered and flexible types of use and ownership into bourgeois capitalist ownership structures (e.g. lease or acquisition for the purpose of profit production). So it is inevitable that the cultural concept of territory and borders is challenged.

New political forms of organisation and areas of sovereignty can develop that way. Initially, topographic phenomena were often used for demarcation and perceived as “natural borders”. The formation of the modern system of states (and hence the foundation of the international system that we are familiar with) is based on a complete territorial division of the earth and the associated idea of the sovereign modern state. The politico-territorial borders are the manifested product of this division and the consequence of negotiations and conflicts between various protagonists. Borders thus categorise areas of power in that they divide and delimit states, provinces, districts, towns and cities as well as communities and, therefore, define the area governed by a particular administration.

The concept of state was the most important mainstay of the development of the visibility and demarcation of borders and the transformation from border zones to border lines (Parker & Adler-Nissen 2012), characterising the change and our current understanding of space and territory.

In the course of time, border evolutions took place especially in Europe or emanated from there which were shaped by various peace treaties (Congress of Vienna (1815), Congress of Berlin (1878), Treaty of Versailles (1919)), imperialist expansions and colonial territories.

The border serves as key concept of political action. “In the modern world of states the border discourse was substantially expanded and intensified. [...] now it is not only about borders to mark one’s own territory but concurrently about marking this territory as a state” (Bredow 2014: 182).

According to the three-element theory by Georg Jellinek (Matz-Lück & Badenhop, undated), the state is a social entity the constituent features of which are a territory surrounded by borders, the people, and the public authority governing this territory. So borders are fundamental for the concept of statehood and the state’s exclusive right to use force. The thought of a homogeneous nation mandatorily governing the national territory is false belief, and the aspiration of nations to set themselves apart in their own sovereign territory is a timeless phenomenon. The idea and concept of nation is a fairly modern phenomenon. Nation is a specific form of a limited and sovereign imaginary community. It is imaginary inasmuch as “even in the smallest nation not all its members [...] know or get to know each other; their community is [only] based on such a notion of nation” (Mohnike 2005: 21).

Moreover, nation is limited since no nation believes that it can (potentially) comprise the whole world. It is one out of many – as one of many subjects having both will and power (Anderson 1998: 14f).

As the modern nation is thought to be limited, borders are used to serve the imagination of otherness and alienness associated with the non-native areas and actors.

The idea of a limited area and the significance of nation are subject to temporal change too. As the 1980s

drew to a close and gave way to economic technological transformation and stepped-up global networking, non-governmental players moved into an ever more central position of spatially relevant processes in the global interaction environment.

Network societies and “softer borders”, which allow the free flow of people, capital and goods, came into focus. As a result, the virtuality of borders gained importance, entailing growing blurring between political, economic and social areas and spheres.

While there is little dynamics in the linear or zonal courses of national boundaries, the border functions morphed into multiple, complex and player-specific functions with geographic differentiation. The actually existing distances and absolute marginal locations of areas lose significance in the light of new spatial constellations with relative distances. This complicates the local manifestation of the functional border demarcations, and borders that have ostensibly disappeared may have only changed and can no longer be identified as a solid line.

However, this process can also be decelerated or even reversed.

The individual nation state seems to become disempowered by debordering and eroding processes. The “antagonistic” consequence can be a renationalist and protectionist policy with disintegrating effects and tendencies. Thus, for instance, the international migration that we are currently facing reformulates the question of border protection and border regimes, which to an increasing degree is answered by national decisions and actions.

Current Challenges

Aspirations such as renationalisation, protectionism or more restrictive immigration control harden soft borders. This may lead to a coincidence of softened and rigid border functions in the same geographic area. For example, selective soft borders within parnational alliances (e.g. EU, MERCOSUR, ASEAN) and territorial conflicts and/or stricter border regimes (e.g. Gibraltar, Ukraine, USA-Mexico, South China Sea) oppose each other along fixed borders.

As already mentioned, the political system rests on the concept of nation states. Every state is sovereign and therefore responsible for itself according to the territorial principle. In the 21st century, however, the importance of transnational challenges and risks such as international migration, climate change, epidemics or international terrorism is growing.

In addition to the old potential conflict constellations between actors with a limited territory, conflicts with new actors without a territory accepted under international law (e.g. “pirates” or Daesh) occur. These players exploit the territorial and administrative limits of statehood and areas of power to carry on a debordered conflict.

By and large, this process heightens the present and future complexity of the borders issue in a geopolitical

and security-related context. Coping with these tasks now and in the future requires transnational solutions and the incorporation of post-national actors.

In that sense, borders and territorial and “debordered” processes find themselves in permanent, corresponding, and dynamic interaction – a development challenging established notions, concepts and rules of the international system.

As a result, the political line dividing internal from external security can no longer be clearly drawn. This elevates the significance of the comprehensive approach pursued by the Federal Republic of Germany and corroborates the validity of this concept.

The understanding of territorial defence is debated as well. Digital attacks on crucial infrastructures and data networks, economic warfare and new forms of cyberwarfare call for new concepts and methods of territorial defence in and from the virtual space.

This also highlights that the national security structure in the 21st century must not end at national borders but dynamically adapt itself to the growing field of tension between the national and post-national security structures. Consequently, the nation state must develop a cross-border transnational strategy and look for new dynamic strategy variants.

Owing to the developments and effects mentioned before, the geopolitical and geoeconomic interests seem to be sort of watered down and mingled with security-related interests and patterns of argument. The transnational tasks and the complex, partly hybrid form of conflict and crisis constellations also cause a shift in the political justification and legitimation of military operations. It has become difficult to clearly delimit the issues and areas relevant to security policy in terms of content and geography. Given the limited resources of the state and the necessity of a globally oriented crisis management, it is imperative to find partners with whom common security-related and geopolitical interests can be pursued.

What follows is consolidation of supranational alliances with different requirements or levels for integration.

Players to be involved are primarily state-organised entities yet may also be regionally relevant non-governmental players if appropriate.

All in all, the challenge with regard to security policy is shifting. Instead of a threat posed by tangible actors with hostile intention, what we are facing today is indefinite risks which have to be identified and recognised as hazards in the first place to give rise to relevant measures. In the light of such risks, the strategies of deterrence, engagement, coexistence or cooperation geared to state players are becoming futile.

The descriptive approach of this circumstance alone, consisting in the cartographic and linguistic regional localisation of complex, spatially undelimitable contexts, evokes notions of societies and space (Dalby & O. Tuathali 1996), and real and imaginary dividing lines and lines of conflict are reinforced.

Go-West Strategy of PR China

The Go-West strategy of PR China is a case in point. China's western border regions are contact zones to the usually politically peripheral and economically underdeveloped areas of the neighbouring countries. The existing economic and transport infrastructural disparities in the border regions in the favour of China heighten the rising power's clout there. An aspect with the approval of major infrastructure projects is that they are intended to serve not only civilian but also (which mostly goes unmentioned) military purposes (Hahn 2008: 118). Another goal of the government is to improve the region's infrastructural development for better trade relations with the adjacent countries and thus promote cross-border economic integration and cooperation in Asia.

In 2013 (embassy 2015), PR China proclaimed the revival of the Silk Road, which was done under the headings of a New Silk Road or One Belt, One Road. The concept denotes a transport network between several

trade centres spanning the Asian, European and African continents. Established markets (such as the European Union) are connected with potential markets (Central Asia, Africa) and emerging markets (East/Southeast Asia) (embassy CH 2015). In linguistic terms, the positively connoted narrative of the historical Silk Road was emulated.

The mentioned example of PR China goes to show that the holistic geopolitical view must also develop procedures for the discourse-analytical deconstruction of space in order to obtain qualitative access to the space.

If basic geopolitical situations change, the spatial constructs and political geospatial references change as well. Every major change concerning the borders and barriers brings about "processes of relocalisation in both the literal and figurative sense" (Mohnike 2005: 11).

This geospatial material, socio-economic and discursive system analysis is a responsibility of geopolitical analysis, advice and research.

The South China Sea as an Example of Territorial Conflicts in the Context of Border-The South China Sea as an Example of Territorial Conflicts in the Context of Border Issues

Lieutenant Colonel Birgit Albrecht

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The maritime borders of the South China Sea are an example of a current and future challenge posed by a territorial conflict in the border context. Over the past few years, the media has time and again presented news of the South China Sea, along with a host of maps/charts and figures. No matter how they are laid out, these visualisations almost always harbour potential conflict, which appears to be logical given the claims of no less than ten nations abutting the sea. The main source of error is the mixing up of claims and borders, which sparks controversies among the affected states over and over again. Besides, the claims of the nations are not unambiguously defined in the form of coordinates, but frequently there are different names for one and the same island, atoll or reef that is laid claim to.

Most widespread is the visual representation of the nine-dashed line as an area claimed by PR China (see Figure 1) in which both the Paracel Islands and the Spratly Islands are situated. It is however unclear how to assess the Chinese claims. Although Chinese maps/charts feature the individual line segments (if notably not as area), the legend provides no explanation. Therefore, the line segments can be interpreted in different ways. China has the numerous representations deliver their message to augment its narrative (see

Figure 2) and in the meantime creates a fait accompli by developing certain islands and reefs. Officially, the country is reticent about this circumstance.



Figure 1: Nine-dashed line PR China (United Nations)

Source: http://www.un.org/depts/los/clcs_new/submissions_files/mysvnm33_09/chn_2009re_mys_vnm_e.pdf

Borders are demarcated in bilateral or multinational discourse between the nations concerned. If agreement is reached, it is communicated to the United Nations and published. As an asset, bilateral borders already exist between five coastal states in the South China Sea. However, as long as different maps/charts

and figures with contradictory representations of the situation continue to be published and as long as natural resources and rich fishing grounds are estimated to occur, the conflict and dividing lines are bound to deepen with every illustration.

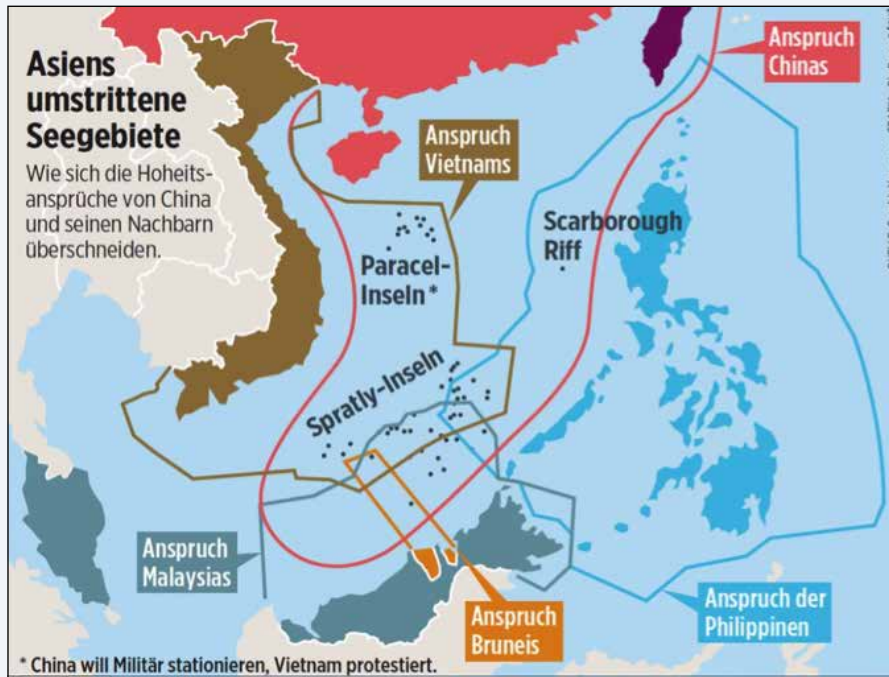


Figure 2: Infographics:
Asia's disputed maritime areas
(DiePresse.com)

Source: http://diepresse.com/images/uploads/0/2/8/1454120/ethopia_1379502590204323.jpg

Future Challenges

As highlighted before, physiographic, territorial, political and conceptual borders have changed and will continue to do so.

The question about the recognition of old and new borders is hence also a question about the recognition of the (re)organisation of political power.

Along with answering the border issues, foreign and security policy also needs to consider if existing or new borders lend themselves to create stability with regard to security at different spatial levels. Analysing the geopolitical dimension of borders and the areas defined thereby is absolutely crucial to answer that.

This spatial analysis is "(...) the systematic analysis of area-dominating structures and area-impacting processes by means of technical methods so as to come to a more profound understanding of complex spatial relationships" (Frank 2013: 229).

Particularly in the geopolitical analysis it is required to perform a multi-perspective spatial analysis.

The area must be perceived in the system of position and positional relationship, which includes physiographic analysis and regional policy. Such an area is captured by relevant parameters and, as a consequence, constructed. Subsequently, however, it is assumed to be really existing or, on perception of a nation state as regional planning entity, legitimised by the international political system.

It is predominantly quantitative approaches (e.g. cartographic works and statistics) that are used for presentation and analysis; both of the latter need a clearly delimited area.

If one views the delimited space as a construct, one must address yet other analytical questions for which it is necessary to look at narratives and geospatial metanarratives. Considering the effects of the actions and the communication with respect to the spatial construction has relevance as well. Furthermore, one must analyse the means employed by actors to construct an area and legitimate its use.

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The Construction and Deconstruction of Europe's Borders

Dr. Bernhard Rinke

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Where does Europe end? What is the extent of Europe? Where are Europe's borders? What is the course of these borders? These questions have been preoccupying geographers, historians, philosophers, and politicians since ancient times. Insofar the debate on the shape and delimitation of Europe has been a perennial issue in the history of the "old continent", but the end of the East-West conflict put it in full swing again. The reason for this is the European Union's (EU) enlargement policy. There are many who say that Europe is an objective reality and that the EU must not reach beyond the supposedly clearly defined borders of Continental Europe. This argumentation is thus based on a spatial view where the EU (in its maximum extent) and Continental Europe are ultimately one. The question of the European borders is therefore neither of a purely academic nature at present nor is it anachronistic or irrelevant. On the contrary, it is of particular current relevance and political sensitivity. The issue at stake here is no less than the extremely controversial question of how the EU defines its external borders: "What are the states the European integration project extends to? Which states should and which should not be included?" (Simonis 2007: 259).

The question is, however, whether geography is actually able to provide a definite answer to the politicians asking where Europe begins and where it ends. In order to answer this question, some essential epistemologically oriented observations shall be made below on the analysis of borders and on the concept of borders. These observations shall be taken as a basis for asking if Europe is actually a clearly definable continent. Subsequently, institutional Europe and its borders will be discussed, followed by the argumentation that the nature of the European integration process is not to draw borderlines but rather to eliminate them. Finally, we will address the question as to the consequences that will arise from the spatial conceptual modelling of the European Union for its vision of being a player in the international system.

Borders and Border Delineation in the Epistemological Debate

In the course of four enlargement rounds a total of 16 states have joined the European Union so far. That means that the EU has increased since the end of the power bloc confrontation from 12 (situation in 1990) to 28 member states. Five other states, i.e. Albania, Macedonia, Montenegro, Serbia, and Turkey have the status of accession candidates. Bosnia and Herzegovina as well as Kosovo are designated potential accession can-

didates by the EU. And just to name some cases that are of particular sensitivity, Georgia, Moldova and Ukraine also aim at joining the EU in the long term. Obviously, the European Union continues to be of great appeal in spite of being on the verge of "going under in the maelstrom of many complex individual crises that threaten its existence" (Rinke 2016: 189) (the well-known keywords being here: refugee crisis, Euro crisis, bank crisis, crisis in Greece, crisis of democracy, legitimacy crisis, etc.).

At the same time it is irrefutable that at least the people in the EU member states have meanwhile become weary of enlargement. In an essay that clearly shows his sceptic view of the course the European unification project is taking, author Hans-Magnus Enzensberger, for example, complained: "It is obvious not only on the internal level that there are no limits to the delusions of grandeur the European institutions suffer from. Their desire for enlargement is notorious. Countries flouting any accession criteria have been integrated without much ado and against all rules. Our little geopoliticians still aim at continually expanding their Europe. Why not penetrate as far as the Caucasus and the Maghreb region?" (Enzensberger 2011: 55)

To make it clear right away: The intention of this paper is not to identify the states the European integration project should finally extend to. It rather aims at tracing how Europe's borders are actually construed in the pertinent debate and what will be the consequences. For the theory the statements herein are based on the thesis that Europe's borders are no natural realities, but projections, representations and discursive constructions. Or to put it in other terms: Europe's borders cannot be correctly determined through quasi-objective observation irrespective of the observer.

It is true that Europe is often described and portrayed as a confined or delimited continent. From an epistemological point of view, such descriptions are based on positivist approaches that represent essentialist spatial concepts and define borders as real natural frontiers (cf. Eigmüller 2007: 19). Based on objective facts, it is thus possible to give a correct answer to the question of the real delimitation of the EU's borders.

Contrary to that, this paper is committed to post-modern theoretical approaches that stand for the renunciation of epistemological realism and the associated environmental and/or spatial determinism. Constructivist considerations of borders "do not focus on explaining what a border is, but rather how it comes into being and how it succeeds in becoming sustainably stable (or fails to do so)" (Eigmüller 2007: 25f.). Borders and the spaces they confine are therefore no real phenomena or the essentialist result of an objective description of the world but rather the result of people interpreting space, i.e. political conventions or societal constructs. In other words: Spaces do not simply exist; they are made (for these considerations see also Albert 2005, Reuber 2011: 786, and Schultz 2014).

Beyond this differentiation we must also be aware of the fact that the term 'border' covers at least two different levels of meaning (cf. Nicolaidis 2014: 238):

The first level concerns the form or shape of borders (here in the sense of "frontiers"). In our context the key question arising therefrom is: Where exactly lie the borders of Europe/the EU? The second level addresses the nature of borders (here in the sense of "boundaries"). Consequently, the question is whether the borders are of a spatial or functional nature, whether they delimit political domains or whether they are regulatory borders.

Europe: A Geographically Clearly Delimited Continent?

First, let us turn our attention to what has been asserted for a long time, not least by politicians, i.e. that Europe is a continent that can be clearly delimited and defined geographically. In the context of the debate on the EU's enlargement policy, this view has generally been used as a basis for the guiding principle that the geographical and political borders of the integration project have to be brought to congruence, although Turkey, for example, is actually located outside the geographic borders of the continent which would exclude it from accession to the EU.

As early as in 1998, Austrian politician Ewald Nowotny (SPÖ – Social Democratic Party of Austria) advised: "If we want to avoid problematic discussions on 'European identity', we can only rely on the objective criterion of geography for keeping the EU in a functional size: Seen from this decision-oriented angle, states that are not situated geographically in Europe for the biggest part of their territory cannot become members of the EU. In concrete terms this means that membership in the EU is not possible for the two large, but only partly European states of Turkey and Russia" (quoted from: Schultz 2005). And in 2002, former Bavarian Prime Minister Edmund Stoiber stated: "The EU may and should not expand beyond the geographic borders of Europe. Turkey must not become a member of the EU. Europe does not end at the Turkish-Iraqi border" (quoted from: Fassmann 2002). Wolfgang Schäuble, then vice chairman of the CDU/CSU parliamentary group expressed similar views in 2004 when he asked "[to] define Europe also as a geographically delimited space" (quoted from: Schultz 2005).

In the obviously politically motivated endeavour to impose limits to the enlargement process, it is thus suggested that Europe is geographically defined as it were, and that consequently the "attempt to determine Europe's borders or space" (Heller 2011: 106) could yield a positive result. According to Hans-Dietrich Schultz, the space-oriented core of these statements can be summed up as follows: "The plausibility of this reference to geography quite obviously thrives on the conviction that the geographical definition of Europe leads to a situation that does not depend on the perceptions of an individual and therefore cannot be perceived differently by multiple individuals; it rather exists as an

incontestable fact, defined once and for all and being independent from any individual" (Schultz 2005: 27).

Despite the presumed "objectivity" of geography, there is, however, no consensus on Europe's borders that is independent of individual perceptions. Contrary to still widespread beliefs, it should rather be noted that geographers are not able to provide an objectively correct answer to the politicians' question as to what are the geographic (physiographic) borders of Europe. In short: The geographic delimitation of Europe has remained a controversial issue until now. The geographic search for Europe's borders has resulted in a series of different spatial concepts, alternative delimitations and pictures of Europe.

Within the scope of this paper it is not possible to trace back in detail the debate on the geographic borders of Europe towards the East and Southeast (as the particularly controversial geographic borders of Europe; for the discussion on the EU borders in the North Atlantic cf. Gaarder 2009) that have been debated more or less intensely since ancient times (cf. therefore the overviews given by Gebhardt/Glaser/Lentz 2013: 4ff.; Hummel 2004; Krause 2009: 223ff., Schulz 2004, 2005; Sträth 2005).

Nevertheless it should be mentioned cursorily that the delimitation of Europe changed over the times and that the definition of borders towards the East – to Asia and Russia – was always difficult, in particular: The "geographers re-defined the eastern border time and again" (Hummel 2004: 277). For "demarcation", they used "inland seas, lakes, mountains, hills and depressions" that were "presented in a variety of combinations" (Schultz 2005: 33). Thus, not only the course of the border itself, but also the criterion that allows determining its course has remained an unsolved question.

Subsequently, the definition of the European-Asian border varied from a border approximately corresponding to today's eastern border between the EU and Russia to a border in Siberia: "Between the 16th century and today, the border between Europe and Asia varied by about 80 degrees of longitude and extends from the Rokitno marshes east of the Bug River beyond the Yenisei River" (Schultz 2005: 33). In a map collection he published in 1570, Flemish geographer and cartographer Abraham Ortelius proposed, for example, to draw the border along a line from the Dnieper River to the White Sea. In 1963, Wilhelm Müller-Wille, a German geographer, however, made his Greater Europe extend as far as the Yenisei River in Siberia. The border that has prevailed in principle until today, albeit not entirely uncontested, is the mountain border on the ridge of the Urals that was proposed by Swedish officer, geographer and cartographer Philipp Johann von Strahlenberg in 1730. Former French President Charles de Gaulle, for example, repeatedly put forth the idea of a "Europe from the Atlantic to the Urals". With his delimitation, Strahlenberg who had become a prisoner of war in Russia, however, complied with Tsar Peter the Great's wish for the Europeanisation

of the Russian territory. In other words: Since Peter the Great wanted to make his empire a part of Europe, the historical course of time dictated the course of the border that, although oriented on nature, was artificially created or invented by Strahlenberg (on the topic of artificial delimitation cf. also Gauss 2000: 58).

Consequently, the idea that Europe's borders can be defined in a geographic-positivist effort is an illusion. Geography is not able to unequivocally answer the question of where Europe's borders lie. It does not know where Europe ends: "Geography cannot provide a clear definition of Europe that is binding upon all" (Schultz 2004: 52). With a view to the debate around the enlargement of the European Union these findings mean: Geography, which is assumed to be objective, is strategically instrumentalised for the political purpose of exclusion.

In order to avoid any possible misunderstanding: The argumentation above necessarily leads to the conclusion that the idea of a static, clearly defined Europe that exists almost naturally in reality has to be abandoned. This does not mean, however, by implication that the European Union can do without borders or pursue an enlargement policy that knows no limits. Without any doubt, an 'unbounded' enlargement would overstrain the reception capacity of the EU to the extent of further damaging the already contested legitimacy of the integration project. Still, it is to be stressed that the decision on EU membership and, consequently, on the external borders of the integration scheme cannot be made on the basis of presumed geographic/positivist "realities". It is rather a basically political question to which only a political answer can and must therefore be found. Geography cannot take the place of politics (cf. Schultz 2014: 3). In other words: The EU is stuck in an ultimately unsolvable enlargement dilemma where it must differentiate, for political reasons, between states it grants the perspective of accession and states it wants to maintain good-neighbourly relations with beyond this threshold.

Institutional Europe and Its Borders

The argumentation above, i.e. that spaces are made, is all the more true when we take a look at different formats of institutional Europe and the functional or regulatory borders of Europe created in the process.

With regard to the institutional aspect, it must certainly underlined that "Europe [must] not be equated with a specific institutional form: the EU (or formerly the EC)" (Beck and Grande 2004: 23). Apart from the European Community, multiple alliances were formed and treaties concluded in a variety of policy areas after World War II. These alliances and treaties are characterised by their flexible and overlapping memberships and almost 'naturally' include states that could not be granted accession to the EU based on the presumed physiographic borders of Europe. It should thus be borne in mind that the European integration process had "a highly flexible architecture (italicised in the original) of treaties and alliances from the start" (Beck und Grande 2004: 23).

As examples of the highly complex architecture of 'European' political institutions, this paper shall only address two cooperation formats that, due to their inclusive character, are in clear contrast to the idea of a European Union as an exclusive club of Continental European states (excluding, for example, Turkey):

First, the European Council founded in 1949 by 10 Western European states. Having integrated, among others, numerous Post-Soviet states (incl. Russia) as well as Turkey, the European Council meanwhile has 47 members and thus extends from the Portuguese Atlantic coast in the west and Greenland in the North Atlantic to the Russian Pacific coast in the east.

The second example is the Organisation for Security and Cooperation in Europe (OSCE) that emerged in 1995 from the Conference on Security and Cooperation in Europe. It currently comprises 57 members (incl. Canada, the USA, Mongolia, Turkey as well as all Post-Soviet states) and has set itself the objective to build up an area of stability reaching from Vancouver to Vladivostok.

But that is not all: If, in addition to international governmental organisations, we also take into consideration societal European cooperation formats such as UEFA or the Eurovision Song Contest, Israel obviously is part of Europe.

In short: Especially from the institutional point of view, there is thus not *one Europe*, but a large number of functionally *different Europes* whose borders obviously cannot be brought onto line with traditional geographic concepts of the borders of Europe as a continent or physiographic region.

The European Union as a Postnational System

Quite apart from the above observations: From the political science point of view, looking for the borders of the integration project will always lead you astray, as the integration project will then continue to be oriented on the image of the so-called Westphalian State System "whose core idea is the concept of national sovereignty, both at the internal and external levels" (Schneckenner 2011: 83) and where "borders [represent] the demarcation lines between two sovereign political/administrative entities" (Heller 2011: 109). The political science debate on the EU has, however, for quite some time been aiming at increasingly mapping out the post-national character of the integration scheme. According to this, the nature of the European integration process is not to draw borders, but – quite to the contrary – to eliminate and abolish borders. From this perspective and in light of the specific aspects of its supranational and, consequently, cross-border governance, the EU clearly differs from the state-centred governance model. And even if it seems that these processes currently are not or no longer irreversible given the presently manifest disintegration and renationalisation phenomena, it is important not to turn a blind eye to a shift from the state level, even if only partial, of the European Union. In this light at least three distinctive

features characterise the European unification and integration process (cf. the overview in Heller 2011: 108f.):

First: In the wake of increasing globalisation or denationalisation, territorial and national borders have become less and less important, for example due to the implementation of the European Single Market within the European sphere of integration.

Second: In a series of political areas, the EU member states have meanwhile transferred their full decision-making and regulatory powers to supranational institutions.

Third: With regard to policy-making, also, “a complex change has taken place [in the EU] with a shift away from exclusively national and hierarchically organised ‘governing’ towards new forms of governance and of the organisation of politics that also disengaged from territorial and national ties as well as traditional, sector-specific modes of decision-making” (Heller 2011: 109).

In summary that means: The EU is a highly complex, functional and territorially differentiated multi-level governance system beyond statehood that, in distinction from the traditional national state of the Westphalian type, can be characterised as post-Westphalian or post-nationalist (cf., for example, the references in Rumelili 2004), in short as “the first truly post-modern international political form” (Ruggie 1993: 140). Mathias Albert considers this the actual achievement of the European integration project that is of relevance in world history: “having created a comprehensive political space beyond the national states as a community of security and prosperity” (Albert 2005: 70).

Let us recapitulate our previous observations: It is not possible to give a clear and unequivocal answer to the question of where Europe begins and where it ends. The answer depends on how Europe is construed and what is the institutional Europe that is considered. In short: “There is no Europe; there is only Europeanisation which is to be understood as an institutionalised process of permanent change. What does ‘Europe’ include and what does it exclude, where are its territorial borders and what is their course, what institutional form does this Europe have, and what will its future institutional architecture look like – all these issues remain unsolved” (Beck/Grande 2004: 16).

The European Union: A Geopolitical Player in the International System?

From the points of view of discourse theory or critical geopolitics (for an overview, cf. Albert/Reuber/Wolkersdorfer 2010), the interesting question is actually no longer where Europe is situated, but rather what strategic concepts are tied to specific constructions of Europe.

Discourses on Europe as a geographic continent are thus forms of “Othering” (Diez 2004; Krause 2009), on the basis of which “Europe’s shape” and that of the EU are defined in negative terms as it were, especially with regard to or in contrast to a geographic Other (“Non-Europe”) (cf. Albert 2005: 62). Consequently, a Europeanisation of the territorial principle can be obser-

ved (cf. Krause 2009: 173ff.), as the discursively construed Europe is obviously oriented on the model of “the (national) state as a model of clearly defined (territorial) borders, of (territorially) homogeneous action contexts” (Diez 1996: 261 ff.).

This spatial modelling often goes hand in hand with a security discourse (cf. Reuber/Strüver/Wolkersdorfer 2005: 14f.), where the EU is construed by the use of spatial terms as a continent that is subject to external threats. Former Chief of Defence of the Bundeswehr, Klaus Naumann, for example described the EU as a “vulnerable island of stability in a sea of instability and unpredictability” and “an island in a world of radical change”, respectively (Naumann 2002: 32). Integration researcher Werner Weidenfeld brings forwards similar arguments: “Geopolitically speaking, Europe is situated in a sensitive and restless neighbourhood” (Weidenfeld 2013: 206).

In light of such positions, it does not come as a surprise that the first and foremost task of the EU as a player in the international system is often considered to be to transform the integration scheme into a world power of the traditional kind that is fully capable of acting both at the political and military levels. That means that it should provide for a true centre of decision-making in external, security, and defence matters and facilitate outstanding military proficiency (cf. Weidenfeld 1995).

In short: Under the telling title “global power thesis” (Wessels 2000: 576) a geopolitical assertiveness debate is pursued where the vision of the EU as a world power or military power shines forth (for a summary of this vision cf. Rinke 2007).

Against this background, some critics have complained about a renaissance of geopolitics, with the perspective of Europe’s own, in many periods belligerent, past being at risk to be lost (cf. Albert 2005, Diez 2004; Reuber/Strüver/Wolkersdorfer 2005; Guizzini 2012). From this point of view and from the European internal perspective at least, it was precisely the relinquishment of traditional power and geopolitics that made it possible to develop the Union into a non-belligerent community or a “peace community” where the peoples of the continent “ensure their security through mutual reconciliation and the resolution of conflicts” (Meyers 2000: 459).

Thus, an attempt is made at translating the peace policy-based concept of the integration process into a modern vision for an EU without geopolitical ambitions in the international system. As an alternative to the vision of a world power or military power, Hans-Georg Ehrhart, in particular, developed the vision of peace power. This is “the vision of an EU that neither is a player exclusively relying on civilian means nor pursues a military power policy in the vein and with the means of a classical Great Power. It would rather be an international player that, within the framework of international governance structures, brings to bear the full range of its capabilities for the prevention and constructive manage-

ment of violent conflicts. This perspective is based on the exchange of the modern, national state view for a cosmopolitan realism that assumes that, in light of the large variety of global threats, the reflected self-interest of the states absolutely requires to meet these challenges and risks in a joint effort and on the basis of international law" (Ehrhart 2011: 221).

Although this vision is already part of the foreign-policy agenda of the EU, it still awaits consistent implementation. In an era where geopolitics and thinking in terms of borders and spatial categories has obviously become the norm again, the EU succeeding in making progress in this respect would not be the worst contribution to a world that, if not peaceful all, is at least poorer in conflicts.

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Microphysical borders and fourth-generation warfare: Drawing the lines between geopolitics and biopolitics in the competition for natural resources

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The new forms of international competition and conflict redefine the relationship among territory, scale and borders. In particular the concept of fourth-generation warfare (4GW) describes a set of phenomena and processes which imply radical changes in the nature of contemporary conflict, in the kind of actors involved, the means and spaces of its development. Though it's a valuable framework to understand modern trends in warfare and explain how different factors of power tend to interact in the extreme manifestation of conflict, the 4GW analytical model lacks an explanation on the causes of conflict in times of "peace". Furthermore, it leaves out the incidence of the positional competition of powers in the world system, omits the political-economic objectives behind war, and specifically its value as an instrument of states to exert predominance over gravity centers of an antagonist. In the current context of global competition for natural resources, the means to ensure the access and control of their exploitation have developed a mimetic dynamic which is close to that of 4GW. Beside historical means to seize direct physical control of resources and to gain areas of influence, the trend in progress moves toward a microphysical dimension: dispersion of the "battlefield" and extension of zones of interest to urban space and civil population, fragmentation of territory and permeability of borders, biotechnological tools and inputs, nanoscale devices, cell maps as a target of scientific prospection, biosecurity protocols against pandemics outbreaks, to sum up a blurring of the limits between geopolitics and biopolitics. A comprehensive assessment of risk and threats to security should take into account the microphysical dynamic of competition/conflict, and the morphology of borders, as a mean to denominate, to separate, measure, seize, and protect. Lessons of this dynamic are taken after briefly analyze the case of Argentina's agribusiness dependence on genetic modified organisms.

Introduction

What kind of border could deter a microphysical threat? How can a physical border detect a nanometric Trojan horse? What devices should checkpoints deploy to identify threats disguised with genetically modified compounds of deadly pathogens? These questions that seem science-fiction require serious consideration and integration into the security agenda in the years to

come. More than how to imagine threats, they should lead us to a radical reconsideration of how space is represented, as well as which means of power are changing world affairs.

The study of borders is a classical and fundamental theme within the discipline of geopolitics. Through time the relationship between geography and politics has determined the morphology of borders, as a mean to denominate, separate, measure, seize, and give security to a community. Since the Neolithic Revolution around 10.000 years ago and the consequent inception of civilizations, humankind developed a physical and organic sense of space, while developing capacities to recognize and exploit natural assets over territory, cooperate and trade with other communities beyond the own hinterland, and for sure grab and/or defend property from others.

Recent trends in technological innovation and globalization have been redefining the relationship among territory, space and scale. Beside historical means to seize direct physical control of resources and to gain economic areas of influence, the global trend in progress moves toward a microphysical dimension: biotechnological events, nanoscale materials, cell maps as a target of scientific prospection, biological assets within global commons zones, biosecurity protocols against pandemic outbreaks, not to mention the pervasive deployment of electronic and cybernetic systems. The logic of these innovations permeates the superficial and outer materiality of things, especially organic beings, and changes the dynamic of approximation to them. Nowadays we can assert without hesitation, after ages of being used to a direct physical relationship with territory, resources and persons, that an indirect dynamic of approximation to a microphysical level is evolving as a new trend.

This blurring of the limits between geopolitics and biopolitics it is not exempt of global dynamics of competition and conflict. It's a complex phenomenon that could be analyzed under the notion of Fourth Generation of warfare (4GW) due to the fact that it shares constituent characteristics of dispersion, asymmetry, and non linearity. Though the 4GW conceptual framework was initially conceived just to understand warfare, a comprehensive assessment of risk and threats to security should take into account the current microphysical dynamic of competition/conflict, which it's not exclusive for "small war" or "asymmetric conflict", but a general characteristic of new means of power. In particular this microphysical trend, which is comprehended within the competition for natural resources, implies an indirect approach and control of assets permeating borders around the world.

Thus this article undertakes three overriding tasks: first, it briefly explains the analytical concept of fourth-generation warfare (4GW). A reflection upon its evolution, characteristics, and usual application, helps to formulate later a critic from political realism in order to reach a more coherent and broadly applicable conceptual frame

to explain the dynamic of positional competition in the world system. Contrary to the assertions of liberal scholars, conflict it's not *sui generis*, so this article relates the violent conflict (or the warfare) with the international competition in times of „peace“. As a contribution to the discipline on how competition for natural resources has reached a microphysical dimension, it finally lays out some potential avenues for future research after briefly mentioning the specific case of Argentina and the massive deployment of genetically modified organisms.

Generations of warfare (and the changing nature of conflict)

For realist scholars the international system is characterized by interstate competition (Mastanduno 1999; Mearsheimer 2014). The assumption is that states permanently look for opportunities to gain power at the expense of other states and to maximize their relative share of power in the world system. Eventually and for many different reasons, the clash of interests drags rival states to violent conflict and the use of force in order to mutually impose their political will. As it's well known through time the means of the use of force have changed.

At the brink of the end of what was called the Cold War, a group of high officials of the United States army led by analyst William Lind, published in the *Marine Corps Gazette* an innovative study about how modern warfare has been changing. The article posed that modern warfare could be typified in generations according to some specific characteristics, and that each generation of war evolves into new forms that deeply change the essence of conflict (Lind et al 1989).

The first generation of warfare was born in the context of the Peace of Westphalia. The treaties signed around 1648 ended the Thirty Years' War and created a new system of political order for Europe based upon the concept of co-existing sovereign states. Though the system implied a mutual recognition of political borders and territorial sovereignty, it didn't restrain struggle for power among actors. Nevertheless it found a consensus of international law by which states established a monopoly on war with state armed forces. Along with the mechanistic conception of the age that the world was a machine ruled by clockwork laws, armed forces militarily organized in uniforms, ranks and gradations, fought in a precise battlefield with orderly lines and column tactics: *“the relevance of the First Generation springs from the fact that the battlefield of order created a military culture of order”* (Lind 2004: 12).

In this historical context energy was driven by organic means (i.e. animal and human force), thus the relationship space-time, or speed, did not qualitatively change until a significant product of the Industrial Revolution was applied for war around 1860: the use of railways modified the space of the battlefield and put this generation of warfare into transition to the following.

The Second Generation of warfare was developed by the French Army during and after World War I. In

political terms the state continued to hold a monopoly on war, and as in the previous generation, state armed forces fought in a precise battlefield and tactics remained essentially linear. The radical difference was that industrial weapons of attrition were widely put into action. In other words, massed firepower replaced massed manpower. In this context the energy matrix was changing from coal to petroleum, and newly transport systems were driven by machine force. It's worth mentioning that the industrial technological change and the massive implementation of engines within the space-time formula, even led to a point of theoretical reconsideration of geopolitical notions from the previous age based on organicist principles, for instance the concept of natural border (Losano 2011).

The next generation, the third, was developed after World War I and during World War II. According to the authors the paradigm is the German *Blitzkrieg*, a shift in the operational art from place to time: speed, surprise and physical dislocation of the enemy. The main difference in this generation in relation to previous ones was non-linearity, thus the aim of action was to bypass and collapse the enemy in his rear. The change in the conception plus the full development of air power (including later missiles) implied that targets of war reached urban space and civil society. The use of nuclear power represented the *non plus ultra* in the means of use of force and inaugurated the era of what was later called during the Cold War “mutual assured destruction” between superpowers. Again in political terms, the state still held a monopoly on war, but the scope of military actions widened the space of battlefields from national territories to mainly geostrategic positions of continental importance (such as maritime landings, sea straits, chokepoints, etc.).

Seen in historical perspective, each generational change has been marked by a greater dispersion on the battlefield, and the *“two major catalysts for change in previous generational shifts were technology and ideas”* (Lind et al 1989: 23). In this line, with the next generation of modern warfare, the battlefield would likely include the whole of the enemy's society, thus targets may be more in the civilian than the military sector. This spatial shift from the enemy's front to his rear, which was already established in action during World War II, replaces the terms front-rear of the classic territorial battlefield with the perception that everything could be a target, even urban space. In consequence the tactical and strategic levels blend as the opponent's economic infrastructure and civilian society become also “battlefield targets”.

The reason behind that logic is because a key component of the fourth generation is to collapse the enemy rather than physically destroying him. Thus the identification of enemy strategic centers of gravity becomes highly important, no matter if they are military, economic or political. In broad terms, 4GW seems likely *“to be widely dispersed and largely undefined; the dis-*

inction between war and peace will be blurred to the vanishing point. It will be nonlinear, possibly to the point of having no definable battlefields or fronts. The distinction between "civilian" and "military" may disappear. Actions will occur concurrently throughout all participants' depth, including their society as a cultural, not just a physical, entity." (Lind et al, 1989: 23)

Following the former reasoning, the dynamic of the 4GW could tend to dilute the distinction between actions of force in "wartime" from "peacetime". Though Lind and his group did not mention it, it's important to notice that the challenge of identify a rival center of gravity and set actions to collapse it, could silently evolve during peacetime while hostilities did not happen yet (or would never do). Specifically, the capacity to disarm a rival's system before it becomes a threat could be of paramount importance. Not casually it's outlined that a *"growing dependence on technology may open the door to new vulnerabilities"* (Lind et al, 1989: 24).

In relation to the use of force in itself, the authors considered that mass of men or firepower would no longer be an overwhelming factor. Just small, highly maneuverable, agile forces would tend to dominate and would require a high degree of ability to live off the land and the enemy like in surgical strikes. But Lind and his group, unlike what they did for previous generations, lost a characterization of the international actors and state powers who would engage in a fourth generation kind of conflict, and even worse, in a major war. Instead they just considered the asymmetry component of the formula and drive it to the figure of non-state actors, especially terrorists. Anyway in the context of the end of the 80s the authors explained that *"elements of fourth generation may be visible in terrorism, but we are not suggesting terrorism is the fourth generation."* (Lind et al 1989: 26)

A critical view of 4GW from realism

The turning point of the authors' concept will be after the United States military interventions in Afghanistan and Iraq. In particular Lind, following a liberal path inherited in the optimistic post Cold War moment, replicated the assumption that the state was in retreat due to a universal crisis of legitimacy; thus it has been losing its monopoly on war (Lind 2004). The sovereign state no longer would be the main actor moving the wheel of international affairs, not to mention state armed forces the military means of power and the warfare generations.

Continuing a decade later his post-westphalian perspective of a declining state and narrowly focusing on the tangled situation in the Middle East, its fourth generation concept would exclusively remain understood as the asymmetric dynamic of terrorism and non-state opponents (Lind & Thiele 2016). To sum up, fourth generation warfare initially conceived as a theoretical blueprint to understand the shift in the complex matrix of power relationships, was reduced to an asymmet-

ric fight between one superpower (United States) and some partisan groups of uncertain origin, financing and purpose.

Lind's view is shared by other known analysts whose intellectual efforts to understand warfare also fail by confusing a method with an actor (Van Creveld 1991; Kaldor 2001). In the same line, spatial representations of the fourth generation as an asymmetric conflict against non-state rivals depict the world sharply divided between a transcontinental zone of failing states, turmoil and rampant violence, and a zone of economic development and peaceful integration (Kaplan 2001; Barnett 2004). According to the liberal creed, conflict is generated "outside", among those who have not entered yet in the evolutionary cycle of progress and fraternal peace. Thus, there is a geography of conflict with precise boundaries detached from "normal" international politics (for realists: competition). It's a world where "democracies do not fight between them" because they have gone through the end of History understood as the end of politics.

The former argument plus the flawed idea that asymmetry and dispersion are not characteristics of modern competition/conflict and have become exclusively a method of a particular actor in the international system, lead us to think about who are the actors and which is the essence of politics. A task already addressed in the context of the Cold War by rigorous scholars who properly comprehended asymmetric conflict and irregular fighters within an interstate system, a structural dimension which inevitably defines the existence of the opponent according to its legal status and not by its scale (Schmitt 1963; Aron 1976).

To begin with, thinking in a general perspective, what states in the world have lost its legitimacy and for whom? For instance regime change and liberal democracy in the regions of Lind's focus (Middle East and North Africa) have never enjoyed much legitimacy and popular fascination. More complex representations of the international scenario would draw overlapping levels of statehood between post-westphalian, neo-westphalian and pre-westphalian worlds (Malis 2014). Regarding developed regions: does the "crisis of legitimacy" mean a lack of political will to hold the monopoly of the use of force over national territory? Or that borders are no longer an expression of power but just a matter of recognition from a non-state opponent? An issue that recent events in world affairs has shown is that despite some specific cases of lawless regions (mainly sub Saharan) the state is not in decline. On the contrary, the trend is to have a reaffirmation of its role in international affairs, its pervading presence on economic matters like trade agreements, tariff barriers and a growing participation as stakeholder in large corporations, also as a goal of emerging national identities, in the securitization of geostrategic issues, in the need to seize control again of national territory and in the claim of citizens to secure borders, among other processes.

Second, in relation to the affirmation that the state is losing the monopoly on war and that the only conceived actor who wages a war is a terrorist whose means are asymmetric, we could wonder: does it mean that the main instruments of war are no longer under state control? Which states? Where are the political actors and the central powers of the international system? The last version of the 4GW not only lacks a theoretical framework of international politics which can explain how interstate competition build systemic threats, but it also grossly missed to include the contribution made precisely by state military staffs (and not by non-state forces without such technical and financial capabilities) with the reorganization of infrastructure under the flexible doctrine of Revolution in Military Affairs, which advanced versions of RMA have incorporate sophisticated technologies, including unmanned aerial vehicles (UAVs), nanotechnology, robotics, and biotechnology. Clearly for first and second tier powers the state continues to hold the monopoly on war; that's because *"states pay close attention to how power is distributed among them, and they make a special effort to maximize their share of world power."* (Mearsheimer 2014: 34)

Third, the 4GW conceptual framework narrowed its explanatory scope just to a type of conflict (asymmetric terrorist actions), but it does not explain the reasons of its beginning, nor its relationship with competition within an interdependent international system. For realism, international politics is understood as a perpetual struggle among groups for security, prestige, power and influence, viz., control over territory, scarce resources and the distribution of those resources, the behavior of other groups, and the world economy. Conversely to the liberal conviction, which sees the invisible hand of market fraternally harmonizing nation's relationships thanks to their wealth, realists from Thucydides to Gilpin have viewed uneven rates of economic growth, which continually redistribute power in the system and thereby undermine the international status quo, as a primary cause of interstate conflict and competition: *"because positional goods are subject to absolute limitations in supply, economic growth and prosperity, far from ameliorating intergroup conflict, tend to exacerbate it."* (Schweller 1999: 30)

If the essence of politics is international positional competition, then competition without violent conflict as the ongoing struggle for power and influence among nation-states is synonym of peace. Conflict would be an especially virulent subset of competition, which logic is who rules when the fighting stops. Sign the peace thus means not only to military defeat a rival but to impose the profitable political-economic conditions after victory. In this sense, what is at stake behind the origin of a violent conflict, as a particular subset of international politics, it is not just the defeat of an unknown partisan group without political purposes; instead the causes should be found in the systemic struggle among world powers for the political-economic structures. Conver-

sely, if violent conflict (or warfare) is not the continuation of politics by other means, then conflict would not have a political cause. Conflict would be apolitical, like a spontaneous combustion. In consequence we could argue that conflict has no relationship with competition, or that competition does not exist at all, which is a complete nonsense.

Finally, regarding the means of violent conflict or warfare, if they are also the means of peace, then asymmetry and dispersion are not only a characteristic of a specific kind of conflict but of general competition dynamics. Following the former reasoning, the political-economic conditions of competition within the international system have also adopted an asymmetric and dispersed dimension. In consequence, in the international struggle for power and security, the direct physical way to access and control the supply of scarce resources has also reached an asymmetric and dispersed dimension: a microphysical competition. To sum up this implies that in general, power relationships not only have come out of the traditional military field and evolved into a multidimensional level, but indirect dislocation and control of a rival's centers of gravity has become part of a kind of structural shift known as "war without limits" (Lian & Xiangsui 2001).

New trends in the competition for natural resources

Paraphrasing Clausewitz, warfare is the continuation of politics by other means. Thus politics for realism is synonym of a permanent struggle for power among actors without the use of force: *"States permanently compete to enhance national economic welfare. (...) When scarcities exist, international economic relations necessarily become more competitive, and states may struggle over access to capital, natural resources, markets, jobs, or advanced technologies."* (Mastanduno 1999: 158)

As an integral part of the ongoing competition among actors in the world system, the competition for natural resources has been gaining momentum in last decades. The emerging economic disparity between regions after the end of the Cold War has fuelled a global race to access and control the supply of new sources of raw materials (Klare 2012). According to specialists many geopolitical factors interact in this global competition, for instance the rapid growth of urbanization and population in emerging regions are likely to aggravate the demand for energy and the lack of access to stable water supply, arable land and food. In general, several think tanks agree on the idea that governments need to review the access that their countries have to resources to meet a growing global competition, and that in the short to medium term, the competition for limited resources may increase as a source of friction and shape policies and international relations (NIC 2013; Lee et al 2012).

A particular subset of this world competition comprehends the agrifood system, an issue that has been always intertwined with power relationships but was never considered a matter of resources competition (Borrell 2010). The complexity of the theme would bound us to widely

develop it in other place; nevertheless it's worth mentioning it in this article as an example of the evolving trend toward a microphysical dimension in the competition for natural resources.

The Argentina's case with GMOs

Lind wondered almost three decades ago relating the 4GW with asymmetry: *"what do we see if we combine terrorism with some of the new technology we have discussed? For example, what effectiveness might the terrorist have if his car bomb were a product of genetic engineering rather than high explosives?"* (Lind et al, 1989: 26) The subsequent question that we could pose today is: what if that new technology is not the weaponized device of an illegal actor (i.e. terrorist) but the instrument of a legal actor who indirectly deploys it to exert power over an economic gravity center? Thinking in the characteristics of the fourth generation matrix, what would be the incidence between both actions beside the spontaneous use of force in the former and the permanent "peaceful" use in the later?

In general terms, biotechnology has raised concerns about possible epidemic outbreaks as well as optimistic proclamations linked to corporate agribusiness which see it as the cornucopia of the everlasting food supply. Nevertheless, genetic engineering has launched a race for the planet's shrinking gene pool as a new source of increasing monetary value and power: *"multinational corporations already are scouting the continents to locate microbes, plants, animals and humans with rare genetic traits that might have market potential. After locating the desired traits, biotech companies are modifying them and seeking patent protection for their new „inventions“* (Rifkin 1998).

Specifically for agriculture, genetically modified organisms (GMOs) have almost reached an overarching scope after their implementation two decades ago firstly in the United States and in Argentina, and later in other countries of the American continent, in the Asia-Pacific region and recently in Sub-Saharan countries. By 2015 more than 27 countries have legalized biotech crops with a total area of around 180 million hectares globally. Argentina in particular, from an area of 2,7 million hectares of GM soybeans in 1996, moment of its legalization, jumped nowadays to more than 24 million hectares of GM crops (BCR 2015). Though the contribution to the national economy due to commodities exportation, the dynamic of territorial expansion has gone along with a concentration process of corporate actors who own the technical know-how and the property rights of the GM seeds, plus the agrochemicals massively used in this extractive agribusiness model (Tansey & Rajotte 2008). The entire production of soy (around 61 million tons) and almost of corn (more than 33 million tons) depends on GM seeds developed and owned by a bunch of gigantic transnational corporations, mainly *Monsanto* and *Syngenta*, among others of lesser presence such as *Dow*, *Dupont* and *Bayer*.

These events would seem to indicate that the path ahead is paved for the deployment in large scale of the next generation of GM organisms, which control the plant genetic expression. In other words, these seeds nicknamed "terminators" are genetically modified to be sterile after one harvest cycle, thus forcing farmers to not keep harvested seeds for the next cycle to re-plant them, but to buy new seeds to the provider corporation every cycle. That practice which goes back to the Neolithic, when humanity entered in the course of history after gaining the autonomy to produce its own food, could be jeopardized by this biotechnological trap. Its strategic power implies a microphysical control of the resource and of the whole agricultural system as an economic gravity center. The sovereign decision would no longer be up to who owns the productive land or the deed, but to who has the technical capacity to control plant cellular expression. Unlike the conceptions made by classical geopolitics a century ago (Losano 2011), the vital space far from being physical becomes microphysical. An indicator which implies that in the years ahead the struggle for the *lebensraum* will be of nanometric scale. No wonder that geopolitics is dynamically turning into biopolitics (Lemke 2011).

Conclusions

This article has posed from a realist perspective that first and second tier actors of the international system have been developing a revolution in the means of power, especially in innovative instruments that share the constituent characteristics of dispersion, asymmetry, and non linearity; conditions to what could be comprehended under the concept of fourth generation of warfare (4GW). In particular an indirect dynamic of approximation to a microphysical level has been evolving as a new trend within the global competition for natural resources, changing the direct physical relationship with territory, resources and persons, and in consequence blurring the limits between geopolitics and biopolitics.

Certainly, the indirect and microphysical approximation to the analyzed center of gravity has become obsolete the physical borders, and, what is even more, violent land occupation (an action that runs along most of human history). There's no need of an expeditionary force that cross borders, wage a war of occupation in foreign territory and hoist its flag after physically destroying an enemy like in the three first generations of war. The use of force and the act of violence becomes systematically instrumental. Therefore, the systemic biological control at distance becomes the strategic power, and not a direct physical clash. This means that while the stealthy matrix is the norm, a bioterrorist attack would be just an exception. It could even be a possible regulated exception, a controlled dose which gives functioning to the systemic matrix: that sort of biopower can preset a genetically modified pool with its specific future pests and (of course) the tailor made pesticides for

them. Furthermore its microbiological dimension could also make up the genetic ground for unknown epidemic outbreaks. On the whole, such a biopower could determine the entire functioning of an agricultural system or directly its collapse. *Not by chance the "next generation" of biological weapons made possible through genetic engineering will be asymmetric weapons par excellence*" (Aisncough, 2002:2); clearly not because the actor is asymmetric, but because the means of power toward centers of gravity are.

A consideration that could be drawn in order to counter this challenge is that the outdated maps of physical geography should be redesigned at a nanoscale with a boundless biodiversity. Borders would be determined by the power of scope of bionanotechnological devices. At the same time, the defense capacity of borders would be secured by the bionanotechnological scope of the devices deployed.

Before concluding, it's worth thinking that aside from the dynamic above mentioned, the patenting of human chromosomes, of cell lines, tissues, organs, and nearly all the genes that make up the genetic blueprint of the human race will also become matter of economic competition, bionanotechnological manipulation, intellectual property rights impositions, in short, a new ground for biopower relations. The human microphysical vital space will be the next frontier.

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Porous Borders in Eastern Europe – The Case of Ukraine

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Porous international borders mean comparatively easy-to-transgress international borders, caused by developments in past and present that either prevent(ed) their proper establishment or (have) lead to a significant erosion of security in border areas.

The overall importance of this topic stems from the fact that implicit or explicit questioning of international borders question the legitimate existence of a state per se – which always depicts as a security threat on the strategic level.

Such politically but also even militarily contested borders are at the center of each of the numerous stalled or ongoing wars, ‘frozen’ or meanwhile unfrozen conflicts among the former Soviet Union (FSU) republics. Prominent examples include the Armenia-Azerbaijan war, Transnistria, the 2008 Georgian War, and the continuing war in Eastern Ukraine.

This article consists of two sections. The first one will examine key drivers behind border insecurity in the FSU macro-region and develop a continuum of different types of border porosity for this respective area. In the second section, this matter will be directly linked to the actual border situation of Ukraine as an empirical case study.

1. Key Drivers of Post-Soviet Border Insecurity

Worrisome developments regarding three interconnected arenas have led to different degrees of porous border regimes among FSU republics:

- *Structural-level changes:* The dismemberment of the Soviet Union shifted the burden of border management away from central authorities towards republican institutions that were never designed to carry out such tasks.
- *State-level policy shifts:* The emergence of restorative forces and their political success especially within the Russian Federation have led to sustained border insecurity throughout the region.
- *Agent-level developments:* The advent of organized crime, black marketers and their networks and beneficiaries have gained ground in weak economies of the region and thus wide-spread influence in order to keep the border situation in disorder.

1.1 Structural Level Changes

At first, the issue of state succession after the demise of the Soviet Union will be examined regarding its implications on border responsibility, capabilities and security among the FSU.

1.1.1 Soviet Border Regime Model until 1990

The Soviet Union was a vertically and horizontally heavily integrated union of 15 soviet socialist republics, each with their own soviet constitutions and administrative bodies¹. International sovereignty was vested in the central government, administered by the Moscow based institutions and de-facto governed by the Communist Party. The late Soviet Union under Secretary Gorbachev’s reforms moved closer to a federative system, especially after the adoption of a law to govern secession from the Union in April 1990 (Keep 2010: 354ff.; Cassese 1996: 261).

It is however important to understand that all international security matters -including border management- were always exclusively administered by federative executive organs that commanded central authorities such as border guards, customs, KGB special forces, regular armed forces etc. (Chandler 1998: 68ff.).

1.1.2 Challenge of New Borders: 1990-1991

The Soviet Union has ceased its existence as a subject of international law by the end of December, 1991. By then, all of the former Soviet republics have become fully sovereign states² (Kenez 2006: 275ff.). The dissolution of a subject of international law by collective independence of every single of its constituents is known as ‘dismemberment’ in international law³.

The notion of dismemberment implies that there is no *single* successor – instead there is a collective of 15 *successors*, all endowed with *equal* rights regarding the legal predecessor and equal duties concerning features of acquired international sovereignty, such as governance of territory and their people(s), including management of old, inherited, and newly formed borders around these territories. This is reflected in the Alma-Ata declaration, the founding document of the Commonwealth of Independent States (CIS)⁴. During these two remarkable years, when soviet dismemberment took place, two different border regime types were in place:

- Still-existing Soviet Union *outside* borders: The dying Soviet rump state, whose territory changed every few months, kept its principal security organs in place and working. Only in case of the Baltic States, responsi-

¹ It should be noted that some -but not all- of the soviet Republics have had international sovereignty before their territorial incorporation into the Soviet Union: Examples range from the Baltics to Transcaucasia, but also concern Ukraine during the years following World War I (i.a., Subtelny 2009: 366ff.).

² The (second) last one was the Russian Socialist Federative Soviet Republic -RSFSR-whose independence was already declared on June 12, 1990, which however only became effective by December 12, 1991. On December 27, 1991, the RSFSR was renamed the Russian Federation (Keep, 2010: 410f.).

³ It is to be distinguished from secession, as secession implies the further existence of the preceding state, from which a ‘new’ entity has seceded from (Malanczuk 2005: 165f.).

⁴ The Alma-Ata declaration from December 1991 stipulates continued and institutionalized cooperation among fully sovereign states, each with their own administration and security apparatus. CIS states declared themselves willing to guarantee, in accordance with their own constitutional procedures, the discharge of the international obligations deriving from treaties and agreements concluded by the former Soviet Union. This comprises the bulk of legal and administrative instruments and clearly implied guaranteed full autonomy regarding future border policies and their execution (however subject to joint coordination), Malanczuk 2005, 166f.; SNG [CIS], 1991).

lity for (former) soviet external borders was instantly handed to national authorities due to geographic location and their strong opposition towards joining the CIS.

- Newly formed *national* borders: responsibility for formerly republican borders and now shared international borders between two newly independent, sovereign post-soviet states was gradually devolved to them. But depending on progress in their policy-making, this competence was vested in very different institutions – sometimes they had to be built from scratch or were newly tasked republican bureaucracies.

The result was a puzzle of competencies, severed by unclear loyalties of key staff, neglect or complete absence of physical infrastructure, as well as material shortcomings in a rapidly changing political and institutional environment.

It is obvious that this led to a viable decrease in border security throughout the FSU area, where it became possible for the nascent organized criminal actors to roam free without major disturbance, see below.

The Russian-Ukrainian Border

The 2000 km long Russian-Ukrainian border (from a close-to-irrelevant-republican administrative border) and came into legal existence only on August 24, 1991, when Ukraine had gained independence. Ukraine hasn't even had a security apparatus at that time; its nucleus were structures and physical installations it inherited from the Soviet Union, but all material and staff was deployed to the border along Poland, Czechoslovakia, Hungary and Romania. This meant for the newly formed Ukrainian-Belarusian and Ukrainian-Russian border: No demarcation, no border posts, and no customs: basically no C2 capabilities and border management at all. The same was the case at newly formed borders in the Caucasus and Central Asia, where improvised or simple makeshift checkpoints sprang up.

1.1.3 Towards a new Border Regime Model from 1992

Developments in the political sphere conserved and even severed disparities concerning border security capabilities in the FSU area: The most important of such developments was that the Russian Federation started to strive more or less successfully to become the de-facto 'prime successor' of the dismembered Soviet Union. This argument can be supported by many instances that took place between 1992 and 1995⁵.

Concerning border security, it is very important to notice Russia's swift and smooth incorporation of strategically important Soviet endowments like Moscow-based

all-union ministerial bodies, including subordinate all-union executive organs and most party assets (D'Anieri 1999: 132). The quick usurpation of key all-union assets is a cornerstone of Russia's newly acquired comprehensive ability to secure the old and new outside border to the North and East, but also its institutional advantage in controlling its new Western and Southern border. Also, the danger of revisionist political claims from its new neighbors Ukraine, Belarus, Georgia, Azerbaijan and Kazakhstan was very low and not of strategic concern to Russia - it was still by far the most important political, military, economic and cultural actor in the FSU.

It is thus to conclude that the Russian state profited the most during the years following Soviet dismemberment from unclear border regimes and an international situation in flux. Newly developed power disparities among FSU states translated quickly into border securitization disparities, which in turn produced different border securitization prioritization patterns among post-soviet states. During the first half of the 1990s, the Russian Federation as the most powerful actor with a large border securitization advantage obtained thus an opportunity to directly and indirectly influence any border-related policy-making in neighboring states as a means to secure political alignment.

1.2 State Level Policy Shifts

Key policy shifts that happened during the first post-soviet decade are to be taken into account in order to explain the capitalization of the above opportunity by the Russian Federation – especially regarding its immediate neighbors like Ukraine. However a bit abstract, two interconnected dimensions can be observed: The dimension of political discourse, and the realization phase what can be called the 'politics of border modification'.

1.2.1 Changes in Russian Political Discourse

Russian President V. V. Putin has never left any doubt that Russia's strategic area of interest was the FSU area. Since the early 2000s, official Russian political discourse became more focused and assertive regarding this matter (Devyatkov 2013: 16ff; Svarin 2016, 130ff.).

It redeveloped classic Russian narratives of belonging and 'different' shared identity (othering), directed not only at Russian citizens in Russia, but more and more targeting Russians (or Russian speakers) in neighboring countries⁶. Those narratives were and are based on complex redefinitions and reassurances of so-called 'Russian values', drawing on a traditionalist framework with Eastern Orthodoxy, the notion of a shared Eurasian cultural legacy, and a rather hysterical construction of being at odds with 'the West'.

⁵ Worth mentioning: Moscow obtained the Soviet Union's seat in the UN Security Council; it offered to denuclearize Kazakhstan, Belarus and Ukraine; successfully presented itself willing to continue Soviet Union international legal obligations. For details see i.a. Boczek 2005: 130

⁶ It included thus deliberate falsification of the number of ethnic Russians and Russian speakers (who are significantly more numerous according to census) in neighboring countries like Ukraine (i.a. Sakwa 106: 2015). The outcome can be described as some kind of vaccination of irredentist ideas among Russian minorities in other post-soviet countries.

This discursive environment has remarkably intensified after the Orange Revolution, the 2008 Georgian War and once more after 2012, when V.F. Yanukovich has started to change his political course towards friendlier relations with the EU.

This deliberately and strategically changed discursive environment served as the background argumentation and justification fabric regarding any concrete physical action towards international borders of neighboring states. In other words, this massive (dis)information and propaganda campaign lay the grounds for or even was the first step in Putin's Russia's real geopolitical agenda.

1.2.2 Politics of Border Modification

Six years after the 2008 Georgian War, the Russian Federation seemed to be prepared to physically violate and thus change borders in the region: The first assault on Ukraine's territorial integrity was the forceful accession of Crimea, legitimized by means of an illegal referendum (Eitze & Gleichmann 2014: 5), which was launched and largely operated directly out of Russia, using special forces and quick deployment techniques, as well as crucial infrastructure already under control of the Russian Black Sea Fleet on Crimea. The employed strategy contained elements of public mobilization through long-time fostered political support basis, effective political communication, paramilitias (known as 'little green men') and Russian military support.

It did however not take long to launch another border modification project: As a reaction towards Ukraine's enhanced reforms agenda with the EU-Ukraine Deep and Comprehensive Free Trade Agreement DCFTA at its core, the Russian Federation framed this attempt to political emancipation a strategic threat. What followed was a massive attack on Eastern Ukraine, employing a much more elaborated joint hybrid war strategy: Next to long-time formed pro-independence-, pro-Russia-, and anti-Ukraine elements of civic society and massively expanded political dis- and misinformation campaign, it included the military intelligence service (Russ. 'GRU'), 'separatist' proxy militias, voluntary fighters, so that the Kremlin was more or less successful in temporarily labeling themselves formally impartial and not party to the conflict.

It should have become clear, how changes in political discourse, seen as a symptom of state-level policy shifts of the Russian Federation, have served and do serve as a the powerful pretext for concrete action towards the physical modification of international borders by forceful means – in an environment of structural change as described above.

1.3 Agent Level Developments

The last arena that needs to be examined as a key driver for border porousness in the FSU area concerns agent-level developments. As structural changes created inefficient and dysfunctional borders and policy

shifts lead to further destabilizing border modifications, a myriad of other actors discovered that this situation caters to them very well and has developed decisive political influence over the last two decades (Keep 2010: S. 395ff.).

It is about the advent of organized crime, black marketers and their networks and beneficiaries who have gained ground in weak transition economies and vulnerable societies already during perestroika times. It was and is in their best interest to keep the border situation fuzzy as this earned them billions of dollars in annual revenues. If not originating from the political field, they have become very successful over the years in sponsoring political actors or in even joining the political arena themselves. In the end, their strong and meanwhile powerfully marketed interest to keep the border situation in disorder and thus to hinder liberal reforms (including customs, criminal law, security sector reform, anti-corruption etc.) is being felt in the political field of all FSU countries.

1.4 Continuum of Border Porousness

The following remarks depart from the overall assumption that safe borders are a function of how the above examined drivers of border insecurity convolute, regarding respective borders in question: How and in which way is the border affected by structural change and politics, how much and to what extent do certain actors hinder the introduction of proper border control measures and means etc. Thus, the convolution of those drivers of border insecurity translates into all sorts of empirically possible FSU border regimes with different degrees of 'border porousness'. One way to abstract this finding is placing four ideal-type border porousness models along a continuum: The 'continuum of post-soviet border models', ranging from close to non-existing security (very porous) to a model that represents to a certain extent the ideal of a modern state border based on Westphalian principles (limited porousness).

- *Undelimited*: The border is not even properly represented on a means of geographical conception like a map and has no clear definition in physical landscape.
- *Undemarcated*: The border is on a map and its coordinates are known to the larger extent, but its physical representation is completely or partly indiscrete or inexistent.
- *Insufficient functionality*: A delimited, and also demarcated border but without proper border management that allows uncontrolled cross-border movement.
- *'Modern Westphalian'-oriented*: A border administered by a working bureaucracy, featuring enough resources to fulfill its designated purpose at large.

Around the FSU macro-region, different international borders bear to varying degrees characteristics of all of these models.

2. Case Study: Ukraine's Borders

As stated above, the following case study will examine the situation regarding Ukraine's complex border situation, based on the above continuum of border models. The Ukrainian case is unique, as it offers -among hybrids- nearly all of the above models as ideal-types.

2.1 Undelimited Borders

National delimitation is the process of legally establishing the outer limits of a state by virtual means like maps (for academic definitions, see Srebro 2013: 23f.): In the case of Ukraine, these were old Soviet maps which showed republics solely for administrative and statistical purposes⁷. Delimiting a state border is an integral part of state- and nation building and is usually one of the first legal acts of the newly independent state: Article four of the law 'Про правонаступництво України [on legal succession of Ukraine]' (October 1991) stipulates that 'the state border of the USSR that separates the territory of Ukraine from other countries and border between the Ukrainian SSR and the Byelorussian SSR, the Russian SFSR, and Moldova on July 16, 1990, is the state border of Ukraine'.

As delimitation of borders lies at the core of sovereignty, undelimited borders have become a global rarity meanwhile. However, there are still prominent examples, but mainly in the maritime domain.

Concerning Ukraine, the only undelimited border is the maritime boundary in the Sea of Azov and the Strait of Kerch, where no final consensus between Ukraine and the Russian Federation has been reached before the most recent outbreak of armed conflict. The only agreement made defined the Sea of Azov as a so-called 'closed sea', jointly administered by the Russian Federation and Ukraine, but no concrete legal or administrative implications have been defined. Thus, at least three versions of possible border lines can be found (i.a. Lebedev 2016; Samokysh 2013).

Russia's Crimean border delimitation

On Russian publications, a solid border line is visible that depicts as quasi-delimitation to the Russian audience, but not on any other media. Given Ukraine's non-consent about the Crimean situation and the overall illegality of the matter regarding core principles of international law, it is close to impossible to see a jointly delimited border in the foreseeable future between Crimea and Ukraine proper and/or Crimea and the Russian Federation.

Crimea's annexation and its full incorporation into the Russian Federation, as well as the Russian government's commission to building of a bridge across the strait of

Kerch via Tuzla Island further complicates the issue, creating possible new territorial water bodies⁸. Furthermore, also unilateral delimitation has taken place: The only recent example concerns the Isthmus of Perekop that separates Russian-occupied Crimea and Ukraine: Russia has unilaterally declared this an international border line.

2.2 Undemarcated Borders

Demarcation of a border is the act of creating a physical boundary around a governed territory in real-world landscape. This means, that sovereign states usually place demarcation signs (and other 'border furniture') along their border lines – usually after jointly

It is important to note that the Eastern Ukrainian battle zone is not demarcated by Ukrainian authorities as this would be an implicit recognition of statehood of the so-called Donetsk and Luhansk People's Republics (DNR/LNR); however there are improvised checkpoints along the front lines. Concerning Ukraine's Eastern border, about 450 kms of are not under Ukrainian Control and it is doubtful if DNR/LNR's security organs have enough managing capacities.

and carefully negotiating, coordinating and mapping of the border in order to prevent the questioning of coordinates and even of the overall legitimacy of this activity per se (for accurate comparison of academic opinions: Srebro 2013: 25).

Delimited, but undemarcated borders may be on of maps, but their exact location in physical landscape is unknown. In such cases, state security organs have no legal basis for action, which in turn means opportunities for mutual provocation and border incidents.

One example of joint demarcation of a delimited border is the roughly 1000 km long Belarus-Ukraine border, where border signs are being erected only from 2014.

On the contrary, unilateral demarcation can be seen on the Ukraine-Russia border: The plan to demarcate this border has been in place since the 1990s, and was approved for renewed action in 2010, but even after numerous meetings of the joint border demarcation commission and completed reports on discrete locations of future border signs, none of the described delimitation action has been taken (Roudik 2014).

It is thus not surprising, that only after 2014, Ukraine was forced to push forward with *unilateral* demarcation of this border in the event of imminent military threat, provoking of course instant protest. The so-called 'Evropeyska Stina' (ukr. 'European Wall'), depicts thus as a measure by Ukraine to protect its border physically from intrusion and invasion (i.a. UNIAN 2014).

⁷ It is well known that many of the newly independent nations were quick in producing evidence of pre-Soviet and/or pre-Russian boundaries. However 18th or 19th century maps are at times hard to take as evidence in state building, as the advent of the modern state in Eastern Europe usually coincided only with the advent of Russian expansion.

⁸ For further reference regarding new possible maritime regimes in the Black Sea and the Sea of Azov as well as implications of the Tuzla Island Conflict (see i.a. Socor 2014).

2.3 Insufficient Functionality

Any border can be delimited and also properly demarcated, but feature too little or inadequate monitoring, both regarding technical equipment and staffing. This is the most common case of shortcomings related to border security in the FSU area.

One example to illustrate this issue is the Ukraine-Moldova border, that includes two separate sections in the North and South (ca. 600 km altogether), but also a highly problematic, long border section separating Ukraine and the Moldovan break-away statelet Transnistria (ca. 400 km). The latter is exceptionally interesting, as Tiraspol' has not shown any political willingness⁹, nor does it bear capacities and capabilities to implement consistent border management, allowing for de-facto freedom of movement of above mentioned criminal actors between Ukraine and Moldova the freedom of movement of above mentioned actors between Ukraine and Moldova. This is significantly severed by Moldova's unwillingness to let Transnistria install a quasi-border within its territory, as such action would be seen as a proof of acknowledging Transnistria's sovereignty over Moldovan territory and thus be a threat to its territorial integrity (Grund, Sieg & Wesemann 2011).

The Moldova-Ukraine border is thus a prime example of border porousness through insufficient willingness, assignment and deployment of resources.

2.4 'Modern Westphalian'-oriented

A modern, Westphalian-oriented border model in this article means one where borders feature proper border management regarding quantitative as well as qualitative aspects, including constructive political willingness, the absence or acute border conflicts as well as appropriate supervision and monitoring capacities and capabilities. In the case of Ukraine, this applies only at the country's border with the EU, which runs along Poland, Slovakia, Hungary and Romania and is altogether ca. 1400 km long.

One of the most important issues is cooperation and coordination among all those four EU member states involved and Ukraine, facilitated by institutions like FRONTEX. The EU outside border towards Ukraine is a hardened installation which allows for an augmented level of securitization. However, the same border is – from a Ukrainian perspective – only to lesser importance to the Ukrainian Border Guard Service, as the country faces greater border security challenges in the South and East.

3. Summary and Conclusion

This article firstly aimed at examining key drivers of border insecurity in a post-soviet setting, thereby using a multi-level analytical approach. As a derivate, a continuum of different types of border porousness models

was developed. In the second section, this was linked to Ukraine's complex border situation and represents the empirical part.

The FSU macro region features a broad variety of very different border regimes as a result of interconnected drivers of border insecurity that lead to border porousness. Four ideal-type border porousness models were constructed along a continuum of close-to non-existing border security to an ideal, modern and state-of-the-art Westphalian state border. However noting that the majority of actual border regimes are hybrid in nature, it was later examined where and under which circumstances empirical symptoms of these four models can be found around Ukraine.

Nevertheless, it is clear that the continued war with Russia's proxies and the traumatic annexation experience of Crimea have triggered a broad consensus among Ukrainian policy-makers to move towards an effective-as-possible border management system around Ukraine as the problems connected with undefined borders, unknown border localities and coordinates, missing or improper management, staffing or monitoring are evident: It was and still is very easy for outside malevolent actors to traverse and transgress the border and to even alter the border line as the most severe consequence, thus significantly infringing national sovereignty.

One of the reasons for Russia's spectacular success in Eastern Ukraine was the largely missing demarcation, attention and monitoring of the Russian-Ukrainian border, paired with a total lack of capacities and a corruption riddled border service in Eastern Ukraine.

Future border security management mechanisms thus aim at assisting in border implementation (delimitation, demarcation) and actual border management (monitoring). This should rely on experience sharing and multilateral involvement. Successful and fruitful examples include – but are not limited to – measures like EUBAM¹⁰ (European Union Border Assistance Mission to Moldova and Ukraine), the 'Working Arrangement Framework of FRONTEX with State border guard service of Ukraine'¹¹, and institutions like the 'OSCE Border Management Staff College'¹².

⁹ Transnistria's economy and political system depend to a significant degree on cross-border criminal activities such as smuggling, trafficking, forfeiting of currencies and product piracy (Economist, 2007).

¹⁰ For further reference see website of European Union External Action's website on EUBAM Ukraine/Moldova.

¹¹ For details on EU-Ukraine cooperation within the above framework see Website of State Border Guard Service of Ukraine.

¹² OSCE border management is at the core of OSCE's programs and measures to assist member states see OSCE Border Management online (OSCE 2016).

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Make Law, Not War. Power Politics versus International Law in the South China Sea and the Lesson of Spitsbergen

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Introduction – Sino-US Competition and the Disputes in the South China Sea

Despite the many hopes for a ‘peace dividend’ following the collapse of the Soviet Union (SU) in 1991, questions of power have not become out-dated in international affairs in the post-Cold War era. In Asia-Pacific, which has experienced a dramatic economic transformation during the last decades¹, this is particularly visible when it comes to the disputes in the South China Sea (SCS). The SCS is one of the region’s marginal seas and is larger than the Mediterranean Sea and the North Sea combined. Being an essential part of the world’s premier Sea Line of Communication (SLOC), the SCS both symbolizes the rising economic significance of Asia-Pacific – more than 5.3 trillion USD of trade runs through the SCS annually – and the ongoing importance of geopolitical competition between states.

The SCS is bordered by Vietnam, China, Taiwan, the Philippines, Malaysia, Brunei, Indonesia, and Singapore. Apart from the latter two countries, most of these neighbours hold conflicting maritime claims regarding their territorial baselines, territorial seas and exclusive economic zones (EEZ) as well as the SCS’s continental shelf. Moreover, the SCS has multiple insular features, the most prominent being the Paracel Islands, Scarborough Shoal, the Spratly Islands and the Natunas. Sovereignty over most of these islands is also contested; the Natunas being a notable exception as Indonesian sovereignty over the more than 200 islands is acknowledged, although their EEZ is also disputed. The most extensive claims are made by the People’s Republic of China (PRC) and Taiwan, which both argue that they hold comprehensive historic rights to most segments of the SCS. An infamous U-shaped line to outline their assumed entitlements over large parts of the SCS and the territorial features within this line has been promoted by both countries for many decades now. Other nations, particularly Vietnam, the Philippines, and Malaysia, make substantial claims as well, though still considerably less extensive than Beijing and Taipei². If open military conflict were to erupt in the region over the islets, it would likely also involve Washington, which is not a claimant but a security partner to some of the involved nations.

In terms of power politics, Chinese policymakers in particular seem to see the SCS both as an essential component for increasing their country’s strategic clout in the region (Lanteigne 2016: 103-106) and as a way to construct a great power identity (Li 2016). Given the country’s historic experience of Western colonialism and Japanese imperialism, the SCS is depicted as essential for China’s quest to gain maritime security. This fits not only the general tendency of great powers to control their ‘near abroad’ (Kim 2016: 53f), but connects to the ongoing discussions of China’s return to the frontlines of the world stage as a leading power – a position the country already held until the Qing Dynasty’s severe defeats in the two Opium Wars (1839-1842, 1856-1860) against the United Kingdom, France, and the United States (US).

Over the last two decades, the PRC has become both the most active state within the SCS and the most seriously-debated emerging power, viewed by academics, politicians and large parts of the public alike to be capable of effectively challenging the hegemonic position of the US in global as well as Asia-Pacific affairs (Yong & Moore 2004, Wagener 2011, Layne 2009: 152). Unsurprisingly, the relations between the US and China are a subject of intense discussions among scholars of International Relations because “[m]ore dangerous than a subsystem of one great power is a situation where two great powers have strong footprints in a region” (Copeland 2012: 70). This article is based on the remarkable developments since the end of the Cold War and the Chinese desires and prospects to become a global power again, which might eventually challenge and overtake the US. The article turns next to the developments in the SCS, perhaps the most important global waterway of our time and object of one of the most significant border disputes in the world. In context of the shifting regional power dynamics and the ongoing Sino-US competition amidst rising tensions in the SCS, a solution that draws on European diplomatic history will be introduced and closer investigated in the article’s concluding section.

Shifting Regional Power Dynamics: A more Capable China amidst an Enduring US Leadership

Shortly after the demise of the SU, Nicholas D. Kristof already called China’s rise “the most important trend for the world in the next century” (1993: 59). Being confident about China’s future development, he argued that “China is not a villain [...] but rather an ambitious nation that is becoming the behemoth in the neighborhood” (1993: 70). Many other Western – particularly American – scholars, however, were less optimistic. Richard Betts for instance asked whether it was really in the United States’ interest to allow China to grow economically at such astonishing rates and become more prosperous and subsequently more capable in military affairs (Betts 1993). Moreover, Betts identified China to be the nation “most likely over time to disturb [the] equilibrium in the region – and the world” (1993: 36) and warned that, given the high Chinese economic growth

¹ According to figures from the World Bank (2017), the region saw its regional Gross Domestic Product (GDP at market prices, constant 2010 USD) almost tripling since 1991 to 22.9 trillion USD in 2015, which was 128% of the regional GDP of the European Union.

² A good overview on the competing claims is provided by Asia Maritime Transparency Initiative (2017).

rates and Beijing's rising military spending, the only recently overpowered Soviet threat was actually a "comparatively modest challenge" (1993: 35f.) for the US. Indeed, after having enjoyed a brief moment of global unipolarity following the demise of the SU in the 1990s, Washington's situation has changed remarkably in several ways over the last two decades. Although many scholars continue to argue that despite its multiple challenges, the US remains "an extraordinarily powerful global actor" (Lane 2006: 41), few would likely agree that the appropriate claim made by John Ikenberry in 2001 – that American power in the 1990s was "without historical precedent [because] [n]o state in the modern era has ever enjoyed such a dominant global position" (2001: 270) – still stands today. Instead, there has been a growing discourse among scholars that the "colossus that currently bestrides the world has feet of clay" (Ferguson & Kotlikoff 2003: 32), something which makes the development of "a post-American world" (Zakaria 2008: 32) all the more likely; particularly as "the rest of the world is catching up" (Schweller & Pu 2011: 42)³ at the same time.

Among many other things, its positive economic growth has allowed China to overtake the United States in terms of total GDP in purchasing power parity (PPP) in 2013; for the first time in almost 140 years the United States does not have the world's largest economy (if measured in PPP) (see chart 1). In market-exchange rates it might take China another decade to overtake the US economy in size (Scott & Sam 2016) but the economic development so far is nevertheless very impressive. Since 2010, China has been the world's greatest trading nation and – in stark difference to the US – consequently has run a positive current account balance (chart 2), which means China is not only producing more than it is consuming but also that it has created foreign assets on a large scale. This positive trade pattern has helped the Chinese leadership to accumulate great foreign currency reserves (around 3 trillion USD in December 2016), a war chest that is helpful for transforming the Chinese economy and stabilising the Yuan. It has moreover allowed Beijing to become one of Washington's key creditors, i.e. lending the US some of the money needed to – among other things – buy Chinese products.

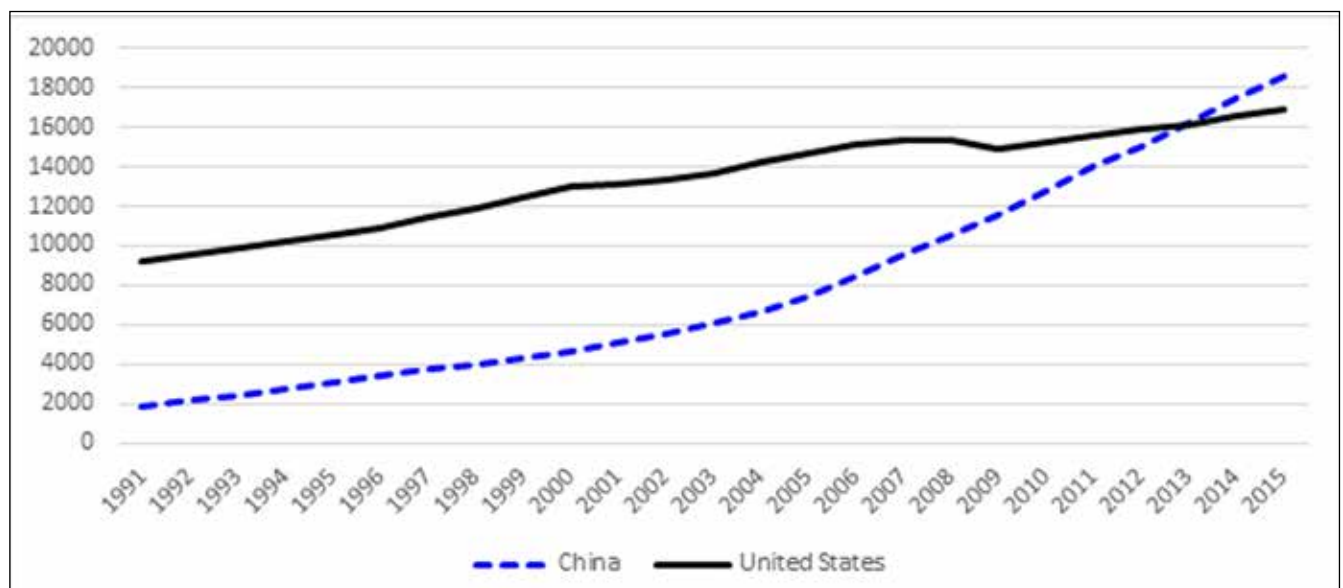


Chart 1: GDP (PPP) of China and the US in constant 2011 international billion USD (World Bank 2017)

Without any doubt, China's development is particularly crucial for understanding the changing perceptions of the region's importance in wider global affairs as well as the shifting 'power structure' within the region itself. China has experienced astonishing real Gross Domestic Product (GDP) growth rates since the late 1970s, often well beyond 10% annually. Although its GDP growth has recently slowed to a little above 6% (which is still more than two times higher than economic growth rates in the EU or the US), this development has impressively increased the Chinese economy in real terms within a generation and allowed it to commit more resources to all sectors of Chinese society – including defence.

China has achieved this by integrating itself into the US-led global economic system (in contrast to the former Soviet Union) and has gained considerable economic weight well beyond the Western Pacific. Some even argue that China – not the US – has been the principal beneficiary of the end of the Cold War (Yahuda 2011: 271). Indeed, due to the astonishing development of the Chinese economy, Asia-Pacific's regional economic structure has become much more China-centric in the past three decades. Although it is unclear whether China's impressive economic accomplishments can help it to escape the 'middle income trap' (Fels 2017: 766), the PRC has certainly been playing a growing role in regional and global institutions (such as in the SCO, the BRICS or the *Asia Infrastructure Development Bank*) as a result of its

³ They believe that a multipolar world is in the making, but that this structural transformation of world politics does not necessarily imply conflict among the poles.

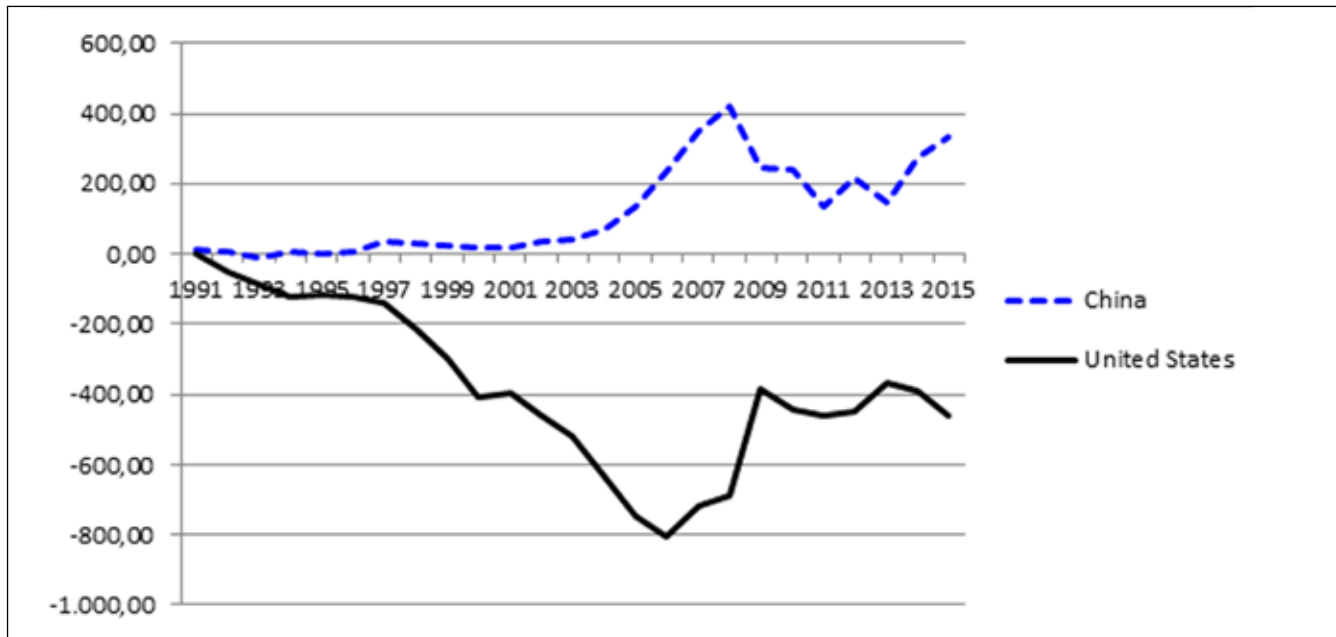


Chart 2: Current account balance of China and the US in billion current USD (World Bank 2017)

new economic power and is eager to closer connect with other economies via its very ambitious and far-reaching *Silk Road Initiative*. With regards to the patterns of regional defence spending, great shifts are observable: While regional states⁴ combined committed around 5.6 times the amount of resources to defence as Beijing in 1991, Beijing has been responsible for almost half of Asia-Pacific's defence spending since 2013 (see

defence expenditures in the world (an estimated 214,5 billion USD for 2015), but the gap between the US and the PRC was down to less than 3:1 (see chart 4) according to data from SIPRI (2017). Clearly, this constitutes a remarkable relative change within just a single generation. Hugh White consequently noted already some years ago that a "Chinese challenge to American power in Asia is no longer a future possibility but a current reality" (2010: 2).

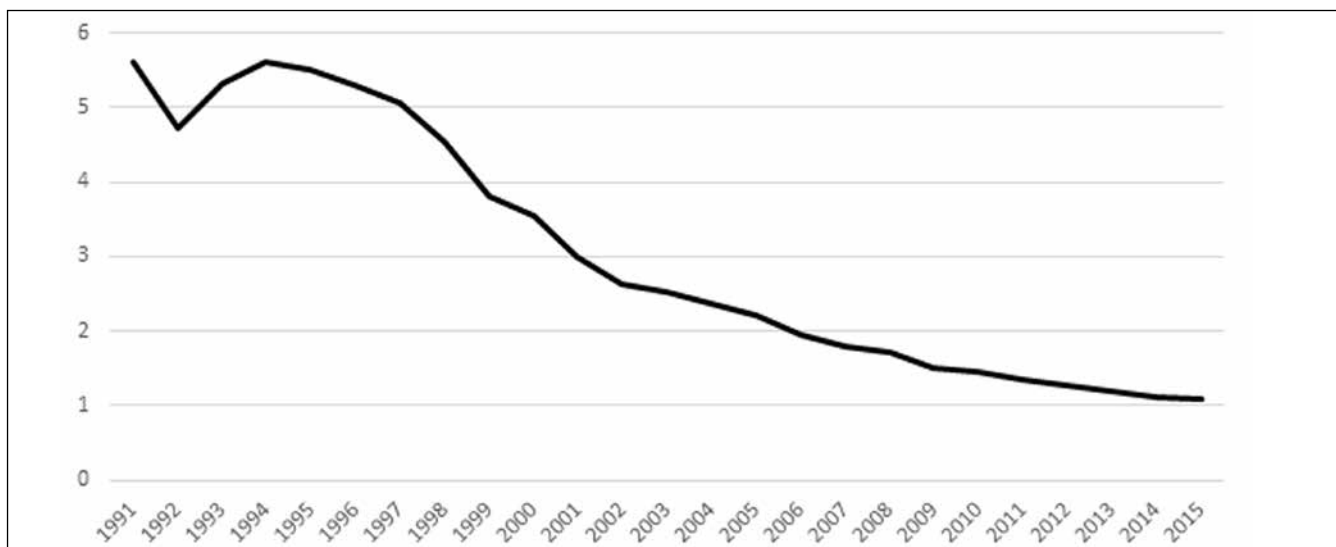


Chart 3: Ratio of Chinese and regional countries' defence spending (own calculation based on data from SIPRI 2017)

chart 3), despite the fact that most of these countries have increased their military expenditures over the last years significantly. Unsurprisingly, also the ratio between Chinese and US defence expenditure has changed. In 1991, the US spent almost 21 times more on its defence than the PRC. In 2015, however, China not only had the second largest

Over the last years, more and more authors have started to become quite outspoken about a potential challenge to US hegemony due to the growing Chinese economy. Those scholars who tend to write in the realist tradition have concentrated more on the security and military aspects of the bilateral relationship and have seen Beijing's economic development as a subsidiary factor to these two primary areas. They worry about the relative different developments of power resources in both countries and warn that in some point in the near

⁴ Afghanistan, Australia, Bangladesh, Brunei, Cambodia, Fiji, India, Indonesia, Japan, Laos, Malaysia, Mongolia, Myanmar, Nepal, New Zealand, North Korea, Pakistan, Papua New Guinea, Philippines, Singapore, South Korea, Sri Lanka, Taiwan, Thailand, Timor Leste, and Vietnam.

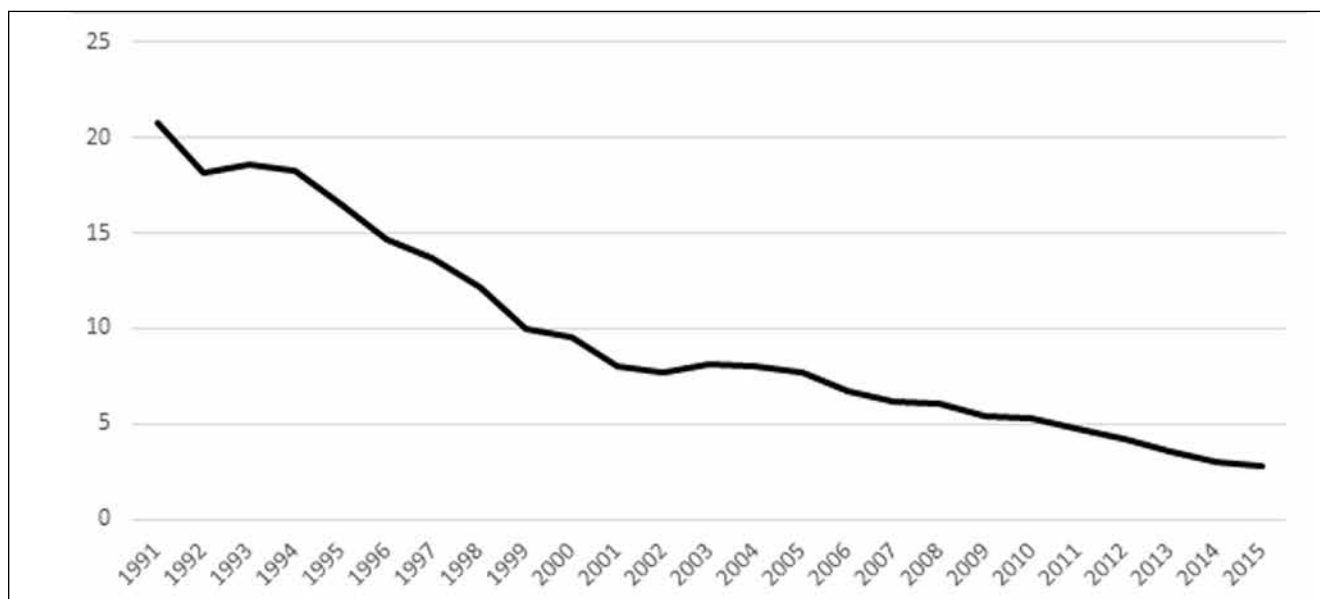


Chart 4: Ratio of Chinese and US defence spending (own calculation based on data from SIPRI 2017)

future China will reach parity with the US (or is close to achieving this), leading to a power shift. Moreover, realist writers have pointed to historic evidence and warned of a 'Thucydides Trap', according to which during periods of power transition the strategic (mis)calculations between the major states considerably increase the risk of violence between great powers: Either the rising state feels strong enough to openly challenge the established hegemon or the leading major power pre-emptively engages the rising power in order to preserve its own position as long as it still feels to have the upper hand. Graham Allison notes that in "11 out of 15 cases since 1500, where a rising power emerged to challenge a ruling power, war occurred" (2012). In the same vein John J. Mearsheimer (2005: 47f) argued that "China cannot rise peacefully and if it continues its dramatic growth over the next few decades, the United States and China are likely to engage in an intense security competition with considerable potential for war". He saw the reason for this rooted in Beijing's desire to achieve what Washington already had: Establishing hegemony in its own region and maximizing the power gap between itself and its neighbours. This, according to Mearsheimer, would furthermore mean that China would try to push the US out of Asia – just as the US pushed the European powers out of the Western Hemisphere. Moves by Beijing in such directions would then almost certainly cause a reaction by Washington, especially as US policymakers would find it hard to accept a peer competitor given their nation's long historic lead (both globally and in Asia-Pacific).

Liberal scholars, on the other hand, have pointed to the economic interdependence and the institutional webs that have developed between China and the outside world and have highlighted the preeminent position the US holds in the world's premier economic institutions and leading regional fora. In their understanding, this makes open competition with the US not only very

costly for China (particularly given the economic opportunity costs), but actually leads to a type of self-encirclement because other regional and global players, which (just like China) have been benefitting from the liberal US-led international order since the end of the Cold War, are likely to turn against China if Beijing sought to overthrow the system. Many constructivist scholars likewise see China enmeshed – by being internationally socialized to respect, follow and uphold largely liberal-based norms and rules, which again will lead to a restrained rise of China (Shambaugh 2013: 312f).

Most scholars in the debate (even if they cannot be assorted to any of the theoretical schools) do not believe that the diverging national interests of Beijing and Washington necessarily have to result in open war between the two great powers – although many see this as a possible development given historic precedence and common theoretic presumptions. Almost all authors are convinced that although China is not seeking to fundamentally overturn the global Western-led system, the government in Beijing is certainly trying to gain a much more prominent role in regional as well as global affairs – something that, if achieved, will likely be to the detriment of Washington's global role and influence. Still, one study, which analysed the theoretical work of nine major theorists on global political developments, alarmingly remarked that the "most striking about these various theories is that they all lead to or support the conclusion that America is heading toward a major war with China" (Levin 2008: 12; 13-25). Similarly, experts have pointed to different core value systems in China and many Western nations, which have not only limited mutual understanding and appreciation, but more importantly prohibited stronger political cooperation (Gu 2014). Another study moreover concluded some years ago that regardless of their ontological background, the "consensus opinion [among IR scholars] is that US power is eroding" (Schweller & Pu 2011: 72).

This notion is well founded. A recent mixed-method study by the author of this article conducted an in-depth investigation of the aggregated and relational power (power from vs. power over) developments in Asia-Pacific (Fels 2017). By constructing a composite indicator that encompasses 55 variables and compares 44 regional countries since 1992, regional aggregated power trends were outlined. The data shows a clear shift in aggregated power in all of the four weighting scenarios that the eclectic study conducted. In every one of them, China was identified to particularly gain in relative position and come very close to the power position of the US. In one scenario the PRC even came out ahead of the US. According to this statistical analysis, a regional shift in aggregate power is therefore evident. As this shift particularly favoured the PRC, which impressively improved its relative position vis-à-vis the US in a relatively short time since the end of the Cold War, Washington is certainly no longer the uncontested leader in Asia-Pacific it was two decades ago – at least in terms of aggregate power.

However, the study's relational power analysis also showed that a wealthier and militarily more powerful China has not automatically turned the regional tides in its favour. Using the relations of six regional middle powers (Australia, Indonesia, Japan, Pakistan, South Korea, and Thailand) that were identified via a k-means analysis to Washington and Beijing as a latent indicator of changes in relational power affairs⁵ the study conducted a within-case analysis of these six countries' allegiance to both great powers. This revealed that even though China managed to significantly improve its relations with all middle powers except for Japan (bar economics), most of the six middle powers in question did at the same time not downgrade their relationships with the US. This is particularly true when looking at security relations, to which realists attribute utmost importance in international affairs. Even though China enhanced its economic ties considerably with the six regional middle powers, corresponding improvements in bilateral security cooperation took place only in a few instances. Minor military exercises and contacts aside, only Pakistan and Thailand were identified to be exceptions to this general finding. In short, when it comes to the scope of security, the analysis shows that no middle power essentially substituted Beijing for Washington (this is also true for Islamabad, which established the strongest military ties to its great neighbour). The US regained, maintained or even improved most of its good relations in the security scope in almost all of the six cases at the same time. In sum, while the PRC was capable of gaining greater relational power vis-à-vis the six middle powers with regards to economics and to some extent

also politics, the different developments in the scope of security and the continuing high importance of the US in this area leads to the conclusion that a relational power shift cannot be observed in Asia-Pacific.

Once the aggregate and relational power analyses are combined, it becomes clear that China could extensively shift its position upwards and has closed the gap to the US. However, even though regional middle powers have begun to engage with China since the end of the Cold War also in scopes beyond economic cooperation, Fels (2017) points out that since 1992 Washington has demonstrated a strong resilience in the scope of security and could essentially sustain the allegiance of most regional middle powers in this area. While this general development has only further augmented Sino-US competition over influence on important regional actors, Washington's pre-eminence in the field of security is likely to continue (unless domestic developments in the US change Washington's ability and willingness to meaningfully engage in another region) as it also acts as an attractive balancing option for regional countries against an ever more powerful China. In short, Washington has allies, while Beijing has business partners. In times of great power competition, this is more than just a subtle difference. Washington's regional policies thus help to uphold so far an alliance-based balance of power in Asia-Pacific that is favouring US interests. Still, China's greater potential to gain relational power in the future due to a likely further rising aggregated power base means that strategic competition with the US is set to continue (and with it the risk of strategic miscalculation).

Importantly, due to the territorial disputes, the SCS is currently one of the playing fields where the two great powers play out their rivalry, which in this case not only involves trailing each other's vessels and challenging Chinese claims by overflight of US planes, but also the exchange of harsh diplomatic statements and even the seizure of military equipment, such as underwater drones. Amidst the region's aggregate and relational power dynamics, the rising level of tensions in the SCS disputes therefore present a telling example not only for the continuing reign of realist great power politics, but also outline a Chinese dilemma: rising means, but a shortage of relevant partners for advancing own aims and building a more Sino-friendly order.

The SCS, which can be seen as China's front yard in geopolitical terms, is of particular importance in the greater strategic engagement between China and the US. Not only does it hold great economic value (e.g. due to its huge significance for global trade routes as well as its often noted yet still hard to quantify riches of energy⁶ and seafood), but is also significant to China's regional strategies and future regional role. Shortly after

⁵ The study reasons that with regards to balance-of-power politics, middle powers are interesting alliance partners for great powers due to their rather limited global and regional ambitions yet adequate material capabilities and regional standing. In line with realist thought, this middle-range theory holds that if a middle power's allegiance is won by a great power, its aggregated (and to some extent relational) power can support the latter's regional influence, providing competing great powers with strong incentives to win the support from middle powers in their quest for regional and global influence. Once the allegiance of middle powers has shifted, this constitutes a shift in relational power.

⁶ Although the amount of energy resources is uncertain, the US Energy Information Administration estimates that approximately 11 billion barrels of oil and 190 trillion cubic feet of natural gas in proved and probable reserves lie beneath the SCS (EIA 2013). Notably, Chinese assessments are much higher and put the amount of energy to around 125 billion barrels of oil and 500 trillion cubic feet of natural gas (Herberg 2016).

the end of the Cold War, the former Chinese foreign minister Huang Hua (1976-1982) already declared in a private conversation on the disputed islands and shoals in the SCS that China “will pick them up gradually, one after another” (Waldron 2014: 174). From a geopolitical point of view this is understandable as the SCS is the essential part of the perhaps most important waterway of our time: the Sea Lines of Communication (SLOC) that connects Singapore with Northeast Asia. Importantly, around two thirds of this premier SLOC runs through the SCS. In many ways, the SCS is therefore the maritime economic runway of the Asia-Pacific and crucial for the region’s future economic development (Fels & Vu 2016). By attempting to incorporate the SCS as sovereign and undisputed Chinese territory, Beijing would essentially be able to put strategic pressure on the SLOC’s important for three regional US allies (Japan, South Korea and Taiwan), gain an area rich in sea food and energy right at its doorstep (and thus further reduce dependency on ship-based energy transports from the Middle East and Africa, which are strategically vulnerable to other nations’ naval assets) as well as demonstrate to neighbouring states the PRC’s ability to considerably shape its ‘near abroad’. Chinese maritime thinkers emphasize the idea that in the SCS regional states are engaged in an intense competition over resource-rich areas and that the Chinese navy has an important role to play in protecting Chinese maritime interests and in developing China into a maritime great power. The efforts the Chinese leadership has been taking in securing its claims are indeed impressive and support the notion that next to the much looked-for reincorporation of Taiwan into the Chinese motherland, the SCS is perhaps the most important strategic area for China to transform from a land to a sea power. These steps encompass symbolic acts like depicting the SCS (and Taiwan) as PRC territory in Chinese passports since late 2012, massive subsidies for fuel, satellite navigation systems (the sophisticated *BeiDou* system) and vessel modernisation to Chinese fishermen fishing in the area and the establishment of military and civilian outposts in or nearby the many islands and islets of the disputed area (some of which even held concerts of the Chinese super star and Grammy winner Song Zuyin in May 2016).

Although the US does not claim any territory in the SCS, the clash of visions between Beijing and Washington is (among other things) particularly related to the freedom of maritime navigation and a test to the reliability of the US alliance system established in the decades of the Cold War (Fravel 2016). Regional states have to deal with a much more self-confident China that is using its greater military capacities to buttress a strategy of incremental assertiveness in the territorial disputes and, as outlined above, has advanced to a level of aggregate power much closer to the US than ever before. In light of the attested regional and global process of shifting economic and military capabilities and realists’ understanding of world affairs, a dispute over sovereignty

questions in the SCS is therefore not just a mere argument between China and some of its Southeast Asian neighbours, but needs to be seen in the wider strategic context involving the competition between Washington and Beijing over their future position in regional as well as global affairs.

For good reason, China’s growing assertiveness in the SCS since 2009 has thus sparked a debate within US policy circles on the question of the PRC’s ultimate intention and how to appropriately deal with it. Indeed, even if Chinese pre-eminence may not be achieved with military force (but with the application of political and economic pressure, supported by a superiority in military means), the Chinese leadership still ultimately seeks to uproot the US military alliances in the region while at the same time severely limiting the ability of US forces to operate in the SCS. Moreover, both sides fundamentally disagree on the role that the US should play in Asia-Pacific’s future. This is also symbolized in the clash of visions regarding the freedom of navigation in the SCS, which provides a challenge to the established ‘rules of the game’ that have long ensured the freedom of maritime passage in the region. The attempted reshaping of the current rules by Beijing is essentially a question of who will exert influence over the SCS in the future – both *de jure* and *de facto*. By forming new ‘rules of the game’ that ultimately seek to limit the ability of foreign vessels to move freely in the SCS area also in order provide Beijing with strategic depth regarding its coastal cities (Hayton 2014: 252), China is attempting to buttress an own maritime Monroe Doctrine that limits regional US involvement (Fels & Vu 2016: 10). However, Washington is clearly not willing to grant Beijing such an exclusive zone of strategic influence. Yet, gaining privileged rights in its ‘near abroad’ might actually be what the PRC – just like other great powers before her – is seeking. Chinese actions in the SCS in recent years provide ample evidence for this (Van 2016).

Given the strategic dynamics outlined above, this development in the SCS opens the path for greater strategic competition between the US (and its regional allies) with China – a trend that is certainly not beneficial to regional stability and Asia-Pacific’s future economic progress as it increases the risk of either open military clashes between great powers or their proxies and undermines regional states’ ability to deal diplomatically with common challenges ranging from Islamic terrorism to climate change⁷. In this view, Asia-Pacific’s power dynamics aggravate the SCS disputes and exacerbate the region’s looming Thucydides Trap. At the same time, past Chinese actions in the SCS have allowed the US to increase its relational power in the region by improving ties with nations that feel bullied by China (particularly Vietnam). In short, like the Balkans hundred years earlier, the disputes in the SCS have developed into a political powder

⁷ The level of severity of the situation is further substantiated by reports conducted by notable institutions, which already try to calculate the costs of war between Washington and Beijing. Gompert et al (2016).

keg for regional great and middle powers, with current international law appearing to be (so far) unable to tackle Chinese great power ambitions and the dynamics they trigger in the SCS. Indeed, legal solutions to the problems seem to be off the table, as China is vehemently rejecting the ruling of the Permanent Court of Arbitration from July 2016, which ruled that Beijing's actions in the SCS were violating the rights of Manila (the suing party) under the United Nations Conventions of the Law of the Sea (UNCLOS) and that China had no historic rights to most of the territorial features (which were moreover classified as rocks under UNCLOS, a step that severely limited their economic value as they do not generate a 200 NM Extended Economic Zone anymore) in the SCS (Permanent Court of Arbitration 2016). China sees this ruling as unjust and not in line with its own interpretation of international law (PRC Foreign Ministry 2016a, b).

Quite unsurprising to realists, the region is thus facing a situation of might vs. right, where great powers refrain from following legal norms due to power considerations or interpret them to fit their national interests. Next to China, this also is true for the US, which has not ratified UNCLOS, yet officially fully supported the UNCLOS-based international ruling. As the great Kenneth Waltz (2000: 27) once fittingly held: "Most international law is obeyed most of the time, but strong states bend or break the law when they choose to." In the same vein, Harvard's Graham Allison (2016) pointed out shortly *before* the legal verdict on the SCS that China will not comply with the ruling, reasoning that "none of the permanent members of the UN Security Council have ever accepted any international court's ruling when (in their view) it infringed their sovereignty or national interests." The developments in the SCS prove both scholars right.

Still, apart from the present inability to solve the matter via legal means, the SCS' politico-historical romanticisation in national discourses of basically all claimant states and the lack of a viable regional security community amidst rising Sino-US tensions nevertheless make new approaches towards the peaceful solution of the overlapping claims necessary (Bindenagel 2016). Hence, a practical diplomatic solution is needed in order to substantially manage (and potentially defuse) the territorial disputes. In this regard, the diplomatic solution of the Spitsbergen dispute in the early 1920s might serve as a guideline for regional states for resolving their overlapping claims and prevent conflict escalation.

A way out? The SCS disputes and a helpful lesson from Europe's past⁸

Like the territorial disputes over the islands, rocks, and shoals in the SCS in Asia-Pacific, European states were engaged in serious disagreements over an archipelago situated in the Arctic sea: Spitsbergen or Svalbard, as it was named later. The archipelago lies midway between

Norway and the North Pole and basically encompasses all islands and rocks (including Bear Island) between 74° and 81°N and 10°E and 35°E. With around 62000 km², Spitsbergen has about the same size as Sri Lanka. Recorded on a map for the first time in the late 16th century by Willem Barents, claims on the islands and the competition for large-scale exploiting of its natural riches via whaling and walrus hunting (both important energy sources at the time) and the hunt for meat and fur (polar bear and fox) had plagued relations between European states for centuries. Historically, both the Danish-Norwegian and the English King claimed sovereignty over the archipelago, while France, Russia, Spain, and the Netherlands referred to the principle of *mare liberum* and held that they had the right to hunt and fish in the area. Importantly, no claimant was able to enforce its own position in the dispute and all of them failed to both assert authority over the archipelago and to regulate the exploitation of its initially very rich animal resources, essentially leading to the collapse of the animal livestock. During the 19th century, Spitsbergen gained the legal status of *terra nullius* – a territory not belonging to any sovereign state (Churchill & Ulfstein 2010). This allowed travellers and pioneers of all sorts to conduct activities ranging from hunting and fishing to mining and Arctic research. However, hostilities between the rivalling nations did not cease. At times, small-scale deadly force was used in order to expel rivalling hunting and fishing parties. Spitsbergen's strategic position close to the Barents Sea (a region particularly important to the naval forces of the Russian Empire and their quest to secure permanent access to the Atlantic) and the discovery of large coal deposits moreover altered the great powers' perception of the archipelago. Particularly the new mineral deposits (accompanied by new and improved mining technologies) further exacerbated the situation between Europe's energy-hungry nations during the early 20th century. At the time Spitsbergen basically "was an international free-for-all, meaning that there were no rules, no regulations, no tribunals to solve conflicts" (Governor of Svalbard 2016). However, with the discoveries of mining opportunities, questions of ownership became much more important.

After earlier Norwegian efforts had failed to reach an agreement for an international regime based on Spitsbergen's status as *terra nullius*, more promising talks regarding the legal status of the archipelago commenced in the 1910s, yet the outbreak of the First World War prevented any progress on the matter. While the end of the war led to the rather short-sighted results of the Versailles Treaty in June 1919, European leaders at the Paris Peace Conference achieved a smart and very durable diplomatic solution regarding the archipelago's status and signed the *Spitsbergen Treaty*⁹ on February 9, 1920. It entered into force on August 14, 1925 and 43

⁸ I am very grateful to Hendrik W. Ohnesorge for our fruitful discussion on this issue. See also Ohnesorge (2016).

⁹ The Treaty's full name is Treaty between Norway, The United States of America, Denmark, France, Italy, Japan, the Netherlands, Great Britain and Ireland and the British overseas [sic] Dominions and Sweden concerning Spitsbergen.

states (including China) had signed the treaty by May 2016. With their signature, the states recognize in the treaty's Article 1 "the full and absolute sovereignty of Norway over the Archipelago of Spitsbergen" including all adjacent islands as well as great and small rocks. Norway quickly used its newly gained right to rename the archipelago into Svalbard. Importantly, in its second article, the *Spitsbergen Treaty* established the right of all signatories to hunt and fish in the archipelago and its territorial waters, which Norway defined to be 12NM. Significantly, the treaty (in merging the concept of national sovereignty with some of the benefits gained by states when being active in a *terra nullius*) established a number of important rights for all signatories. Most crucially is perhaps the principle of non-discrimination with regards to certain important activities such as fishing, hunting, mining as well as industrial, commercial, trade, scientific, and maritime activities granted to all states that have signed the treaty. While Norway, as the sovereign over the archipelago, has the right to pass specific legislation to regulate these (and other) activities on the territory of the archipelago and its adjacent waters (Governor of Svalbard 2016), all treaty nations, including their citizens and enterprises, enjoy equal rights regarding these matters and no distinction is allowed to be made on the basis of nationality according to Article 2 of the treaty. This point of non-discrimination (while observing Norwegian regulations) is repeatedly emphasized in the treaty text.

Article 3 established the principle of "equal liberty of access and entry for any reason or object whatever to the waters, fjords and ports of the territories" for all treaty nations. Next to unhampered access they are furthermore allowed to use Norwegian ports when going to or coming from the archipelago. Again, no additional charges or taxes are imposed upon them that Norwegian nationals do not also have to pay and there is no preferential treatment of persons, ships or goods in this matter. Speaking of taxes, due to its sovereignty over the archipelago, according to Article 8, Norway has the right to raise taxes, but the government is limited in its capacity as all "[t]axes, dues and duties levied shall be devoted exclusively to the said territories and shall not exceed what is required for the object in view", i.e. providing a lean, yet effective administration of the archipelago. The obvious purpose of this rule is that Norway should not profit too much from its sovereign rights over the territory and indeed has Norway rather spent mainland tax payers' money on Spitsbergen than the other way around (Churchill & Ulfstein 2010: 556) as the local authorities had to refrain from imposing taxes that aim at augmenting state revenues (Governor of Svalbard 2016).

Finally, Article 9 of the *Spitsbergen Treaty* established important military restrictions to the archipelago. Accordingly, Norway is forbidden to build and maintain naval bases or military fortification on the territories covered by the treaty and is mandated to not allow any such

establishment by another nation. The aim of this is that Spitsbergen "may never be used for warlike purposes". Ever since then, Norway has not only limited its own military footprint in the region to coast guard vessels, but maintained that any "[f]oreign military presence is unwelcome" (Governor of Svalbard 2016).

Although some disagreements between signatory nations particularly with regards to the exploitation of maritime resources have persisted despite the provisions of the *Spitsbergen Treaty*, scholars have noted that it has "contributed to regional security and peaceful conflict management" (Ohnesorge 2016: 49). In this context, the treaty is a valuable historic example from Europe's diplomatic past that can serve as a model for "creative diplomatic solutions" that Dutton (2011: 58) and others have called for with regards to the SCS. Its three elements (clear, yet restricted sovereignty; non-discrimination and equal access; full demilitarisation) could help to provide strategic stability and joint economic development. Taking the *Spitsbergen Treaty* as a guideline, the claimant states in the SCS could work towards a regional format that allows for joint ventures regarding exploration, development, and sustainable exploitation of the region's vast maritime and energy reserves.

Still, from a strategic point of view, there are at least two major obstructions to address when applying a 'Spitsbergen Approach' to the territorial disputes in the SCS. Firstly, several sound proposals like a jointly operated 'peace park', which protects fish stocks in a vast marine conservation zone in the Spratly Islands and thus allows for regional fish populations to recover from overfishing, or a 'Zone of Peace, Freedom, Friendship and Cooperation', which seeks to find a practical compromise between exploitation and questions of sovereignty, have already been made and failed to gain political grip among claimant states (Hayton 2014: 243-247). Essentially, this was because Beijing's willingness to act in a multilateral format on the SCS disputes has been limited, which next to the politic-historical romanticisation of the area in the PRC's national discourse (a circumstance also observable in other claimants' narratives on the disputed area) is most likely due to the great strategic importance Chinese leaders attach to the SCS. Other countries like Vietnam and the Philippines certainly have been much more open towards multilateral conflict management and an eventual diplomatic solution of the disputes based on a common understanding of international law. Given Beijing's long insistence on bilateralism regarding the disputes and the benefits such an approach provides to a China equipped with greater aggregate power than ever before in the last 100 years, it will be particularly hard to win an authentic Chinese engagement without offering something to the Chinese leadership that provides the PRC with some strategic value or assurances (and moreover allows it to calm public nationalist sentiments that might erupt). Importantly, this strategic setting could very well develop into

a 'Munich Moment' for regional states, i.e. a situation in which other claimants make wide concessions towards China in order to get a promise of peace, stability, and joint economic progress only to discover at a later point in time that the PRC has played foul and has sought to overturn the regional system all along. The lack of trust thus has to be accounted for, which means that all sides need to make a genuine effort for conflict solution and reflect on an important ethical advice from the realist writer Hans Morgenthau, which highlights the importance of strategic respectfulness of other nations' core interests:

"The national interest of a nation that is conscious not only of its own interests but also of that of other nations must be defined in terms compatible with the latter. In a multinational world this is a requirement of political morality; in an age of total war it is also one of the conditions of survival." (Morgenthau 1952: 977)

Secondly, and very much related to the first obstacle, the claimant states finally have to agree on the question of sovereignty. The Spitsbergen disputes were diffused by awarding sovereignty over the archipelago to Norway, a middle power claimant, which has been acting as a reliable custodian of the archipelago ever since. However, the geopolitical situation in Europe at the time was different, which helps to explain the 'generosity' of Europe's great powers involved in the Spitsbergen question: Only a few months earlier, Great Britain and France had achieved a grand political victory over Germany. London and Paris gained large-scale concessions from Berlin to appease their citizens (France seizing Alsace-Lorraine, both receiving large-scale German reparations) and were fully occupied with managing post-war European affairs, all the while the young SU had to recover from its military defeat against Germany and was engaged in a brutal civil war between Bolshevik and Menshevik forces. Obviously, the current situation in the SCS is entirely different: A self-confident Chinese leadership, equipped with rising means, is willing to bolster own claims in the SCS disputes with force, all the while being locked in a strategic competition with the US. Again, the lack of a diplomatic framework to adequately address security concerns in the region helps Asia-Pacific's security dilemma to endure and produces suboptimal political outcomes amidst a continuing great power competition.

In general, based on the *Spitsbergen Approach* three options regarding the conflict over sovereignty would be possible with respect to a transfer of sovereignty over specific parts of the SCS towards one (or more) claimants by an international binding treaty. Why specific parts? It is just as unlikely that China will ever allow sovereignty over the Paracel Islands to be transferred back to Vietnam (from which the islands were taken in 1974) as it is implausible that Moscow will allow Crimea to return to Kiev's authority. This is certainly an unsatisfying point to many observers, yet wishful thinking should be avoided. Instead, the reality of great power politics has to

be acknowledged if a durable diplomatic solution to the disputes is to be found. In this context, an agreement over the transfer of authority regarding the pieces of land currently occupied by claimant states in the area known as the Spratly Islands and Scarborough Reef seems to be easier to achieve than getting China to agree to leave the Paracels. Aside from the high political costs the Chinese leadership would face due to an enraged public by returning the Paracels to Vietnam after more than four decades (being an autocracy does not mean Beijing is willing to trigger large-scale public discontent by pushing vastly unpopular policies), the Paracels are also providing a security buffer for the country's important southern urban centres and China's largest island Hainan, which is home to a significant naval harbor and the PRC's most modern cosmodrome.

But who is to be awarded sovereignty over the Spratly Islands and Scarborough Reef? To begin with, like in the original *Spitsbergen Treaty*, sovereignty could be transferred to non-great power claimants. Based on the principle of non-discrimination, a future SCS treaty on the Spratlys would provide Chinese and other regional companies and citizens with equal access to the regions resources and opportunities. At the same time, China could showcase in concrete action and not only in words that it is truly a benign great power, willing to respect the voices and interests of smaller nations and open for engaging neighbours in mutually positive cooperation. Still, given the resources China has invested so far in the development of its position in the Spratlys (between 2013 and 2015 China reclaimed around 3,200 acres of land, compared to 50 acres by all other claimants) and the current trajectory of aggregate power dynamics seem to benefit Beijing's current position more than other regional states, it is unlikely that China will make any concessions on the matter of sovereignty in the near future if not sincerely compensated for the loss of territory. This makes the matter of the SCS' full and lasting demilitarisation very important. Interestingly, the Spratly's demilitarisation would be a matter of great value for all claimant states, both strong and weak. While China would gain security, as US military assets would effectively stay out of the SCS apart from the occasional transit, the smaller nations would be less prone to being bullied by Chinese forces in the SCS (and of course US naval assets would quickly return to the area once such bullying starts). Importantly, a higher level of security is likely also an important selling point that could ease political dissatisfaction of China's public that might emerge from Beijing giving up on its immense U-shaped line and fully complying with UNCLOS.

A second option is to award all sovereignty over the Spratlys to China – in effect the full acknowledgement of its U-shaped line. Of course, this would be in conflict with the original idea of the *Spitsbergen Treaty* to put a non-great power in charge. Again, a full demilitarisation with only a minimum coast guard crew would be an important requirement. However, for smaller nations

this is most certainly not acceptable, simply because it is a very risky bet: It is doubtful whether a future Chinese leadership in possession of sovereignty over all territory in the SCS would honour its treaty obligations and not simply use its stronger position to bully its smaller neighbours. In fact, the Spitsbergen Treaty's success story is to diplomatically 'neutralize' the archipelago by transferring authority over to a nation which, due to its limited aggregated power, is not engaged in great power politics. This allowed all great and middle powers to respect the provisions of the treaty even during the most intense dynamics of the Cold War. Norway, a founding member of NATO, ensured the principles of the treaty and the archipelago was never used militarily against the Soviet Union (whose fleet relied on passage through the Barents Sea to reach the Atlantic). Moscow even used its treaty rights for establishing mining outposts on the archipelago. Thus, granting China sovereignty over the Spratly Islands and Scarborough Reef would probably place the seed of ruin right at the heart of a *Spitsbergen Approach*. As a great power, China would likely find it extremely hard to not violate the treaty in case competition with the US persists and intensifies – a crucial difference to the first scenario, which makes it less promising with regards to an enduring solution for achieving regional stability and prosperity.

The same dilemma also persists in the third option where the status quo is acknowledged and sovereignty is awarded to claimants based on those pieces of land (including man-made ones) they currently have under control. Again, full demilitarisation and the principle of non-discrimination would help to considerably ease the disputes by basically rendering sovereignty questions irrelevant and allow for further diplomatic engagement on SCS matters and economic exploitation of SCS resources. While this might make a sustainable development of the region's maritime resources harder to achieve due to the 'tragedy of the commons', security-wise the same dilemma as in the last scenario continues: If China maintains sovereignty over parts of the Spratlys as well as over Scarborough Reef, this entails again the risk that both great powers pursue alliance politics and potentially militarize segments of the Spratly Islands and Scarborough Reef again in clear violation of the *Spitsbergen Approach* – at least if deemed necessary following a geostrategic imperative.

Given the larger 'game' great powers are engaged in, the two scenarios that allow China to keep a foothold in the Spratly Islands and Scarborough Reef, while being engaged in pushing the US out of this important maritime area at the same time, is risking quick militarisation of the SCS in the future. Given the severity of this situation, the aim should therefore be to 'neutralize' the territorial disputes in the SCS with regards to great power politics and allow for the region's peaceful economic development in order to help establish trust, which is key for overcoming the security dilemma among regional states. As argued above, this can likely only be achieved

if only non-great powers are awarded sovereignty over the territories in question. In this context, it is also surprising that Chinese leaders, perhaps bedazzled by their nation's impressive aggregate power development, have not realized that their assertive policy in the SCS over the last years has triggered a reaction in some Asian capitals which has not only led to a serious hampering of China's relational power development, but has greatly helped the US to increase own relational power amidst a China that has caught up mostly in aggregate terms only (Turcsányi 2016, McEwen-Fial_ & Brand 2016, Heydarian 2016). The same is true for India and Japan, who likewise seek to strengthen regional claimants in their struggle with China in order to prevent a stronger Chinese position (Sitaraman 2016, Sakaki 2016, Silva & de Amorim 2016).

From this perspective, a sustainable solution of the SCS disputes that also accounts for the interests of regional non-great powers is very much in China's interest. Again, such a solution is likely only achieved if legitimate Chinese security and economic interests are recognized, while at the same time the dangers of a 'Munich Moment' are avoided. The first scenario outlined above, according to which only regional small and middle powers are granted sovereignty over territories in the southern and eastern part of the SCS based on the principles of non-discrimination and demilitarisation, therefore seems to be the best version for a *Spitsbergen Approach* towards the SCS disputes. It provides the Vietnamese government with a suitable and face-saving compensation for officially abandoning its quite reasonable claims on the Paracels. Importantly, like in the historic European dispute settlement, the US and probably also the EU should become significant outside signatories, i.e. international actors of vital economic importance to China and other regional states, which get involved as soon as one or more parties violate regional states' treaty obligations. In case of future disagreements (e.g. regarding over-fishing or pollution due to exploitation), all claimants could also agree in advance to follow the elaborate dispute settlement mechanisms as outlined by UNCLOS. Moreover, they may eventually even see the new treaty as a nucleus for a resource management in the SCS that reflects on the vast experiences of the EU's Common Fisheries Policy and allows for a sustainable development of the area's already badly affected maritime ecosystem. All in all, these steps could help to de-securitize the disputes (Kivimäki 2016) and abandon the zero-sum thinking of great power politics that is plaguing regional political relations, hampering friendly relations between Washington and Beijing and threatening the future economic development of Asia-Pacific and other world regions.

Conclusion

Building on a quip by Mark Twain, the postulated death of great power politics following the end of the Cold War certainly was an exaggeration. So far, there is no end of history in sight. Many authors have correc-

tly noted that China and the US are engaged in a serious geostrategic competition while being economically enmeshed at the same time. However, as outlined, scholarship has not properly charted the power fundamentals at the heart of their strategic engagement. A comprehensive power analysis shows that China's aggregated power has certainly seen an impressive development since the end of the Cold War. Yet, Beijing has largely failed to use its new means to develop strong ties with neighbouring states – instead, Washington was able to keep and deepen the allegiances of multiple regional middle and small powers. This has allowed the US to remain the region's leading security provider and supports it in maintaining an order that has so far constrained a China equipped with greater aggregate power than ever before in the last hundred years. However, this development also means that not only does strategic rivalry persist in Asia-Pacific, but that the region is still far away from a rule-based order that is buttressed by all great powers as it satisfies their main national interests.

The SCS provides an important example for this: No regional body seems to be able so far to tackle the disputes effectively in order to limit the risk of escalation. Perhaps in no other sub-region of Asia-Pacific it is also clearer that China has rising means, yet lacks relevant partners for advancing own aims towards a sustainable solution that fulfils Chinese interests. Worse from a Chinese perspective, China's policies and actions towards other claimants have helped to get the US further involved in the disputes. Given the region's looming 'Thucydides Trap' and the lack of a viable security community (which would help to limit the regional security dilemma by allowing political disagreements being dealt with diplomatically instead of militarily), the SCS disputes combined with the increasing geostrategic competition between Beijing and Washington have turned into a dangerous political powder keg. The *Spitsbergen Approach*, taken from a surprisingly durable, yet mostly forgotten example of European diplomatic conflict management, might be of help in this regard. The stakes are high in Asia-Pacific's most troubled waters and creative approaches are needed to address both the region's changing power structure and the persistence of great power politics. Applying the principles of demilitarisation and non-discrimination to the southern and eastern part of the SCS, while at the same time awarding formal sovereignty over the territorial features in the area to non-great power would allow for joint-exploitation and regional development of the SCS resources. It would also ensure safe passage for other relevant regional actors and could provide the region's great powers and non-great powers with a way out of the 'Thucydides Trap' by acknowledging China's legitimate security interests. The *Spitsbergen Approach* would allow for an order that is flexible enough to accommodate China's new role as a leading power while preventing a 'Chinese Monroe Doctrine' (without cornering the PRC) by officially getting the US

and perhaps also the EU involved diplomatically. In this context, it is important to also recognize the political spirit behind the *Spitsbergen Treaty* – it was essentially one of win-win, mutual development, and sustainable regional stability.

When he was still responsible for China's foreign policy and sought to promote the concept of 'Peaceful Development', Dai Bingguo remarked that „Deng Xiaoping once said, if one day China tries to seek hegemony in the world, people of the world should expose, oppose and overthrow it. The international community can hold us to account.“ (Dai 2010)

Coming back to preventing both the dangers of a 'Munich Moment' as well as falling into the 'Thucydides Trap', it is thus clear that, firstly, settlements of the dispute can only take place if the region's underlying power shifts and strategic dynamics are taken into account; secondly, non-great powers claimants like the Philippines and Vietnam gain sovereignty over territories in the southern and eastern part of the SCS; thirdly, China's security interests vis-à-vis the US are recognized and respected at the same time; fourthly, the PRC agrees to bind itself by international law and shelves large parts of its claims in the SCS in light of the principles of non-discrimination, equal access, and demilitarisation that apply to the Spratlys and Scarborough; finally, the US and the EU become diplomatically involved in the *Spitsbergen Approach* by being perhaps the most significant guarantors of any future treaty regarding the SCS. Importantly, if China does not stick to the rules it has agreed to in such a future treaty and instead engages in a policy of incremental assertiveness in the SCS' stormy waters, the PRC has – in the word of Deng – exposed itself and should accordingly be held accountable for this by regional states joining forces for opposing and toppling any Chinese attempts towards regional domination.

Until this happens, states in the regions – and particularly great powers locked into strategic rivalries – are well advised to consider the tragic consequences European nations suffered in the first half of the 20th century. Their leaders failed to establish a sustainable and responsive framework for addressing strategic challenges in a time of altering power dynamics. Instead, they sleepwalked into the Great War following a crisis over territorial disputes and strategic influences in the Balkans triggered by an assassination. Two shots of a young Serbian nationalist were all it took to light up Europe's powder keg. This sparked diplomatic events that unleashed political, ideological, and military forces, which killed tens of millions, displaced several millions more and ultimately altered the fate and global role of a whole continent. The *Spitsbergen Approach* sketched out above can provide food for thought to help leaders in Asia-Pacific to be more effective in providing a sustainable, legal dispute management solution in order to avoid getting their region's powder keg potentially ignited by relatively minor incidents in the future.

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German Maritime Boundaries – Status and Disputed Areas

Thomas Dehling

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The Dutch jurist Hugo Grotius postulated more than 400 years ago the “Freedom of the Seas” 1609 in „Mare Liberum“. Since the use of the seas and the concern of its protection has been growing. This process will be accelerating more and more in the future and the freedom of the Sea is rather limited indeed. The influence of the adjacent sea area by a coastal state is defined nowadays by international law in the United Nations Convention on the Law of the Sea. The basic regulations about maritime boundaries are being presented. Especially baseline, territorial sea, exclusive economic zone, continental shelf and the high seas are being introduced and illustrated by excerpts from the maritime boundaries in Germany.

Despite UNCLOS being in place, there are numerous disputed boundaries worldwide. The International Court of Arbitration in The Hague and the International Tribunal for the Law of the Sea (ITLOS) in Hamburg deal with these issues, if there is no room for solutions on a bilateral or multilateral basis. Quite some disputes are already or have the potential to become a geopolitical danger.

This is surely different within the EU, but even Germany has unsolved issues with its neighbors, which is being demonstrated with the following examples from the North and Baltic Sea: The continental shelf in the German Bight, the Ems Estuary, the List Deep north of Sylt and the Bay of Pomerania. The reasons for the disputes, the implications and the practical workarounds are being provided. Although there is an excellent relationship to the neighboring countries, the difficulties in solving the issues are being demonstrated.

Freedom of the Seas?

Was there a Freedom of the Seas since its use by mankind?

The Dutch jurist Hugo Grotius or Huig de Groot (born 1583 in Delft, died 1645 in Rostock) postulated more than 400 years ago the “Freedom of the Seas”, where the sea was international territory and all nations were free to use it for seafaring trade (1609 in „Mare Liberum“).

England, competing fiercely with the Dutch for domination of world trade, opposed this idea and claimed “That the Dominion of the British Sea, or That Which Incompasseth the Isle of Great Britain, is, and Ever Hath Been, a Part or Appendant of the Empire of that Island.”¹

The influence of a coastal state on the adjacent coastal waters usually was limited. Trade and naval influence were dominant. Over the centuries the uses of the sea were increasing. Shipping and fisheries have been important since ancient times with shipping rapidly increasing. At the same time other uses are growing more and more in their importance, especially exploitation of natural resources, energy production at sea, hydraulic engineering and the construction of artificial islands. Simultaneously political interests and the demands for coastal and environmental protection are increasing.

All these factors lead to an extension of the area of influence of a coastal state. This was reflected in the development of the Law of the Sea. In the Geneva Convention from 1964 the territorial waters had a width of three nautical miles (nm), the new United Nations Convention on the Law of the Sea extended this to up to twelve nautical miles and introduced further areas reaching as far as 200 nm and beyond.

If you take a look at topographic maps, the so to speak wet part of a country's territory or area of influence is usually not displayed, although the size can be significant indeed. Even for Germany with its rather short coastline, this area is about one sixth of the dry part. Impressive is a look at the waters around Europe, where virtually all of them are under national jurisdiction. Thus it is worthwhile to take a look at the maritime boundaries according to the Law of the Sea.

Maritime boundaries according to the Law of the Sea

The United Nations Convention on the Law of the Sea (UNCLOS) was signed in 1982 after longer debates. It is in force since 1994, which is one year after the ratification of the 60th Nation. Germany ratified UNCLOS in 1994 as well, the United States haven't done this yet.

UNCLOS extended the territorial limits to 12 nm and introduced the Exclusive Economic Zone (EEZ) with a seaward limit of up to 200 nm. It installed three institutions:

- International Tribunal on the Law of the Sea in Hamburg, Germany;
- International Seabed Authority in Kingston, Jamaica;
- Commission on the Limits of the Continental Shelf, meeting regularly in New York.

A basic rule is that the rights of the coastal state decrease with the distance to the shore and the right of all other states increase simultaneously.

Fig. 1: Page 45)

¹ Selden, John. Needham, Marchmont (trans.) (1652) Mare Clausum. Of the Dominion, or, Ownership of the Sea. Vols. 1 & 2. London: Printed by William Du-Gard, by appointment of the Council of State and sold at the Sign of the Ship at the New Exchange

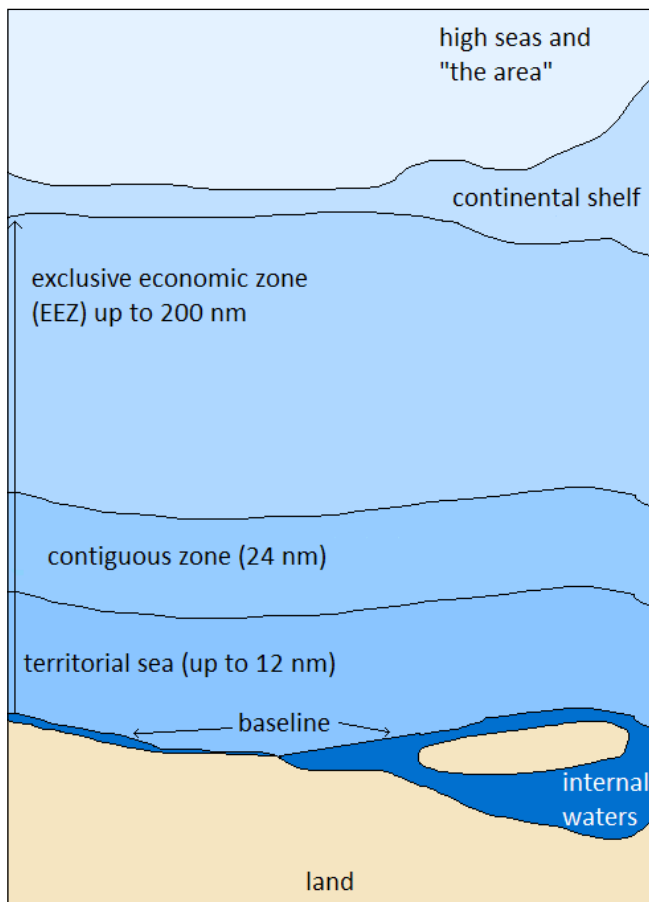


Fig. 1: Overview of maritime boundaries

Baseline

To define limits in a certain distance from the coast you need to fix the starting line first – the baseline. One could specify the coastline itself, which is usually defined as the limit between land and sea at high water (high tide). But the legislators decided to use the low water (low tide) instead, usually the Lowest Astronomical Tide (LAT). This can make quite a difference (several nm) for countries with shallow coastal areas and a significant tidal range. That line is depicted in nautical charts as the 0 meter depth contour line. It is called normal baseline. A disadvantage is that this line is changing due to sand movements. A straight baseline may be drawn instead, for example if the coastline is deeply indented or if there is fringe of islands along the coast. The straight baseline is defined by coordinates. States are allowed to use combinations of normal and straight baselines.

(Fig. 2: Page 46)

Internal waters

The area landwards of the baseline is called internal waters.

Territorial sea

The territorial sea originally was limited to 3 nm, now it has been extended to up to 12 nm. In that area a coastal state has sovereign rights, but other states have rights like the innocent passage while foreign submarines are required to navigate on the surface and to show their flag.

To define the seaward limits with neighboring or opposite countries closer than 24 nm, the equidistance line is dominant. This is a line of points that have the same distance to both countries. But other agreements and historic titles may be used instead.

Contiguous zone

That zone is contiguous to the territorial sea; a coastal state may prevent and punish infringement of its customs, fiscal, immigration or sanitary laws, if committed within its territory or territorial sea. The contiguous zone may not extend beyond 24 nm from the baselines.

Exclusive Economic Zone (EEZ)

The EEZ is limited seawards by a line with a distance of not more than 200 nm from the baseline. Sovereign rights of the coastal state are (a.o.) with due regard to the rights and duties of other States to:

- explore, exploit, conserve and manage the natural resources, whether living or non-living,
- of the waters, the seabed and its subsoil,
- production of energy from the water, currents and winds,
- establishment and use of artificial islands and structures,
- marine scientific research,
- protection and preservation of the marine environment.

For the delimitation between neighboring or opposite countries an agreement between the states involved is necessary. An equidistance line is a possible choice, but not mentioned in UNCLOS. Any other method can be agreed upon. (Fig. 3: Page 47)

Continental shelf

The continental shelf is the seabed and subsoil that extends beyond the territorial sea to the outer edge of the continental margin, or to a distance of 200 nm, whichever is greater. To define the seaward limits is quite complicated and shall not be explained in this article. To give you an impression of the complexity an excerpt of UNCLOS Article 76 is provided herewith:

UNCLOS Article 76 (excerpt):

- 4a) *If the continental shelf extends beyond 200 nm, a line*
- i) *which is drawn to the outermost fixed points at each of which the thickness of sedimentary rocks is at least 1% of the shortest distance from such point to the foot of the continental slope, or*
 - i) *delineated to fixed points not more than 60 nm from the foot of the continental slope.*
- 4b) *In the absence of evidence to the contrary, the foot of the continental slope shall be determined as the point of maximum change in the gradient at its base.*

If a coastal state wishes to extend its continental shelf beyond 200 nm, thorough geological, geophysical and hydrographic investigations have to be accomplished.

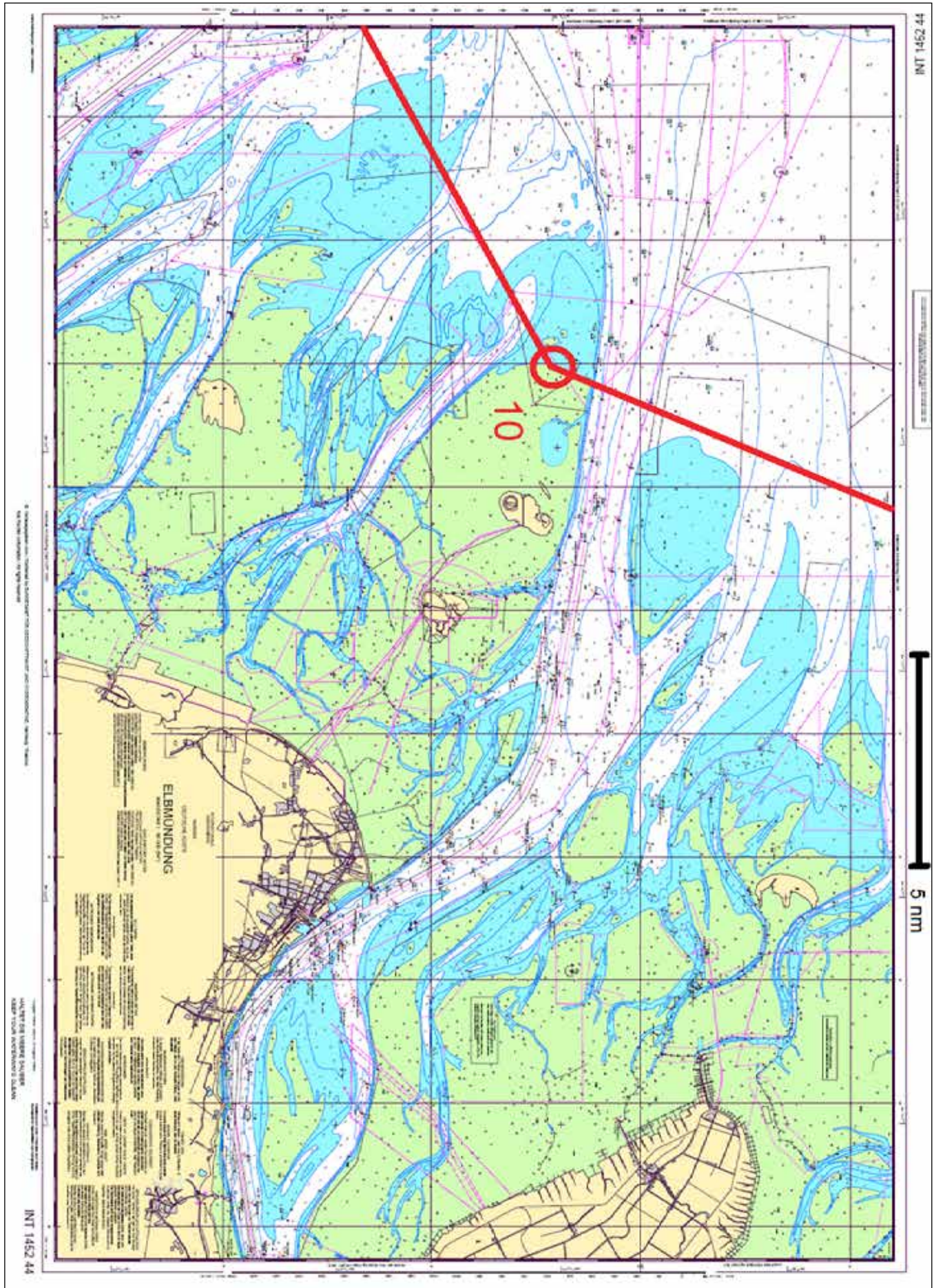


Fig. 2: Straight baseline in the German Bight (excerpt)

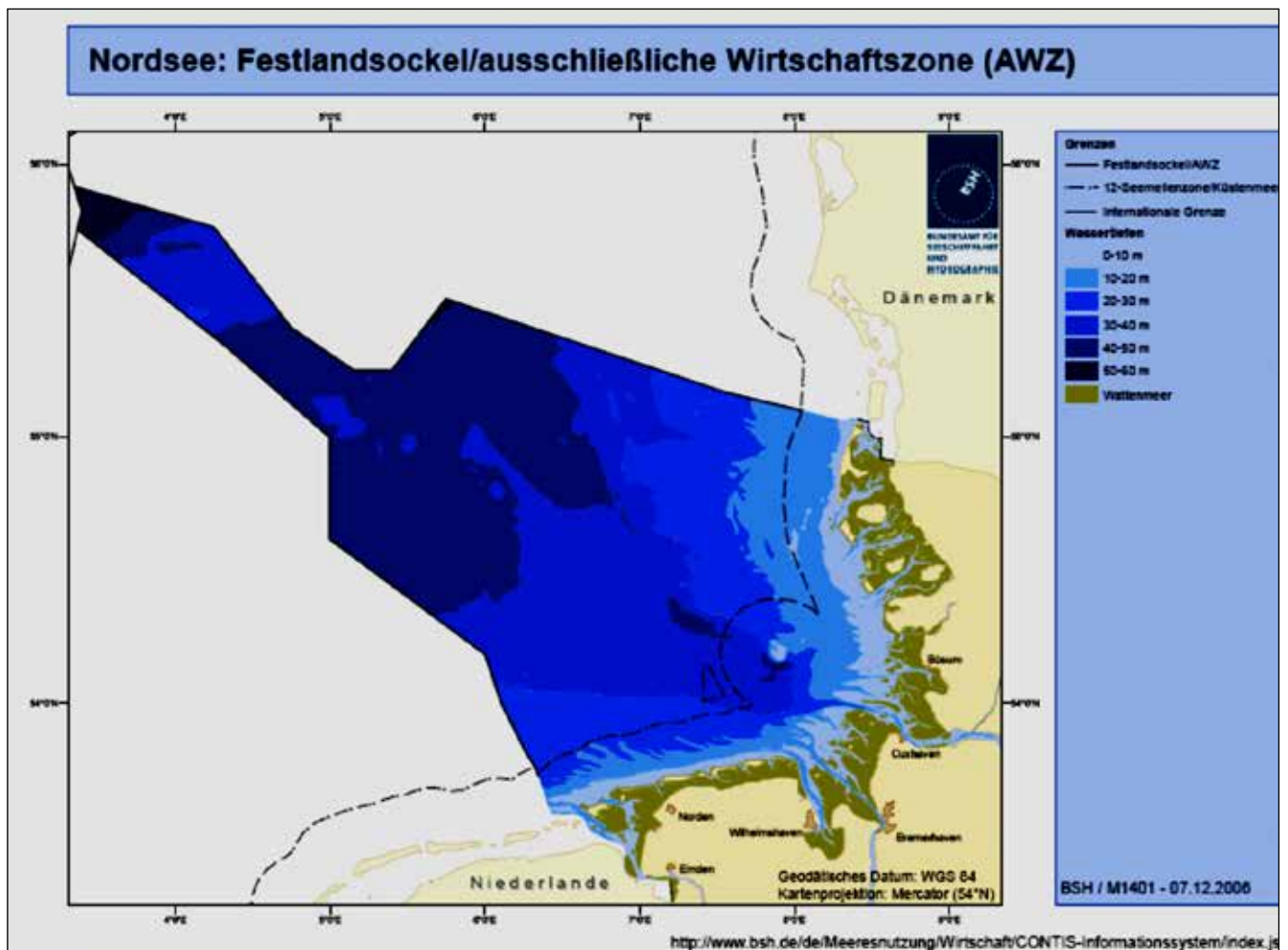


Fig. 3: German EEZ in the North Sea

The result has to be submitted to the Commission on the Limits of the Continental Shelf (CLCS). The commission decides about the acceptance of that submission.

The continental shelf provides sovereign rights for the purpose of exploring and exploiting its natural resources. But different to the EEZ it is limited to non-living resources (minerals etc.) and living organisms belonging to sedentary species. The coastal State shall make payments in respect of the exploitation of the non-living resources of the continental shelf beyond 200 nautical miles of up to 7%.

High Seas

The High Seas are the areas beyond national jurisdiction. They encompass the waters and air above only. Seafloor and subsoil are not included. The high seas shall be reserved for peaceful purposes. The conditioned rights for all states are:

- freedom of navigation;
- freedom of overflight;
- freedom to lay submarine cables and pipelines;
- freedom to construct artificial islands and other installations;
- freedom of fishing;
- freedom of scientific research.

“The Area”

In a simplified definition “the Area” is the seafloor and subsoil underneath the High Seas. The authors of UNCLOS apparently didn’t find another name for that zone.

The Area and its resources are the common heritage of mankind. The use of the Area and its resources is open for all States. It is regulated by the International Seabed Authority in Kingston, Jamaica.

Negotiations are ongoing for the areas beyond national jurisdiction, both “The Area” and High Seas, especially to introduce „environmentally protected areas“.

Disputed maritime boundaries in Germany

Despite UNCLOS being in place, there are numerous disputed boundaries worldwide. The International Court of Arbitration in The Hague and the International Tribunal for the Law of the Sea (ITLOS) in Hamburg deal with these issues, if there is no room for solutions on a bilateral or multilateral basis. Quite some disputes have the potential to become a geopolitical danger.

This is surely different within the EU, but even Germany has unsolved issues with its neighbors, which is being demonstrated with the following examples from the North Sea: The continental shelf in the German Bight, the Ems Estuary and the List Deep north of Sylt. The reasons for the disputes, the implications and the

practical workarounds are being provided. Although there is an excellent relationship to the neighboring countries, the difficulties in solving the issues are being demonstrated.



Fig. 4: International Tribunal on the Law of the Sea (www.itlos.org/press-media)

Case 1: German Bight

The discussion arose between Germany, Denmark and The Netherlands in the 1960s when the countries implemented their sections of the continental shelf. There was no EEZ at that time as this was introduced only later by UNCLOS. The brightly shaded area in the map is a result of an equidistance line. Germany explained that there is a disproportionate rating using an equidistance line as the result is depending on the shape of the coastline. Because of Germany being placed in a bight with a concave coast would have a disadvantage compared to the neighbors with a rather convex coast. Germany went to the court in The Hague and claimed that there should be a direct connection to the center of the North Sea for Germany as well. The court decided accordingly and requested the countries to determine the precise boundaries of the continental shelf. The subsequent negotiations led to the extraordinary shape of the boundary in the early 1970s (dark shaded area in the map). In 1994 the same area was proclaimed as the German EEZ. Due to its shape it is often called “Entenschnabel (duck spout)”.

Case 2: Ems Estuary

Historical background

To understand the special case of the common boundaries between The Netherlands and Germany in the estuary of the river Ems it is necessary to shortly explain the historical background first. The different positions about the boundary in that area go centuries back. The German position is that the low-water line at the western shore of the Ems estuary constitutes the border and refers mainly to a letter of enfeoffment (Lehnsbrief) from the year 1464. This means, the river and the estuary belong to Germany. The Netherlands state that the border should be drawn according to the general rules in international law and refer to the principle of the talweg, which is defined as the line joining the lowest points of a valley throughout its length (IHO Hydrographic Dictionary, S-32).

Ems-Dollart-Treaty

In the 20th century both countries agreed, that they don't agree in this regard and in the light of the traditionally good relationship both countries found a status-quo agreement that led to the Ems-Dollart-Treaty in 1960. Several supplementary treaties have been signed and the Ems-Dollart-Commission has been constituted. This framework guarantees that all practical issues in the disputed area are being dealt with amicably. Thus the unsolved case of the boundary became quite irrelevant. The figure 6 shows the area of the Ems-Dollart-Treaty in red (attachement to the supplementary agreement from 14 May 1962). As can be seen on the chart, the area comprises the territorial sea in the estuary at the time the treaties were signed as well. The seaward limits of the

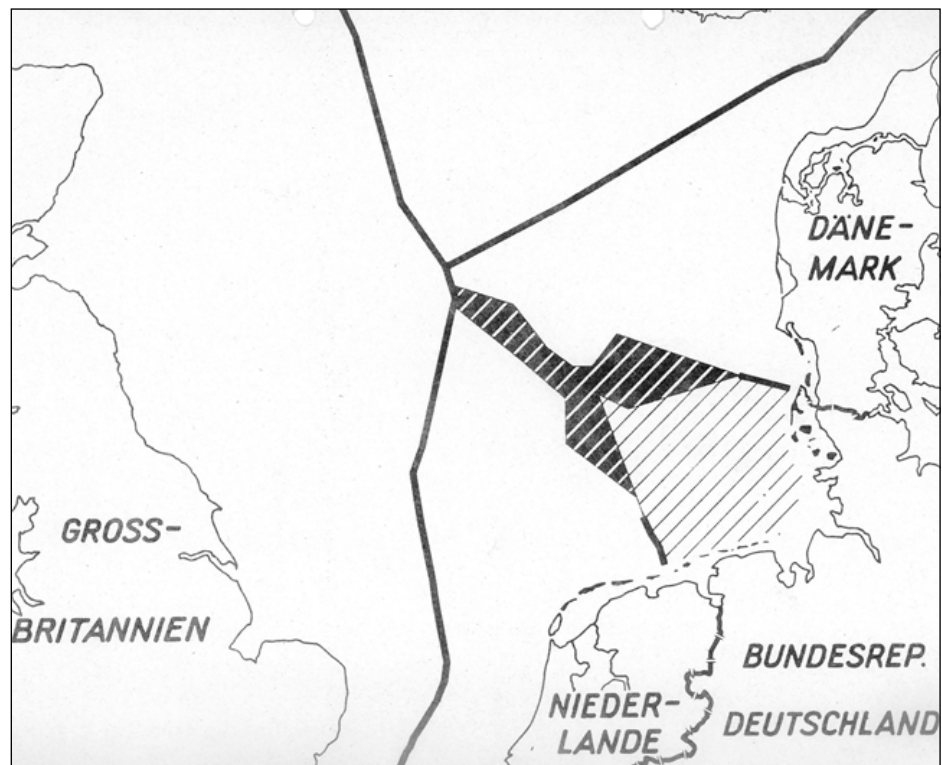
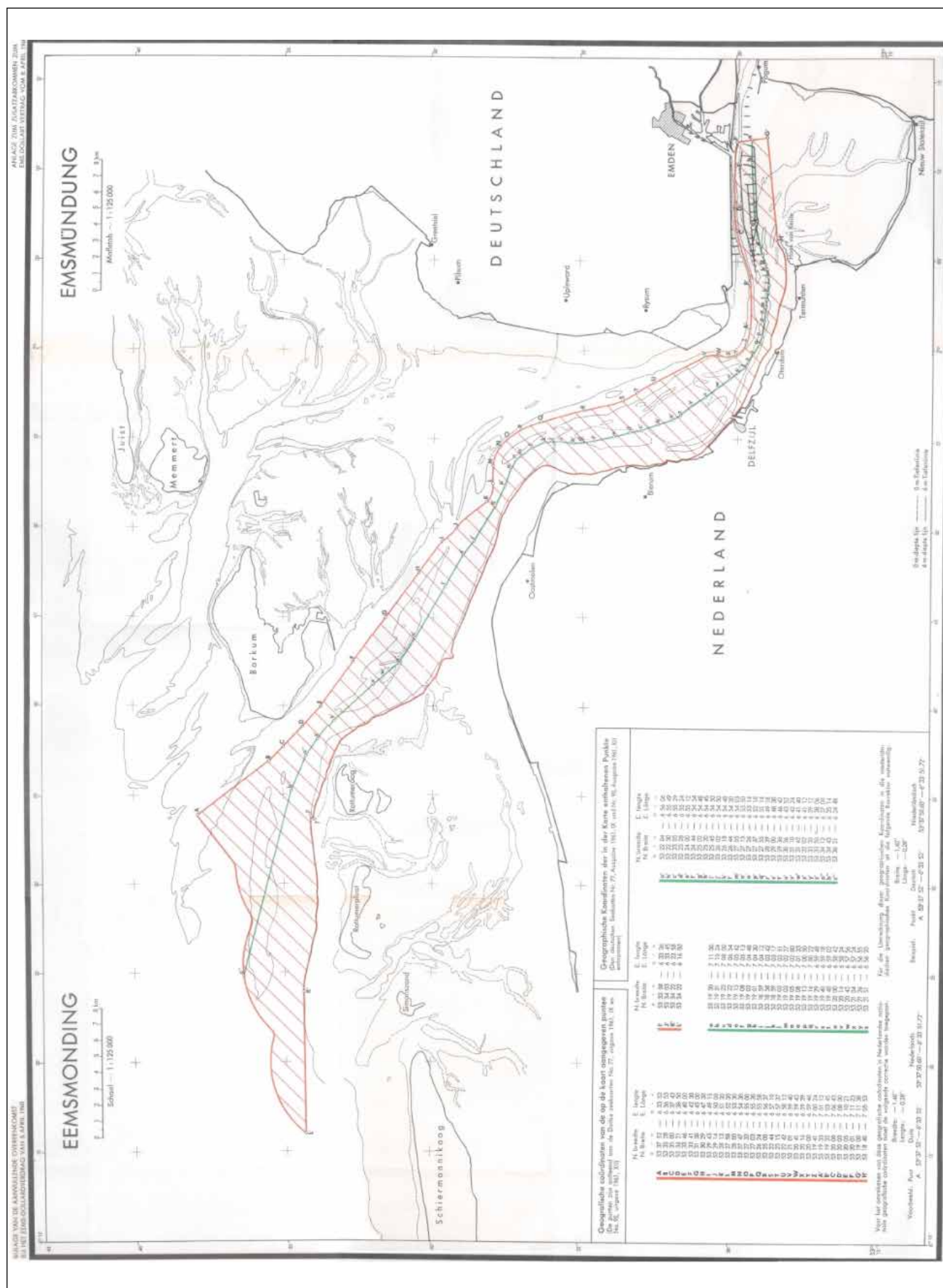


Fig. 5: German Continental Shelf in the German Bight (Entenschnabel)



territorial sea from both countries were drawn in a distance of three nautical miles from the normal baseline. Fig. 6: Chart showing the Area of the Ems-Dollart Treaty

Area between 3 and 12 nautical miles

With the new regulations in UNCLOS, both The Netherlands (in 1985) and Germany (in 1994) extended their territorial waters from 3 to 12 nm. The limits of the Ems-Dollart-Treaty were not adjusted to that extension accordingly. Both countries stated that the lateral limits of the territorial sea between 3 and 12 nm have to be defined by a later agreement. Thus the extension in the Ems estuary has led to an area of unclear legislation. Even the limits of that area were unclear.

and more obvious. The plans for the windfarm „Riffgat“ put even more pressure on the legal questions. The windfarm is intersected by the equidistance line. From the German point of view the whole windfarm is without doubt completely inside their territorial sea. The legal process of approving the construction of the windfarm was accomplished according to German law in 2011. But still the legal situation remained unclear and there will surely be more cases to come in practice where approvals will be requested and second “approval chains” need to be avoided. Thus it became evident that this uncertainty had to be eliminated.

Treaty “on the use and administration of the territorial sea between 3 and 12 nautical miles”.

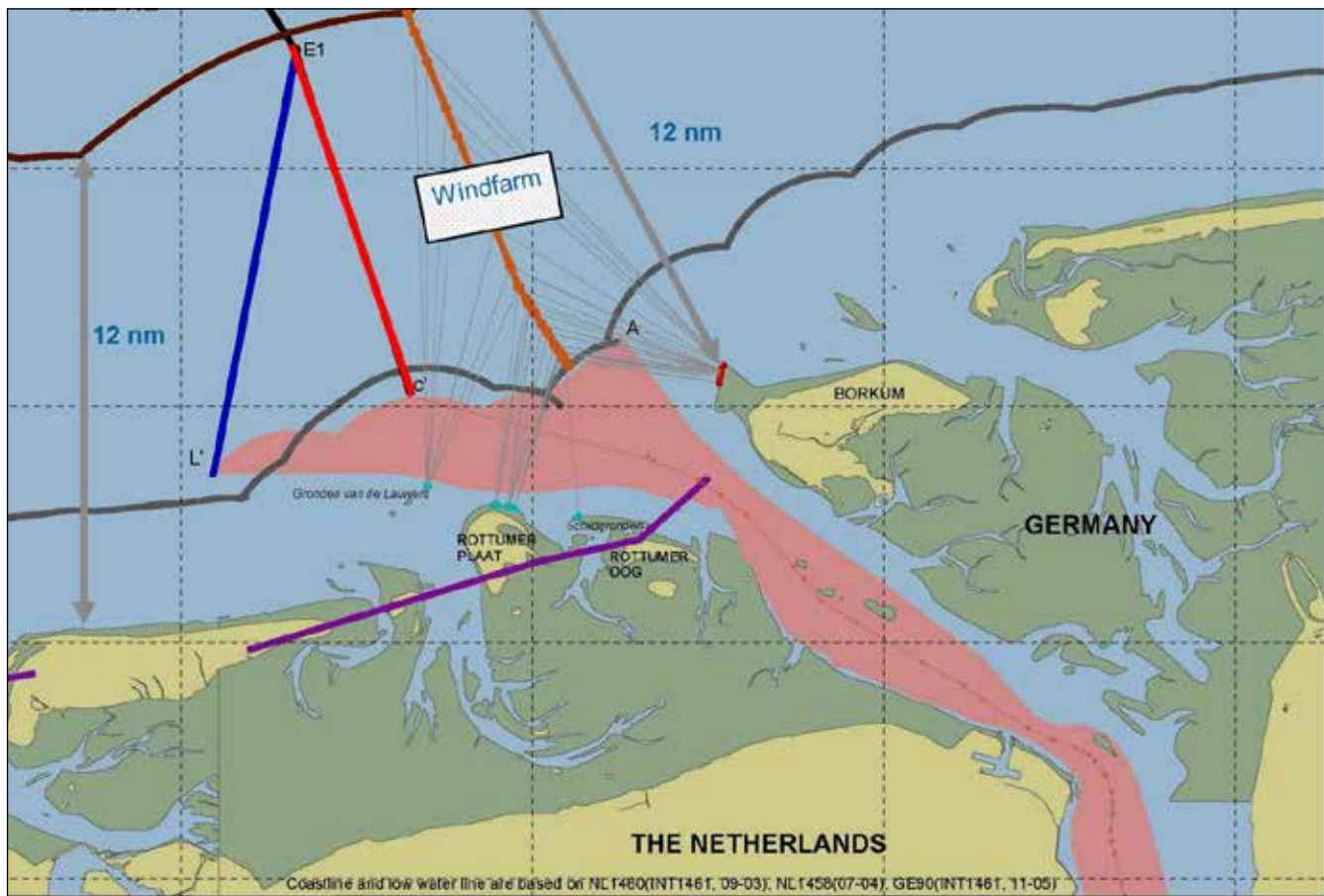


Fig. 7: Sketch showing the area between 3 and 12 nm

Consultations began already in the 1980's to solve the issue of the undefined common boundary between 3 and 12 nm. Different proposals from the definition of the boundary itself to an extension of the Ems-Dollart-Treaty area didn't lead to a solution. In the sketch (fig 7) one can see the area of the Ems-Dollart-Treaty in red, the 3 nm in grey, the 12 nm in brown, the limit of the continental shelf in the disputed area in blue and the equidistance line in orange.

The practical impact of that unclear legal status was marginal in the beginning and could generally be solved by the Ems-Commission. But with the growing importance of that area for economic use and environmental protection the need for a new regulation became more

After consultations an agreement was finally reached in 2014. It fixes the substantial and for practice particularly important aspects:

- The construction of the windfarm “Riffgat” is being based on an assured basis of international law;
- The delimitation of responsibilities for marine cables, pipelines, windfarms, rights for exploitation and uses is being done along the line of the German-Dutch treaty of the continental shelf from 1964;
- The access to the high sea from the harbours of Emden, Delfzijl and Eemshaven remains without hindrance;
- The whole marine traffic management in that area will be concentrated in one joint vessel traffic service center

Although stated in the media repeatedly, this treaty is not an agreement about the boundary in the Ems estuary. It explicitly does not include a border between the two countries, but it provides legal certainty on both sides with a pragmatic solution. This is important for further investments and the administration of the Ems estuary, which becomes more and more important due to the growing relevance of the coastal seas both economically and ecologically.

Case 3: List Deep (Lister Tief)

The List Deep is a trench between the islands of Sylt and Römö. In the year 1921 it was defined as the boundary between Denmark and Germany. Since then, the trench has been moving northwards. This is due to the significant natural redistribution of sand in the wadden sea. Germany claims that the boundary is formed by the talweg of the List Deep and is moving together with the trench. Denmark states that the boundary is fixed with the position of the trench in 1921. (Fig. 8: Page 53) Chart showing the area of the List Deep

In Fig. 8 the blue area shows the sandbank that is moving northwards. The dot and dash line marks the German interpretation of the current boundary north of

that sandbank. The dash line is the boundary as of 1921. Within some years from now on the trench “List Deep” will not move further north but jump back to a position south of the sandbank and start moving north again.

In former negotiations no solution was found. New consultations are planned. As the area in question is not of higher economic importance, the pressure is not too high for a quick settlement.

Summary

The sea is growing in importance economically and ecologically. Thus the maritime boundaries are becoming more and more important. The influence of coastal states has been extended seawards, in several cases beyond 200 nm. The UNCLOS regulations provide a solid legal basis. But there is still room for interpretation and the necessity for bilateral or multilateral agreements. On the one hand, the cases for the German part of the North Sea show that even within the EU maritime boundaries are disputed, although there are pragmatic solutions or workarounds in place. On the other hand, a worldwide picture shows that there are cases with the potential for a geopolitical danger.



Fig. 8: Chart showing the area of the List Deep

The Borders of Hungary in an Evolving Geopolitical Context

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The Re-Emergence of Border Issues in Europe

Borders* have not disappeared with globalisation. While in the European Union (EU) the physical barriers of political frontiers have gradually vanished among member states, concurrently, the external borders of the Union have been reinforced within the framework of the Schengen Agreement. Correspondingly, the question of the limits of Europe is continuously debated in the context of potential future enlargements of the Union. This is illustrated by the debates over Turkish candidacy for EU membership, and relations with Ukraine, amongst other examples. Moreover, the increasing power of regionalists and numerous ethno-nationalist movements in member countries of the EU may result in situations where border changes can once again be on the political agenda at interstate and intrastate levels. For example, if the Basque population of Spain, in the name of the Self-Determination Principle, decides to opt for its own independent state, this will inevitably lead to border issues, not only in that country, but in France as well, as the territorial limit of the Basque region does not correspond with the standing border between these two nations. Likewise, in Southeast Europe, independence of Kosovo may still impact different boundary issues. For instance, the question arises that if the Albanians of Kosovo can have their own state, then, could the Serbs of Bosnia and Serbia have the right to be unified under the sovereignty of one Serbian state? In addition, would Albanians of Macedonia one day want to be unified with Albanians of Kosovo in one state as well? As the secession of Kosovo from Serbia illustrated, in Europe, the movements of national emancipation that affect multi-ethnic and multi-national states, and their neighbours, are confronted with crucial geopolitical questions: *What sort of political sovereignty is to be sought? What will the territorial arrangements be and how will they be realised?* (Through negotiation, attribution, or conquest?). (Foucher 1991: 12) In case of a potential break-up of Ukraine, what will the status of territories formerly belonging to Russia, Romania, Poland, and Hungary, turn out to be, and how will the borders be defined?

Since the 2015 *migration crisis*, the issue of borders has gained considerable importance in the political

agenda of not only a number of European countries, but in the EU as a whole, as the capacity of the EU to maintain the Schengen Zone has been seriously put into question due to the migration pressure on significant parts of the external border of the *single-visa* zone. In this context, since the beginning of the recent mass migration movements, Hungary has found itself in a vulnerable geopolitical situation due to the fact that on the one hand it has to assure control over external Schengen borders, and on the other hand, as a small export-oriented nation with a significant number of Hungarian communities living in neighbouring countries, she has a key interest in maintaining free circulation of people and goods which can best be facilitated by open borders.

When examining boundaries, it is important to take into consideration the cognitive aspects of geopolitics. In this framework, borders have three points of reference: the real, the symbolic, and the imaginary. The *Real Dimension* refers to spatial limits of the exercise of sovereignty of a given state in its proper modalities: open boundary lines, semi-open, and closed. The *Symbolic Dimension* refers to the role of borders in the collective identity of a given population, and their mental representations related to the limits of their territory. Often, these representations refer not only to the actual limits of the territory of the state, but also to limits of former territorial configurations. The *Imaginary Dimension* of the border refers to the relation with the “Other”, the neighbour, friend or enemy, situated outside of state borders. To examine a geopolitical situation, it is necessary to examine the role of ideas which influence the mind-set of different actors seeking control over a given territory. These ideas, termed *representations* in geopolitics, often refer to a subjective dimension of a given territory in the collective mentality of a human group, connected to national myths, symbols, religions, and a specific interpretation of history. Representations can be diffused through various narratives and discourses. The geopolitical analysis of borders seeks to understand the effects of boundary lines on the internal and external interactions that take place on territories separated by boundaries, on the political elites of states, and on peoples; it also takes into consideration the cognitive level constituted of geopolitical representations, discourses and narratives, linked to the boundaries.

Whether a state boundary is open to different flows, or represents a barrier to variable types of exchanges between populations separated by this border, first and foremost depends on the nature of relations between the states sharing that border. As Michel Foucher, French expert on the geopolitics of borders, states: “There are no border problems; there are only problems with regard to relations between states and people around borders”. (Foucher 2013: 162) The issue of borders has to be examined in the geopolitical context of a given time-period and on different geographic scales: *regional*, *continental* and *global*. The power-shifts, the evolution of the balance of power between the great powers of a given

* The notion of boundary and border is used in an interchangeable way in this article.

period, and the interactions between regional, continental, and global actors, can have significant impacts on the geopolitical dynamics of borders. This multi-scalar approach is important as different powers located in proximity or remoteness from a given geopolitical rivalry may support local or regional state or non-state actors based on their own geopolitical and/or economic interests. These kinds of influences can impact geopolitical processes, including those related to borders.

The borders of Hungary have to be examined in this multi-scalar perspective, as regional factors (Ukraine Crisis and the challenge of migration flows transiting through Hungary from neighbouring countries), continental dynamics (evolution of the balance of power in the EU, its integration and disintegration dynamics, and their relative impact on Hungary), and world scale parameters (the geopolitical competition between Russia and the United States, and the growing importance of a China which considers Central Europe as an important geographic zone for its project to establish the 21st Century Silk Road, connecting Europe to Asia), can exercise influence on the periphery conditions of this country. Due to the limited length of this article, all of the above-mentioned factors are not integrated in this text.

The Buffer-Zone Position of Hungary

Hungary is a landlocked country situated in the Carpathian Basin with a total area of 93,030 square kilometres (land: 89,608/water: 3,420). When examining her borders, it is necessary to take into consideration the location of the country in Central Europe, which has historically (and presently as well) constituted a *buffer zone* between competing spheres of influence

of different powers. Due to its geographic location, Central Europe has been a zone of contact and confrontation between different powers and civilisations throughout history.

During the Cold War, the region situated between Russia and Germany was commonly called Eastern Europe. This concept referred to a geopolitical representation that originated in the geostrategic situation of Europe after 1945, characterized by the division of the continent into two spheres of influence under the control of the two main victorious powers of the Second World War, the United States and the Soviet Union. Since the erosion of the Potsdam/Yalta territorial order, back in the 1989 to 1991 period, the former denomination of Eastern Europe does not correspond to a rapidly evolving geopolitical situation, influenced by ethno-cultural and historical cleavages. The former Eastern European space can be divided according to the following divisions: Central Europe (more or less the territory of the former Austro-Hungarian Empire), Baltic States, East Europe (Byelorussia, Ukraine, and Romania), and Southeast Europe (mainly states in the Balkan Region).

The Central and Southeast of Europe are situated in a buffer zone between Germany and Russia. In addition to competition between these two important powers, other major states have always impacted the internal geopolitical dynamics of this zone. The competition between these different external actors has influenced nationalist projects, border issues, and territorial arrangements. This region is also a “connecting zone” between important geopolitical spaces: Russia, the Middle East, and North Africa, among others. For instance, one can think of the importance of the Danube River (one

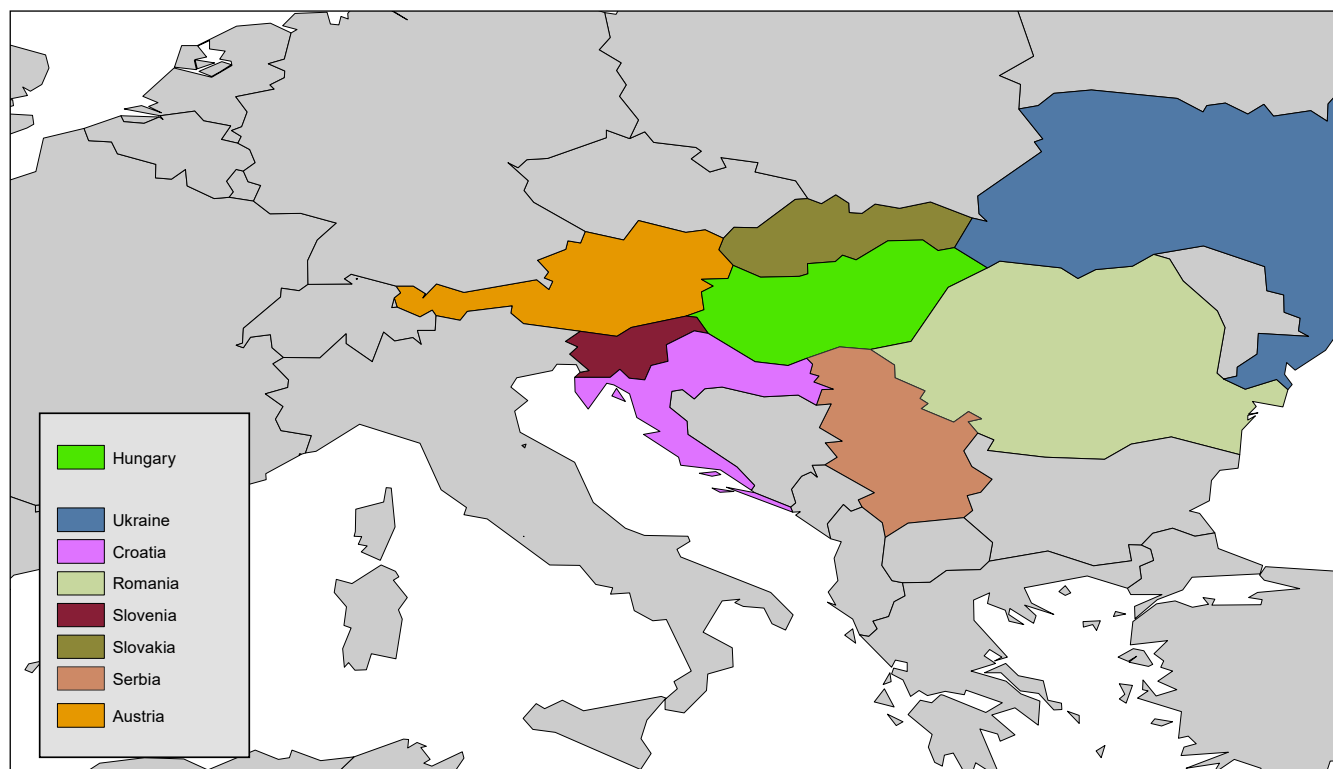


Fig. 1: Hungary and its neighboring countries

of the most important rivers in Europe); 2.850 kilometres long. The axes of road and train communication in Central and Southeast of Europe are as important as the European Union's "Project of Corridors" illustrates, with the development of highways, rail lines, airports, and maritime and fluvial ports in the region. This region has a geopolitical importance as well in energy transport infrastructure for petrol and gas arriving from Russia, the Caspian, and other regions, which are transited towards Western Europe. Due to the importance of the geographic location of Central and Southeast Europe as a connecting zone between the East and the West, China has been increasing its economic presence in this area that may play an increasingly important role in Beijing's strategy of the revival of the Silk Road in the 21st Century. Increasing Chinese investment in port, railway and highway infrastructure in Southeast and Central Europe is part of China's geo-economic strategy in the extension of its "One Belt and One Road Initiative", also referred to as the "New Silk Road". (KSH 2011)

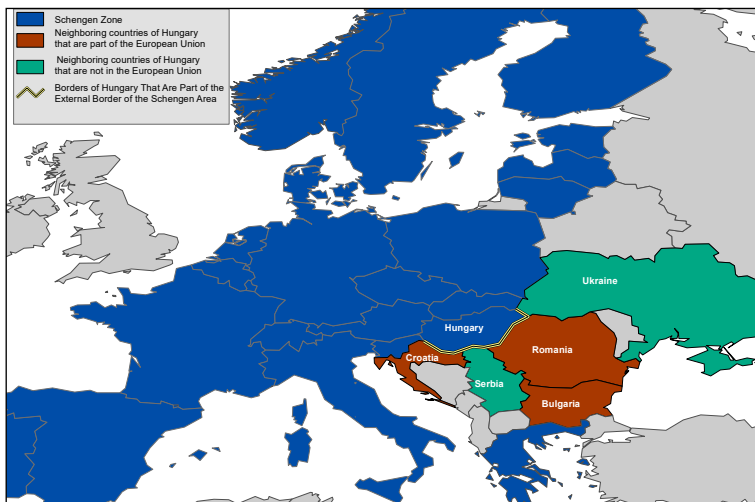


Fig 2: Hungary, the EU and the Schengen Area

In Central and Southeast of Europe, from a cultural point of view, the first cleavage refers to religious identity. One can distinguish the Catholic and Protestant zones (Western Christianity), the zones populated by Orthodox Christians, and those where Islam is the main religion. These differences in collective identities played an important role in nationalist conflicts leading to the disintegration of Yugoslavia in the 1990s. A second characteristic of Central and Southeast Europe is a rather heterogeneous geographic distribution of different communities. A patchwork of ethnicities can be found in several parts of this region. One community can represent a majority in a given geographic zone but numerically represent a minority in the given state. Collective identity differences are based on a great variety of languages, religions and ethnicities.

Hungarians are part of the Finno-Ugric people; in terms of ethnicity and language they do not share a common identity with any of the surrounding Slav, Germanic, and Romanian populations. In terms of religion, the dominant affiliation is Catholicism, followed by Protestantism.

Current Borders of Hungary

The length of the current borders of Hungary is 2.106 km. The length of the border with each of the neighbouring countries is as enumerated: Austria 321 km, Slovakia 627 km, Ukraine 128 km, Romania 424 km, Serbia 164 km, Croatia 348 km, and Slovenia 94 km.

Hungary has been part of the Schengen Zone since 2007 and significant sections of its borders are limits of the external Schengen boundary: with Croatia and Romania which are EU member states, and with Ukraine and Serbia which are not.

The population factor is an important consideration in the examination of the current borders of Hungary. The population of Hungary is close to ten million people: 9,980,000. Fertility rate is 1.44, which is considerably lower than the 2.1 necessary for population maintenance. Hungary is a relatively homogenous country from an ethnic point of view. Minorities represent 7.6 % of the population. The largest ethnic minority groups are: the Roma (315,000 people) and the Germans (184,000).

(Levitin et al. 2016)

One of the main issues concerning the current boundaries of Hungary lies in the fact that more than 20% of all Hungarians live outside of them: (Kocsis et al. 1998: 15) Romania 1250'000; Slovakia 460'000; Serbia 254'000, Ukraine 150,000; Austria 55,000; Croatia 14,000; and Slovenia 6000. Consequently, the state borders of Hungary can be considered a separation-line of a "Divided Nation". Hungarians living outside of Hungary's borders constitute the largest minority abroad, apart from the 15.1 million Russians living outside of Russian state boundaries.¹

The existence of minority groups can first of all influence the internal geopolitical structure of a given state in terms of its territorial organization: a state can opt for power-sharing in terms of different forms of autonomy/federalism or aim for maintaining a centralized state model. Second, it can also affect external geopolitics in terms of inter-state relations. The fact that a nation is divided by political frontiers can have serious implications for state relations, in particular if subgroups of the nation are found in neighbouring states. The situation in which one part of a nation is under the sovereignty of another state can lead to the phenomenon of "Kin State." A Kin State can provide different kinds of support to the parts of its nation separated from it by political frontiers. These parts of the nation, living under the sovereignty of neighbouring countries, and forming minorities there, can receive educational, cultural, economic, and political support, from the nation-state of their origin. In extreme cases, this help can even take the form of military support, as it happened in

¹ Károly KOC SIS, Eszter KOC SIS-HODOSI, Ethnic Geography of the Hungarian Minorities in the Carpathian Basin, Geographical Research Institute of the Hungarian Academy of Sciences, Budapest, 1998, p. 15.

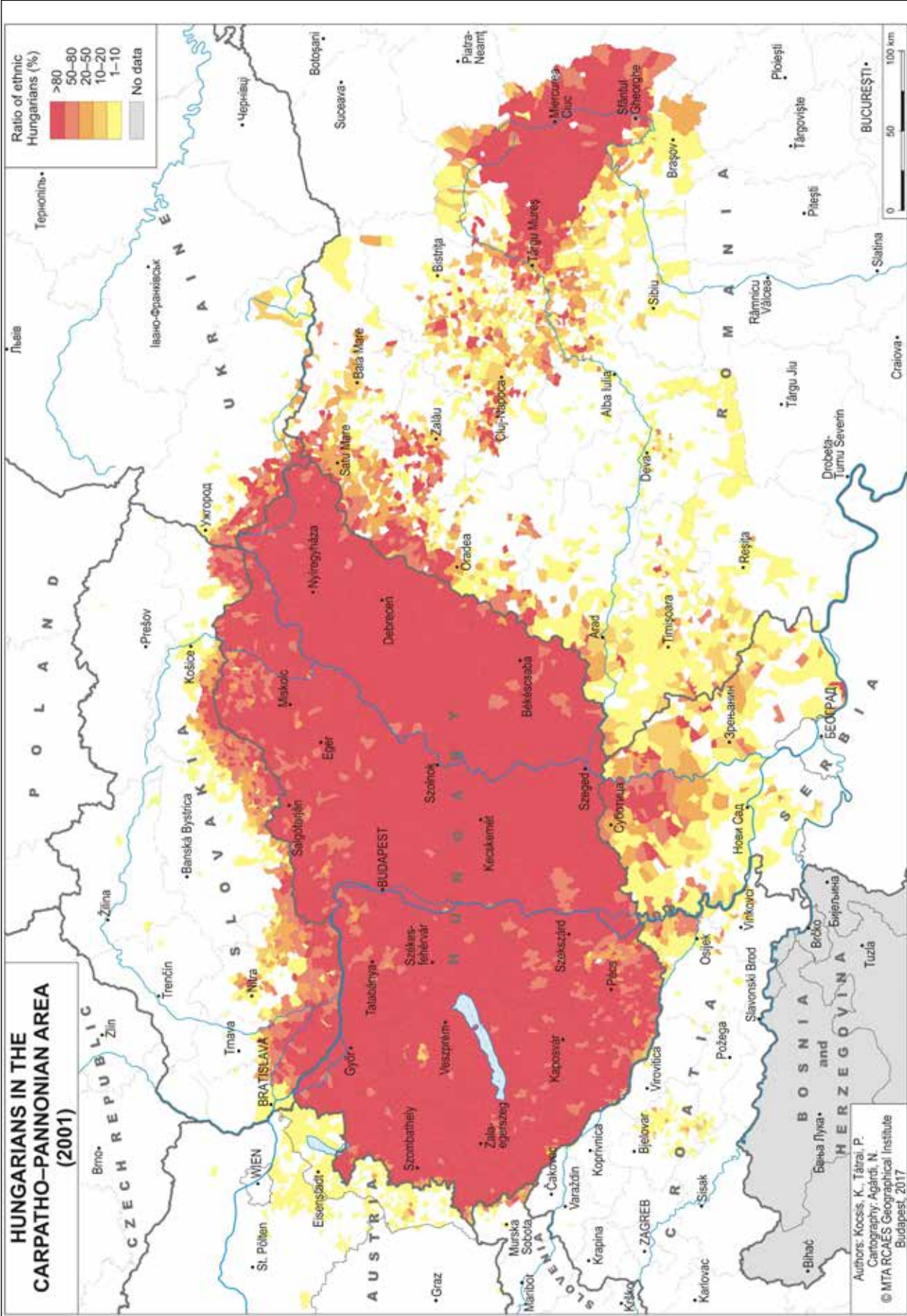


Fig 3: Hungarians in the Carpatho-Pannonian Area (2001)

the 1999 Kosovo Conflict when the Kosovo Liberation Army used the territory of Albania for training and logistic purposes.

The Hungarian situation illustrates the abovementioned internal and external geopolitical aspects of minorities. Hungarian minorities seek power-sharing arrangements to maintain their identity, in particular in Slovakia, Romania, Serbia and Ukraine. Hungary, as their kin state, provides various means of support to these minorities living in its periphery. For instance, since 2010, Hungary has been granting Hungarian citizenship to ethnic Hungarians living outside of its borders. Protection of the interests of Hungarian communities abroad has been an important foreign policy task for all Hungarian governments since the end of the Cold War.

Geo-Historical Factors: The Evolution of the Territorial Configuration of Hungary

The French expert in geopolitics, François Thual, highlights the importance of carrying out a so-called “Outcome Assessment” of the territorial evolution of states, in a geopolitical analysis. This process refers to the examination of state formation processes on a given territory: territorial expansions; also, territorial contractions resulting in boundary changes of states. This geo-historical territorial evolution of territory of states can help one better comprehend the intentions, motivations, perceptions, and enduring logic, related to territories that these states controlled, control at the present, or may want to control in the future. (Thual 1996a: 55) For example, gaining access to warm seaports has been a constant factor in Russian foreign policy, and the territorial expansion cycles in Russian history, and continues to be an important factor in current Russian geo-strategy as the recent annexation of Crimea and Moscow’s interests in maintaining military bases in Syria illustrate.

Another important factor in the historical context is the study of the demographic, state, and nation formation processes of human groups occupying a given territory. The evolution of demographic changes on a given territory that can result from differences in birth rates, migrations, colonization, and conflicts that lead to population changes, among other factors, has to be examined in different periods of history. (Thual 1996b: 65) The evolution of territory and its demographic and ethnic structures influenced by historical processes is to be taken into consideration through three different timeframes according to the French historian Fernand Braudel: short-term; medium-term; and *longue durée*, or long-term, duration. (Braudel 1990: 15)

It is important to take into consideration a relatively late nation-state formation process borne out of the historical evolution of Central and Southeast Europe, with the exception of some states such as Poland, Hungary and Czech, as these nations ruled their own medieval states before they were incorporated into large empires. As a matter of fact, the nations of East, Central, and Southeast Europe, were either part of the Otto-

man, Habsburg, and/or Russian empires, for centuries.

Another important historical factor is that after the disintegration of these empires, for a considerable number of states, political borders were imposed, and not negotiated. The territorial arrangements of the Versailles and Trianon Treaties, concluded after the end of the First World War, led to border changes that did not resolve problems of nations and minorities but aggravated them instead in some cases. Napoleon Bonaparte’s affirmation that, “History is written by the winners”, was well illustrated by the imposition of the abovementioned Treaties. The victorious states took little or no consideration of ethnic, economic, cultural, and historical factors. The perception of these imposed territorial arrangements led to revisionist policies, in particular in Germany and Hungary, as these two countries wanted to modify the territorial status-quo defined by the treaties concluded after the First World War. After the end of the Second World War, the Yalta-Potsdam geopolitical order froze the national question for 45 years. On the other hand, in the Communist Block, the question of minorities and borders was officially resolved in the so-called *Fraternal Community of Socialist States*, governed by Marxist Ideology. Therefore, it was not a big surprise that with the end of the Cold War the *national question*, the issue of borders and minorities, re-appeared in the region.

The frequent territorial changes of states in Central, East, and Southeast of Europe has contributed to the geopolitical vulnerability of these regions. Moreover, arbitrary delineation of borders has led to the disruption of former common economic zones, thus creating obstacles to regional integration. The separating lines of political frontiers and the rather heterogeneous geographic distribution of a wild variety of communities have led to geopolitical configurations in which the nation and the state do not always coincide in a geographical space; a state can cover one part of a neighboring nation at the same time that one or more parts of the nation belonging to the first state can be under the sovereignty of another state or group of states. These territorial configurations have led to geopolitical tensions and conflicts. The boundary of Hungary, dividing the Hungarian nation, is a relevant example for this situation. Moreover, the historical evolution of territorial configurations has considerably impacted the geopolitical representations, narratives and discourses of political elites and populations of these regions.

Due to the limited length of this article, a shorter summary of the “Outcome Assessment” of the evolution of the territorial configuration of Hungary, which illustrates the main characteristics of the abovementioned geo-historical characteristics of Central Europe, is presented below.

An independent state, called Hungary, first appeared following the conquest of Hungarian tribes in the Carpathian Basin, under the leadership of Chieftain Árpád in 895². With the crowning of Stephen I, the grandson of Árpád, the Hungarian Kingdom (HK) was established and integrated into Europe by adapting to Roman Catholicism. The HK was an important state in the Middle Ages, controlling the territory of the Carpathian Basin. Due to family unions with Croatia and Poland, and annexations, the territory under the sovereignty of HK reached its peak in the second-

half of the 14th Century with control over 577.000 square km of territory. By the end of the 15th Century, HK still held control of 482.000 square km of land. A continuity of a core territorial configuration of the HK existed until 1945, with some minor fluctuations. The first territorial discontinuity factor was related to the Ottoman expansion. After the battle of Mohacs in 1526, which resulted in Ottoman supremacy over the territory of the HK, its lands were divided into two sections: The one under the control of the Habsburg Kingdom, and the second under the Principality of Transylvania.

² Maps and historical data references used in this short summary of the Outcome Assessment of Hungary are from: Ed., KOCISIS ?

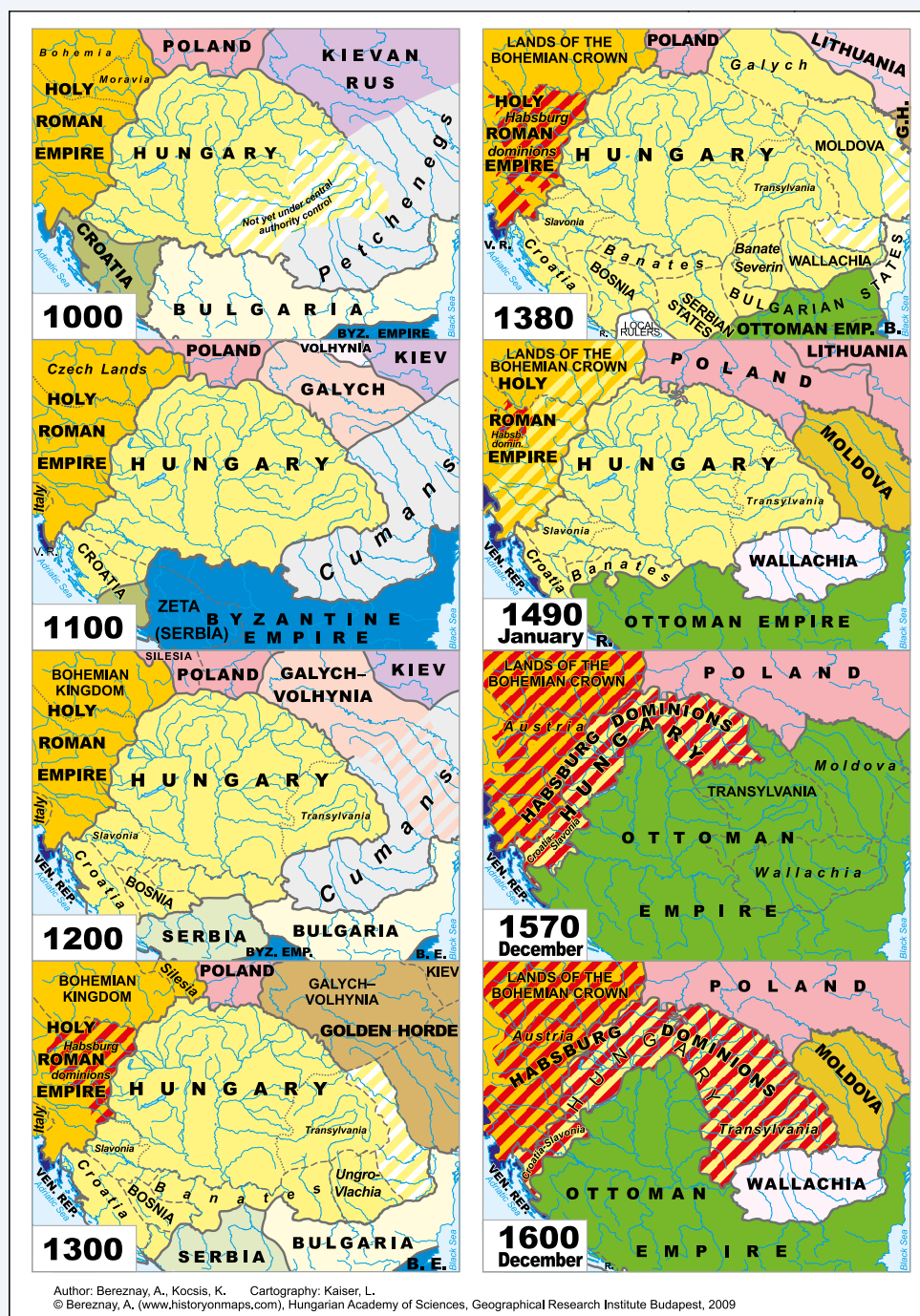


Fig 4: States in the Area of the Carpathian Basin (1000–1600)

The Ottomans were defeated by the army of the Holy League at the Battle of Buda in 1688, which resulted in the incorporation of the territory of the Hungarian Kingdom, including Transylvania and Slavonia, in the Hapsburg Empire. After the defeat of the Hungarian uprising against the Hapsburgs in 1848, Hungary obtained a great degree of autonomy in 1867 when the dual Monarchy of Austria–Hungary was established. Following the dissolution of the Austro-Hungarian Monarchy at the end of the First World War, the 1920 Trianon Treaty was imposed on Hungary. The country lost two-thirds of its territory, and

about one-third of the Hungarian population fell outside of the newly defined borders of the country. After 1920, Hungary opted for a revisionist policy and in 1938 and 1940 it regained some primarily ethnic Hungarian regions of the former Hungarian Kingdom due to the support of Italy and Germany. Through military campaigns, Hungary annexed regions of Trans-Carpathian Ukraine in 1939 and (ethnically mixed) Bačka, Baranja, Međimurje, and Prekmurje of Yugoslavia, in 1941. Following the end of the Second World War, Hungary's boundaries reverted to what had been set by the Trianon Treaty.

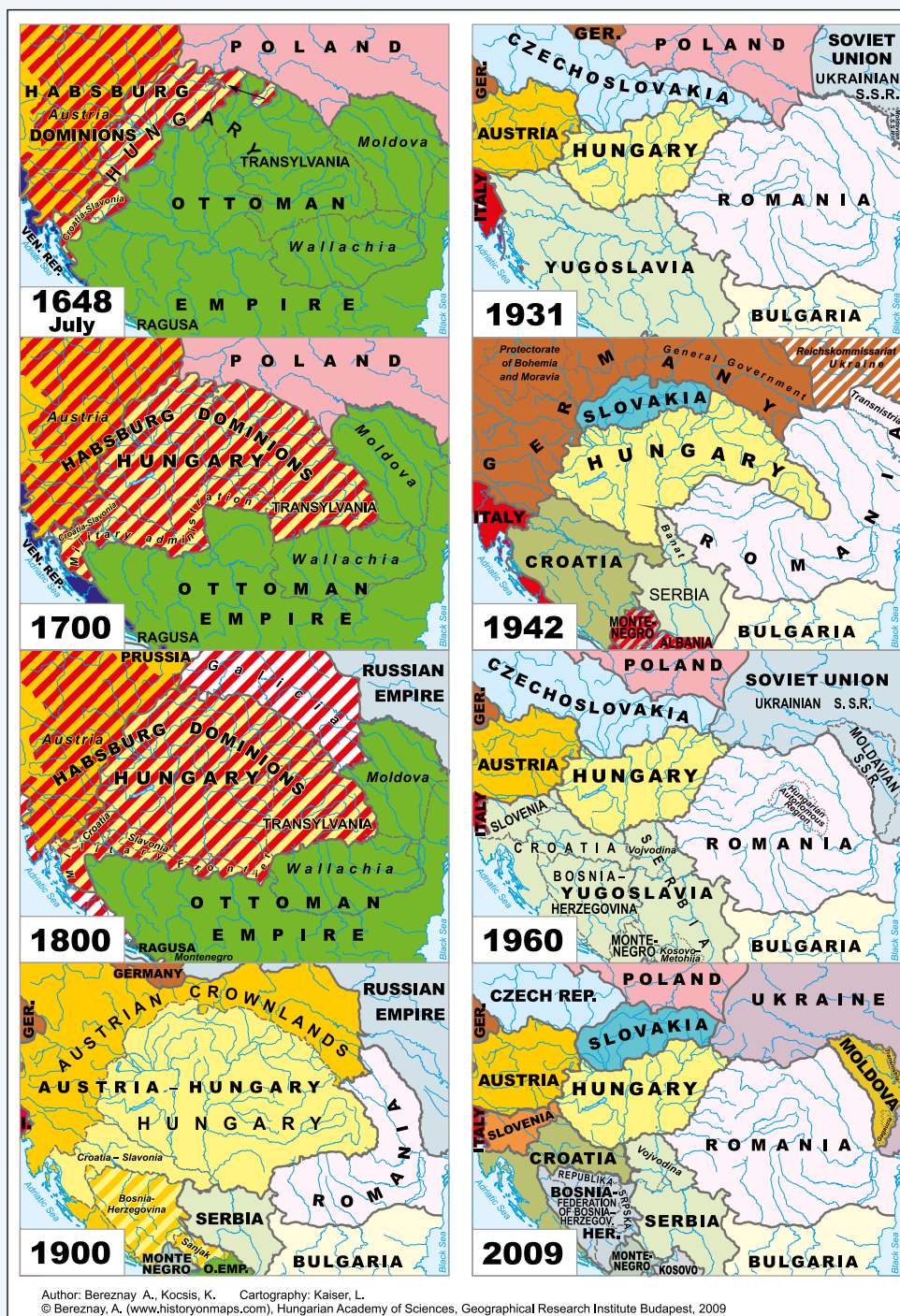


Fig. 5: States in the Area of the Carpathian Basin (1648–2009)

This map shows the visualisation of the geopolitical representations and narratives formulated by the revisionist policy of Hungarian governments after 1920



Fig. 6: Map of visualisation of the geopolitical representations and narratives formulated by the revisionist policy of Hungarian governments after 1920.

Hungarian geopolitical representations and narratives have been considerably influenced by historical factors, and in particular, by the territorial changes that have affected the Hungarian Nation. The following postcard, which was recently purchased in Budapest by the author of this article, is a relevant example of the



Fig. 7: States in the Area of the Carpathian Basin (1648–2009)

contemporary visualisation of the “Trianon Syndrome” of the Hungarians. The map on the postcard illustrates both the current political boundaries of Hungary and those of the so-called “Greater Hungary”, referring to the territory of the Hungarian Kingdom before the 1920 Trianon Treaty.

Current Border Security of Hungary in a Regional and Wider Geopolitical Context

At this juncture, the current borders of Hungary, and their relevant political and security aspects, have to be taken into consideration, both in the regional and wider geopolitical contexts. There are two main external *crescents of crisis* in the relative geographic proximity of the EU. The first *arc of crisis* is in the eastern periphery of the EU, with its epicentre in Ukraine. It is mainly affected by the war in Ukraine and the tensions between NATO and Russia. The second arc of crisis is in the south, with epicentres in Libya, Syria, and Iraq. Moreover, the growing demographic pressure of Sub-Saharan Africa should also be considered, as the Southern Dimension, since Europe will face increasing migration flows from this region.

The two main arcs of crisis are characterized by geopolitical fragmentation dynamics influenced by internal, regional, and global geopolitical rivalries. On internal and regional levels, the tribal, ethnic, and/or religious factors, are exploited by the different state and non-state actors. On the global level, the evolution of the US-Russia geopolitical competition should be taken into consideration,

as it significantly affects both the Eastern and Southern arc of crisis zones. The evolution of the geopolitical situation in these two arcs of crisis, in the Eastern and Southern periphery of the EU, impacts Hungarian border security.

The US geopolitical theorist of Polish origin, Zbigniew Brzezinski, emphasises the importance of Eurasia as “the globe’s largest continent... A power that dominates Eurasia would control two of the world’s three most advanced and economically productive regions. About 75% of the world’s people live in Eurasia, and most of the world’s physical wealth is there as well, both in its enterprises and underneath its soil... Eurasia accounts for about three-fourths of the world energy resources... Eurasia is thus the chessboard on which the struggle for global primacy continues to be played.” (Brzezinski 1997: 31) In his book, Brzezinski elaborates a geo-strategy for the United States to maintain its dominant influence in Eurasia. His thinking is in line with the Anglo-American geopolitical thinkers of sea-power, such as, Halford Mackinder, or, Nicolas Spykman, amongst others, when he states the following: “Who controls Eurasia controls the world”. (Brzezinski 1997: xiii) Brzezinski argues in his book that the main geopolitical objective for the

United States is to prevent the emergence of a dominant and potentially rival Eurasian power (i.e. Russia, China, and a German Dominated Europe). In this context, a US geo-strategy must deter any rapprochement between a German-dominated continental Europe and Russia. This has become an even greater imperative, as the balance

of power in the EU has been altered even more in favour of Germany due to the 2016 Brexit vote, the British decision to leave the EU.

According to Brzezinski, Geopolitical Pivots are those states whose importance is not derived from their power and impetus, but rather from their sensitive location, which in some cases gives them a special role in either defining access to important areas or in denying resources to a significant player. (Brzezinski 1997: 41) "Ukraine, an important space on the Eurasian chessboard, is a geopolitical pivot because its very existence as an independent country helps to transform Russia. Without Ukraine, Russia ceases to be a Eurasian empire". (Brzezinski 1997: 46) Ukraine, situated in the buffer zone separating Russia and Western Europe, represents a major geopolitical stake, with its territory of considerable size (577.400 km²; 603.550 before Crimea was annexed by Russia in March of 2014), important agricultural potential (with good hydrography), and a population of 43 million. The recent US/EU-backed regime change in Ukraine, which followed the 2014 "Maidan Revolution", was an important element of the US-led sea power strategy to roll back Russian influence and create a major obstacle to potential geopolitical collaboration between resource-rich Russia and a German-dominated continental Europe that could provide technology and investment to modernise the Russian economy.

As concerns the southern arc of crisis, the geopolitical fragmentation dynamics of this zone were considerably impacted by the destabilisation effects of the so-called *Greater Middle East Project/Initiative (GMEP/GMEI)*. Although the Greater Middle East concept was used earlier in US strategic circles from the 1970s on, influenced mainly by Neo-Conservative thinkers, it was put into practice by the George W. Bush Administration. As the map below illustrates, the concept of the Greater Middle East covers a large area, including Northern Africa, the Middle East, the Caucasus, and Central Asia.

The Greater Middle East, later referred to as the New Middle East, is a strategic zone containing most of the world's oil and gas reserves, and situated at the intersection of the spheres of influence of all the great powers, is consequently a rather important geopolitical region. The reorganisation of this geopolitical space, advocated by Neo-Conservative groups in the US, started with the 2003 US-led invasion of Iraq.

The two maps on following page "Redrawing the Middle East Map" and "Reshaping The Middle East Map;

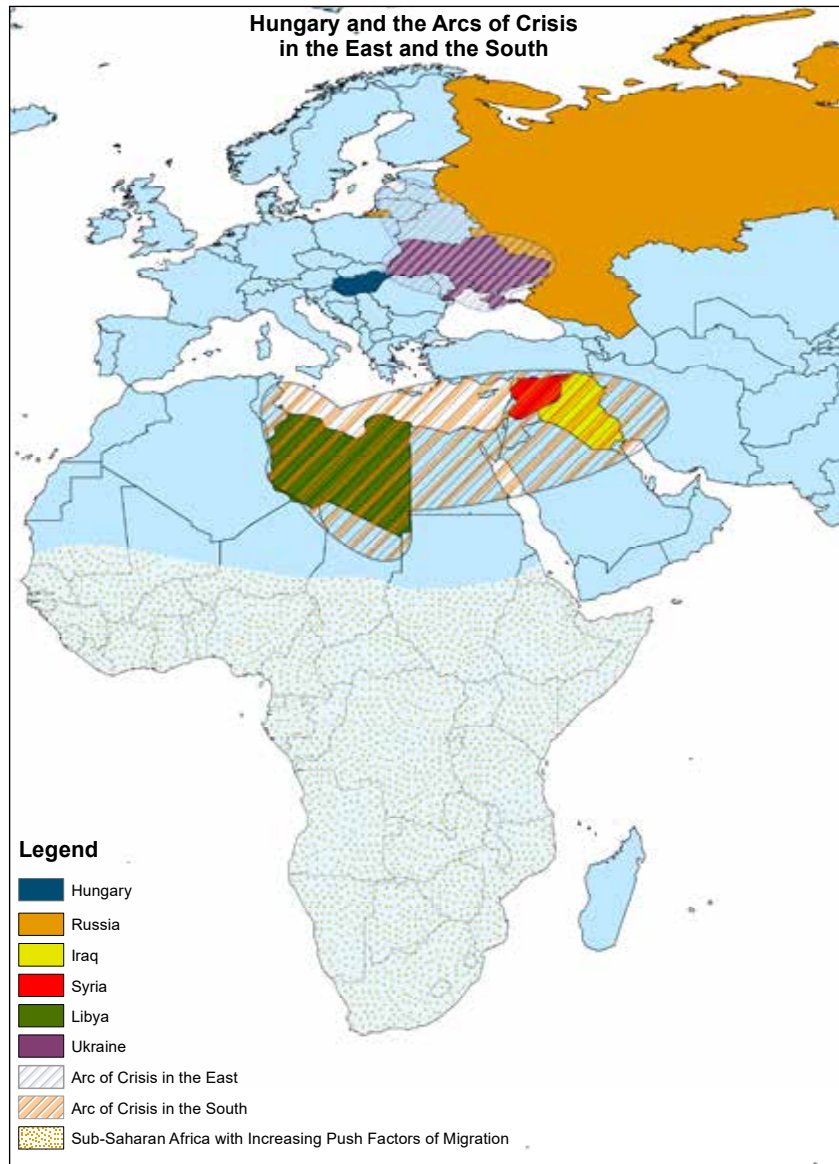


Fig. 8: Hungary and the Arcs of Crisis in the East and the South

How Five Countries Can Become 14" are indicative of the US planned re-organisation of the so-called Great Middle East Region, which has resulted in the fragmentation of a certain number of states in this area. The officially declared US objective of getting rid of dictatorial regimes and introduction of democracy in different countries of the GMEP Region proved to be a destabilisation project. It resulted in the fragmentation of territories and destruction of secular states, such as, Iraq, Libya, and Syria, and created a potential playground for radical jihadist groups. The current chaotic situation in Libya provides a relevant example of the geopolitical consequences as an outcome of the 2011 NATO military intervention which resulted in regime change and partial collapse of that state³. On the one hand, this Western-led foreign intervention removed the authori-

³ Bernard LUGAN, French geopolitical expert on Africa, made a considerable number of relevant analyses on the potential consequences of the Western-led 2011 regime-change operation in Libya. One can consult his Journal called, *Afrique Réelle*, and his book, *Histoire et Géopolitique de la Lybie*. Information on these publications can be obtained from the following site: <http://bernardlugin.blogspot.ch/>

These two maps were made by Lieutenant-Colonel Ralph Peters, a retired officer of the U.S. National War Academy. It was published in the *Armed Forces Journal* in June of 2006.

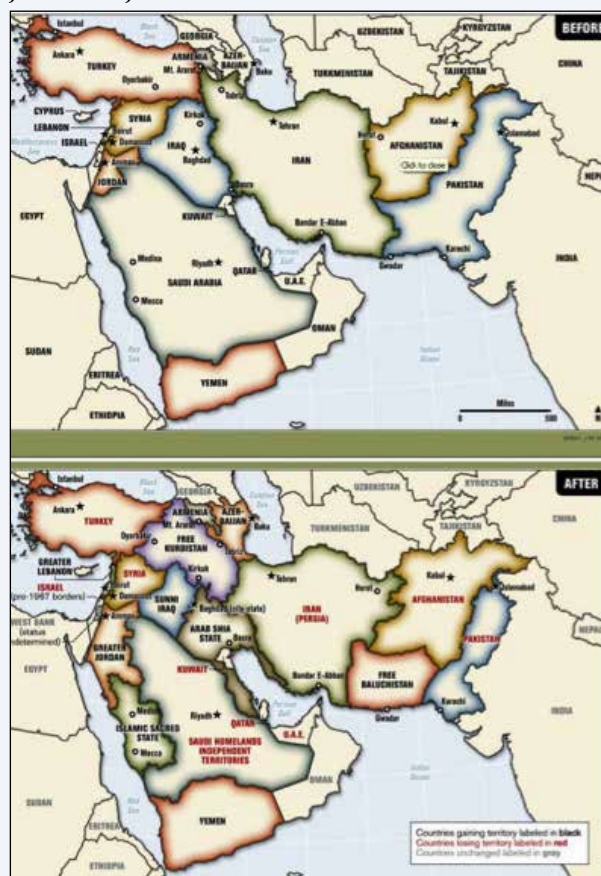


Fig. 9: Redrawing the Middle East Map

tarian regime of Muammar Gadhafi, but on the other hand, it proved to be a catalyst for chaos and disintegration of the Libyan State, and consequently facilitated the transfer of a considerable amount of weapons from Libya to DAESH/ISIS, the so-called Islamic State⁴. In this context, it is important to recall that the resulting chaotic situation of Libya has culminated in a much greater security threat for Europe than the former Gadhafi Regime ever could. This, in particular, is the case in the context of migration. Libya played a rather important role in the control of migration flows towards Europe. The current chaotic situation characterised by the competition of different regional groups for power in Libya, favours the lucrative activities of criminal organisations involved in human trafficking, a multi-billion-dollar business. Migrants from all over Africa seek to reach Libya as a transit point towards Europe. In general, implementation of the US-led Greater Middle East Policy, resulting in the fragmentation and destabilisation of geographic zones in the Middle East and North Africa, stemmed the significant increase of migration flows towards Europe, as the 2015 Migration Crisis illustrated.

⁴ Jacques Baud, a former analyst of the Swiss Intelligence Service, made a very good analysis on this situation in his recent book, *Terrorisme, Mensonges politiques et stratégies fatales de l'Occident*, Rocher, Monaco, 2016.

The map below, "Reshaping the Middle East Map", was made by Robin Wright, expert at the United States Institute of Peace (USIP). The original version of this map was published in the *New York Times* in September 2013. The map indicates how 5 countries can become 14. The current disintegration processes of Iraq, Syria and Libya into different entities are illustrated on this map. It is interesting to observe the fragmentation of Saudi Arabia and Yemen on this map.

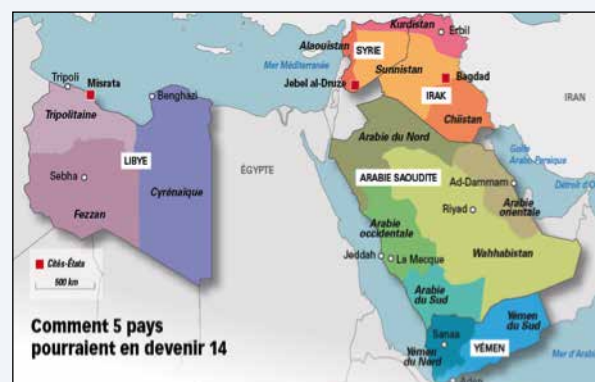


Fig. 10: How 5 Countries Could Become 14

Migration flows towards Europe will probably increase even more, due to the demographic pressure from the rest of Africa. According to the projections of the United Nations, (UN 2015) the population of Africa may reach 1,7 billion in 2030, 2,5 billion in 2050, and even surpass 4 billion by the end of this century. The most significant demographic rise will take place in Sub-Saharan Africa. Job creation and socio-economic development may not meet the challenges of this substantial rise in population; this in particular can be a problem for the rapidly growing number of young and active populations. Besides, this region has to confront political instability, climate change, desertification, water scarcity, and major problems with its public health and education infrastructure. All these push factors may motivate young people to move towards other regions of the world, and in this context Europe will remain a target location for African migrants.

The two main challenges for Hungary in the context of borders are, the challenge of mass migration flows, and the instability of Ukraine. The 2015 migration crisis and perceptions on potentially new waves of mass migration resulted in a Hungarian policy of strict border control, including border closure, counter to a few other European countries, such as Germany which accepted more than one million asylum seekers on its territory, in 2015. In 2015, Hungary built a border-barrier, first with Serbia and then with Croatia. This border barrier has a height of 4 meters and length of 523 km. The Hungarian Defense Force is in charge of managing this border barricade. Cooperation exists with the Visegrad Four (V4) Countries, Czech Republic, Poland, and Slovakia, as these nations provide various forms of support to

Hungary to maintain effective control over its borders that are part of the external Schengen limits. Strict border patrols and the 2015 construction of a border fence resulted in a sharp decrease of entries by migrants and asylum seekers. In 2016, the Hungarian government announced construction of a new border barrier to be built alongside the existing one, which would strengthen defenses to respond if Turkey's policy on migration changed. Hungary would have to prepare for the eventuality of breach of the deal between Turkey and the EU, in order to clamp down on migration into Europe via the Balkans. At present, there are about 3 million refugees in Turkey, mainly from Syria.

At the end of April 2017 the Hungarian government announced that a second fence along its border with Serbia has been completed. In the Hungarian perception, Hungary has to guarantee the security of Schengen borders under its control. If the external Schengen borders are not protected, the whole Schengen Zone can disintegrate, which is not in the national interest of Hungary. Due to the presence of Hungarian minorities in neighboring countries, Budapest is interested in maintaining open borders and developing trans-boundary regional cooperation. The recent mass migration crisis illustrated the EU's incapacity to develop a common policy. The Visegrad 4 Countries are opposed to the imposition of an EU migrant quota scheme; it is important to note that these countries were satellites of the USSR, for more than 40 years, with rather limited sovereignty. Furthermore, the ongoing conflicts in big city suburbs of a sizeable number of Western European countries, and the various issues related to the integration of migrants of non-European origin, have impacted public opinion in Hungary and other Central European countries in relation to managing migration flows and border security. Also, during the 2015 peak of the mass migration crisis, there were controversies surrounding the application of the so-called Dublin Accords or the Geneva Refugee Convention, and the distinctions to be made between economic migrants and refugees. Additionally, the question of whether these mass movements of populations towards Europe were spontaneous or manipulated could be discussed. As a matter of fact, strategic engineered migration can be a weapon of war. (Greenhill 2008)

The other important security consideration for the Hungarian government that led to the closure of the border was the risk of penetration by ISIS-DAESCH combatants seeking to engage in clandestine activities in European countries; including terrorist activities, subversion, and constitution of sleeping cells, inter alia. In this context, it is important to highlight the difficulty to carry out an effective security check, due to the massive influx of people within a relatively short period of

time. In addition, ISIS-DAESCH did take control of a passport producing facility in Syria, and therefore prospective terrorists could use these passports to enter onto European territory. The risk of the extension of an ISIS-sponsored Jihad on the territory of European States, combined with growing economic crises in a number of European countries, and the swelling tension in big city suburbs, as the French situation illustrates, for example, might potentially result in civil war situations. It is important to mention here, that an estimated 4.300 foreign fighters from the EU joined the Islamic State in Syria and Iraq, and about 30 percent of them already returned to their home countries. Some 14 percent of these fighters have been confirmed as KIA (Killed in Action)⁵. Returning former ISIS fighters can present security risks to Europe. As contraction of territory under ISIS control has been taking place due to concerted attacks by different military forces (Kurdish, Turkish, Russian, American, and others), the mass exportation of asymmetrical warfare onto European territories could be the next logical strategy left for ISIS.



Fig. 11: Caliphate Daesch wants to create

What is more, the Caliphate Project of ISIS can be mentioned in this context. A Caliphate is a form of Islamic government led by a person considered the political and religious successor of Prophet Muhammad, and a leader of the entire Muslim Community. There has been no Caliphate since the end of the Ottoman Empire. The leader of the so-called "Islamic State of Iraq and Syria/Levant" (ISIS/ISIL), who is known as Abu Bakr al-Baghdadi, declared himself ruler "by order of God" of the Caliphate. Propaganda maps of "ISIS", widely disseminated online, show the areas that this "Caliphate" wants to control in the future. These areas, which cover the Middle East, North Africa, large swathes of Asia, and some parts of Europe, indicate the aim of ISIS to extend into Europe. Spain, which was Muslim-ruled until the late 15th Cen-

⁵ Source: 2016 Dutch National Coordinator for Security and Counter-Terrorism Study based on a variety of sources, including information provided by ministries, intelligence services, and other government agencies from 23 European Union Member States.

tury, is marked to form part of the ISIS Caliphate Project, as would the Balkan States and Eastern Europe, as far north as Austria.



Fig. 12: Transcarpathia

After the mass migration question, the second major issue related to Hungarian borders, in the contemporary geopolitical context, is the challenge of the Ukraine Crisis. The crisis and war in Ukraine are particularly sensitive for Hungary, from a security and political standpoint, as Ukraine is a neighbouring country that has a Hungarian minority population. One hundred and fifty thousand Hungarians live in Ukraine's Trans-Carpathian Region, in the proximity of their common border. Trans-Carpathia, also called Sub-Carpathia, is an area of 12,800 km² in the western part of Ukraine.

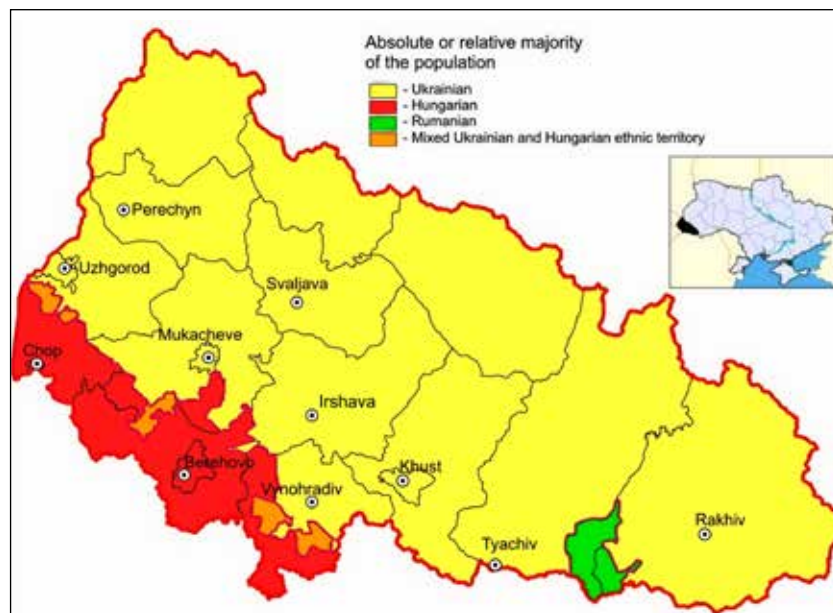


Fig. 13: Absolute or relative majority of the population

Most Hungarian of Ukraine have already obtained Hungarian citizenship as well, or are in the process of obtaining it. This is perceived negatively by Ukrainian authorities. Furthermore, current Ukrainian laws do not recognise the right of dual citizenship for their citizens. For the young Hungarians, a Hungarian passport is useful for going to Hungary, or other EU countries, to work,

and also to avoid military service in the Ukrainian Army as Hungarians have no perceived interest in the war between Kiev and pro-Russian separatists.

Since 11 June, 2017 Ukrainian citizens holding biometric passports can travel to the Schengen Zone without a visa for a period of 90 days within any 180-day period for purposes other than working. The active Hungarian kin-state support has at times been perceived with some concern by Kiev. Hungary supports the demands for autonomy by the Hungarian community of Trans-Carpathian Ukraine. As well, Budapest provides financial and economic support to Hungarians living in Ukraine. Hungarian educational institutions, small businesses, churches, and charitable organisations, receive support from Hungarian state agencies and at other times by non-state sectors inside Hungary; businesses, NGOs, church organisations, and so on. Both, the Hungarian community in the west, and the Russians living in the east of Ukraine, are interested in obtaining regional autonomy within the framework of a great degree of decentralisation of the country.

Beyond concerns regarding the war in Ukraine and its potential security implications for the Hungarian community there, the rather unstable economic situation of that country should also be taken into consideration: the Ukrainian economy contracted by nearly 15% in 2009; among the worst economic performances in the world. In 2014, the contraction rate of the GDP was -6.5%, and in 2015, -9 percent. (Worldbank 2016) In 2016, contraction of industrial production continued with no signs of recovery. What is more, the banking system of Ukraine is on the verge of collapse. Likewise, the economic disruption of the country cannot be ignored. Similarly, the country has an underdeveloped infrastructure and transportation system, and huge problems with corruption and bureaucracy. About half of the economic activity of Ukraine transpires on the black market, generating no tax revenues. On top of all that, the country has to face the problem of one million seven hundred thousand IDPs (internally displaced persons) due to war. (Office of the United Nations High Commissioner for Human Rights 2016)

Beyond the risk of intensification and extension of the armed conflict in the eastern part of the Ukraine, the risks related to potential economic collapse should be taken into consideration. This may result in a failed-state of more than 40 million citizens and contribute to increased migration flows towards Europe and mounting influence of Transnational Criminal Networks using Ukraine

as a logistical base. The border area between Ukraine and Hungary is already infested by different types of criminal activity, ranging from cigarette and drug trafficking to human trafficking, among other things.

Concluding remarks

Hungarian border issues, in particular those which are security-related, cannot be separated from rapidly evolving regional and global geopolitical situations, in particular what happens in the Eastern and Southern arcs of crisis in the peripheries of Europe. The evolution of relations between Russia and the United States will remain an important geopolitical factor impacting both the Eastern and Southern arcs of crisis. Migration pressures will most probably remain an important factor for border security, not only for Hungary but also for the EU, as the so-called “push factors” influencing people to leave their home countries remain strong. Some of these factors are: weak and/or failed states, the Libyan situation, demographic pressures of Sub-Saharan Africa, the reality of the “Arab Winter” after the “Arab Spring”, economic problems, waters scarcity, desertification, and climate change, among other matters. The evolution of the Ukrainian situation, and relations between Turkey and the EU, may represent important risk factors as well in terms of border security for Hungary and other countries in the Union. The development of regional cooperation, and a more efficient and coherent European approach, could be important factors to enhance the border security management of Hungary.

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Fighting Terrorism across Borders – Legal Framework for the Use of Unmanned Systems in the Fight against IS and the Future Perspective of Autonomy

Tassilo Singer

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1. Rise of NIACs, Rise of Terror

The multi-national operation in Syria and Iraq which often is called the war against IS or “Daesh” lasts more than two years now. Legally speaking, even though a couple of States are involved these conflicts, no third State invaded Iraq or Syria. However the terrorist organization itself decided to cross the Iraqi borders and to take advantage of the situation in Syria, namely the weak control and power of the Syrian government during the Syrian Revolution (Barrett 2014: 10 ff.). From a legal point these hostilities have to be categorized as two non-international armed conflicts, which (might) have a spillover effect to each other (Gill 2016: 373 ff.). To be more precise and to link it to the overall topic of “borders”, each non-international armed conflict extends geographically to the borders of the relevant national State and contains possible spill-over violence.

The rise of non-international armed conflicts (NIACs) instead of international armed conflicts – conflicts between two or more States - is an ongoing challenge. Besides general discontent with the government, the reasons for NIACs often are historical borders or borders drawn by colonial powers, which are considered unfair as the land might have belonged to a tribe or a sectarian group for centuries (compare also the Chinese arguments for the South China Sea). Roughly until about the 1990s those and other more general reasons such as strong discontent with national government or the fight against foreign occupation formed the main basis for rebellion against national States. Since the 1990s you can recognize a change. There has been an increase in ideological-religious motivated conflicts. Due to the dominance of the US and the West in general, there seems to be an understanding in Islamic-motivated groups that one has to fight everywhere against global enemies, especially the former colonial, “imperialistic” States and the world power USA (Paulus & Vashakmadze 2009: 108 ff.). This also extends the scope of violence, formerly kept (mostly) within the borders of the national States. Nowadays this violence expands to neighbor States and to potentially everywhere and everyone on the world. Thereby the line between freedom-guerilla-rebel-fighters and terrorists is blurred more and more. It has to be pointed out though, that often it is a political decision whom to label terrorist and whom to call a freedom fighter. A commonality between guerilla fighters and terrorists is the asymmetry of the fighting powers. On one

side is the “powerful” State which in most cases can rely on all available tools of warfare like planes, tanks and unmanned systems, with which it can fight the rebels or terrorist. In contrast the former regularly cannot field an air force or have enough resources and men for open, “conventional” battles. Thus, in order to survive and to continue their fight, those groups need to change their war tactics to other hidden means and methods of warfare such as ambushes, the mining of strategic roads or bridges, attacks on supply and critical infrastructure and the use of IEDs. The conduct of hostilities thereby gets transformed to asymmetric warfare (Paulus & Vashakmadze 2009: 96 f., 108 ff.). The guerilla tactics pose a great danger to soldiers and put enormous pressure on them due to their unpredictability and the possibility to be attacked everywhere and at any time. Furthermore, they are disadvantageous for conventional warfare – you just cannot defeat an enemy hiding in the middle of the civilian population by a massive tank advance.

But what exactly is terror? There are many different definitions of terror and terrorism and no consent on a singular definition or a set of necessary criteria. A reasonable approach seems to focus on the goals and outcomes of terrorism: Terrorism tries to influence individuals psychologically and hereby the authorities and the whole community by threatening or actually using violence against State symbols, routine systems, public spaces or individual persons. Terrorism wants to put pressure on the public debate and thus influence political decision makers to change their policy – especially with view to strengthening security measures, tightening security systems and thereby restricting personal freedoms of the population. By putting the State authorities under pressure to act, terrorist might gain support of the local population due to the “forced” reactions of the State. Combined with social and charitable measures by the terrorist group and possibly an attractive ideology the terrorist can definitely gather or increase some support, retreat and safe havens among the population (Eicher 2009: 4 ff.).

2. Fighting Terrorism – Rise of IS, Unmanned Systems and the Legal Framework

2.1. Rise of IS or Daesh

The core of IS and its main administrative centers are situated in Syria (Raqqa) and Iraq (Mosul). However, there are several outposts in Lybia and Yemen, where IS tries to gain ground in the ongoing civil war. IS is also attempting to get a foothold in Afghanistan to use the ongoing NIAC with the Taliban for its own purposes. Furthermore, there are several other countries and areas where IS tries to get a foothold as in Algeria, West Africa, the Caucasus and South East Asia (Clapper 2016: 4 ff.). The rise of IS began in 2003 as a subdivision of Al Qaida in Iraq. Around 2007 the group experienced some set-backs by “the surge” of US-troops and their counter-insurgency strategy. Due to the targeted killing

of former leaders such as the Al Qaida emissary az-Zarqawi in 2006, who proclaimed the Islamic State, and Abu al-Masri and Abu Omar al Baghdadi in 2010, the structure and its approaches changed. Under its current leader Abu Bakr al-Baghdadi, the IS broke with al Qaida. It started to focus on the liberation of captive members and the disruption of the order of the Iraqi government by attacking State linked objects and persons like policemen or soldiers. The Syrian revolution 2011 and the weakness of the Syrian government caused hereby led to the expansion of IS into Sunni-inhabited areas in the east and center of Syria. Finally, IS conquered Raqqa in January 2014. It was also able to expand its territory in Iraq and conquer Mosul in June 2014, Tikrit and Fallujah (Barrett 2014: 8 ff.). Due to the help of the international coalition to the Iraqi State and Russia's support to the Assad regime IS suffered significant throwbacks in its main territory. However, It still continues to persist the attacks on all fronts.

There are various reasons for the rise of IS. Especially the overthrow of the (Sunni) Saddam Hussein Regime by the US-Led Coalition in the 3rd Gulf War has to be mentioned. In its aftermath, a Shiite (~65% of the population) government came to power which discriminated Sunnis. Thus, many former Sunni soldiers, veterans of the Gulf wars, lost their jobs and became a valuable recruiting group for IS. Also, as US-led troops remained in Iraq in order to support the weak government, they were viewed as occupants and fought from both sides, Shiite and Sunnite rebels and terror organizations. IS used this continuous chaos and struggle for order to increase its power, in particular after Abu Bakr al Baghdadi became the new leader of IS in 2010. (Barrett 2014: 12 ff.) Next to the Islamic ideology and its continuous fight against disbelievers ("infidels") and perceived "occupants", IS has a basis of support among the Sunni population and its fear of losing social status and any prospect of a future by hands of Shiite dominance (Barrett 2014: 18 ff.). One reason for these demographic and societal problems (sectarian violence) definitely lies in the border demarcation by the occupying powers after the first world war. IS explicitly rejected the Sykes-Picot delimitation of Iraq (Barrett 2014: 21), allocating the historical borders as a problem.

2.2 Unmanned Systems characteristics

The evolution of unmanned systems was possible due to the successful accumulation of several technological developments: High-performance computer technology for command and control, better materials to reduce weight, while improving endurance and sustainability, more effective sensors, efficient energy supply and storage and finally better communication and data transmission. The combination of these technologies enabled the development of unmanned systems in the four domains land, sea, air and space (US DoD 2013: 5 ff., 26 ff.). Some of the important tools for C&C are being derived from space research such as swarming unmanned systems in the Caracas Project (Smalley 2014). Unmanned Systems

and especially unmanned aerial vehicles (UAVs) have a long endurance and can be controlled from a great distance to the battlefield, even across borders. Regularly there is a need for relay stations due to the physical constraints for control – the earth curvature – and the time lag which the signals need, if they have been sent via satellite. These relay stations have to be stationed at strategic distances between the area of operations and the control station. (Grünwald & Petermann 2011, 29 ff.). Therefore, the control-signals often travel back and forth over various borders to the unmanned system. Consequently, these relay stations have to be included in the geographical planning process.

However, there are legal constraints for the use of an UAV. You always need a dedicated airspace, in which you can operate the UAV. As the general airspace over most of the States is fairly crowded by planes, different types of airspaces have to be defined in order to separate the traffic in the air and to prevent crashes (Grünwald & Petermann 2011, 14, 43, 45 f, 168 ff.). Thus, before a mission with UAVs is started in a foreign country an evaluation on the classification of the airspace in the area of operations has to be conducted. In most instances, an agreement with the host nation regarding the assignment of an own operational airspace or an airspace for military operations should be concluded. Unmanned systems are also capable of carrying a proper weapon payload. UAVs such as the Predator and the Reaper have been used to combat terror worldwide at least since 2001. Yet, UAVs probably represent the strongest form of asymmetry in the battlefield. There is no human enemy that can be fought against. Also, the military bases are protected by superior surveillance and defense technology. So, if there are no manned patrols it is very difficult to attack the enemy. Thus, due to States being superior to them, terrorists tend to fight them by using other tactics like attacking "soft targets", focusing even more on insidious terrorist attacks. Therefore, one could draw the conclusion that the use of unmanned systems because of asymmetric tactics by the terrorists leads to more asymmetry, which in turn results in even more terrorist attacks. Nevertheless, unmanned systems continue to be a very effective tool for pinpoint attacks on terrorist leaders as proven by the targeted killing of the IS-Leader and Spokesman Al Adnani on 30th August 2016 (CNN 2016).

2.3. Legal Framework for fighting a global operating terror-organization:

The basis of the framework in international law are the States as its main actors. The concept of state sovereignty is closely linked to the one of "sovereign equality of States". One imperative element of statehood is State territory and thereby its national borders. This element is connected to the State's national sovereignty, as sovereignty gives the authorities the only and absolute power to control the national territory and therefore also its borders. Other States have to refrain from border viola-

tions due to the principle of territorial sovereignty and sovereign equality of States (Epping 2014: 50 f., 173 f.).

Usually, terrorism is a national problem. Combatting terror is viewed as being the national duty of the State to maintain its monopoly of the use of force and to protect its own citizens. However, most of the current terror organizations are operating internationally and do not care about national borders or the limitations of national law enforcement authorities. Furthermore, terrorist organizations do not limit their violence to objects and persons belonging to the State(s) they are fighting. Instead they extend their violence to everything and everyone in their range of fire and attack civilians arbitrarily. This evolution can be called “globalized terrorism”. This leads from internal law enforcement to the conduct of military operations in NIACs with spillover effects, compare the conflict pairs Afghanistan and Pakistan (Generalbundesanwalt 2013: 17 ff.) and Syria and Iraq. Hence, international law has to address this form of the use of force or violence, especially concerning the reaction of States to globalized terror organizations.

There are two legal frameworks addressing the circumstances under which the use of force is legal, independently of the type of weapon or the means or methods of warfare employed: A use of force must be in consistence with the *ius ad Bellum* – which addresses the “if” of the use of force, and the *ius in Bello* – which determines “how” hostilities may be conducted (ICJ 1996, paras. 36, 42, 51, 105). Both legal bodies have to be observed separately (Gill 2016, 369).

2.3.1. First framework – *ius ad Bellum*:

Any use of force against people within another State –e.g. fighting terrorists in by using UAVs and their weapons –amounts to a use of force against that State in most cases. Regularly, this would breach the prohibition of the use of force according to Art. 2 (4) UN Charter and its equivalent rule in customary international law (Arimatsu & Schmitt 2014: S.5). Thus, the fight against terrorists by using UAVs is governed by the rules of the so called “*ius ad Bellum*”, which governs under which circumstances it is legal to use force. However one problem remains: What is the legal basis for using force against terrorists when the terrorists are not “rebels” in your State, but are in another State? In the following the possible legal options are presented and subsequently discussed with view to the military operations in Syria.

2.3.1.1 Lawful Solutions: Intervention upon Invitation

The first and the best option is the invitation by the State, in which the terrorists are active and/or have their base. The inviting State asks another State for military assistance and grants the helping State access to his country, possibly to military facilities. This invitation by the inviting State has to be qualified as a binding consent. Therefore, the fight against terrorists might not even be considered a use of force by some, as there is no use of force in the legal sense if a State consents to military

deployment and actions on its territory or area of national sovereignty (Singer 2015, 237 ff.). In case one intends to use military aircraft, especially UAVs, an (additional) agreement about the use of the national airspace of the inviting country is needed.

2.3.1.2. Self-Defense

Also, a State fighting terrorism could rely on self-defense, either in the form of individual or collective self-defense according to Art. 51 UN-Charter. This requires an armed attack against a State, which constitutes a considerable legal threshold for this exception to the prohibition of the use of force (Heintschel von Heinegg 2014: 1079 ff.). Collective self-defense has certain similarities with the intervention by invitation as the victim State asks another State for military assistance against an armed attack (Heintschel von Heinegg 2014: 1090). However, collective self-defense requires an armed attack against a State, which an intervention upon invitation in contrast does not. The decisive question is, whether self-defense against a terrorist attack comparable to the Al Qaida attack on 9/11, meaning an armed attack by a non-state actor, is possible, if the threshold of an armed attack is reached. Does self-defense depend on the attack having been committed by a State? Depending on the answer one could rely on self-defense to attack a terror organization in another country. Arguments supporting this view are the UN Security Council Resolution regarding the terror attacks of 9/11 and the legal position of the US (Heintschel von Heinegg 2014: 1088 f). A related issue is what means can be employed, if a non-state actor is based in another State, which in turn is refusing to act against the non-state actor. One of the lines of argumentation put forward is the so called “unable or unwilling” doctrine. If a State is unable or unwilling to act against a non-state actor, who has triggered the right of self-defense of another State the victim-State may act against the non-state actor, crossing the borders of the host State (Deeks 2012: 483 ff.) However, the victim-State may not use the terror attack justifying a full scale intervention against the host State.

2.3.1.3 UN Security Council Resolution

Another legal basis for attacking terrorists is view in a UN Security Council Resolution according to Art. 42 UN-Charter (Heintschel von Heinegg 2014: 1110). Art. 42 UN-Charter permits military sanctions under the conditions listed in the respective resolution. Thus, depending on the content of the UN Security Council Resolution, it is permitted to lawfully fight terrorists in other countries as long as the extent of the operations is kept within the framework set by the UN Security Council Resolution.

2.3.1.4 Rescue of own Citizens

Finally, it is considered lawful to free own citizens in other States by the use of force which have been taken hostage by terrorists. The consent of the host State is not

required for this purpose. In this case the use of force is limited to the liberation of the citizens and the surrounding area, which is necessary for a safe exit. Thus one cannot launch a full scale intervention or occupation based on this legal tool. Precedents can be found in the Israeli Entebbe Raid (Heintschel von Heinegg 2014: 1097 ff.) and e.g. in the German Operation Pegasus in Libya 2011.

2.3.1.5 Transfer to Military Operations in Iraq:

In Iraq the US led coalition acts upon the invitation of the Iraqi Government (consent) to fight the IS. This could be considered to be a case of collective self-defense, too, if one considers that the attacks launched by IS reached the threshold of an armed attack against Iraq, e.g. by conquering Mosul (Arimatsu & Schmitt, 2014, 6 ff.) The Kurdish troops in Iraq are acting (more or less) on behalf of the Iraqi government or as a part of the Iraqi government. German troops are lawfully acting upon the invitation of the Iraqi government by delivering weapons, ammunition and the training of Kurdish troops.

2.3.1.6 Transfer to Military Operations in Syria

In Syria, Russia is acting upon the invitation of the Syrian government. Also one could argue with a case of collective self-defense of the Syrian government, if you consider the Syrian government a victim of an armed attack. However, the legal basis for the activities of the US-led coalition is unclear as there is no invitation by the host State or an UN-Security Council Resolution. But the US led coalition argues that they are acting in self-defense and to be precise by individual preventive self-defense against terrorist organizations like the Khorasan group. The “unable or unwilling” doctrine could also be applied to the Syrian government which would permit the intervention by the US-coalition under international law. Another line of argumentation could be that of acting in “effective” collective self-defense, meaning that a State does not have to stop defending itself or its ally at the State border, if the threat still exists behind that border and will continue to attack you (Arimatsu & Schmitt, 2014, 8 ff., 21 ff.).

Following the attacks in Paris on 13th of November 2015 France justified its engagement with Art. 51 UN-Charter and Art. 42 (7) EUV which refers to Art. 51 UN Charter. Thus, Germany could support France eventually by referring to collective self-defense. However, this depends on, whether a situation of collective self-defense existed in first instance, which is arguable by comparing the situation with the 9/11 terrorist attacks.

Furthermore, the legal basis on which Turkey’s recent involvement could be based on is difficult to determine. One could argue that Turkey is acting in self-defense. However, the origin of the necessary armed attack and its lawful targets are unclear. Turkey’s struggles with IS, the Kurdish PKK and its Syrian counterpart YPG respectively have been going on for several months. Acts of self-defense, though, have to be launched instantly in a

reasonable time after the attack. Still, one could argue that the (separate) acts of violence committed by IS deriving from Syria are amounting to an armed attack, if one considers it lawful to add several pin-prick assaults together amounting to an armed attack (Dinstein 2011, 206 f., 221). Also the Russian foreign ministry criticises in its Statement on 07/09/2016, that Turkish intervention aggravates the military and political situation in Syria.

Finally, it should be clear that each of the solutions proposed has its own legal limitations. Especially, when one is operating in a situation of delegated powers or sovereignty, such as based on an invitation, you have to stay within the legal framework and limitations imposed of that national State. With view to UAVs this concerns the national legal regulations for the use of airspace and air traffic control. If military operations are conducted to support another State, one needs a dedicated airspace for the operations. Also, one needs an agreement as to what kind of force and weapons one is allowed to use and in which areas it is permitted to attack.

2.3.2. *Ius in Bello*:

The *Ius in Bello* (= Law of Armed Conflict, LOAC) regulates the conduct of hostilities. Therefore, it has to be applied to the use of unmanned systems in the fight against terrorists.

2.3.2.1 Applicability

The first requirement for the applicability of the LOAC is the determination of the type of armed conflict – either an international armed conflict or a non-international armed conflict. This does not necessarily depend on the violation of borders by a State. In Iraq and Syria, a NIAC is prevailing (Gill 2016: 373 ff.). The applicable law in NIACs is restricted to the Common Art. 3 of the Geneva Conventions I – IV (GC) as a minimum standard, the rules accepted as customary international law and Additional Protocol II (AP II), if the relevant State is a signatory of AP II (Gill 2016: 365 f.). As a precondition for the existence of an armed conflict there has to be protracted violence between military forces of a State and an organized armed group or between organized armed groups against one another, compare Art. 1 AP II (ICTY 1995: para. 70). The characteristics of an organized armed group depend on different criteria and indicators (ICTY 2008: para. 194 ff.): The existence of a military hierarchy or command structure, the group’s ability to speak with one voice, the military capacity of the armed group, the logistic capacity of the armed group and the existence of an internal disciplinary system and the (theoretical) ability to implement International Humanitarian Law (ICTY 2008: para. 194 ff.; ICTY 2005: para. 46, 94-129, 158).

Mainly, two cardinal principles have to be observed (ICJ 1996: para. 78): The prohibition to cause unnecessary harm or superfluous injuries and the principle of distinction. This means that the conflict parties have to distinguish between civilians and combatants. Conse-

quently, weapons which are unable to distinguish between lawful (soldiers, members of organized armed groups) and unlawful targets (civilians, soldiers hors de combat) are prohibited under IHL.

2.3.2.2 Rules

These principles have to be applied to the use of UAVs in the fight against IS.

First, the prohibition to employ weapons, means and methods of warfare that are of a nature, to cause superfluous injury or unnecessary suffering, as codified in Art. 35 (2) AP I concerns the “nature” of the weapon and thereby its effects. It does not depend on the type of the control or on the question if the system is unmanned or manned, but on the type of weapon that is employed (Schmitt/Thurnher 2013: 244 ff.; Frau 2011: 64) e.g. the use of phosphor weapons in a city center would be prohibited. Secondly, the principle of distinction has to be observed. The general rule is codified in Art. 48 AP I, however there are several subprinciples specifying the rule. As pointed out before it is forbidden to use means and methods that are indiscriminate per se, Art. 51 (4) lit. b AP I. This means that the system employed must have the abilities to distinguish between lawful and unlawful targets. This rule is stressed by the examples in Art. 51 (5) AP I. In the course of the targeting process, one has to consider and balance the military advantage of potential civilian casualties and damages ex ante, Art. 51 (5) lit. b), 57 (2) lit. a) iii) AP I (Proportionality). Furthermore, certain precautions with the aim to spare civilians and civilian objects have to be taken before an attack as provided in Art. 57, 58 AP I. Besides, there is the duty to conduct weapons review according to Art. 36 AP I and thereby to ensure, that the methods and means of warfare comply with the *Ius in Bello* and all relevant provisions of international law (Frau 2011: 61 ff.).

2.3.2.3 Transfer to use of unmanned systems in Iraq/Syria

The UAVs currently used are controlled by human operators (=semi-autonomous), and so is the targeting process, meaning that the use of a weapon is definitely confirmed by human operator. Therefore, the human operators have to observe the principle of distinction and be able to distinguish between the targets and not the systems. Also, they have to do the collateral damage assessment and take the aforementioned precautions before an attack. Hence, the use of a UAV controlled by a human operator is lawful, depending on the actions of the humans (Frau 2013: 131 ff., 136). One advantage of the use of UAVs for fighting terrorists is obvious: No human soldiers are being put into danger, while the UAV is in the battlefield. An unmanned system can be sacrificed in dangerous missions as its loss is of financial value only. Especially in an urban environment the legal thresholds deriving from the *Ius in Bello* are much higher. For example, it is much harder to distinguish between civilians and lawful targets when terrorists

are hiding amongst the civilian population. Thus, much more efforts are necessary for military personnel to obey the principle of distinction in urban environment, e.g. if civilians are used as human shields or as hostages, or if the terrorist are hiding in dense urbanized areas such as market places or places of worship. The use of unmanned systems renders one time to single out the lawful targets and protect civilians without the need for immediate response fire.

3. Future of Fighting Terrorism – Autonomous Weapon Systems

The technologies used in unmanned systems are making enormous progress. Especially self-control, independence and the self-guidance of system processes are increasing more and more. For example it was possible to land the UCAS-D UAV on an US aircraft carrier and to fuel it in the air without any human control or guidance (US Naval Air Systems Command 2016). Autonomous Weapon Systems (AWS) can be a huge advantage in fighting terrorism. AWS do not need to rely on humans for information processing, situation assessment and decision making, but work based on fast computer calculation processes instead. Combined with superior sensors AWS could revolutionize fighting on the battlefields - also in urban areas where the decision making process is much more difficult and has to happen faster. Concluding, fully developed AWS in theory could determine in a shorter period of time whether something is a threat or not. In those difficult situations AWS could be decisive in reducing collateral damage to civilian bystanders.

3.1 Characteristics of Autonomous Unmanned Systems

Some of the characteristics of autonomous weapon systems are certain soft- and hardware features, which enable the system to act more independently from human control. The tools for combining and processing the data flow and guiding the decision making processes are of utmost importance. The status of the human in the system process can be classified by using different levels of autonomy (US DoD 2012: 13): „A weapon system that, once activated, can select and engage targets without further intervention by a human operator. This includes human-supervised autonomous weapon systems that are designed to allow human operators to override operation of the weapon system, but can select and engage targets without further human input after activation.”

There are at least three different types of autonomy of unmanned systems: First, semi-autonomous systems are used which are controlled and guided by a human telling the system what to do where and how. Especially the targeting process is performed by the human operator(s) who make the targeting decision based upon the sensor data the unmanned system delivers. Other processes such as navigation could be delegated to the

system though. Second there are fully automated systems. These systems are capable of moving and navigating to a target area and detect and select targets in the designated area of operation. However the systems are still under human surveillance. Either the human operator has to confirm the target or the system at least provides for a certain timeframe for the human to act, until it attacks the target itself. The human still has control over the targeting process and can influence the acts of the unmanned system. The third and final category are fully autonomous systems. This means a total independent system that can move and act by themselves. They can process the data collected by their sensors, arrange and classify them, communicate data back and forth. Based upon all the data gathered, they can create a situational picture, understand the situation and act upon this understanding. If the relevant acts involve targeting enemies, the system itself has to be technically capable of acting according to the law (especially in conformity of the *ius in Bello*), avoiding civilian casualties and unnecessary harm or suffering and if this is not possible, to stop the targeting process itself. In conclusion, a fully autonomous system by definition does not have human control, though human supervision will be more realistic in practice (which is in line with the US DoD definition of autonomy). In the most absolute form an autonomous weapon system there are no means or possibilities for human interference with the acts of the AWS once it has been set free and reached the target area.. However, such a system must and will have very strict mission parameters (Schmitt/Thurnher 2013: 235 ff.). Nevertheless, this raises multiple ethical and practical questions – such as whether the decision over life and death could be taken solely by a machine without human control or the operability with friendly troops of the ground and the danger of friendly fire). However, autonomy in multiple levels is still in the development and is not expected to be deployable to soon. A gradual process of certain features being performed by the system autonomously is the most realistic perspective (US DoD 2013: 15, 29, 66 ff.).

3.2. Transfer of Legal Framework to AWS

Like unmanned systems in general AWS have to comply with the applicable legal framework. First of all it is important to state that there is no international treaty prohibiting the use of autonomous weapon systems. However, an intense debate has been going on under the framework of the UN Convention on Certain Conventional Weapons for several years. Therein some NGOs and also groups of scientists demand a full ban of autonomous systems (UN CCW 2016). As there have to be comprehensive rules for the conduct of hostilities, the form of control over a weapon or weapon system cannot be decisive for the general legal boundaries. Thus, the same legal rules of the *ius ad Bellum* and the *ius in Bello* apply as to for regular, semi-autonomous unmanned systems.

3.2.1 *Ius ad Bellum*

The *ius ad Bellum* does not entail legal problems different to other weapon systems be it manned or be it unmanned. However, an autonomous system - due to its autonomy - must be able to possess a certain situational awareness and navigation abilities, especially a positioning recognition so it can determine its own position. This is necessary to prevent an autonomous weapon system from crossing certain State borders and thereby violating the non-intervention principle or in order to leave a special designated airspace in another State.

3.2.2. *Ius in Bello*:

The legal compatibility with the *ius in Bello* is more problematic. Considering the prohibition to employ weapons etc., that cause superfluous injury or unnecessary suffering (Art. 35 (2) AP I), AWS do not pose a special problem. As explained already the prohibition depends on the weapon and its effects and not on the type of control of the weapon (Schmitt/Thurnher 2013: 244 ff.). Thus, there is no difference from a legal point of view, if an AWS fires a phosphor grenade or a human guided tank.

In contrast, the principle of distinction is more problematic. According to Art. 48, 51, 52 AP I, an AWS has to have the ability to distinguish between civilians and combatants, military objects and civilian objects. This signifies, that the system itself has to be able to determine the status of an object and evaluate this status correctly without any help from outside. Based on this information the system must take its own targeting decision which has to be in compliance with the law. The same is provided by the prohibition to use weapon systems that are indiscriminate per se, see Art. 51 (4) lit. b AP I. The critics of the use of AWS presume that an AWS cannot distinguish properly and this high level of autonomy is impossible to reach. However, one can argue that this is not a question of possibility but a purely technical question: If the AWS has the technical abilities to distinguish properly, its use has to be considered lawful. The wording of the rule is in support of the last position, as there is no written requirement for human control but the pure aim that the ability to distinguish is necessary (Schmitt/Thurnher 2013: 251 ff.). Also, the provision to take precautions can be classified as a technical question with view to the use of AWS. If the AWS incorporates the necessary skills for taking precautions a use of AWS complies with the law, otherwise the use has to be qualified as unlawful (Schmitt/Thurnher 2013: 259 ff.).

The biggest problem poses the principle of proportionality, Art. 51 (5) lit. b), 57 (2) lit. a) iii) AP I, which requires the balancing of military advantage against potential civilian casualties and damages. This provides that a certain value has to be assigned to the relevant objects and advantage(s) and these values have to be weighed against each other. The outcome then provides the basis

for the targeting decision. On the one hand, this ex ante assessment could be qualified as a technical issue, too - that can be observed by AWS in the future (Schmitt/Thurnher 2013: 251 ff, 262 ff.). AWS might be able to perform such a consideration. On the other hand, it has to be discussed whether a software can perform such an analysis in a legally sufficient way, meaning if the balancing process can be conducted like a human or better or worse than a human. Again this depends on the standard for human consideration and balance and how these are assessed in reality. One could argue that nowadays the balancing process (in particular the collateral damage estimate process) is already based on the input of sensors and computer calculation of e.g. the effects of weapons. So, in reality, there might not be such a big difference between an AWS and a human taking the decision based on computer data. This has to be separated from the ethical question if a computer system should be entitled to assign a certain value to human lives and weigh them.

3.3. Conclusion - AWS

Therefore, based on the previous findings, AWS do not pose a challenge with view to the *ius ad Bellum*. There are some peculiarities, which the operators regularly have to consider and which the autonomous system independently must take care of, especially the navigation process. Concerning the *ius in Bello*, there are mostly technical challenges that have to be met in order for AWS to comply with the law of armed conflict. AWS might possibly become a very effective tool to fight terrorism with more precision and speed. The future might bring further development in the fields of deep learning and/or artificial intelligence, neuronal networks and quantum computing, thereby making computer systems even more effective (US DoD 2013: 27, 53).

4. Conclusion –Constraints and Suggestions for the fight against terrorists with UAVs

In conclusion, national sovereignty and national borders are decisive for the legal assessment of the use of weapons - especially in politically complicated armed conflicts like the ones in Syria and Iraq and the fight against IS. Also, borders are particular important as a legal restriction, representing the range of State sovereignty and thereby the range of national law. The use of UAVs in the fight against terrorism is legally possible. Also, the author holds the view that the legal challenges of the law of armed conflict with view to AWS can be tackled in the future. Current operations against terrorists are characterized as urban combats, because terrorists tend to hide in civilian-populated environments. Thereby, there is a higher risk of civilian casualties and thus a violation of the principle of distinction in general. So, there should be fairly strict rules of engagement for the use of unmanned systems to comply with the applicable rules of LOAC. It is suggested to take all necessary precautions when using AWS, until the technology has

matured further. This has to be combined with very thorough weapons review (Art. 36 AP I) to guarantee that AWS are technically able to obey the Rules of LOAC in these high-risk environments. However, the growing use of unmanned systems is also increasing the asymmetry between humans and machines, between terrorists and the opposed State. This leads to a loss of connection to the humans on the ground. This may lower chances of getting back to a peaceful interaction, to win the hearts and minds of the local population and thereby ending the state of war. Therefore, unmanned systems should be used only in combination with human soldiers on the ground, who should foster relations with the people after the autonomous weapon systems have cleared the way. To fight terrorism successfully a multilayered approach on different levels is needed – combining efforts from the government, non-governmental organizations and the society itself. Especially, the needs of the assailable population have to be identified, understood and met by the State.

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- Heft 3, 2016** Oberst a.D. Dipl.-Ing. Jochen Landmann
Die Topographietruppe 1957 – 2003

Contents

Foreword

Borders: Current Challenges and Future Development

L (Navy) Thorben Hoffmeister

LTC Birgit Albrecht

The Construction and Deconstruction of Europe's Borders

Dr. Bernhard Rinke

Microphysical borders and fourth-generation warfare: Drawing the lines between geopolitics and biopolitics in the competition for natural resources

Mg. Juan José Borrell

Porous Borders in Eastern Europe – The Case of Ukraine

Maj. Michael A. Hehn, M.A.

Make Law, Not War. Power Politics versus

International Law in the South China Sea and the Lesson of Spitsbergen

Dr. Enrico Fels

German Maritime Boundaries – Status and Disputed Areas

Thomas Dehling

The Borders of Hungary in an Evolving Geopolitical Context

Gyula Csurgai, PhD

Fighting Terrorism across Borders –

Legal Framework for the Use of Unmanned Systems in the Fight against IS and the Future Perspective of Autonomy

Tassilo Singer