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Editorial Note

Dear Reader,

Our Editorial Board is proud to present Vol. 16 No. 1 of Politikon, the flagship academic journal of the International Association for Political Science Students.

The current issue, coming just in time to be read at the 2016 IAPSS World Congress in Berlin, is full of interesting articles; some of them were presented at the 2016 IAPSS Convention in Prague. From a study of cancer villages in China, through the question of population displacement to Brazil's cyberspace politics, we compiled 18 articles and one research note, or more than three hundred pages of valuable academic work from young scholars across the globe.

We believe that with such a wide variation of topics, all our readers may find something that will catch their attention and maybe also something that will inspire them to submit their own article to one of our IAPSS academic journals.

We are looking forward to reviewing your work!

Your Editors

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National Interest Groups and Transnational Governance: Brazilian Sugarcane Producers and Biofuel Standards

Guilherme Arbache, Danilo Freire & Pietro Rodrigues

Guilherme Arbache, 31, born in São Paulo, Brazil, has a BA and a MA from the Department of Political Science, University of São Paulo. Guilherme's research is focused on political participation, political culture, voting patterns, and private governance. Danilo Freire, 32, also a Brazilian national, is a PhD candidate in Political Economy at King's College London. Freire holds a BA and a MA in Political Science from the University of São Paulo and a MA in International Relations at the Graduate Institute of International and Development Studies, Geneva. His main topics of interest are civil wars, political violence, prison gangs, and research methods, particularly Bayesian inference and agent-based modelling. Pietro Rodrigues, 28, born in Sorocaba (Brazil), is a PhD candidate in the Institute of International Relations at the University of São Paulo. Pietro hold a BA in Social Sciences and a MA in Political Science from the same institution. He is interested in the intersection between business and politics, especially international political economy and international private governance.

Abstract

How does the Brazilian sugarcane sector act towards transnational private governance initiatives on biofuels? Brazil is one of the world's largest biofuel producers, and since the 1970s sugarcane ethanol production has expanded with the help of the federal government. The developed nations' rising demands for higher social and environmental standards have fostered the emergence of new governance mechanisms that affect biofuel-producing countries, which in turn have started to engage in private initiatives to regulate their economic activities through transnational certificates. This article aims to analyse the strategic interaction amongst Brazilian actors involved in biofuel production. Our goal is to explain: a) what are the conditions that have based the agents' ability to act in the international arena, and b) how they have influenced the international standards for biofuels. Building upon Büthe e Mattli's (2011) Institutional Complementarity Theory, as well as Caffagi e Pistor's (2013) normative concept of regulatory capability, we argue that a trend of geographical and economic concentration and homogeneity in Brazilian sugarcane production helped to create the conditions for Brazilian producers to adhere and influence the standards of Bonsucro (the most important private international regulation for sugarcane ethanol). Then, we suggest paths for further research on that issue, so that we can confirm these claims.

Keywords

biofuels, Brazil, ethanol, private governance, regulatory capability

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Introduction

Brazil is one of the world's largest biofuel producers. Since the 1970's, sugarcane ethanol production has expanded with the help of the Brazilian government. The rising demands for higher social and environmental standards by the developed nations (such as the USA and the EU members) have fostered the emergence of new governance mechanisms that affect biofuel producing countries, which in turn have started to regulate their economic activities through transnational certificates. Bonsucro (sugarcane), RSPO (palm oil) and RTRS (soybeans) are prominent examples. The embodiment of socioambiental responsibility attributes to demanding consuming markets rang the bell of producers in developing countries, who follow carefully the regulatory dynamics of importing countries, especially the European Union, which established compromises and goals through the European Directive on Renewable Energy (EU-RED) in 2009. The Directive sets a goal of 20% of all the energy of EU to be renewable until 2020, and it is faced by some developing countries as a non-tariff barrier to trade, once its exigencies can considerably increase the costs of production and trading of biofuels like sugarcane ethanol made in Brazil.

Every private or public regulation has the potential of creating distributive impacts over the stakeholders[1]. Particularly interesting is the fact that the Directive was not bounded to one only standard. Thus, state-driven and voluntary standards previously approved by the European Comission allow the entrance of biofuels in EU. Among the voluntary certification schemes, Bonsucro (*Better Sugarcane Initiative*) stands out as the main responsible for the prescription of environmental and social criteria of production and processing of sugarcane.

Brazil, as the major sugarcane producer in the world, is also an example of one of the most successful attempts to influence environmental and social standards. It is important to note that not always big producers are capable of directly interfering on the criteria defined by voluntary systems of certification. The soybean industry in Brazil, for example, is one of the world biggest producers, but its influence on the Round Table on Responsible Soy (a multistakeholder institution that creates global standards for sustainable production of soy) is almost null[2]. That is precisely the reason why we believe it is necessary to understand the conditions that allowed the sugar industry to influence and comply with Bonsucro standards. Our main hypothesis is that political centralization of interests and productive, technical and territorial homogeneity of Brazilian sugarcane industry have created the o criaram the roots for an effective action by UNICA (Sugarcane Industry Association) towards Bonsucro standards, in order to attend some specifities of the Brazilian sugarcane production (reducing, therefore, the transaction costs for adequacy to the international standards).

[1]Every regulatory regime exerts differential effects on regulators, the direct targets of regulation (i.e. the regulated), its beneficiaries, as well as others who are indirectly affected by it. Regulation restricts the choices of some while enabling others to realize their preferences. As such, every regulatory regime has distributional effects. (Cafaggi 2013: 2). A similar argument can be seen in Büthe (2010).

[2]RTRS: www.responsiblesoy.org. The hardship of Brazilian producers and industrialists to adhere RTRS can be understood by the fact that some of the main representational institutions of the segment, such as Abiove (Brazilian Association of Vegetable Oil Industries) left the Round Table due to disagreements regarding the certificate development process (Rodrigues 2014).

Büthe and Mattli's (2011) Institutional Complementarity Theory aims to find the conditions in which a productive segment is able to influence international private standards. According to these authors, the more hierarchically arranged an industry is inside a country (i.e., the less disperse), higher the capacity of representing its interests on the international arena. If the sugarcane industry is more vertically organized (having sugar mills that are owners of the lands where they grow sugar or linked to the producers through rigid contractual schemes) higher are the possibilities of finding an environment conducive to a unified positioning towards international demands. We argue that this is precisely the case of Brazilian ethanol: its increasingly concentrated production and UNICA's role as the spokesman of the segment favoured the strengthening of Brazilian producers inside Bonsucro, enabling them to influence the standard in order to attend their interests.

Our argument also builds upon the normative concept of regulatory capability, as developed by Cafaggi and Pistor (2014). Regulatory capability, for these authors, is the power of agents submitted to regulatory pressures to influence or create alternatives to regulatory regimes. In that sense, the case of Brazilian ethanol producers is a successful example of regulatory capability.

To sustain our main argument, we will proceed to the analysis of the reasons through which we believe the Brazilian sugar ethanol industry was able to uphold its main interests through UNICA. As in other studies in the field of private governance, the shortage of empirical analysis creates a gap that must be fulfilled. Therefore, we proceed to an initial attempt of determining the capacity of influence of organized segments over the regulatory supply stablished through private regulation schemes. For that goal, we employ as our main explanatory variables measures of economic and political centralization of the industry. Those variables might explain a great deal of the adherence of Brazilian producers to Bonsucro, as well as the legitimacy given by EU to this standard for ethanol international trade.

We aim to develop a theoretical argument to search for the foundations of the power of influence of a specific segment over private regulatory initiatives, in that case, the determinants of the capacity of action of UNICA inside Bonsucro. After exposing some key concepts to drive our dependent variable (regulatory capability), we proceed to an analysis of explanatory variables through public data and information obtained through interviews. Finally, we discuss the limitations found in the constitution of the analytical model aimed in the present article and some possible directions for future research.

International Organizations and International Institutional Environment

Practices internationally established from an economic agent decision-making perspective provide the basis with which strategies of action are defined. To international governance institutions, the evaluation of the setting of international rules of commerce is the starting point of strategy drawing up for private actors. It is from the perception of the flaws in the international institutional arrangement that many of the explanations about the creation and design of private regulation are anchored (Mayer and Gereffi 2010; Cashore 2002). The international institutional environment is important to define the role of these organizations.

In the case of sugar cane production system, in the absence of a specific international regulatory arrangement, Bonsucro stands as a global private alternative for the supply of biofuels regulation.

However, its scope of action is constrained by decisions made inside multilateral International Organizations from importing countries and political/economic blocks like EU, with whom it maintain an intense interaction.

As a general rule, the regulatory frameworks that affect global trade are designed under the influence of economic factors (Thorstensen, Ramos, and Muller 2013: 75). They could be subsumed in three categories: the most comprehensive framework brought by the multilateral trade system, begun with the GATT and with WTO as a contemporary reference; regional, bilateral and not always reciprocal regulatory frameworks that spread mainly after the 1990's. Finally, major international partners also define regulatory frameworks over the international trade when they develop their own public policies, following and broadening multilateral and preferential frameworks, under the pressure of main political and economic players (Thorstensen, Ramos, and Muller 2013: 76).

The hardships faced by the multilateral trade system under World Trade Organization in order to answer to international regulatory demands over new issues provide an important obstacle to the definition of global rules. WTO, given its complex structure (159 members)[3] and decision-making rules based on consensus, cannot conclude the Doha Round of Trade Agreements, started in 2001. One of the main reasons for Doha's hindrance regards the demands of developing countries such as Brazil and other countries involved in the G77 for the reduction of agricultural subsides to developed countries and regions, like USA and EU.

Many discussions over the proliferation of private regulation have taken place inside formal International Organizations. In WTO case, since 2005 there is a concern with the impact of private regulation over the multilateral trade system. In that case, private *standards* are a matter of discussion by the Committee on Sanitary and Phytosanitary Measures (SPS Committee). The main discussions are about 3 issues: market access, development and multilateral legislation (Mbengue 2011).

These issues, beyond the demand for sustainability and labour rules, have a direct impact in the competitivity of agro exporting countries, since they define an increase in production costs while introducing patterns and conditionants that make the productive process more expensive. Thus, the access to markets like UE and USA wcan exclude many potential suppliers when they stablish rigorous domestic legislations (in particular, suppliers from developing countries, for whom is usually more difficult to adapt to such standards).

The agricultural field is in the core of the quarrels inside WTO and the insatisfaction of developing countries in relation to more demanding markets like Europe and US. No wonder that, in the absence of satisfactory answers to the pressures for environmental and social rules that, for many agribusiness segments, private regulation initiatives have emerged, aiming to fit to the specifities of different countries and regions. This plurality of private initiatives helps to build a new scenario for the international trade, where legitimacy disputes, adherence and aception of these mechanisms in the multilateral, preferential and national levels take place.

[3]Source: WTO (March, 2013).

The European Directive of Renewable Energy

The European Directive of Renewable Energy (EU-RED) is an initiative by the European Union to reduce greenhouse emissions (GEEs) in the economic activities of member countries. Founded in 2009, the Directive "details what each country needs to do in order to help achieving the global goal: 20% off all energy consumption inside EU must come from renewable sources until 2020, being 10% of that in the transportation sector" (SGS 2011: 6). To achieve these goals, the EU has set sustainability criteria that must be followed by all its potential energy suppliers. What is new in the model adopted by the EU, however, is the fact that, simultaneously, to the establishment of sustainability criteria, there was a struggle to explain how "member States and biofuel industry organizations could implement and evaluate biofuels in accordance to the criteria" that were defined by the initiative (SGS 2011: 6).

While crediting the role of bondsman of the criteria to voluntary certification initiatives, EU has included private regulation institutions into its legal internal arrangement. As a supplier of rules that testify the compliance of biofuels with the Directive, the European decision strengthens private regulation, which in turn gains a unique role as a "third party" deliberative organ of the rules to be followed by energy suppliers.

Bonsucro, as a representative of the sugar cane industry, was included in the list of voluntary certificates accepted by the EU-RED. The acceptance of Bonsucro was interpreted by Brazilian participants of this multistakeholder initiative as an encouragement for an increase on the production of certified ethanol. On the other hand, the demands stabilished by the regulation might be faced as non-tariff trade barriers (Levy and Newell 2005), since many potential suppliers (including many Brazilian producers) are excluded on the basis of requirements that are not regulamented by WTO.

Distributive Effects of Private Regulation

Incentives that result from changes in global politics and market instruments find in Tim Büthe's (2010) approach an attempt of conciliation of economic, politic and social arguments. For Büthe, the increasing demand for regulation, fueled by the transnationalization of the economy, requires cooperation among regulatory States, which is hard to be achieved in the short-term. The inefficiency of state answers in terms of regulatory cooperation would be more evident in fields with deep distributive conflits, such as global productive chains. The short answer to the implementation of common rules across States would not hinder, however, the appearance of non-tariff barriers. Therefore, a deficit in the harmonization of valid rules for all States would imply conflicts and damages among producers and other players involved in several production chains.

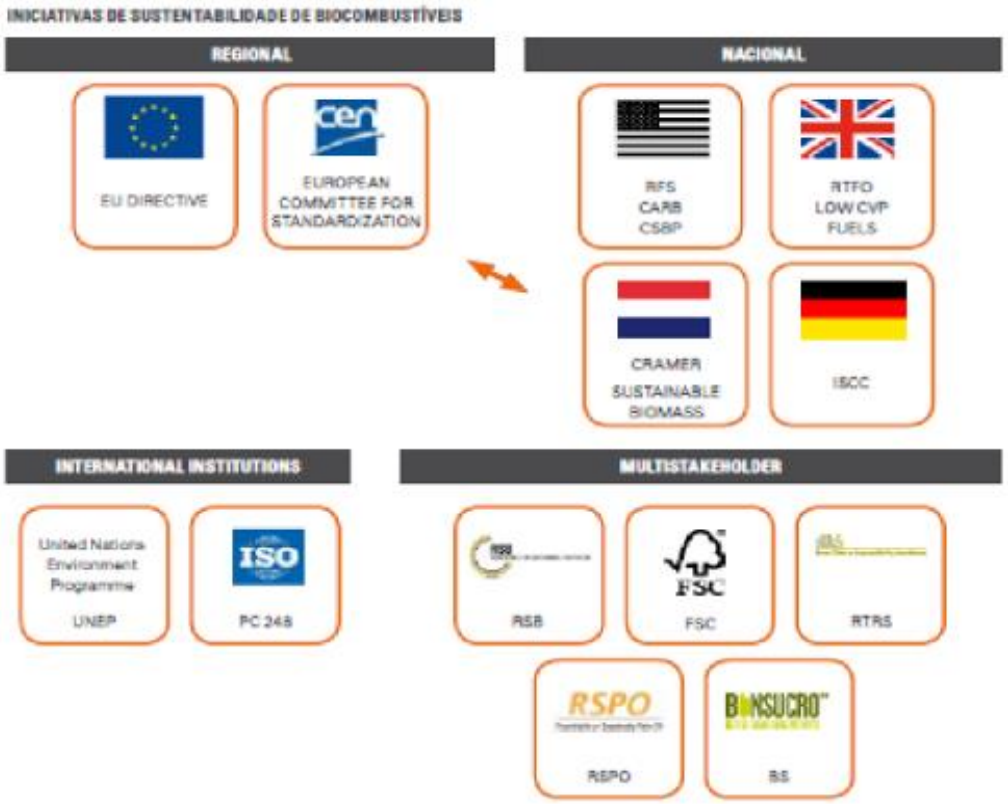


Figure 1: Biofuel Sustainability Initiatives in the European Union. Source: SGS, 2011.

Büthe's proposition claims attention to the specificities of the actors involved in the private governance process and highlights that the interests and interpretations of such actors over the regulation impact their positions on the creation, maintenance, monitoring, *compliance* and *enforcement* of private institutions. Since changing rules is costly, why would private actors handle these costs, and what would be the best way to distribute them? What would lead market actors to cooperate for the creation of rules? For Büthe (2010), despite quarrels over the cost and benefit distribution among *stakeholders*, the main perceptions of benefits are based in assumptions like the following: 1. Cost-efficiency of private regulation; 2. Capacity to adjust to interest conflits and asymmetric distributive impacts; 3. Less transactional costs and higher trust among stakeholders; 4. Broadened participation of other stakeholders; 5. Favouring of cooperation for unimpeditive, unegotiable rules, which remove costs from the government.

Büthe's analysis struggles to interpret incentives that explain the creation of private regulation arena. The author combines, in his propositions, political and economic arguments, mainly the ones that are related to a perception of smaller transactional costs of private regulation in comparison to public regulation[4]. For such reason, his point-of-view implies an understanding that the limitations of collective action and the incentives of private regulation institutions are constrained by transaction costs. Therefore, the limitations to action provided by private initiatives can be considered only when the benefit of the collective action is smaller than the costs of creation, maintenance and adherence to the rules. In the absence of mandatory rules and given the

[4]This argument can be seen in Spiller (2011).

"voluntary" character of the private regulation, the adhesion and compliance of suppliers will be limited by the costs in relation to the benefits of such adhesion and compliance.

Regulatory capacities

Literature on private regulation is broad and heterogeneous regarding explanations to success/failure of private institutions created in order to regulate market flaws. In general, explanations are divided by the disciplinary filiations of authors[5]. Therefore, sociological/constructivist approaches tend to focus the negotiation arenas the different world-views of players regarding social pressures in the incentives for the creation of private initiatives and its negotiations (Keck and Sikkink 1998; Chasek, Downie and Brown 2013; Gereffi, Humphrey and Sturgeon 2005). On the other hand, this subject has gained relevance in the business and political economy field, especially when it comes to economic interests and hindrances that underlie demand and supply for regulation and specific characteristics of the segments subject to regulation (Bruszt and McDermott 2012). In turn, political scientists and internationalists are concerned with questions of legitimacy and authority, as well as the relationship between private authorities inside each state and international organizations (Slaughter 2004; Hale and Held 2011; Hall and Biersteker 2002; Rosenau and Czempiel 1992).

Among this great variety of perspectives, scholars such as Büthe (2010), Büthe and Mattli (2011), Cafaggi (2011), Van Waarden (2011), Levi-Faur (2011), and Prakash and Potoski (2012), while proposing an approach of the phenomena not constrained to a single train of thought, have made an effort to build a more organized debate, providing significant contributions for the developing of questions that can be addressed with empirical analyses. Our struggle to create empirical indicators is mainly based on these authors' works.

The Idea of Regulatory Capabilities

"The regulatory capabilities approach draws attention to the impact TPR (Transnational Private Regulation) has on the ability of individuals and collectives to determine the rules that shall govern them" (Cafaggi and Pistor 2014). Caffagi e Pistor's definition of regulatory capacity raises an important question: the capacity of stakeholders to choose or influence the rules to which they will be submitted. According to the authors, the concept of capacity is influenced by many factors, such as the material conditions of the agents, personal abilities, social constraints, and other features of the social, political, and economic context. What is most important here is the idea that internal and external conditionants to the agent have a considerable impact on its capacity to influence, adhere or reject rules.

The synergy between public policies and the domestic coordination of productive sectors might be related to the capacity of this sector to influence the setting of rules in transnational private arenas (Büthe and Mattli 2011). At the one hand, that means the type of productive chain and the institutional environment in which they are inserted make possible the adhesion and influence of the segment in private *multistakeholder* initiatives. On the other, it means that the differences

[5]See Kersbergen and Waarden (2004).

between domestic regulation among the countries could encourage or discourage consensus building among national industry organized representation.

Based on that argument, the behavior of productive chains and the adequacy of public policies to the characteristics of an industry will tell the capacity of this industry to influence international standards. The higher the capacity of influence, higher the level of *compliance to the standard(s)*. In that sense, sectorial adhesion to private rules is not seen only a consequence of incentives (prizes) on the market. Before that, adherence and success of private governance initiatives will depend on the acclimation of the rules created to the specific characteristics of the productive chains of big players. Therefore, one of the main consequences of the differences among domestic regulation standards, considering that private regulation might work as a club, once the major players define the rules of international trade, is that less competitive and/or influential actors will have to fit themselves, otherwise they will stay out of the main world trade channels.

The obstacles faced by the coordination of the productive chain, the reputation of Brazilian ethanol, and the threats of creation of non-tariff barriers to commodity exports are strategic issues in Brazilian political and commercial agenda (Barral 2003). Frequently, public policies are pointed out as bottlenecks for the development of Brazilian agribusiness and, consequently, taken as essential to the development of competitive and internationally representative productive segments.

Büthe and Mattli, in "*The New Global Rulers*" (2011), develop a theory about "Who wins, who loses and why, when the standard-setting is made by private focal institutions" (pp. 43)[6]. The institutional complementarity theory states that:

A concern with distributive conflicts inherent to private regulation underlies the theory developed by the authors. Adaptive costs for the convergence of production chains, "even when the benefits of convergence are clearly higher than [those] adaptive costs for each country or player" (Büthe and Mattli 2011: 42) are faced by stakeholders as a fundamental element for their positioning in the negotiations. On the other hand, according to these authors, understanding how the interests are balanced when private rules are put under negotiation requires an understanding of how the stakeholders themselves are domestically articulated. Once the resources for influence that lie on private arenas are distinct from traditional resources that exist on the Intergovernmental Organizations, the ability to organize in a country basis is very important. While highlighting the role of resources such as *technical expertise*, *socioeconomic resources*, *information speed* and *effective representation of interests*, the capacity of influence of national segments on private arrangements will depend on the *level of coordination* of the domestic productive chain.

In order to support their main argument, Büthe and Mattli (2011: 48) claim that domestic institutions are crucial in the interaction with international institutions. The institutional complementarity between domestic institutions and standard-setting International Organizations affects the ability of stakeholders to influence the content of international standards and their consequent cost and benefit distribution. The way that these authors analyze the capacity of influence is driven by an analysis of the domestic organization of the relevant industry. Comparing

[6]"Focal institutions" are institutions that have enough legitimacy to create rules with international validity.

domestic sectorial regulatory models, these authors state that the higher the complementarity between domestic and international institutions, higher the power domestic stakeholders to make their interests relevant inside the private international institutions. At the same time, it increases the capacity of pervasiveness and influence of international rules at the national level.

In Büthe and Mattli's framework, the type of institutional domestic structure is the most important element to determine the capacity of influence of national stakeholders in transnational arrangements[7]. Countries that present hierarchical domestic structures, that is, centralized regulatory public institutions (by technical field or segment), would have an advantage in the representation of the interests of domestic agents, given that they would find themselves in a higher level of organization and harmonization. Therefore, they can project their interests with a single voice, strengthened by the legitimacy that their practices already find in the domestic level[8], once they are already translated into public policies. On the opposite side, countries with a decentralized, non-hierarchical internal structure, the ability of sectorial coordination is diffuse and, consequently, could make impossible for the segment to have a legitimate, single voiced, representation in the international level. That is only possible because, even inside a single productive sector, stakeholders would be more prone to have different interests, besides having different adaptation costs (Büthe and Mattli 2011, 54).

Private regulation, according to Cafaggi and Renda (2012), emphasizes the division of responsibility among the many agents in a productive chain for the provision of guarantees that the rules will be respected. That responsibility distribution implies in costs that need to be distributed. For these authors, players with a higher power of influence on the market would be leaned to force other players of the productive chain to comply with the rules through contractual agreements. Big buyers, for example, could demand by contract that their suppliers respect the rules (stablished by the company itself, through self-regulatory standards). The same way, vertical integration or disintegration processes acquire a very interesting consequence for the capacity of incorporation of international private standards in this approach (Williamson 1996). Cafaggi and Renda (2012), argue that more vertically integrated productive chains have a higher capacity of coordination of activities for the certification of the whole process of production (a guarantee chain) in comparison to less integrated chains. They should resort to other mechanisms of governance so that the information and guarantees of the certification process can be adequately transferred through the stages of production. Therefore, productive chains in which we verify a high level of vertical integration would be more inclined to the adoption of common rules. Under this conception, the type of productive chain and the characteristics of transactions inside such productive chains determine, to a large extent, the capacity of rules harmonization in the international level through private schemes.

Empirical Analysis

So far, we have stated that the capacity of influence of organized segments on the private regulation schemes depends on many political and economic variables. The main explanatory variables here

[7]Büthe (2013) develops a similar argument.
[8]The capacity of information exchange in this type of daomestic institutional structure would also be higher than in decentralized structures.

are: 1) the overlapping between geographic location of the regulatory demand and the destination of exports, which encourage exporting companies to comply; 2) The structure of the plants and the governance mechanism of the market[9]; 3) public pressure and the institutional domestic environment of the agents submitted to the pressure to engage in private regulation and; 4) Diffusion or concentration of legitimacy and authority of class entities. In the following sections, we perform a preliminary analysis of the impact of these explanatory variables in the case of Brazilian ethanol industry, aiming to find evidences of the capacity of influence of the organized sector in Bonsucro standard.

Importance of Sugar Ethanol Segment to Brazil and the International Market

Our statements about regulatory capacity depends, of course, on the importance of Brazilian exports of ethanol to the EU. Since the region is the main target of international demands for sustainability certification, the overlapping of these demands with the economic relevance of the European market to Brazilian exporters provides a significant incentive for the adequacy of the production chain to EU-RED standards. Similarly, these data provide strong indications that this relevance might be related to the capacity of Brazilian producers to adapt easily (i.e., with lower costs) to these standards, since many of these criteria were already being attended in the Brazilian industry.

First, it is worth to note the external importance of Brazilian sugar in the entire world has risen up abruptly lately. The share of Brazil went from 3.1% in 1989 to 51% of the total amount of sugar exported in 2010 (DATAGRO). Being a major player helps the country's producers gain power to influence international standards.

On the demand side, EU is a major player in ethanol exports, especially if we consider only the product made in Brazil. In 2008, USA was still the biggest importer with 30% of the total volume, but if we consider the European Union as a whole, it was very close to US with 29% of the total volume of Brazilian ethanol (Moraes et al. 2010). The particular relevance of the European market to Brazilian producers (and vice-versa) is shown in figure 2 below: the share of Brazil was 40% in 2009 and 45% in 2010.

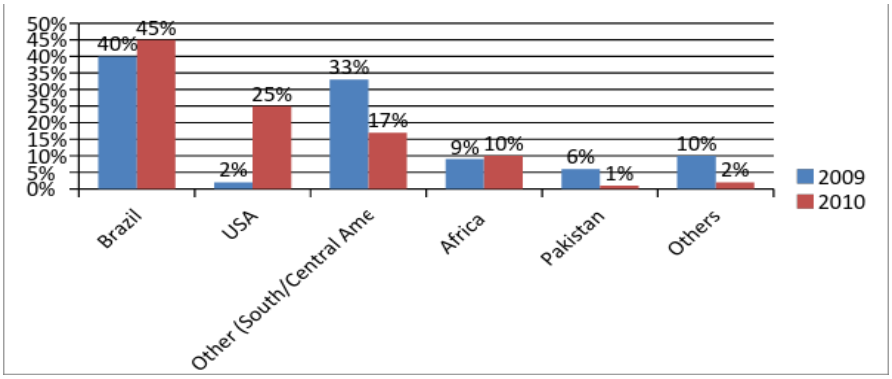


Figure 2: Country/Region of Origin of EU Bioethanol Imports (2009/2010). Source: Johnson et al (2013).

[9]This argument refers to Williamson (1996).

Thus, considering that both USA and most particularly the European Union are major destinations of Brazilian ethanol, the fact that these are very demanding markets in terms of sustainability of their energy grid is a significant reason for Brazilian producers to organize themselves in order to influence the sustainability standards that are linked to these markets.

Evidence of Concentration in the Brazilian Sugarcane Industry

One of the particularities of Brazilian sugar and alcohol production is that it is highly concentrated in comparison to other countries. Most sugar mills owners are also owners of the lands where the sugarcane is grown. This verticalization facilitates the coordination and homogeneity of interests vis-à-vis national and international regulators. Moreover, it decreases the costs of spreading the new procedures brought by such regulations to the first levels of the supply chain. According to CONAB, "one of the main distinctive features of Brazilian sugar industry is precisely the concentration of production and processing of the sugar in the same plant. Only one third of the processed sugarcane is bought from third party producers" (Abastecimento 2008).

Table 1 shows the trend of concentration in sugarcane industry along almost two decades. From 1992/93 to 2010/2011, the number of sugar mills went from 147 to 190. The average milling rate almost tripled, going from 1199 to 2931 thousand tons, as well as the total milling, that went from 176.218 to 556.880 thousand tons.

	1992–1993	**2000–2001**	**2010–2011**
Number of units	147	133	190
Total milling (1000 tons)	176,218	207,099	556,880
Average milling (1000 tons)	*1,199*	1,557	2,931

Table 1: Number of Sugar Mills in Operation and Average Milling per Unit in São Paulo State. Source: DATAGRO (2013).

Figure 3 shows the territorial concentration in Brazilian sugarcane, with a predominance of producers of the Center-South region of the country over the North and Northeast (it also suggests that this geographic concentration is slowly increasing - it went from 90.45% in 2005/2006 to 96.09% in 2010/2011).

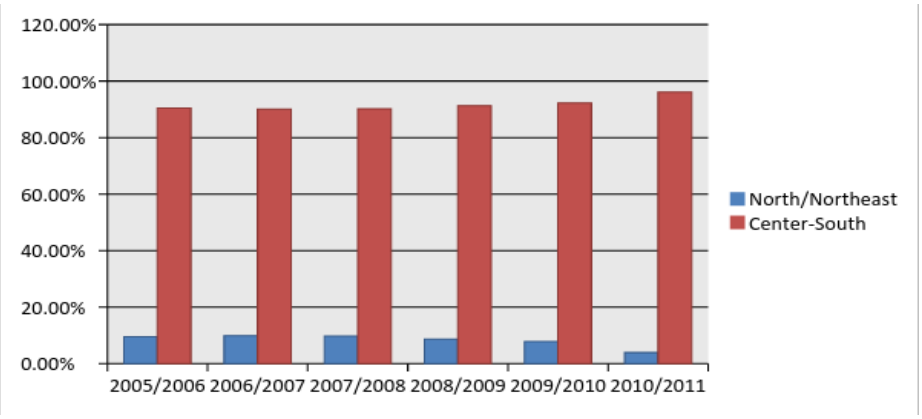


Figure 3: Distribution of Ethanol Production Among Brazilian Regions. Source: UNICA.

This trend of a geographic concentration in sugar cane and ethanol production is not new. Cordonnier (2008) shows that since the 1940's the production started to get concentrated in Center-South (whereas the Northeast was known for its sugar cane production for centuries). This author also points out that "industrial growers who also controlled sugar Mills" became more frequent as independent growers started to disappear.

In table 2, it is evident that the prominence of Center-South, mainly São Paulo State, is not only in the production, but also in ethanol exports (São Paulo State is responsible for almost 95% of the total exported by the country)[10].

State	Volume of Exports (thousand litres)	% Share
1. São Paulo	261,378	94.46%
2. Minas Gerais	15,156	5.48%
3. Goiás	92	0.03%
4. Pernambuco	51	0.02%
5. Rio Grande do Sul	32	0.01%
6. Others	0	0%
Total	276,708	100%

Table 2: Ethanol Exports by State. Source: UNICA/SECEX (2013).

For sugarcane in particular, the main international requirements are related to managing complexity and environmental pressure: the bottleneck on the coordination for increase in sustainability remains in the production and processing of the commodity. Other players that stand further on the sugarcane production chain have been pushing the producers to engage on a common goal of certified production(Moura and Chaddad 2012).

As Sauer and Leite (2011) point out, the production and processing of sugarcane is made by short trade circuits, as shown by the territorial concentration of the production and trade of sugarcane. According to Shikida, Azevedo, and Vian (2011), this territorial concentration can be used as an indicator of homogeneity on the use of technology in the sugar ethanol industry of the Center-South region. Geographical concentration of production, processing verticalization (given that few plants respond for most of the processing, and they are also spatially concentrated) as well as homogeneity on the technological standard are, thus, true indicators of the balance on the profile of production units. Therefore, those material conditions create a basis for an efficient positioning of Brazilian sugar industry in the international arena, with a relatively easy and low-cost achieving of consensus.

[10]If we look at data on production by state or, inversely, exports by region (Center-south VS North and Northeast) the same trends are found. To save space, we do not feature such data here.

Public Policies and Regulation in Brazil

As pointed out by Zezza and others (2012), some of the most prominent authors in private governance theory, like Cashore et al. (2007), see an important role for the government in creating conditions for compliance with private regulation.

Zezza and others (2012) shows then how the compliance of Brazilian ethanol producers with international standards and certifications is such an example was made more feasible by public policies designated for the ethanol market.

Brazilian government helped ethanol production not only increase but also adapt easily to international standards and regulation, for two reasons: first, through public policies that support both the supply and demand of ethanol in the country. Second, through public regulation, in some cases coordinated with private actors, which turned Brazilian ethanol chain of production already close to the requirements of international certification, in comparison to other producing countries.

First, the *Proalcool* program, started in 1975, brought many incentives for the production and transport of ethanol (Cordonnier 2008). Second, policies that helped a vigorous internal market for ethanol emerge, like a 1979 Protocol: "One of the most innovative governmental programs to emerge from the late 1970s in Brazil was the agreement brokered between the Brazilian government and large automobile manufacturers to produce cars that ran on ethanol alone, rather than simply a blend of ethanol and gasoline" (Cordonnier 2008).

These policies, which continued with financial supports to "flex fuel" cars (cars that run on both ethanol and petroleum) and sugar/ethanol production throughout the decades, made possible a vigorous ethanol industry.

Besides that, by the time that certifications linked to the EU Directive such as Bonsucro were starting to develop, Brazil had already public regulations that were strict in comparison to other biofuel producers, making adaptation to these international standards less costly. For example, the country had already "implemented its own protected areas" under the CDB (Convention for Biological Diversity), although different criteria than the one used by the EU Directive (@ Zezza and others 2012, 8).

More than that, sugar cane producers in São Paulo state (where most of the production is concentrated and well-articulated under UNICA's representation) signed the Green Protocol, an agreement with São Paulo State Environmental Agency (Zezza, 2012:14). In fact, UNICA itself was the responsible for signing, in the name of producers, the Green Protocol. This shows how organized and prepared for adequacy to environmental and social restrictions those producers were even before international standards started gain importance[11].

[11]Beyond those incentives,Brazilian sugarcane was easier to fit water requirements of Bonsucro, since 95% of the production uses rain-water (not irrigation), as described by Selfa, Bain, and Moreno (2014).

Concentration and Interest Representation

Not only the relationships inside the chain of production, but also the representational profile of sugar and ethanol producers in Brazil is relevant in the way that national actors organize to support their interests. Private interests representation also depends on the capacity to coordinate collective action. Notwithstanding, the characteristics of the productive chains and the relationships developed among its many agents are essential to identify the obstacles for the establishment of interest representation organizations and for the efficiency of compliance to international rules.

Together with the concentration and verticalization of Brazilian ethanol production it came an institution that could represent Southern producers effectively. UNICA has today more than 130 associates, which correspond to 50% of the ethanol and 60% of the sugar produced in the country (UNICA website, 12 June 2014)[12].

UNICA was founded in 1997, as a result of the merger of several São Paulo State setorial organizations (which, as we have seen before, is responsible for the majority of production and export of Brazilian ethanol). It is run by a Council formed by representatives of the associate producers and technical experts in sugarcane[13].

As a consequence of the centralization of important players around UNICA, the association could become not only the main representative of the sugarcane segment inside the country, but it also gained power in the international level, particularly in Bonsucro negotiations. UNICA's worldwide projection can be felt by the opening of an office in USA, in 2007, and Europe, one year later. More than that, the organization has a member in the board of directors of Bonsucro.,Therefore, UNICA's performance was crucial in the strengthening of the position of Brazilian exporters and the avoidance of dissonant voices in the segment inside the country.

Analytical Considerations

Cafaggi and Pistor (2014), Cafaggi and Renda (2012) and Büthe and Mattli (2011) became reference in private transnational regulation studies because their contributions have exceeded their initial goals. Most of the literature in the field have relied on case studies, mainly because of a lack of theoretical foundations that allow the development of research questions that could be addressed with data analysis and replicable explanatory models.

At the one hand, Büthe e Mattli's (2011) institutional complementarity theory. solidify the argument that some specific features of an (namely, the level of verticalization of the productive chain, the centralization in the interest representation, and the adequacy to standards and legitimation of the sectorial positioning through public policies) are strong indicators of the capacity of producers to make their interest worth in the international regulatory arena. On the other, regulatory capability theory of Cafaggi and Pistor (2014) complement Büthe and Mattli's statement, while building arguments that, in the field of private regulation, provide a normative foundation to the idea of the capacity of influence of players in the regulation to which they are

[12]There are other associations which represent the interests of producers, such as Alcopar (in Paraná State, close to São Paulo), but they only represent a few producers and have much less international power of influence than UNICA.
[13]See UNICA's website: http://www.unica.com.br/historico-e-missao/.

submitted. The present article main goal is to find convergence between these two theoretical perspectives which, when applied to our case (Brazilian ethanol industry influence on Bonsucro standard), suggest interesting paths to a research agenda.

Therefore, the study of the determinants of the coordinated action and regulatory capacity of players that represent the sugar ethanol segment in brazil, testified by the level of adherence of Brazilian producers to Bonsucro[14], show us that the theoretical framework of these authors can be suitable to an explanation of 1) the level of adherence and compliance to private regulation (certification) 2) the necessary conditions for country sectorial interests could be balanced in private transnational regulatory arenas.

First, the case shows that the sources of demand for ethanol regulation (EU) converge with a privileged destination of Brazilian exports of sugar and ethanol. The pressures for compliance that come mainly from Europe through EU-RED have strongly impacted producers and industrials that act in Brazil. Such pressures gave a kick-start to the constitution of Bonsucro, the private initiative for sustainability standards of the sugarcane chain of production.

Secondly, a concentration of the production and processing of sugarcane in Brazil enable a relative homogenization of the production. The data on that matter suggest that the concentration, mainly in the sugar processing, has as a consequence the strengthening of this stage of the productive chain in relation to producers (who are more disperse), increasing verticalization of the productive chain in the first stages of the value chain. When we overlap data on production with territorial dispersion of production and processing of sugarcane, we find out that the industry is concentrated in the Center-South, a very homogeneous region in terms of property size (mainly large), technology (Shikida, Azevedo, and Vian 2011), and labor and environmental standards (fueled by previous public policies, as pointed out by Zezza and others (2012). As Büthe and Mattli (2011) suggest, the homogenization of the industry favored an increased capacity of being represented in transnational arenas.

Third, public policies that favour or legitimate the practices of a sector also provide legitimacy to the position of agents in the international arenas (Büthe 2013). In the Brazilian case, a very demanding institutional environment regarding environmental standards made many producers of sugar and ethanol already adapted to international standards as the ones required by EU-RED, even before they seek for certification. Therefore, the Brazilian industry gained, from the beginning, a comparative advantage in relation to other competitors whose initial patterns were less demanding. As it follows, the efforts made by the Brazilian government to stimulate the production of ethanol in the 1970's were essential to impel the growing and productivity of the segment.

Finally, we state that the geographic concentration and verticalization of the production and processing in a small number of sugar mill plants favored, in the case of sugarcane industry, the unification of interests under UNICA. It is important to highlight the role of UNICA, since the

[14]The large majority of plants certified by Bonsucro are Brazilian (26 out of 28). Source: http://www.unica.com.br/noticia/1940474192039218077/cresce-o-numero-de-usinas-certificadas-pelo-bonsucro/.

beginning, as a privileged member of Bonsucro negotiations. That role was only possible because of the domestic legitimacy and power that UNICA gained among Brazilian producers.

Conclusions and Directions for Future Research

Scholar literature on private transnational regulation is still taking its first steps in the use of metrics, statistical data and analytical frameworks. In the present article, which intends to set a further research agenda, we have combined some information and data that could sustain the development of indicators or analytical models, which could be anchored on theoretical grounds in a process of systematization of research questions, fundamental concepts and analysis dimensions. Therefore, we believe the development of an indicator for further research is of the greatest importance for private governance studies and, for that reason, we proceed to the systematization of theoretical statements which could be supported by quantitative indicators and available statistical data.

The study of the fundaments that characterize the capacity of collective action of Brazilian ethanol industry in Bonsucro is an interesting exercise which could, on subsequent works, help us to create indicators that provide an adequate measure of the regulatory capacity (influence) of organized domestic segments to influence and adhere to private regulation standards. Therefore, the question "Who wins and who loses under private regulation- and why?" could gain a clearer outline, as the indicators of regulatory capacity could be used to evaluate and measure the distributive effects of private regulation from the agents capacity to involve themselves effectively in private regulation processes.

We believe, therefore, that measures of homogeneity of representation, concentration of authority, legitimacy of representation and the verticalization of productive stages provide explanatory variables to the constitution of regulatory capacity indicators in future research.

References

Abastecimento, Companhia Nacional de (2008): Perfil Do Setor Do Açúcar E Do Álcool No Brasil. Brasília: Governo Gederal.

Barral, Welber Oliveira (2003). Negociações Comerciais Multilaterais: a Trade Promotion Authority E Os Interesses Brasileiros. São Paulo: Fundação Boiteux.

Bruszt, Laszlo, and Gerald A McDermott (2012). "Integrating Rule Takers: Transnational Integration Regimes Shaping Institutional Change in Emerging Market Democracies." Review of International Political Economy, 19(5): 742–778.

Büthe, Tim (2010). "Private Regulation in the Global Economy: A (P)Review." Business and Politics, 12(3).

Büthe, Tim (2013). "Distributional Consequences of Transnational Private Regulation: Institutional Complementarity as a Structural Source of Power in Global Product and Financial Markets." Duke University Rethinking Regulation Working Paper, 6.

Büthe, Tim, and Walter Mattli (2011). The New Global Rulers: the Privatization of Regulation in the World Economy. Princeton: Princeton University Press.

Cafaggi, Fabrizio (2011). "New Foundations of Transnational Private Regulation." Journal of Law and Society, 38(1): 20–49.

Cafaggi, Fabrizio (2013). "The Regulatory Functions of Transnational Commercial Contracts: New Architectures." *Ford*ham International Law Journal, 36:1557.

Cafaggi, Fabrizio, and Katharina Pistor (2014). "Regulatory Capabilities: a Normative Framework for Assessing the Distributional Effects of Regulation." Regulation & Governance (early view).

Cafaggi, Fabrizio, and Andrea Renda (2012). "Public and Private Regulation: Mapping the Labyrinth." CEPS Working Document, 370.

Cashore, Benjamin (2002). "Legitimacy and the Privatization of Environmental Governance: How Non–State Market–Driven (NSMD) Governance Systems Gain Rule–Making Authority." Governance, 15(4): 503–529.

Cashore, Benjamin, Graeme Auld, Steven Bernstein, and Constance McDermott (2007). "Can Non-State Governance 'Ratchet up' Global Environmental Standards? Lessons from the Forest Sector." Review of European Community & International Environmental Law, 16(2): 158–172.

Chasek, Pamela S, David L Downie, and Janet Brown (2013). Global Environmental Politics. Boulder: Westview Press.

Cordonnier, Vanessa M. (2008). "Ethanol's Roots: How Brazilian Legislation Created the International Ethanol Boom." William & Mary Environmental Law & Policyy Review. 33:287.

Gereffi, Gary, John Humphrey, and Timothy Sturgeon (2005). "The Governance of Global Value Chains." Review of International Political Economy, 12(1): 78–104.

Hale, Thomas, and David Held (2011). Handbook of Transnational Governance. London: Polity.

Hall, Rodney Bruce, and Thomas J Biersteker (2002). The Emergence of Private Authority in Global Governance. Cambridge: Cambridge University Press.

Keck, Margaret E, and Kathryn Sikkink (1998). Activists Beyond Borders: Advocacy Networks in International Politics. Cambridge: Cambridge University Press.

Kersbergen, Kees van, and Frans van Waarden (2004). "Governance as a Bridge Between Disciplines: Cross-Disciplinary Inspiration Regarding Shifts in Governance and Problems of Governability, Accountability and Legitimacy." European Journal of Political Research, 43(2): 143–171.

Levi-Faur, David (2011). "Regulation and Regulatory Governance." In: Levi-Faur, David (ed.). Handbook on the Politics of Regulation. Northampton: Edward Elgar Publishing. pp. 1–25.

Levy, David L, and Peter John Newell (2005). *The Business of Global Environmental Governance*. Cambridge: MIT press.

Mayer, Frederick, and Gary Gereffi (2010). "Regulation and Economic Globalization: Prospects and Limits of Private Governance." Business and Politics, 12(3): 1--25.

Mbengue, M. 2011. "Private Standards and WTO Law." International Centre for Trade and Sustainable Development (ICTSD) Bridges Trade BioRes Review, 5(1).

Moraes, Bruna, Heidy Ramos, Marina Soares, and Mi Almeida. 2010. "Fatores Determinantes Para a Entrada de Investimento Estrangeiro Direto No Setor Sucroalcooleiro Do Brasil." In *Congreso Internacional de Estratégia SLADE*, Guayaquil, 1: 1–23.

Moura, Paula T, and Fabio R Chaddad (2012). "Collective Action and the Governance of Multistakeholder Initiatives: a Case Study of Bonsucro." Journal on Chain and Network Science, 12(1): 13–24.

Prakash, Aseem, and Matthew Potoski (2012). "Voluntary Environmental Programs: a Comparative Perspective." Journal of Policy Analysis and Management, 31(1): 123–138.

Rodrigues, Pietro. 2014. "Governança E Regulação Transnacional Privada: Os Limites Do Sistema Agroindustrial Da Soja." Master's thesis, Department of Political Science, University of São Paulo. São Paulo.

Rosenau, James N, and Ernst-Otto Czempiel (eds.) (1992). Governance Without Government: Order and Change in World Politics. Cambridge: Cambridge University Press.

Sauer, Sérgio, and S Pereira Leite (2011). "Agrarian Structure, Foreign Land Ownership, and Land Value in Brazil." In: International Conference on Global Land Grabbing, Cornell University, pp. 6–8.

Selfa, Theresa, Carmen Bain, and Renata Moreno. 2014. "Depoliticizing Land and Water 'Grabs' in Colombia: the Limits of Bonsucro Certification for Enhancing Sustainable Biofuel Practices." Agriculture and Human Values, 31(3): 455–468.

SGS. 2011. Entendendo a Produção Sustentavel de Biocombustíveis, a Diretiva Da UE de Energia Renovável E as Iniciativas Internacionais Para Verificação de Sustentabilidade. Accessible at: http://www.dcabr.org.br/download/artigos/sgs.pdf . Access: 17/05/2015.

Shikida, Pery Francisco Assis, Paulo Furquim de Azevedo, and Carlos Eduardo de Freitas Vian. (2011). "Desafios Da Agroindústria Canavieira No Brasil Pós-Desregulamentação: Uma análise Das Capacidades Tecnológicas." Revista de Economia E Sociologia Rural, 49(3): 599–628.

Slaughter, Anne-Marie (2004). "Sovereignty and Power in a Networked World Order." Stanford Journal of International Law, 40:283.

Spiller, Pablo (2011). "Transaction Cost Regulation." NBER Working Papers, 16735.

Thorstensen, Vera, Daniel Ramos, and Adriane N. Muller Carolina e Baptista (2013). "Sistemas de Regulação Do Comércio Internacional Em Confronto: O Marco Dos Estados E O Marco Das Transnacionais." Política Externa, 21(4). Online.

Van Waarden, Frans (2011). "Varieties of Private Market Regulation: Problems and Prospects." In: Levi-Faur, David (ed.). Handbook on the Politics of Regulation. Northampton: Edward Elgar Publishing , pp. 469--486.

Williamson, Oliver E. (1996). The Mechanisms of Governance. Oxford: Oxford University Press.

Zezza, Annalisa (2012). "Certification on Sustainability in the Biofuel Sector: a Case Study on Brazilian Ethanol." In *Congress Papers*. First Italian Association of Agricultural; Applied Economics (AIEAA), Trento, pp. 1--25.

Implications and Consequences of the Arms Trade Treaty (ATT)

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Abstract

The international sales volume of conventional arms has been considerably increasing, making it necessary to create an international normative framework of regulations: the adoption of the ATT by the United Nations (U.N.) General Assembly (2013) represents a historical achievement to establish global standards for the arms trade, with the purpose of supporting international peace and security and curbing human-rights abuses. This paper describes the process aimed at regulating the legal arms trade and strengthening the fight against the illicit trafficking. Through the data of the U.N. Disarmament Affairs, the Stockholm International Peace Research Institute and the International Institute for Strategic Studies, the amount of conventional arms transfers worldwide has been analyzed. The articles of the ATT are illustrated focusing on the most innovative and critical dispositions. In conclusion, the Conference of the State Parties will face the turbulent developments and the different international perspectives for the future of the ATT.

Keywords

arms trade, ATT, conflict resolution, human rights, security studies, United Nations.

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Introduction

The Arms Trade Treaty establishes common international standards for the regulation of the international trade in conventional arms, ammunition, parts and components for the purpose of contributing to peace and security, reducing human suffering, and promoting cooperation and transparency. The global volume of trade linked to these arms is progressively increasing and it represents a potential menace to international peace and security (SIPRI Yearbook 2015). The international community is aware of the strong and intense scale of conventional arms trade worldwide and the member States of U.N. expressed their will and need to regulate it in the most efficient and appropriate way: the treaty aims to establish a certain number of criteria by which States will assess arms transfers applications; a ban on transfers likely to contribute to war crimes, to acts of genocide or to violations of international commitments and Security Council embargos; consideration of risks associated with violations of human rights or international humanitarian law; consideration of the risk of corruption in transactions and the risk of diversion into the illicit market. This treaty – which covers the seven categories of the UN Register on Conventional Arms as well as the SALW, ammunition, parts and components – entered into force on 31st December 2014 and its implementation is now essential in the fight against illicit trafficking and in the general regulation of this global trade, especially in the geographical areas most effected by trafficking of SALW.

"The need for the ATT remains abundantly clear. Deadly weaponry continues to find its way into irresponsible hands. Unscrupulous arms brokers defy UN arms embargoes. Ammunition depots are poorly guarded. End-use certificates are not standardized and can be easily forged […] In adopting the Arms Trade Treaty, Member States came together to support a robust, legally binding commitment to provide a measure of hope to millions of people around the world[15]".

Literature Review

Before describing the global volume of the trade linked to these specific arms, it is fundamental to identify what does the notion of "conventional arms" mean. A conventional arm is an arm which is neither nuclear, biological, nor chemical because these latter arms have stronger *magnitudo* and they are classified as "mass destruction arms" for this reason (Christian Ponti, 2013: p. 643).

The U.N. Register of Conventional Arms (hereafter Register) covers seven categories of arms, which are deemed the most offensive ones: battle tanks, armored combat vehicles, large-caliber artillery systems, combat aircraft, attack helicopters, warships, missiles and missiles launchers. The Register is a voluntary arrangement established on 1st January 1992 under General Assembly resolution[16]; this resolution called upon all member States to provide annually by 31st May of each year, to the Secretary General, relevant data on imports and exports of conventional arms to be included in the Register. In the same resolution of December 1991, the General Assembly declared its determination to prevent the excessive and destabilizing accumulation of arms in order to

[15] Remarks delivered by Angela Kane, 25 September, on behalf of the Secretary General to the 2014 Treaty Event, annually devoted to multilateral treaty advancement at the margins of the UNGA (United Nations General Assembly) in New York.
[16] UNGA (United Nations General Assembly), Doc A/46/36 L on 9th December 1991, *Transparency in Armaments*.

promote stability and strengthen international peace and security, taking into account the legitimate security needs of States and the principle of undiminished security at the lowest possible level of armaments.

Recently, member States decided that the SALW could be added to the seven arms of the Register, under the formula "7+1". The U.N. General Assembly gave a definition of the SALW[17]: "small arms" are weapons designed for personal use and they consist of: light machine guns, sub-machine guns, including machine pistols, fully automatic rifles and assault rifles, and semi-automatic rifles; "light weapons" instead include the following portable weapons designed for use by several persons serving as a crew, such as heavy machine guns, automatic cannons, howitzers, mortars of less than 100 mm caliber, grenade launchers, anti-tank weapons and launchers, recoilless guns, shoulder-fired rockets, antiaircraft weapons and launchers, and air defense weapons.

The SALW, unlike heavy weapons, circulate everywhere in both the military and civilian markets. These categories of arms are cheap, light, easy to handle, transport and use by civilians, so that there are different possible ways in which SALW find their way to fall into hands of civilians and into the illegal market: arms captured from enemies during fighting, soldiers defecting from armed groups, stolen or captured peacekeeping stocks, arms supplied by the armed forces, purchases through the open market, supply from government stockpiles of neighbouring States, inheritance from family or relatives or friends.

Before the adoption of the ATT, efforts to improve controls on international arms transfers have primarily been driven and directed by U.N. member States. At the international level there are three existing international instruments: the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, their Parts and Components and Ammunition (the Firearms Protocol)[18], the UN Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects (PoA)[19] and the International Instrument to Enable States to Identify and Trace, in a Timely and Reliable Manner, Illicit Small Arms and Light Weapons (ITI)[20]. These have all contributed to the development of a normative framework on small arms control (Sarah Parker, 2013: page 4), but they have some critical limits: no one of them cover all together the SALW, ammunition, parts and components in their activities and control measures, and the Firearms Protocol is the only legally binding instrument.

Before the adoption of the ATT, U.N. Security Council's arms embargoes were the only real international legally binding measures that aim to partly regulate but mostly to prohibit specific arms transfers: arms embargos are one type of sanctions that can be used to coerce States and

[17] UNGA(United Nations General Assembly), Doc. A/52/298 on 27th August 1997, *Annex, Report of the Panel of Governmental Experts on Small Arms.*

[18] UNGA (United Nations General Assembly), *Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, Supplementing the United Nations Convention against Transnational Organized Crime ('Firearms Protocol')*. Resolution 55/255, adopted on 31st May 2001. A/RES/55/255 of 8th June 2001.

[19] UNGA (United Nations General Assembly), Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects ('UN Programme of Action'). Adopted on 21st July 2001. A/CONF.192/15 of 20th July 2001.

[20] UNGA (United Nations General Assembly), International Instrument to Enable States to Identify and Trace, in a Timely and Reliable Manner, Illicit Small Arms and Light Weapons ('International Tracing Instrument'). Adopted on 8th December 2005. A/60/88 on 27th June 2005.

non-governmental actors to improve their behaviour in the interests of international peace and security (SIPRI Arms Embargoes Database). Under Chapter VII of the U.N. Charter, the Security Council can take enforcement measures to maintain or restore international peace and security. Such measures range from economic and/or other sanctions not involving the use of armed force to international military action. Based on article 41 of the U.N. Chapter, since the 1945-2006 the United Nations has imposed 27 arms embargoes (SIPRI, 2007, Table A.1).

Nevertheless, it is important to specify that arms embargos present some significant limits: States have not always applied with respected the embargoes measures, which can't prevent the supply of arms but can just limit or can just end illicit trades. In general, it is not the goal of arms embargos to regulate the international and national arms trade (Christian Ponti, 2013, p. 646).

Theoretical framework

The ATT is the culmination of numerous dedicated initiatives conducted over recent decades. The idea of an arms trade treaty first came from Nobel Peace Laureates, supported by civil society organisations worldwide: in May 1997 they launched the International Code of Conduct on Arms Transfers (Nobel Laureate Code, 1997): Costa Rican President and Nobel Prize laureate Oscar Arias led other notables in summoning international community support for ethical standards and transparency in arms trade (Sarah Parker, 2014: p. 78). This was to better protect human rights and promote government accountability. In 1998, the European Union concluded the EU Code of Conduct on Arms Exports (EU, 1998), a political measure designed to block member-state arms exports to locations provoking or prolonging armed conflict, risking human rights repression or fomenting state aggression.

In 2003, the Control Arms[21] campaign was launched and has since gathered support for the ATT from over a million people worldwide. Indeed, in 2006 Control Arms handed over a global petition called "Million Faces" to the U.N. Secretary General Kofi Annan. In December 2006, a group of States led by the United Kingdom began investigating the feasibility of an arms trade treaty with common international standards for the export, import, and transfer of conventional arms. The U.N. General Assembly then requested the U.N. Secretary General to canvass member States over the feasibility, scope and draft parameters of a comprehensive, legally binding instrument establishing common international standards for the import, export and transfer of conventional arms[22]. Following reports by a Group of Government Experts (GGE) in 2008, and a U.N. Open-Ended Working Group of government representatives in 2009, differences over a future treaty were narrowed to four main headings. They included goals and objectives (treaty application at its broadest level); feasibility (requirements for a universal, objective, non-discriminatory and clearly defined instrument); scope (intended weapons coverage and range of transactions, transfers and sales); and, most importantly, parameters (principles and criteria providing presumptions of denial of transfer and operational mechanisms). The U.N. General Assembly resolved to establish a

[21] Control Arms is a global civil society movement Non-Governmental Organisations (NGOs) campaigning for tough controls on the international arms trade. Control Arms represents organisations working in over 120 countries. It includes major international NGOs such as Oxfam, Amnesty International and Saferworld, as well as many regional and national level organisations.

[22] UNGA (United Nations General Assembly), Res 61/89 (6th December 2006), passed by 153 votes in favor, one opposed (the USA) and 23 abstentions.

negotiating conference in 2012 for the purpose of drafting a legally binding arms trade treaty. It mandated that negotiations be conducted on a basis of consensus. The global conference held in New York from July 2-27 2012 therefore failed because it was not possible to reach an agreement, based on consensus, on a final text, so a new meeting for the conference was scheduled for March 18-28 2013. The Final Conference took place but it once again failed to produce a successful agreement on a Treaty.

Nevertheless, a large number of member States moved to take the Treaty to the General Assembly in order to vote on it as quickly as possible. International non-governmental organizations (NGOs), including OXFAM, Amnesty International and the International Committee of the Red Cross, sharpened their public advocacy for legal restrictions deemed essential for fulfilment of international human rights and humanitarian law obligations.

On 2nd April 2013, the U.N. General Assembly adopted the ATT and opened for signature two months later[23]: the treaty failed to achieve unanimous support but it garnered the support of a majority member States during the vote: 154 votes in favor, 3 member States – Iran, Syria and North Korea – voted against, while 23 countries abstained, including some of the world's key arms exporters and manufacturers (China, Russia, India) and leading arms buyers (Egypt, India, Saudi Arabia and Indonesia). Nevertheless, "it is a historic diplomatic achievement – the culmination of long-held dreams and many years of effort" Secretary General Ban Ki-moon said in a statement issued after the Assembly's action, "This is a victory for the world's people"[24].

Ensuring that the Treaty fulfils its promises requires the widest possible adherence and implementations among States. The procedure that a State must follow in order to implement the dispositions of the text are the signature, the ratifications, the acceptance, the approval or the accession to the treaty. The ATT has opened for signature on 3rd June 2013 at the UN headquarters in New York. By signing the treaty, a States signals its intention to become a party to it in the future. Once it has signed the treaty, a State must not take any actions that would undermine its object and purpose (see Article 18, *Vienna Treaty on the Law of Treaties, 1969)*. Nevertheless, signature alone does not legally bind the signatory State or require it to begin to implement the provisions of the Treaty. To become legally bound by a multilateral treaty, a signatory State must subsequently deposit its instrument of ratification, acceptance or approval. To formally declare the consent to be bound by the Treaty, a State must follow two steps: action by the concerned State at a national level, and the notification to the depositary of the consent to be bound. The ATT enters into force 90 days after 50 States have deposited their instrument of ratification (acceptance, or approval) (Article 22 of the ATT). Nowadays 130 States have signed the treaty and 72 States have already ratified it[25].

[23] UNGA (United Nations General Assembly), A/RES/67/234 B, *The Arms Trade Treaty.*
[24] Ban Ki-moon's Statement on the adoption of the Arms Trade Treaty available on http://www.un.org/sg/statements/index.asp?nid=6708.
[25] A complete list of ATT ratifiers and signatories is available on http://disarmament.un.org/treaties/t/att.

Data

The arms trade represents an important and massive international point of interest from an economic and political perspective: the following analysis focuses the attention on the exports and the imports of conventional arms of the major exporter and importer States of the world.

Table 1: The trend of transfers of conventional arms, 2005-2014.
Source: SIPRI Yearbook 2015.

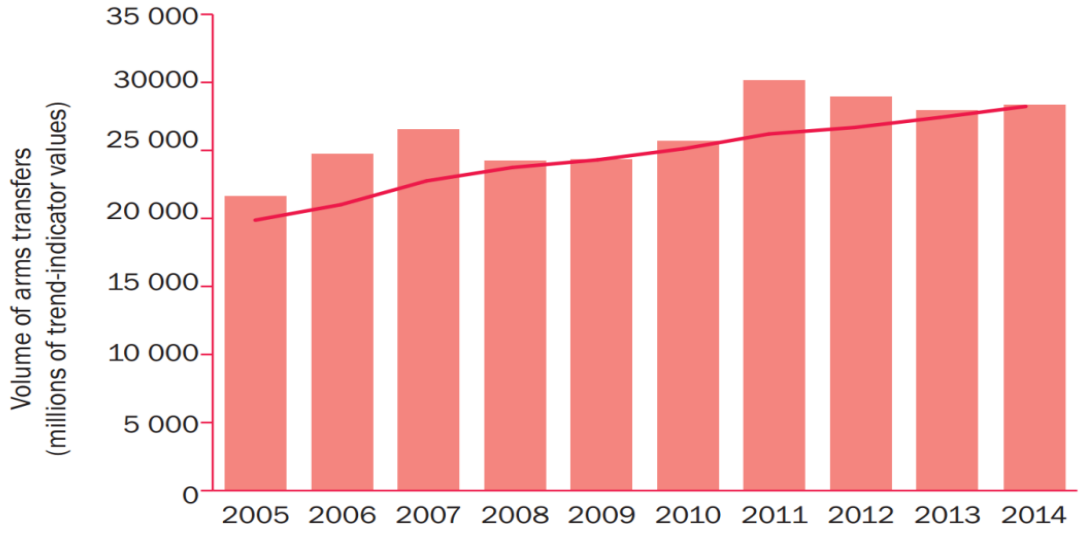


Table 2: The main exporters and importers of conventional arms, 2010-2014. Source: SIPRI Yearbook 2015.

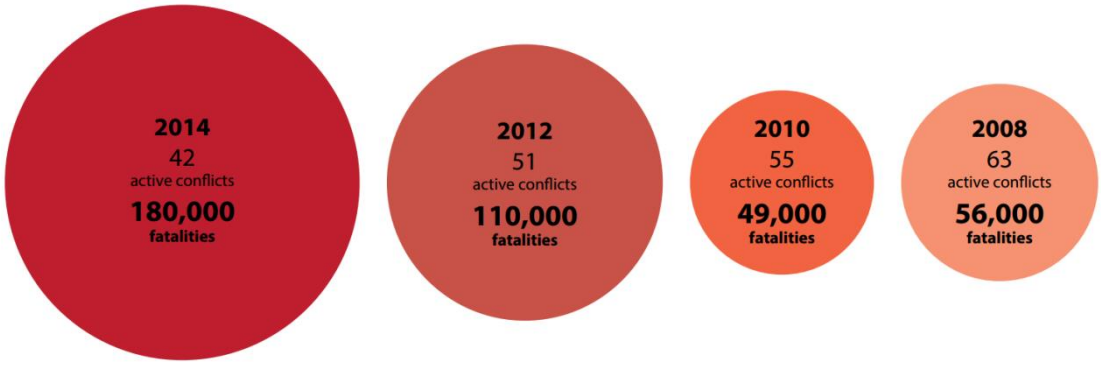
Exporter	Global share (%)	Importer	Global share (%)
1. USA	*31*	1. India	*15*
2. Russia	*27*	2. Saudi Arabia	*5*
3. China	*5*	3. China	*5*
4. Germany	*5*	4. UAE	*4*
5. France	*5*	5. Pakistan	*4*
6. UK	*4*	6. Australia	*4*
7. Spain	*3*	7. Turkey	*3*
8. Italy	*3*	8. USA	*3*
9. Ukraine	*3*	9. South Korea	*3*
10. Israel	*2*	10. Singapore	*3*

The volume of international transfers of major weapons grew by 16% between 2005-2009 and 2010-14 (SIPRI Yearbook 2015). The five largest suppliers in 2010-14 – the United States, Russia, China, Germany and France – accounted for 74% of the total global volume of arms exports. Since 1950 the USA and Russia have consistently been by far the largest suppliers. They, together with Western European suppliers, have historically dominated the top 10 list of suppliers, and there are no signs that there will be any major changes in the near future. However, China has now

firmly established itself as one of the top 5 suppliers: in 2010-14 it was the third largest supplier, narrowly surpassing Germany and France.

The flow of arms to Africa and Asia increased in 2010-14 when compared to 2005-2009. Flows to Europe decreased notably. States in Asia and Oceania received 48% of all imports of these arms in 2010-14. Of the five largest recipients, three were located in Asia and Oceania: India, China and Pakistan. There was also a marked increase in imports by States in the Middle East, two of which were among the five largest importers in 2010-14: Saudi Arabia and the United Arab Emirates. The significant growth in Saudi Arabia's imports and its rise to the position of second largest importer in 2010-14 was especially noteworthy. Saudi Arabia and several other Arab states of the Gulf have placed substantial orders in recent years. Deliveries of those orders have only just started and thus further growth in the region's imports is expected.

Table 3: Armed conflicts and fatalities in the world 2008-2014. Source: International Institute of Strategic Studies (IISS).



The IISS estimates that in 2008 there were 63 armed conflicts taking place around the world giving rise to a total of 56'000 fatalities, whereas in 2014 there were only 42 armed conflicts producing a total of 180'000 fatalities (Nigel Inkster, 2015: p. 2) . The number of armed conflicts around the world has been progressively declining since the Armed Conflict Database was launched and this is obviously something to be welcomed. But the decline in the number of conflicts has been more than compensated for by an inexorable rise in the intensity of violence associated with them. Tension and conflict were ongoing in large parts of the world during 2014, and these often had direct links to arms acquisitions from abroad. Arms imports by North East Asian countries, for example, are linked to various tensions in that region. These imports, along with acquisitions from growing national arms industries in the region, may well serve to increase such tensions.

Analysis and findings

The ATT establishes legally binding commitments governing the international trade – comprising the export, import, transit, transshipment and brokering – of conventional arms, including the SALW. The Treaty does not aim to interfere with the domestic regulation of arms trade: in the Preamble it is recognized the legitimate political, security, economic and commercial national interests in the international trade of conventional arms, as well as the sovereign right of any State to regulate and control conventional arms exclusively within its territory, pursuant to its own legal or constitutional system. States have an inherent right to individual or collective self-defence as

recognised in Article 51 of the U.N. Charter. Apart from arming their national armed and security forces, most countries allow private security companies and citizens, under conditions defined in national laws, to own certain firearms and weapons and use them for lawful purposes. So the ATT not aim to impede or interfere with the lawful ownership and use of weapons. However, common standards for arms transfers will help States assess the risk that transferred arms would be used by national armed and security forces, private security companies or other armed State or non-State actors to foment regional instability, to commit grave violations of international humanitarian law and human rights law, or to engage in other forms of politically or criminally motivated armed violence. These common standards also help States assess the risk that transferred arms will end up in areas proscribed by U.N. Security Council embargoes. Article 1 sets out the "object and purpose" of the treaty: the object of the ATT is to

- establish the highest possible common international standards for regulating or improving the regulation of the international trade in conventional arms;
- prevent and eradicate the illicit trade in conventional arms and to prevent their diversion;

For the purpose of:

- contributing to international and regional peace, security and stability;
- reducing human suffering;
- promoting cooperation, transparency and responsible action by States Parties in the international trade in conventional arms, thereby building confidence among States Parties.

The Treaty does not give a definition of "conventional arms", but it refers to the seven categories of the U.N. Register. Since 2003, SALW have been added to the Register as an optional category (the list of conventional arms included in the ATT is often referred to the "7+1" formula, referring to the seven categories of the U.N. Register plus the SALW). Article 2 specifies each arm on which the treaty is applied:

1. battle tanks;
2. armoured combat vehicles;
3. large-calibre artillery systems;
4. combat aircraft;
5. attack helicopters;
6. warships;
7. missiles and missile launchers; and
8. small arms and light weapons.

Article 3 and Article 4 include other items linked to these arms: the ammunition/munitions and the parts and components of the conventional arms. Each State party shall establish and maintain a national control system to regulate the export of them and shall apply the provisions of Article 6 and Article 7 prior to authorizing the export of such ammunition/munition, parts and components. The text of the Treaty includes specific provisions regarding the control of international transfers and implementation. In order to implement the provisions of the treaty, each State party shall establish a national control system, a national control list to provide to the ATT Secretariat and shall designate competent national authorities in order to have an effective

and transparent national control system, including one or more national points of contact to notify the ATT Secretariat (Article 5 of the ATT).

Article 6 regards one of the most important element of the treaty: prohibitions. It identifies the standards to which the trade in conventional arms should be globally tested. Article 6 presents the criteria to which the greatest weight is given: it concerns violations of international treaties which are particularly important in light of armed conflicts and arms trade. State parties to the ATT shall not authorize any transfer (imports, exports, brokering or transit) of conventional arms, ammunition, munitions, parts and components if:

> 1. the transfer would violate measures adopted under Chapter VII of the Charter of the United Nations, in particular concerning arms embargoes.
> 2. the transfer would violate its relevant international obligations, namely international agreements to which it is a Party, in particular those relating to the transfer of, or illicit trafficking in, conventional arms.
> 3. the transfer shall be used for the purpose of facilitating the commission of genocide, crimes against humanity, or war crimes constituting grave breaches of the Geneva Conventions of 1949, attacks directed against civilian objects or civilians protected as such, or other war crimes as defined by international agreements to which it is a party.

If the export is not prohibited under Article 6, each exporting State party, prior to authorize the export of conventional arms or of items covered under Article 3 or Article 4, as established by Article 7, shall assess whether:

> (i) the export would contribute to or undermine peace and security
> (ii) the export could be used to commit or facilitate a serious violation of international humanitarian law (IHL);
> (iii) to commit or facilitate a serious violation of international human rights law (IHR);
> (iv) to commit or facilitate an act constituting an offence under international conventions and protocols relating to terrorism;
> (v) to commit or facilitate an act constituting an offence under international conventions or protocols relating to transnational organized crime.

There is always a terrible human cost caused by a poorly regulated and controlled global trade in conventional arms and it manifested itself in in several ways: in the killing, wounding and rape of civilians – including children, the most vulnerable of all – and the perpetration of other serious violations of international humanitarian law and human rights law, in the displacement of people within and across borders and in the endurance of extreme insecurity and economic hardships by those affected by armed violence and conflict (UNODA, 2013). When there is a risk of violations of Article 7.1 (humanitarian law, human rights or terrorism), the exporting State can take additional measures – so-called "risk mitigation measures" – in consultation with the importing State in order to mitigate the risk (Article 7.2). When the risks of one (or more) of the stipulations are 'overriding' – despite the potential to take additional measures and in compliance with Article 7.1 – the export shall not be authorized (Article 7.3). Article 7 also specifies that if there is a risk that the conventional arms and their items could be used to commit or facilitate serious acts of gender-

based violence or serious acts of violence against women and children, each exporting State shall not authorize the export.

Article 12 establishes obligations for record keeping (Sibylle Bauer and Mark Bromley, 2015: page 20): each State Party maintains national records in accordance with national legislation concerning export authorizations or actual export data (real exports) of conventional arms which fall under the scope of the ATT (excluding ammunition and components). These records are saved for ten years and they include: the quantity, value, model/type, authorized international transfers of conventional arms, conventional arms actually transferred, details of exporting State(s), importing State(s), transit and trans-shipment State(s), and end users, as appropriate. In order to improve the transparency of the records, each State Party shall submit more reports: an initial report within the first year after entry into force of this Treaty for that State Party of the measures undertaken in order to implement it. These report shall be made available, and distributed to States Parties by the Secretariat. Another annually report shall be submit to the Secretariat by 32nd May for the preceding calendar year concerning authorized or actual exports and imports of conventional arms covered under Article 2 (1). The article does not mention public reporting and does not include the ammunitions, parts and components of conventional arms.

The Treaty then proceeds to tackle its implementation and control of implementation by establishing an "organ" responsible to assist the State Parties in the effective implementation of the ATT: the Secretariat, established by Article 18, adequately staffed, has the responsibility to receive, make available and distribute the national reports, to maintain the list of national points of contact and, among its functions, to establish the Conference of State Parties. Article 17.1 of the treaty stipulates that a Conference of States Parties shall be convened by the provisional Secretariat no later than one year following the entry into force of the Treaty: the Conference will be held in Cancun, Mexico, from the 24th to the 27th August 2015. In this occasion, the rules of procedure will be adopted by consensus as disposed by the article 17.2 and the Conference will be responsible for the financial provisions governing the functioning of the Secretariat and shall

> (a) Review the implementation of this Treaty, including developments in the field of conventional arms;
> (b) Consider and adopt recommendations regarding the implementation and operation of this Treaty, in particular the promotion of its universality;
> (c) Consider amendments to this Treaty in accordance with Article 20;
> (d) Consider issues arising from the interpretation of this Treaty;
> (e) Consider and decide the tasks and budget of the Secretariat;
> (f) Consider the establishment of any subsidiary bodies as may be necessary to improve the functioning of this Treaty; and
> (g) Perform any other function consistent with this Treaty.

This Conference offers an opportunity for States Parties to promote and to improve the implementation of the treaty, and it is a global initiative since participating States will come from all regions of the world in order to take part to the First Conference of State Parties. Whatever the outcome of discussions on global criteria, arguably the critical challenge is the implementation of such principles: the ATT does not have an end use monitoring mechanism to anticipate potential

circumvention strategies holding to eliminate the illegal transfers of conventional arms that allows exporting States to check where the arms they have transferred are finally sent to, or how they are used.

The article 17.2 establishes the formal procedures to adopt the rules: the Conference shall adopt by consensus its rules of procedure. The consensus *modus operandi* means voting a disposition is formally adopted if there is no opposition, and decisions are not made officially by majority voting but when all the participating and present States are called to declare their position in favor or opposition to the vote. The last two diplomatic Conferences held in New York in July 2012 and March 2013, demonstrated the failure of this rule of procedure and consensus could well inflame rules of procedure discussions in these and future meetings of States parties. The Treaty has therefore thrown into sharper relief the primary importance of State responsibility for effective implementation, but that begs the questions of issues the ATT could not realistically confront since, in order to ensure transparency and equity, all States parties shall have the same and manifest possibility to effective express their opinions.

Conclusions

Implemented effectively, this Treaty can help transform the way the arms trade operates. It will set new global standards and enshrine in international law strict control on the arms trade, which has been poorly regulated for long time. This international trade of conventional arms, especially of the SALW, can lead to human rights abuses and violations of humanitarian law. These results are not only caused by illegal trade in arms, but also by the arms trade which flows through legal channels.

Despite the long and successful process which led to the adoption of the first ATT, there are a number of gaps that will need to be addressed in order to help States to effectively implement particular aspects of the ATT: there is a lack of useful guidelines and good practice documents focused on how to establish and implement effective controls on import, transit and trans-shipment of conventional arms. Therefore, States Parties should discuss on including also the items of Article 3 and Article 4 – ammunition/munitions, parts and components – in the dispositions of each article of the text: regulation of the international arms trade should not be limited to regulating transfers of conventional arms but also to their items. There should also be some legal and binding consequences in case of violations or non-implementation of the dispositions of the ATT, both from State and non-state actors. There are some dispositions linked to non-state actors and the need to prevent and eradicate the illicit trade in conventional arms, the illicit market and the unauthorized end use and end users, including in the commission of terroristic acts (Preamble of the ATT, paragraph 3); but there are no specific dispositions concerning the rules to adopt in case of illicit activities made by non-states actors. It obviously urges the ratification and implementation of the treaty, as well as the cooperation, capacity assistance and support of States Parties and, *inter alia,* of the United Nations of international, regional, sub-regional or national organizations, and of NGOs (Article 16.2 of the ATT).

States Parties have taken part in the first Conference of States Parties to the ATT in Cancun (Mexico) from the 24th August to the 27th August 2015. The Conference was attended by 120 States, a number of international and regional intergovernmental organisations and representatives

of civil society, including NGO, and industries. This important meeting represented the initial way to effectively depart from an unregulated and illegal arms trade, which has been responsible for so much human suffering during the past decades. It was deemed necessary to adopt the best possible set of rules of procedure in order to build enough confidence among the State Parties, so that a smooth and proper implementation of the treaty could be possible and in order to cooperate with the Civil Society in a transparent manner (Ferit Hoxha, (2015), pp 1-2). The Draft Final Report (available online on the home page of the Arms Trade Treaty Provisional Secretariat http://www.thearmstradetreaty.org/index.php/en/) has been concluded by the States Parties to the Conference. They decided, *inter alia,* to establish, according to Article 17 paragraph 4 (f), a Management Committee to provide oversight of financial matters as well as on other matters related to the Secretariat with the aim of ensuring maximum accountability, efficiency and transparency of certain functions of the Secretariat and of financial matters on its behalf.

The Conference also decided to hold an Extraordinary Meeting – to be held early in 2016 – to review and consider for adoption the draft proposal concerning the administrative arrangements of the Secretariat and, subsequent to this, a revision of the provisional budgets concerning its matters. States Parties agreed to consider actions and activities of its Program of Work – as contained in ATT/CSP1/2015/WP.8.Rev.1 – as well as further suggestions by the President relevant to Article 17 paragraph 4 (f) such as:

- Identifying and assessing developments in the field of conventional arms,
- Collating best practice on the implementation and operation of the Treaty,
- Promoting universalization of the Treaty
- Identifying lessons learnt and need for adjustments in implementation,
- Collate practice among states designed on the basis of Treaty interpretation

Thanks to the contribution and work made by the ambassador of Sweden Paul Beijer, Facilitator on matters pertaining to reporting, the Conference decided to take note with appreciation of the reporting templates, as found in ATT/CSP1/2015/WP.4/Rev.2, and as orally amended, submitted by Sweden, to establish an informal working group on reporting. The Conference also approved by consensus to designate Geneva (Switzerland) as the geographical location of the Secretariat. The wish is to gold continuous work on the implementation and to encourage the future works for the Second Conference of States Parties: a successful conference will help to maintain the positive political momentum that the ATT has enjoyed so far. "It will reinforce the arguments for universalization and help convince governments that are still hesitant towards the ATT that this Treaty is here to stay. It will demonstrate to colleagues working in other sensitive areas within the UN framework that progress is possible if states are prepared to re-examine their traditional positions and join in a shared effort. A strong and well-functioning ATT will also be a support to those States currently engaged in implementing their obligations under the Treaty[26]".

[26] Opening statement of Sweden at the ATT First Conference of States Parties, Cancun, Mexico, 24-27 August 2015.

References

Bauer S. and Bromley M. (2015), "Implementing the arms trade treaty: building on available guidelines and assistance activities", in *Stockholm International Peace Research Institute (SIPRI),* Geneva.

Fruchart, D., Holtom P., Wezeman T. S. (2007), *United Nations Arms embargoes. Their impact on arms flows and target behavior*, Oxford, The Stockholm International Peace Research Institute (SIPRI).

Hoxha, F (2015) "Statement by Ambassador Ferit Hoxha permanent Representative of the Republic of Albania to the United Nations" in *the First Conference of States parties to the Arms Trade Treaty*, Cancun, pp. 1-2.

Inkster, N. (2015), "Press Statement", *Armed Conflict Survey 2015. The worldwide review of political, military and humanitarian trends in current conflicts*, The International Institute for Strategic Studies (IISS): pp. 2-4.

Parker S. (2013), "The Arms Trade Treaty: A Step Forward in Small Arms Control?", in *Small Arms Survey Research Notes Number 30*, Geneva, pp. 1-4.

Parker S. (2014), "Breaking new ground? The Arms Trade Treaty", in *Small Arms Survey 2014*, Oxford, pp. 78-107.

Ponti C. (2013), "Trasferimenti di armi, diritti umani e diritto umanitario. Spunti di riflessione dopo l'adozione del Trattato sul commercio delle armi convenzionali", in *Diritti Umani e Diritto Internazionale,* il Mulino, pp. 643-667.

United Nations (U.N.) (1945), *Charter of the United Nations*, accessible at WWW: https://www.un.org/en/documents/charter/

United Nations Office for Disarmament Affairs (UNODA) (2013), "Occasional Papers No. 23", in *The impact of poorly regulated arms transfers on the work of the United Nations,* New York.

United Nations Office for Disarmament Affairs (UNODA). *UN Register of Conventional Arms,* accessible at WWW: http://www.un.org/disarmament/convarms/Register/.

Migration from Central America and Mexico to the US: Does the Movement of People Affect the Economies of the Sending Countries?

Ana Magdalena Figueroa

Ana Figueroa, 31, from San Salvador (El Salvador), is a PhD Student at University of São Paulo, Brazil, since 2014. In 2008 received her Bachelor's degree in "Accounting and Finance" at Don Bosco University in El Salvador and her Master's Degree in "Political Science and International Relations at Chosun University, South Korea in 2012, where she wrote her thesis about "The Impact of Globalization on the Human Development of Development Countries". Her research interests are Economic Development, Human Development, Migration, Globalization.

Abstract

This research intends to study the effect of migration flows and migrant networks hypothesizing that freer migration leading to bigger migrant networks are beneficial for the economies of the sending countries, using the New Economics of Labor Migration theory which views migration as an economic decision made by migrants and whose return can be seen as remittances. The data covers a period from 1980 to 2010 and is analyzed through Cross-Sectional Time-Series Feasible Generalized Least Squares. The countries analyzed are Belize, Costa Rica, El Salvador, Nicaragua, Honduras, Guatemala, Panama, and Mexico, as the sending countries, finding that the very moment when migrants leave their home countries, these economies do not seem to experience a statistically significant shock, while once migrants have established themselves in their new host country as part of migrant networks, the effects on the economies of the sending countries becomes positive and statistically significant, as well as the remittances they send.

Keywords

Migration Flows, Migrant Networks, Remittances, Sending Countries.

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Introduction

Migration shapes the world, and reshapes it. It has done so over the history of mankind. In the United States, a nation (just like all the others) built by immigrants, there are people from different countries, religions and cultures, and Latino immigrants are one of the largest groups making about 46 percent of the total immigrant population, according to the Census Bureau[27]. Over the years, the U.S. has reinforced its migration laws and physical borders, especially the frontier with Mexico, in order to cease immigrants from the South to enter the country. Nevertheless, in spite of all the efforts, mass migration seems almost impossible to stop. The reasons: unemployment, insecurity, poverty, political prosecution and income inequality in the countries of origin, just to mention the principal "push" factors. In addition "pull" factors in the U.S. like better economic opportunities make this country very attractive for migrants who seek to survive, build a better life and support their families. The Mexican and Central American governments find it very difficult to stop their populations from walking away to the North.

The importance of this topic in the Central and North American region stems not only from its economic, political and social outcomes, but also from how sensitive it is for all those people whose families are separated every day when a member of the family decides to go and look for a better future, or when the U.S. government decides to deport some members of a family that was formed in American soil, separating them. Immigrants also face many more challenges like human rights abuses and work exploitation in the host country after running away from poverty, natural disasters or persecution back home. It is important for policy makers to know how migration flows and migrant networks impact at the national scale. Over the history, migration has strengthen economic growth, the formation of nations and the enrichment of cultures (Koser, 2007). This is why this study is concerned about how migrants themselves affect the economies of their countries back home, shifting from the common perspective of remittances to a human based perspective.

Why should we study the impact of migration flows on a whole economy? Most of the studies regarding this issue have focused on the individuals or households, and at most, on the migrant sending cities. According to the new economics of labor migration theory, households are part of larger groups, like communities and countries, and because of this, households related to migrants transmit the impacts of migration to other members of those groups, and even households that are not related to migrants are affected by migration when they interact with migrant related households. Therefore, it is very likely that the impacts of migration can be found even outside of the households that send migrants and receive the remittances directly, extending to the whole economy freeing restrictions on investment many times created by market failures, for instance. It can begin by improving the life of the immigrant himself, his family, his community and eventually reshaping his country, and this is why we need to study the effects of migration not only in the sending households, but also in the sending countries as a whole. But measuring this is not easy, and this is how this research contributes not only to the migration literature but also to the economic development literature by linking these two topics.

[27] Census Bureau's 2010 and 2011 American Community Survey. http://www.census.gov/acs/www/data_documentation/2010_release/

It is clear that the economy of a country is built upon many factors, but this study is done over the interest of explaining the role of millions of people who leave their home country and decide to work abroad. The data were gathered from the World Development Indicators, Penn World Table, the Yearbook of Immigration Statistics of the U.S. Department of Homeland Security, and Fitzgeral, Leblang and Teets' dataset on migration flows and migrant stocks from 1980 to 2010 analyzed through Cross-Sectional Time-Series Feasible Generalized Least Squares. The countries analyzed are Belize, Costa Rica, El Salvador, Nicaragua, Honduras, Guatemala, Panama, and Mexico. This research will give a brief overview of the migration flows and migrant stock from Central America and Mexico to the U.S., and then analyze the literature regarding their relationship with the sending countries to discuss whether there is a positive or negative influence. After this, the methodology and the quantitative analysis will be performed.

Literature Review

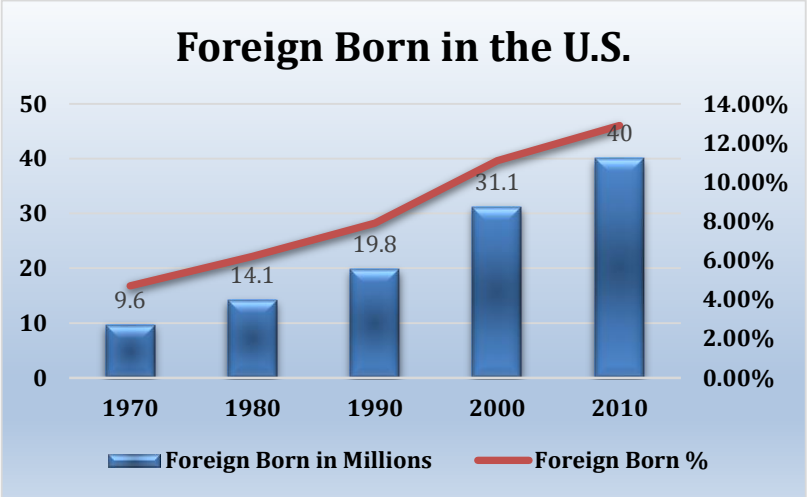
According to the Migration Policy Institute, the term "immigrants" denotes "the people residing in the United States who were not U.S. citizens at birth. This population includes naturalized citizens, lawful permanent residents, certain legal nonimmigrants (persons on student or work visas), those admitted under refugee or asylee status, and persons illegally residing in the U.S."[28] It is not easy to classify migrants because there are many reasons for them to migrate, however Koser attempts to classify migrants into three categories: a) those who can be distinguished between voluntary or forced migrants (usually refugees); b) those who can be differentiated according to their motives, such as political reasons (usually refugees) or economic reasons (low skilled and high skilled migrants); and c) those who are differentiated between legal and illegal migrants. Though some people argue that the term "illegal" is not adequate and instead the term "irregular" should be used, which covers those people who enter a country without documents or with fake documents and those who enter legally and stay in the country after their visa expires (Koser, 2007; 1975 UN General Assembly[29]).

By 2010, immigrants comprised 13 percent of the total U.S. population, and Latino immigrants made about 46 percent of the total immigrant population, according to the Census Bureau's 2010 and 2011 American Community Survey. It is estimated that 28 percent of all immigrants in the U.S. are there illegally. And nearly half of the Mexican and Central American immigrants are there illegally. Among the top sending countries, the largest percentage increase in the last decade was from Honduras (85 percent), India (74 percent), Guatemala (73 percent), El Salvador (49 percent), and China (43 percent) (Camarota, 2012). Graph 1 shows immigrants living in the U.S. represented in total number and percentage as share of the U.S. population, from 1970 to 2010.

[28] Migration Policy Institute, 2013 http://www.migrationpolicy.org/article/frequentlyrequested-statistics-immigrants-and-immigration-united-states

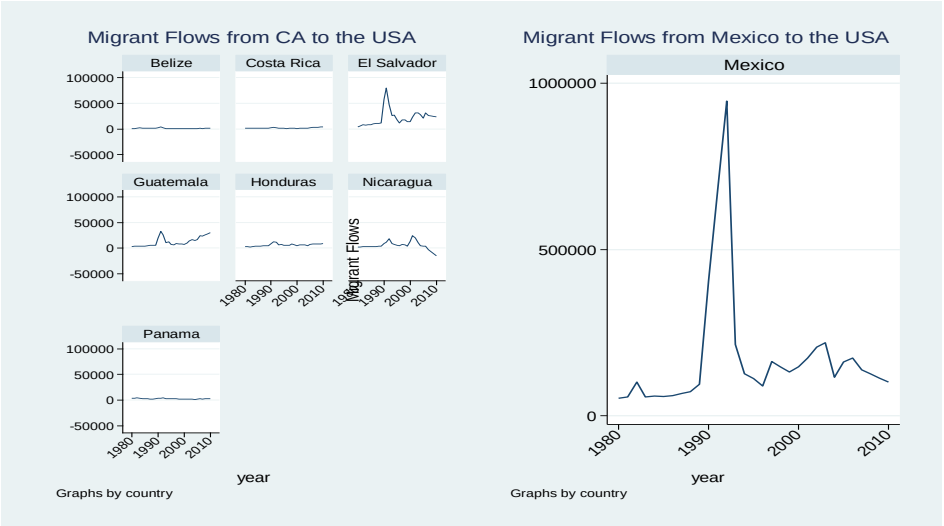
[29] 1975 UN General Assembly. Last accessed October 10th, 2015. Available at http://daccess-dds-ny.un.org/doc/RESOLUTION/GEN/NR0/001/62/IMG/NR000162.pdf?OpenElement

Graph 1. Immigrants in the United States, Number and Percent, 1970-2010



Source: Adaptation by the author from decennial censuses, 1900 to 2010; American Community Survey, 2010 in Camarota, Steven (2012). "Immigrants in the United States. A profile of America's Foreign Born Population". Center for Immigration Studies.

Graph 2. Migrants Flows from CA and Mexico to the U.S., 1980 – 2010

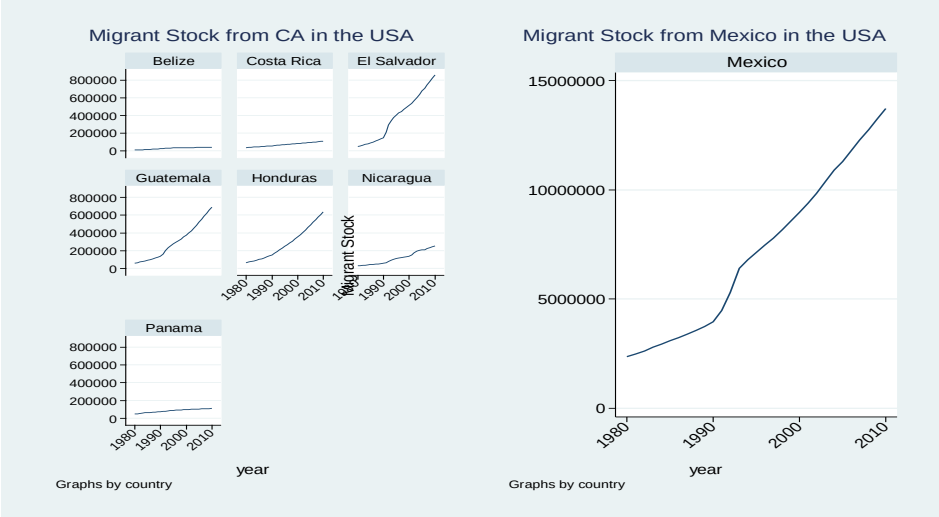


Source: Author, based on Fitzgerald, Leblang and Teets (2014). "Defying the Law of Gravity: The Political Economy of International Migration".

The increase in the rise of the immigrant population has been very remarkable especially since the 1970s. The last decade has been the highest in terms of immigrants' arrivals in the U.S. history and the impact of this on many areas of the sending and the receiving countries is undeniable. But what exactly is this impact? Is it negative or is it positive? Why? It is difficult for any country to attempt to incorporate 40 million newcomers into its society. Should the U.S. legalize them? Or should they remove them? Graphs 2 and 3 show the migrant flows from Central America and Mexico specifically to the U.S and the migrant stock in the U.S. from these countries, respectively,

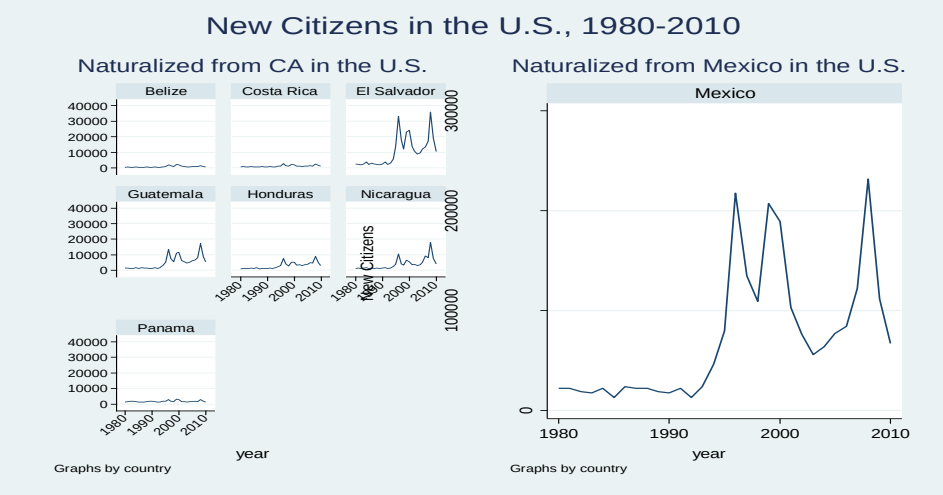
while Graph 4 shows the migrants who have been granted the citizenship status from 1980 to 2010. We can see a sharp increase in these three variables for El Salvador, Guatemala, Honduras and Mexico, while Belize, Costa Rica and Panama remain more conservative, showing a different behavior.

Graph 3. Migrant Stock from CA and Mexico in the U.S., 1980-2010



Source: Author, based on Fitzgerald, Leblang and Teets (2014). "Defying the Law of Gravity: The Political Economy of International Migration".

Graph 4. New Foreign Born Citizens from C.A. and Mexico in the U.S., 1980-2010



Source: Author, based on the Yearbook of Immigration Statistics, by the U.S. Department of Homeland Security.

Is Migration Beneficial for Mexico and The Central American Sending Countries?

"Free international migration can lessen the huge material inequalities and human injustices that many associate with today's globalizing world". (Moses, 2006).

Studies have been done on temporary migration (Epstein, 2005; Epstein, Hillmand and Weiss, 1999), and on the effect of immigrants on the local populations, that is, on the receiving country (Boeri, Hanson and McCormick, 2002). Several studies, for example, found similar result

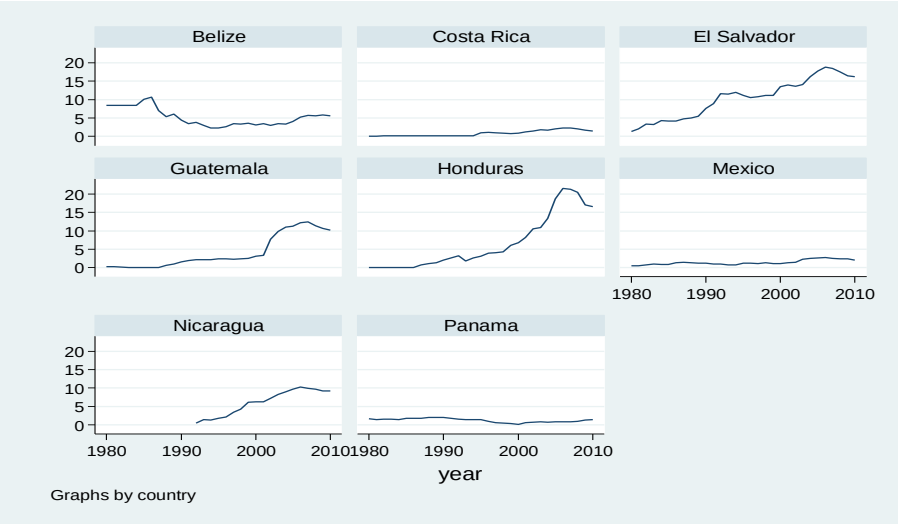
concluding that immigration has a small impact on wages and employment opportunities of natives, because immigrants who enter the country usually do the jobs that natives do not want to do (LaLonde, R. & R. Topel, 1991; Epstein and Nitzan, 2005; and Borjas & Tienda (1985). More recently, studies have been done focusing on why and how migration policies change and how they are related to trade and FDI (Peters, 2015; 2014), how migration helps rural economies (Taylor & Dyer, 2008), and on the role of remittances (Taylor, 1999). There is no a universal international migration theory through which we can analyze the impact of migration on the economies of the sending countries. Instead, we have several theories: neoclassical economic theory[30], dual labor market theory[31], world systems theory[32], network theory, institutional theory[33], the international migration system theory[34], and the new economics of labor migration (Jennissen, 2007; Massey et al., 1998).

This work is based on the new economics of labor migration theory, which argues that households must be taken into account in the decision to become a migrant. That is, the decision of becoming a migrant is not an individual decision, but rather a collective decision. For example, when there are money problems, the immediate solution is that one member of the household becomes a migrant, and once established in her new country, send remittances solving the issue (Taylor, 1999; Taylor & Dyer, 2008). This means that this work deals with economic migration, mainly. According to this theory, households are part of larger groups, like communities or countries, this is why households related to migrants transmit the impacts of migration through market interactions even to households that are not related to migrants and do not receive remittances directly. And because migration is a self-perpetuating process (Massey et al., 2005), the sending countries many times specialize in migration and are owners of a huge migrant labor force that they can export (Taylor, 1999). It is therefore, very difficult to analyze these complex effects.

As said before, immigration from Mexico and Central America to the United States increased dramatically over the last four decades, and with it, the monetary influx from the immigrants to their respective countries has also increased. Remittances are basically transfers of money sent from a migrant worker to another person in her home country. By 2012, global remittances from immigrants to their countries reached US $401 billion and are considered to be, competing with international aid and foreign direct investment, one of the largest financial inflows to developing countries, helping reduce poverty and improving human development in areas such as health, education and gender equality. Remittances not only help the receiving household but also the community in general when remittances are used for expenditures and investment, housing acquisition, financial assets and small companies (Ratha, 2013; Mesnard, 2004). The logic is very simple: remittances increase income, and income improves the quality of life. In this sense, remittances would significantly increase not only developing nations' income but also world income (Peters, 2014; Brown, 2006; Hatton and Williamson, 2008).

[30] (Bader, 2012).
[31] (Jennissen, 2007).
[32] (Amankwaa, 1995).
[33] (Jennissen, 2007).
[34] (Jennissen, 2007; Massey et al. 1993).

Graph 5. Remittances received in CA and Mexico as GDP%, 1980 - 2010



Source: Author, based on the World Development Indicators. Remittances received by Central America and Mexico as percentage of their GDP from 1980 to 2010.

The U.S. is the largest source of remittances for Latin America and the Caribbean, totaling 73 per cent of the total inflow of remittances to the region in 2011. Mexico was the principal receiver of remittances of the region in the same year, accounting for 37 per cent of them (World Bank, 2013). In the case of some Central American countries (see Graph 5), by 2010 remittances constituted very important amounts as share of their GDPs, for example, remittances represent for El Salvador the 15.7 percent of their GDP, for Guatemala it is the 10.2 percent, for Honduras 15 percent, and for Nicaragua 11.7 percent (Davis and Lopez-Carr, 2014). These are official numbers, however the remittances that are sent through irregular channels are very difficult to track and measure and are, presumably, larger. These economies, without the income from remittances, would certainly be in trouble. Remittances are expected to increase given the proposed immigration reforms in the U.S because of the large amount of immigrants that are expected to be given a legal status allowing them to increase their income and therefore, to increase the amount of remittances to their countries of origin. These policies intend to create a path for citizenship for an estimated 11 million unauthorized immigrants. (World Bank, 2013).

There is also concluding evidence supporting a positive relationship between remittances and the human development of the receiving households. According to Ratha (2013), those families who receive remittances invest more in health care and education compared to those who do not receive them, impacting directly to higher birth weights, lower rates of infant mortality and "higher health-related knowledge", lower rates of school dropping, higher school enrollment, and an increase in educational achievements for receiving families in the sending countries (Hildebrandt, 2005; UNDP, 2009; Edwards & Ureta, 2003). Adams & Page (2005), in a cross-country study with a sample of 71 developing countries found that an increase of 10 percent in per capita remittances translates into a 3.5 percent decline in the share of people who are living in poverty.

One of the strongest advantages of remittances is that they are countercyclical. This means that the flow of remittances increases when financial markets decline. In other words, remittances tend to increase not only when economic depressions happen, but also when there are political or civil

crises or natural disasters serving as insurance against loss of resources. This is because when the families in the home countries need it the most, migrants abroad respond with remittances to alleviate the need (Ratha, 2013, Adams & Cuechuecha, 2010; Adams & Page, 2005). Graph 5 shows the evolution of remittances received in the studied sending countries as percentage of their GDP from 1980 to 2010. As expected, there has been a substantial increase in the top sending countries: El Salvador, Guatemala, Honduras and Nicaragua. On the other hand, Mexico shows a stable quantity of remittances.

No wonder why most of the studies on migration focus on remittances. They represent an easier way to measure migration and its effects on the sending countries. But, what happens to the economy after people leave and before remittances come in? That is, what happens when an economy loses millions of workers to migration? Could the movement of people out of the country affect it? Theoretically, the effects could vary. For example, migration is very likely to lead to a drive up of wages benefiting the workers who remain behind, as the competition for limited jobs would decrease and wages would tend to balance. On the other hand, migration can lead to a reallocation of the scarce/abundant resources. In economic theory it is well known that, in the simplest way, countries will export the goods that make intensive use of the relatively abundant factors and import the relatively scarce ones (Heckscher-Ohlin theorem). In an economic theory of migration, sending countries would export labor because that is the abundant factor, and conversely it would import another factor of production that is scarce, e.g. capital, which is very likely to come in the form of remittances, thus reaching an equilibrium. The main assumption is that migrating is beneficial for whom migrates, and that doing so depends on her wealth and the migration policies that will encourage or discourage her (Borjas, 1989). In the case that a country loses too many workers with respect to the total labor force, the economy might eventually learn to restructure itself around labor scarcity changing to a less labor-intensive, and consequently a more capital-intensive economy balance (Taylor & Dyer, 2008).

If the sending country has surplus of labor, production is not very likely to be affected by those who leave, but it would be affected when there are labor shortages as many workers would stop producing goods and services and production would decrease substantially. Furthermore, production is very likely to be badly affected when migrants take with them human or financial capital (Taylor, 1999). On the other hand, once migrants reach the host country and find a job and establishing migrant networks, they are expected to share their income with those who stayed behind. Bigger migrant networks suppose higher incomes for migrant households and for the economy as a whole, and this would tend to increase the demand for goods and services, helping increase the prices, which would benefit the suppliers of goods and services. This, however, would work in opposite directions for the households because these injections of extra income from remittances are very likely to push up the prices and households lose as consumers as they would have to pay more money in order to buy the same products, on the other hand, they would benefit as suppliers because they would be making more money for the same products sold, encouraging investment and entrepreneurship and getting actively involved in the national and international markets. Additionally, migration can have positive effects by reducing competition for limited jobs when there are high levels of unemployment (Koser, 2007).

Data and Methodology

Model and Operationalization of Variables

For the independent variables measuring migration, this study used the work on labor migration flows (excluding refugees, asylees, and illegal immigrants) and migrant stocks from Fitzgerald, Leblang and Teets (2014), which accounts for migrants who leave their home country and go specifically to the U.S. for work and also taking into consideration the friends and family networks formed in the U.S. once they are established through the stock of migrants, helping capture the accumulated value of past bilateral flows and previous institutional agreements (e.g. guest worker programs) between the sending and the receiving country. Two additional measures of migration were used in order to reassure the consistency of the results. These two measures are from the Yearbook of Immigration Statistics of the Department of Homeland Security[35], and account for migrant stocks, being these immigrants who have been granted residency and citizenship in the U.S. For remittances and the economic dependent variables, the World Development Indicators[36] dataset was used for the countries: Belize, Costa Rica, Guatemala, El Salvador, Honduras, Nicaragua, Panama and Mexico for a range of time from 1980 to 2010, taking the data based on 2005 US$ to account for inflation and have a more realistic view of the real changes in the economies studied. For measures of relative living standards across countries and over time (quality of life), employment, and total factor productivity, the Penn World Table[37] dataset was used.

The countries were chosen in order to study the effects of migration flows and migrant stocks in the U.S. on the whole Central American and Mexican region. Even more, the region contains countries that rely heavily on migration and whose remittances received by immigrants abroad constitute a very big piece of their GDP. On the other hand, it also has countries with lower levels of migration and it is interesting to study what is different amongst them. This study used this strongly balanced panel data set that contains 248 observations regarding eight countries during a period of 31 years, from 1980 to 2010 in order to test the hypothesis that migrant flows and migrant networks impact positively their home countries.

A very important conjecture under which we are working is that the official data on migration might not be as representative of the reality as we would wish. For instance, the number of registered migrants is very unlikely to be close to the real number of people who migrate because of all those people who travel irregularly. In the same way, the registered remittances are very unlikely to be close to the real quantity that migrants send through unofficial channels. As studying irregular migration and remittances sent through unofficial channels would demand statistical techniques in order to estimate these number, this research (for now) used only the available official data for the analysis.

[35] Yearbook of Immigration Statistics. Department of Homeland Security. Available at http://www.dhs.gov/yearbook-immigration-statistics

[36] World Bank, World Development Indicators, available at: http://databank.worldbank.org/data/views/variableSelection/selectvariables.aspx?source=world-development-indicators

[37] Penn World Table 8. Feenstra, R. C; R Inklaar & M. Timmer (2013). The Next Generation of the Penn World Table". Available for download at www.ggdc.net/pwt

All the variables used in the models were analyzed for unit roots finding that most of them had to be differenced once in order to make the time series stationary. Additionally, they were lagged once for their impact might not be immediate on the dependent variable. The panel errors reported constant variance, that is, they are homoscedastic.

The main linear regression model used takes the form:

$$\Delta Economy'_{t} = \Delta Economy'_{t-1} + \Delta\beta 1Migration'_{t-1} + \Delta\beta 2Fdi'_{t-1} + \Delta\beta 4Prod'_{t-1} + \Delta\delta 1Dem'_{t-1} + \Delta\delta 2Pop'_{t-1} + \Delta\delta 3Hom'_{t-1} + FEyear_{t-1} + \varepsilon'_{t-1}.$$

The first term is a lagged value of the dependent variable in order to control for its dynamics, followed by lagged independent variables, for the result of the previous year is very likely to influence the present result rather than the current one (Beck and Katz, 2011; Wilkins[38]). Some variables are very likely to be influenced by more than one past value, but in this study we will keep only the last one. Our dependent variables are different sectors of the economy at time *t* measured by: GDP (which is the value that represents all the finished goods and services produced within a country), household final consumption (which is the expenditure made by resident households or consumer spending on goods and services), employment, productivity, expenditure-side real GDP (that is used to compare the quality of life across countries and across time), and consumer price index (which compares from year to year a consistent base of products or basket of goods that people consume daily).

These variables were chosen as they are representative areas of the economy, and this is in order to estimate the impact of the dynamics of migration on these areas of the sending economies. That is, this research tries to differentiate between the effect on the economy caused when people move out of the country, that is, migrant flows, and the effect once they reached the host country through migrant networks and remittances. The model includes a set of time dummies in order to control for yearly shocks and the error term is to include other unobservable shocks to the economy. Country dummies are not included in the model as the variables have been differenced once, which would take the effect of those unobserved unit level effects.

Table 2 presents the summary statistics of the raw independent and dependent variables used for the analysis. This research controls for FDI, productivity, education, trade, population, homicide and level of democracy from the previous year. Due to the nature of the data, they were analyzed through Cross-sectional time-series Feasible Generalized Least Squares to obtain the estimates of the models to test the impact of migration flows, migrant stocks and remittances on the economies of the sending countries. This methodology was chosen as it allows for an auto regressive term of nature AR(1) in the model, as well as correlation among the independent variables and panels and heteroscedasticity (Stata Manuals, 2015[39]). When having a dynamic model, methods such as Arellano-Bond GMM and LSDVC (corrected least squared dummy variables) are widely used. However, the Arellano-Bond GMM estimation method was developed for small-T large-N panels, and this study comprises the opposite. On the other hand, the LSDVC estimation method was designed for strictly exogenous variables, and again, this study might include at least some degree of endogeneity.

[38] Wilkins, A. Working paper. (revise and resubmit at Political Science Research & Methods). Available at http://web.stanford.edu/~arjunw/LaggedDVs.pdf

[39] Stata Manuals, 2015. Last accessed October 9th, 2015. http://www.stata.com/manuals13/xtxtgls.pdf

Table 2. Summary Statistics, Independent and Dependent Variables

Variable	Obs	Mean	Std. Dev.	Min	Max
GDP	248	9.42E+10	2.30E+11	2.96E+08	9.53E+11
Employment	248	5.56	10.89	0.04	44.20
House consumption	248	6.03E+10	1.46E+11	2.51E+08	6.49E+11
Life Quality	248	136047.3	326613.4	525.97	1433932
Productivity	248	134081.7	320807	496.99	1348946
CPI	248	46.96	32.02	0.08	100
Migrant flows	248	23499.08	50696.01	-14954.2	300000
Migrant stock	248	1050046	2648620	10941.14	1.37E+07
Total migration	248	861363	2084053	15982	9367910
Residents	248	33088.4	89791.54	400	946167
Citizens	248	12263.59	32658.39	304	231815
Remittances	248	1.57E+09	4.25E+09	100000	2.69E+10

Source: Author.

As the coefficients obtained were either too large or too small, the variables were standardized in order to seize their impact on the dependent variables, by first subtracting the variable's mean and then dividing by its standard deviation (Giles, 2013[40] apud Goldberger, 1964; UCLA, 2014[41]). The symbol ' represents standardization in the model above. Each standardized variable has a mean of 0 and a standard deviation of 1 and this allows us to see our variables as unitless which allows us to compare the coefficients even when they are expressed in different units (people, money, indices, percentages, etc.). Therefore, the right interpretation of these coefficients should be, for example, a one sample standard deviation increase in remittances leads, on average, to an increase of 0.18 standard deviations in the GDP, (or it leads to a 0.18 standard deviations above the mean of the GDP), all the other variables held constant (See Table 4).

Results

It is worth to note that the results presented in Table 4 are from different models, that is, for example, for the GDP 5 different models were designed, one for each of our main independent variables as they are highly correlated with each other (see Table 3) and because of this the models presented problems of multicollinearity, so it was decided to examine the effect of each main migration related independent variable separately in one model in order to assess its impact independently from the other predictors. In this sense, the results presented in Table 4 account for the standardized coefficients of each of these independent variables that in turn form part of an independent model which controls for FDI, productivity, education, trade, population, homicide and level of democracy, as well as a whole set of year dummies. Column one on Table 4 presents the results of the regression models for migration variables on GDP. Columns 2 to 6

[40] Giles, D. (2013). "Large and Small Regression Coefficients". Available at http://davegiles.blogspot.com.br/2013/08/large-and-small-regression-coefficients.html

[41] Introduction to SAS. UCLA: Statistical Consulting Group. From http://www.ats.ucla.edu/stat/stata/faq/standardize.htm

present the results of the same migration variables regressed on employment, household final consumption, quality of life, productivity and CPI.

Table 3. Correlation coefficients amongst main predictors.

	Migrant flows	Migrant stock	Residents	Citizens	Remittances
Migrant flows	1				
Migrant stock	0.80	1			
Residents	0.81	0.56	1		
Citizens	0.60	0.83	0.41	1	
Remittances	0.62	0.90	0.40	0.70	1

Source: Author.

Theoretically, it was expected that migrant flows would have a positive impact on the economies, but from the results on Table 4 we can observe non-significant mixed effects on the variables showing that the economies would not experience significant shocks when migrants leave, at least in the variables examined here. An exception is the employment, where migrant flows show a very small but significant effect, implying that an increase in one standard deviation of migrant flows is very likely to impact the employment in about 0.01 standard deviations from the mean. That is, employment increases from 5.56, to 5.67 percent. However, when talking about migrant stock (or networks), except for the GDP, it showed a strong positive impact in all the variables, implying a positive relationship, that is, as migrant stock increases one standard deviation, it leads to an increase of less than 0.01 standard deviations in employment, 0.55 standard deviations in household consumption, 0.38 standard deviations in the quality of life, 0.36 standard deviations in productivity and a decrease of 0.12 standard deviations in the consumer price index.

Table 4. Effects of Migration and Remittances on the Sending Countries, standardized coefficients.

			House	Quality of		
	GDP	**Employment**	**Consumption**	**Life**	**Productivity**	**CPI**
Flows USA	0.148	0.011***	0.107	0.083	0.021	-0.026
	(0.06)	(0.01)	(0.06)	(0.06)	(0.06)	(0.05)
Migrant Stock	0.373	0.001***	0.549***	0.377***	0.361***	-0.120**
	(0.05)	(0.01)	(0.05)	(0.05)	(0.05)	(0.05)
Residents	0.154	-0.019	0.101	0.14**	0.147**	0.038
	(0.08)	(0.02)	(0.08)	(0.08)	(0.08)	(0.06)
Citizens	0.262***	0.141	-0.454**	-0.277*	-0.153	0.246**
	(0.11)	(0.02)	(0.11)	(0.11)	(0.11)	(0.09)
Remittances	0.185***	0.037***	0.247***	0.351***	0.288***	-0.033
	(0.07)	(0.01)	(0.07)	(0.07)	(0.06)	(0.06)

*** p<0.05, ** p<0.01, *** p<0.001. Standardized coefficients presented with standard error in parentheses. Cross-sectional time-series FGLS regressions were performed after standardizing the variables, and year fixed effects were used to capture countries' characteristics along with control for time shocks but the results were not reported on the table. Source: Author.**

Residents, on the other hand, seem to have a strong impact on productivity and the quality of life, while citizens show a strong impact on GDP, household consumption, quality of life and CPI. It is worth to note a difference amongst these categories of migrants. Migrant stock captures those migrants who go specifically to work to the U.S., who are part of an agreement and are, therefore, economically active as part of these agreements and will be very likely to send remittances back home, revitalizing the economy in more varied ways. On the other hand, some residents and citizens are more likely to have migrated many years ago, and are more likely to have taken at least their closest relatives with them by the time they become either residents or citizens, having less need of sending remittances for families, and contributing instead in other ways such as small enterprises, migrant organizations, and so on (Koser, 2007).

Migrant networks, be they expressed in terms of migrant stock, residents or citizens, are of tremendous importance for the sending countries, as they are decisive not only economically, but also culturally and socially, as they might influence prospect migrants to decide whether to migrate or not, providing important information about what are the best places to go and economic and political advantages or disadvantages of their prospect new home. And if these people eventually decide to migrate, migrant networks are of great help in finding a new job, settlement issues and re-bonding with their nationals.

Remittances, as expected, have a very strong and positive impact on the GDP, employment, household consumption, productivity and quality of life, as one standard deviation in remittances tends to lead to 0.19, 0.04, 0.25, 0.35, and 0.29, respectively, confirming the importance of this income for the development of the sending countries, and confirming previous studies on remittances (Taylor, 1999).

Summarizing, this research finds evidence that imply that, in general, the migration related variables tested here affect the economies of the sending countries in a good way, helping them to overcome market failures. It seems like once these migrants find their place and establish in the new host country, they make a very important part of the economies of the sending countries as they boost the GDP, employment, quality of life, productivity, and consumption, albeit in different ways.

Concluding Remarks

Migration is largely motivated by economic reasons in Central America and Mexico, and from this study we can increase our confidence in that migration, through the movement and resettlement of people, seems to affect the economies of the sending countries mostly in positive ways. It is very important to acknowledge the importance of the role that people themselves play in shaping the economies of the sending countries, as migrant networks are a key variable not only because they help their economies back home but they also help those who are planning on migrating and those who recently migrated and are not established in the new host country, facilitating the process of adaptation, finding a job and reducing the cultural shocks. In addition, besides sending remittances back home, migrant networks also contribute in very important ways in foreign direct investment, international trade, cross-border portfolio and international telephone communication (Leblang, 2010; Perkins and Neumayer, 2013).

This study found strong evidence that remittances are a very important part of the economies of the sending countries, in consonance with what previous studies on remittances have found. Even after some first moments of suffering, it seems like the movement and resettlement of migrants eventually pays off compensating the initial mixed effects with strong positive effects on various areas of the overall economy, effects that come through the market interactions of migrant sending households with those that do not have direct contact with migration at all. A very unfortunate limitation of this study is the lack of data regarding irregular migration, and it will be a further effort for future research as the implications of migration for the economies of the sending countries can be best explained when looking at the whole picture.

References

Adams, R. H., & J. Page (2005). "Do International Migration and Remittances Reduce Poverty in Developing Countries?". *World Development.* Vol 33 (10): 1645-1669.

Adams, R. H. & A. Cuechuecha (2010). "Remittances, Household Expenditure and Investment in Guatemala". *World Development.* Vol 32 (8): 1407-1417.

Amankwaa, A. A. (1995). "The World Economic System and International Migration in Less Developed Countries: An Ecological Approach". *International Migration*, Vol 33 (1): 95–113.

Amegashie J.A. (2004). "A Political Economy Model of Immigration Quotas". *Economics of Governance* Vol 5: 255-267.

Bader, V. (2012). "Moral, Ethical, and Realist Dilemmas of Transnational Governance of Migration". *American Behavioral Scientist.* Vol 56 (9): 1165-1182.

Beck, N. & J. N. Katz. (2011). "Modeling Dynamics in Time-Series-Cross-Section Political Economy Data". *Annual Review of Political Science*. Vol (14): 331-352.

Boeri T.; Hanson, G. & B. McCormick (ed) (2002). "*Immigration Policy and the Welfare System*". Oxford University Press.

Borjas, G. & M. Tienda (ed) (1985). "*Hispanics in the U.S. Economy".* Academic Press.

Borjas, G. (1989). "Economic Theory and International Migration". *International Migration Review,* Vol 23(3): 457 – 485.

Brown, S. S. (2006). "Can Remittances Spur Development? A Critical Survey". *International Studies Review.* Vol 8 (1): 55-75.

Camarota, S. (2012). "*Immigrants in the United States. A Profile of America's Foreign Born Population".* Center for Immigration Studies.

Davis, J. & D. Lopez-Carr (2014). "Migration, Remittances and Smallholder Decision-Making: Implications for Land Use and Livelihood Change in Central America". *Land Use Policy.* Vol 36: 319-329.

Epstein, G.S. (2003). "Labor Market Interactions Between Legal and Illegal Immigrants". *Review of Development Economics* Vol 7(1): 30-43.

Epstein, G.S.; Hillman, A.L., & A. Weiss (1999). "Creating Illegal Immigrants". *Journal of Population Economics.* Vol 12 (1): 3-21.

Epstein, Gil S., and S. Nitzan (2005). "The Struggle Over Migration Policy". IZA Discussion paper series, No. 1533

Edwards, A. C., &, M. Ureta (2003). "International Migration, Remittances, and Schooling: Evidence from El Salvador". *Journal of Development Economics*. Vol 72 (2): 429-461.

Feenstra, R. C.; Inklaar, R. & M. P. Timmer (2013), "The Next Generation of the Penn World Table" available for download at www.ggdc.net/pwt

Fitzgerald, J; D. Leblang & J. C. Teets (2014). "Defying the Law of Gravity: The Political Economy of International Migration". *World Politics* Vol 66 (3): pp 406-445.

Giles, D. (2013). "Large and Small Regression Coefficients". Available at http://davegiles.blogspot.com.br/2013/08/large-and-small-regression-coefficients.html

Global Bilateral Migration Database, World Bank Group and Ç. Özden, C. Parsons, M. Schiff and T. L. Walmsley (2011) 'Where on Earth is Everybody? The Evolution of Global Bilateral Migration, 1960-2000', World Bank Economic Review 25(1):12-56. Available at http://data.worldbank.org/data-catalog/global-bilateral-migration-database

Hatton, T. J. & J. G. Williamson. (2005). "*Global Migration and the World Economy: Two Centuries of Policy and Performance*". Cambridge, MA: MIT Press.

Hildebrandt, N. & D. McKenzie (2005). "The Effects of Migration on Child Health in Mexico". Working Paper No 4515. World Bank Policy.

Hillman A. & A. Weiss (1999). "A Theory of Permissible Illegal Immigration". *European Journal of Political Economy* Vol 15: 585-604.

Introduction to SAS. UCLA: Statistical Consulting Group. From http://www.ats.ucla.edu/stat/stata/faq/standardize.htm

Jennissen, R. (2007). "Causality Chains in the International Migration Systems Approach". *Population Research and Policy Review*. Vol 26: 411-436.

Koser, K. (2007). "International Migration: A very Short Introduction". Oxford University Press.

LaLonde, R. & R. Topel (1991). "Immigrants in the American Labor Market: Quality, Assimilation, and Distributional Effects". *The American Economic Review,* Vol 81 (2), 297 – 302.

Massey, D. S., Arango, J., Hugo, G., Kouaouci, A., Pellegrino, A., & J. E. Taylor (1993). "Theories of international migration: A review and appraisal". *Population and Development Review*, Vol 19 (3), 431–466.

Massey, D. S., Arango, J., Hugo, G., Kouaouci, A., Pellegrino, A., & J. E. Taylor (1994). "International migration theory: The North American case". *Population and Development Review*, Vol 20 (4), 699–751.

Massey, D. S., Arango, J., Hugo, G., Kouaouci, A., Pellegrino, A., & J. E. Taylor (1998). "*Worlds in motion: Understanding international migration at the end of the millennium*". Oxford, England: Clarendon Press.

Mesnar, A. (2004). "Temporary Migration and Capital Market Imperfections". *Oxford Economic Papers.* Vol 56: 242-262.

Moses, J. (2006). "*International Migration: Globalization's Last Frontier".* Zed Books

Penn World Table 8. Feenstra, R. C; R Inklaar & M. Timmer (2013). The Next Generation of the Penn World Table". Available for download at www.ggdc.net/pwt

Peters, M. E. (2014). "Trade, Foreign Direct Investment, and Immigration Policy Making in the United States*". International Organization.* Vol 68: 811-844.

Peters, M. E. (2015). "Open Trade, Closed Borders: Immigration in the Era of Globalization". *World Politics* Vol 67(1): pp 114-154.

Ratha, D. (2013). "The Impact of Remittances on Economic Growth and Poverty Reduction". Migration Policy Institute. Vol 8.

Taylor, J. E. (1999). "The new economics of labor migration and the role of remittances in the migration process". *International Migration*, Vol 37 (1): 63–88.

Taylor, J. E. & G. A. Dyer (2008). "Migration and the Sending Economy: A Disaggregated Rural Economy-Wide Analysis" *Journal of Development Studies,* Vol 45(6): 966 – 989.

United Nations Development Program (2009). "*Human Development Report 2009. Overcoming Barriers: Human Mobility and Development".*

Wilkins, A. Working paper. (revise and resubmit at Political Science Research & Methods). Available at http://web.stanford.edu/~arjunw/LaggedDVs.pdf

World Bank (2013). "Migration Development Brief". Migration and Remittances Unit, Development Prospects Group.

World Data Bank, World Development Indicators available at: http://databank.worldbank.org/data/views/variableSelection/selectvariables.aspx?source=world-development-indicators

Yearbook of Immigration Statistics. Department of Homeland Security. Available at http://www.dhs.gov/yearbook-immigration-statistics

Human Rights Activism and the (De-)securitization of the 'Other'

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Abstract

The article contributes to the scholarly debate through casting light on the (de-)securitizing character of human rights invocations by civil society organizations (CSOs) in ethno-political conflicts. The securitization concept is an innovative tool for understanding the effects of human rights activism on inter-group relationships: A securitizing move asserts an existential threat to a reference object and demands all necessary means to prevent it. Securitization reinforces the hostile 'self'-'other' conflict divide and, thus, contributes to violent escalation. Reversing securitization necessitates de-securitizing communication challenging the portrayal of the 'other' as a threat. Asking under which conditions human rights CSOs issue a securitizing or de-securitizing move, puts the interface between contextual factors, organizational behavior, and political opportunity structure at the center of interest. The empirical part examines two human rights organizations in the Zapatista conflict, highlighting the influence of the social capital from which the CSOs emerge and the applied discursive strategies.

Keywords

Human Rights, Securitization, Conflict Transformation, Ethno-political Conflict.

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Introduction

The nexus between ethno-political conflicts and civil society is increasingly being recognized by academics and international policy-makers alike. In the aftermath of the Cold War, ethno-political conflicts, where the incompatibility at the conflict's core relates to identity groups self-defined in ethnic terms and their invocation of contesting needs and interests (see Gurr 2000: 53 pp. and Horrowitz 2000), have become a dominant cause of mass political violence (Wimmer 2004). Studying possible pathways for reconciliation, recent research emphasizes that civil society organizations (CSOs) are a force to be reckoned in the progression of ethno-political conflicts. Hence, empirical evidence, drawn particularly from the Balkans in the 1990s, demonstrates that CSOs are key players that might not only act as drivers for peaceful change, but also entrench status quo or even fuel discords further (Marchetti and Tocci 2011a, Kaldor and Muro-Ruíz 2003, Belloni 2001, Rüb 2000, Tocci and Kaliber 2011). The question at hand is not whether, but how policy-makers should partner with civil society. Scholarly debate now attempts to discern which CSOs are conflict-fuelling, with the overall goal to mitigate their effects and to reinforce civil society engagement spurring peaceful transformation (Pishchikova and Izzi 2011: 50, Paffenholz 2010, Forster and Mattner 2006).

This article examines two CSOs advocating for human rights in the ethno-political conflict between the Mexican state and indigenous communities between the uprising of the Ejército Zapatista Liberación Nacional (EZLN) in 1994 and the final blow of the San Andrés peace talks in late 1996. The so-called Zapatista conflict in the federal state of Chiapas is regarded as a prototype for civil society engagement in conflicts (see Mattiace 1997: 32, Collier 2005). Violent clashes between the Mexican state and indigenous communities, organizing in the Zapatista movement, provoked several clusters of civil society activities throughout Mexico which remarkably influenced the conflict's development (see Bob 2005). Much ink has been spilled over the role of the Zapatista supporter network in keeping the struggle for autonomy alive (see i.e. Olesen 2004b). Promising legitimacy and increased international awareness (see Risse and Sikkink 2008: 5, also Franklin 2008), human rights were adopted as central frame at that time by the consolidating Mexican civil society (Stavenhagen 2003). Mushrooming human rights activities called national and international attention to the violent escalation in Southern Mexico and, by this means, significantly influenced the ratio of conflict actor's behavior. Two organization were particularly important as they both represented regional hubs for civil society engagement: The Human Rights Center Fray Bartolomé de las Casas (CDHFBC/FrayBa) established in 1989 on an initiative of the Catholic Diocese in Chiapas and became a pivotal source for information on the conflict and regional port of call for national and international human rights organizations after the outbreak of the violent conflict in 1994. Enlace Civil was founded in 1996 on the initiative of indigenous communities organized within the newly created Municipios Autónomos Rebeldes Zapatistas (Rebel Zapatista Autonomous Municipalities – MAREZ). The organization established as the major hub for the national and international solidarity network in support of the Zapatistas. Albeit both organizations operated within the Chiapanecan conflict context and the same political opportunity structure (POS), the effect of their human rights work differs significantly: While FrayBa's human rights invocations resemble a de-securitizing move calling for inter-group reconciliation, the activities of Enlace Civil rather issued a securitizing move reinforcing hostile inter-group stereotypes and counteracting conflict transformation.

Grasping the process by which contextual factors, the POS, organizational identity and framework of action determined the (de-)securitizing character of the human rights organizations in the midst of the Zapatista conflict shall allow inferences on generalizable patterns and, thus, stimulate further theory-building. For this purpose, the article is divided in five sections. The first section presents and discusses key theoretical concepts, building on previous research by the European SHUR project[42]. The article proceeds introducing the research framework and the background of the Zapatista conflict to the reader. The fourth and the fifth section present the findings of the in-depth case analysis and analyze the conditional mechanisms. The article concludes by two sets of hypotheses on the conditions that determine the role of civil society organizations in conflict transformation processes.

Theoretical Concepts

Securitization and Conflict Transformation

Although an accruing body of literature has led to a broad variety of meanings, conflict transformation is distinguished from other approaches in the field of peace and conflict studies since it perceives conflict as endemic to social systems and asks for the conditions of prevailing conflict systems. The focus is on deeper structural, cultural and long-term-relational aspects that move the social system producing patterns of violence to a peaceful system where conflicts are handled constructively (Mitchell 2002, Botes 2003, Austin et al. 2004, Baechler 2004, Kriesberg 2004). The approach, thus, analytically grasps the kind of transformation human rights activism in conflict often envisions (see e.g. García-Durán 2010, Tate 2007, Lederach 1995).

Approaches to conflict transformation differ with respect to their primary target dimension and subsequent strategies, ranging from structural transformation of societal institutions to relational and actor-centered approaches (Botes 2003: 5, Väyrynen 1991: 163). Understanding ethno-political conflicts as discursive in nature, conflictual discourses constructing incompatibilities and hostile stereotypes are regarded as the central dynamic that moves conflicts from situations where conflicts are debated in the political sphere into stages of renewed violence (see Jabri 1996, Fearon and Laitin 2000). Accordingly, a social-constructivist perspective on systemic conflict transformation asks for the discourses that construct hostile inter-group relationships. The perspective implies that conflict systems giving rise to violence only appear if positions are referred to as incompatible and mutual exclusive, so that material issues might be at the core of interest incompatibilities, but they do not constitute a conflict in itself (Bonacker et al. 2011). Thus, the discursive terrain in which antagonistic identity positions are constructed is understood as decisive in explaining why a certain difference (e.g. different ethnic identities) transforms into a (violent) destructive conflict (cf. Sen 2006). In contrast to actor-centered approaches which exclusively focus on actors and their behavior, a systemic approach draws attention to the self-referentiality of conflicts and postulates that they escalate due to effects that the actors cannot understand nor control (Bernshausen and Bonacker 2011: 24). Thus, systemic approaches not only look at

[42] *SHUR. Human Rights in Conflicts: The Role of Civil Society*. STREP project funded by the European Commission. Website: www.luiss.it/shur. The project was based at LUISS University and involved seven European research institutions with over 20 researchers. The results of the project's work between 2006 and 2009 were published in the monograph: Marchetti and Tocci (eds) (2011a): *Civil Society, Conflicts and the Politicization of Human Rights*, Tokyo: United Nations University Press. A related publication is Marchetti and Tocci (eds) (2011b): *Conflict Society and Peacebuilding*, New Delhi: Routledge

conflicts from the perspective of the actor but also incorporate the process perspective, which puts more emphasis on the dynamics of conflicts.

Conflicts arise when incompatibilities between selves and others are communicated. Once they emerge, a social system establishes that re-produces these boundaries and continues conflict. Addressing violent and destructive ethno-political conflicts needs the transformation of hostile inter-group relationship that renders substantial negotiations about the societal system as impossible (Lederach 1997: 34-35, Bonacker et al. 2011: 16, also Dukes 1999). Restructured relationships – in Lederach's terms sustainable reconciliation – form in their totality new patterns, processes, and structures that manage conflicts constructively, enable the discursive revision of identity frames, and create "new social relations, institutions, and visions" (Väyrynen 1999: 151). However, re-articulated identities need to develop from within the conflict discourse and should not be imposed from outside to ensure that the new narrative truly integrates society and does not appear as a cultural alien constructing a new other within a different form of particularity (see Gheciu 2006: 109). Therefore, the focus civil society engagement within the conflict appears to be of high analytical relevance.

The discursive positioning of threats and the consequences concerning the self/other dimension at the core of the securitization theory appears to be a useful analytical tool to comprehend such conflict transformation processes (c.f. Bernshausen and Bonacker 2011). Developed by the so-called Copenhagen School, the securitization theory claims that any issue may turn into a security issue, if an actor presents it as an existential threat to a reference object. Following John Austin's philosophy of language, the mere speech act – uttering security – changes the situation and transforms an issue from e.g. being an economic question, into a security problem (Buzan, Wæver, and de Wilde 1998: 23, Balzacq 2011). Consequently, security is understood as the performative effect of speech acts and not as something that can be defined objectively (ibid: 31, Roe 2004: 281). Security problems are distinguished from other issues since they endanger the self-determination and possibly even the mere existence of a societal unit (Roe 2004: 281). As survival is at stake, the securitizing actor claims that the issue needs to be shifted from *normal politics* to *emergency politics* (Jutila 2006: 168, Balzacq 2011). Thus, security is "the move which takes politics beyond the normal rules of the game" (Buzan, Wæver, and de Wilde 1998: 23). The use of all necessary means, in turn, breaches the institutionalized rules of normal politics (Buzan & Wæver 2003: 71; Gromes and Bonacker 2007: 2). This means entering an unconstrained situation where combatants try to function at maximum efficiency in relation to a clearly defined aim, the "loser is forced to submit and the outcome is defined in polar terms: victory-defeat" (Wæver 1995: 53-54).

However, it is decisive to distinguish between a *securitizing move* and *securitization*. While asserting an existential threat and requesting extraordinary measures constitutes a securitizing move, securitization only occurs if an audience accepts the allegation and approves a response by emergency measures (Roe 2004: 281). Subsequently, the securitizing move fails when the addressed audience does not agree on the threat and/or the proposal to use extraordinary means. This emphasizes that the impact of securitizing moves is not pre-determined (Gromes and Bonacker 2007: 4). In a nutshell, securitization means that an issue or an actor is framed as threat to a referent object and consists of two constitutive components: The mere claim that a threat to survival exists coupled with the demand for extraordinary measures (securitizing move) and the acceptance of

the claim by the addressed audience (Buzan, Wæver, and de Wilde 1998: 25). Proclaiming a threat to society, reversely, constructs a reified, monolithic form of societal identity being threatened, challenging narratives of heterogeneity and negotiability (Williams 2003: 519). Thus, securitization rests essentially on social constructivist insights and Carl Schmitt's hazardous theory of the political stating that a particular issue becomes political "if it is sufficiently strong to group human beings according to friend and enemy" (Schmitt 1996 [1932]:37 and Williams 2003: 516). Two conditions are required for successful securitization: The internal, linguistic-grammatical, which requires to follow the rule of the act, and the external, contextual and social urging the speaker to hold a position from which the act can be made (Buzan et al., 1998: 32, Balzacq 2005: 172, and Huysmans 2006).

Fundamental criticism has been put forward against the concept of securitization raising to question the coherence of the theory and provoking intense academic debate. On a conceptual level, it has been particularly emphasized that the central dimensions political sphere and state of emergency, the oscillation between which the (de-)securitization process describes, are severely under-theorized and that their distinction appears analytically blurred. The respective context seems decisive in order to define the realm of the political and the state of emergency, but the strong emphasis on speech acts precludes such analysis. Concentrating on the securitizing speech of dominant actors, institutionally authorized to speak on behalf of the collective, further mutes subordinated voices and the gender perspective, as well as it precludes other forms of security representation like images (McDonald 2008: 564 pp., also Hansen 2000, Williams 2003 and Bigo 2002). The sole focus on the moment of intervention cannot grasp the construction of security over time through a range of incremental processes or 'little security nothings' (see Huysmans 2011). This underestimates the Foucauldian perspective on the role of bureaucratic professionalization, institutional practices and struggles inside institutions (Bigo 2002: 73, Foucault 1969). Besides, conceptualizing securitization as an inter-subjective practice, on the one hand, and the strong reference to a single securitizing actor, on the other hand, appears to be contradictory. The classic concept of the Copenhagen School calls not only the securitizing move, but also the process of securitization a speech act (Gromes and Bonacker 2007: 4, McDonald 2008: 572). Balzacq (2005), thus, claims that the logics of illocutionary acts – the act performed in articulating a locution – and perlocutionary acts – the consequential effects that the utterances may cause – are confused (Austin, 1962: 14–15, Searle 1968, Balzacq 2005: 176, see also Butler 1997). Either security is a speech act, reducing it to an illocutionary act or self-referential practice, in which case perlocution with the related acquiescence of the audience is abandoned, or the concept of security is a perlocutionary effect, in which case the response of the audience to the speech act is decisive. Yet, the addressed audience and the relative power positions involved are not concerned or severely under-theorized (Balzacq 2005: 175-176). Speaking security as a conventional practice according to universal principles neglects the context-dependency of security discourses and the meaning they produce. Having euro-centric origin, securitization rests on the commitment to the idea that security is constituted in oppositional terms, wherein identity is determined by the designation of threatening others, setting the implicit logics of exclusion and inclusion as timeless and inevitable (see Balzaqc 2005, 2011, Stritzel 2012, McDonald 2008: 578 pp.). According to the Welsh School, the framing of security as the failure of normal politics rather than recognizing it as a site of contestation and therefore for – even emancipatory – change finally implies a strong normative positioning (Browning and McDonald 2011: 12 pp.).

Despite the severe critiques on the concept's ability to explain the construction of security, the increase in spread and depth of securitization can indicate the level of conflict escalation (see Bonacker et al. 2011: p. 17). Securitizing moves are communicative act by which actors constitute themselves as being threatened by something or someone and establish a conflict system (Bernshausen and Bonacker 2011: 27). As social processes, conflicts materialize from threat communication. The more widely accepted securitizing moves become and the more existential the threat is constructed to be, the more intense the conflict becomes. In ethno-political conflicts, securitization means that the other cannot longer be dealt with within the realm of the political institutions at hand, but needs to be addressed through the adoption of extraordinary measures. This might include legitimizing violence and, in some cases of high escalation, even mass atrocities.

Nevertheless, securitization scholars also provide venues for how conflicts can be positively transformed. Insofar constructivism-based systemic conflict transformation targets at the restructuring of hostile inter-group relations, the key issue is – through the lenses of securitization – how securitized situations become de-securitized. Wæver and Buzan use the term *de-securitization* to refer to moving issues off the security agenda and back into the realm of public political dispute (see Wæver 1995: 57, Williams 2003, 523). De-securitization, as the supplement[43] of securitization, means the withdrawal of emergency measures and the choice for political negotiation. This requires a change in the perceptions so that the other is not seen as an existential threat anymore, but as a partner with diverging interests (Bonacker et al. 2011: 224 Hansen 2012: 533). Similar to securitization, de-securitization is composed of a de-securitizing move – referring to direct interventions aimed at changing the conflict parties' discursively constructed perceptions and the prevalence of emergency measures – and the approval of an addressed audience which moves back to normal politics (Roe 2004: 285 pp.). Therefore, de-securitization can only appear if securitization has taken place and the decision to apply extraordinary means is still in force. De-securitization of the conflict environment contributes to reconciling the incompatibility of subject positions (Marchetti and Tocci 2011b: 67). Referring to the typology proposed by Huysmans (1998), de-securitizing moves may present three types of arguments: the asserted existential threat never existed or the existential threat has been avoided (*objectivist strategy*); ordinary measures suffice to address the threat while emergency measures are not effective, the extraordinary measures might avoid the existential threat, but their side-costs are too high (*constructivist strategy*); the other is not a threatening cultural alien, but a partner who can be lived with within the realm of mutual recognition (*de-constructivist strategy*).

Notwithstanding the concerns that have been raised concerning the inherent danger of taking important issues off the agenda (Hansen 2012: 535), the article holds the position that in the face of warfare and de-humanization, some sort of de-securitization is necessary to start a shared future. The purpose of analyzing the securitizing character of human rights invocations, however, is not to label civil society organizations as overall 'good' or 'bad', but to understand their role in conflict transformation. CSOs issuing securitization moves in ethno-political conflicts reinforce antagonisms between conflict groups, thus nurturing further escalation. De-securitizing moves, on

[43] Referring to Derrida (1976), Lene Hansen (2012) speaks of de-securitization as the supplement to securitization, the derivative term that determines the structure of assumptions (Hansen 2012: 530).

the contrary, convey the kind of change envisioned by conflict transformation: The re-articulation of relationships where the other is not seen as an existential threat anymore (see table 1).

Table 1: Conceptualization of securitizing and desecuritizing moves

Human Rights Invocation	Components	Sample Phrases/Arguments
Securitizing move	Articulation of an irreconcilable self-other relationship Invocation of the other as an existential threat (to survival, self-determination, and/or core values) Demanding emergency measures	Evil, bad, a threat to survival, genocide, extinction Slaves, colonialism, loss of roots/ homes To be or not to be, fight, struggle, resistance, revolution
Desecuritizing move	Call to respect and comply with human rights standards addressed to all involved actors Claim for political debate Proposed starting points for political process to reconcile positions	Threat never existed, threat has been avoided (objectivist argument) Ordinary measures suffice to deal with the threat, emergency measures are not effective, the side costs of emergency measures are too high (constructivist argument) The other is not a threatening cultural alien, but a partner who can be lived with within the realm of mutual recognition (de-constructivist argument)

Source: Created by author.

Context – Civil Society in Conflict

Civil Society resists easy definition, especially when discussed on a global scale. There is no general framework that is agreed upon within the international scientific community which is due to the distinct political contexts and forms of organization, as well as state and economic structures - all of which are central to civil society (Barnes 2005: p. 7). Following a functional model approach, civil society is not perceived as an autonomous and firm array of actors or specific historic form, but as representing a distinct space of interaction in between the societal sectors state, market, and private life (see Merkel and Lauth 1998, Edwards 2004). As an analytical category, civil society is defined by its function as it relates to public institutions (Paffenholz and Spurk 2006: p. 7). The activity of an actor therefore determines the position as civil society, rather than its pure organizational form. Although a variety of actors can act as civil society, the term 'civil society organization' is distinguished as it refers to non-governmental and not-for-profit entities that perform civil society functions (see table 2), have a presence in public life and express the interests of either their members or advocate for others[44] . Function-oriented models appear to be better

[44] This definition roughly follows World Bank 2006: 2.

suited than actor-oriented models in non-Western contexts since they enable the consideration of a broad spectrum of collective action beyond formal requirements (World Bank 2006: p. 4).

Civil society is both an independent agent for change and dependent on an enabling environment, which is dramatically affected by conflict (Marchetti and Tocci 2011c: 12, also: Glasius, Lewis and Seckinelgin 2004, Kurtenbach 2000a, Dudouet 2007). Within highly securitized ethno-political conflicts, societal networks are often destroyed, trust disappears, and society faces the risk to become fragmented along the conflict divide. Formal governance structures to which civil society addresses its activities can be seriously weakened or irresponsive (Kaldor and Muro-Ruiz 2003, Coletta and Cullen 2000). Paffenholz and Spurk (2006), thus, suggested seven functions reflecting civil society's role in the face of violent conflict.

Table 2: Civil society's functions in conflicts and human rights related activities

Civil Society Function in Conflicts	Examples for Human Rights Related Activity
Protection	Human accompaniment (e.g. BRICOs - Civil Brigades of Human Rights Observation) Maintaining 'Zones of Peace'
Monitoring and Early Warning	Observation of conflict Reports on human rights violations
Advocacy and Communication	Advocacy for a societal group/own membership (e.g. ethnic minority group) Advocacy for an issue-based agenda (e.g. ban on land mines)
Socialization and Culture of Peace	Education on human rights
Conflict Sensitive Social Cohesion/Community Building	Creating community networks Facilitating collective action (e.g. protests, social movements)
Intermediation/Facilitation between all involved actors (state/non-state armed actor/civilians)	Facilitating contacts (Track II diplomacy) Mediating between conflict parties
Service Delivery	Workshops and training programs Juridical support Supporting local population in conducting projects Build-up of peace constituencies

Source: Civil society functions taken from Paffenholz and Spurk 2006: p. 32
Examples for Human Rights Related Activity created by author.

A flourishing civil society requires not only the mere existence of state structures, but also necessitates responsive authorities creating an enabling environment for engagement (Marchetti and Tocci 2011c: 14, Paffenholz and Spurk 2006: 14). The relationship between state and civil society influences the direction of activism, since cooptation or intimidation might urge existing civil society to securitize identity groups that challenge the authority of the elites and not to securitize human rights violations perpetrated by the state. This is of particular relevance in the Central American context, where authoritarian regimes with patrimonial and corporatist

characteristics significantly shaped the character of emerging civil societies, setting well-defined ideological and political confines. If basic rights and freedoms of association are curtailed, such as in Mexico in the 1990s, civil society engagement conducted beyond legal boundaries often turned against the state instead of interacting with it (Marchetti and Tocci 2011b: 50, Olvera 2010). Therefore, the degree to which human rights are formally granted and respected by state authorities and non-state armed actors is an important contextual condition as well. The human rights situation marks the point of departure for human-rights activities. If human rights are not even formally granted and the violation of even basic standards prevails, the security situation scarcely allows human rights organizations to operate and severely confines the scope of their activities. The gravity and kinds of violations perpetrated by conflict parties further defines the securitization potential and influences prospects for mobilization of transnational advocacy networks (Brockett 2005: 37 pp., Tarrow 2005: 120 pp., Risse and Sikkink 2008: 22, also Franklin 2008).

Yet there is another condition which is of significance in the rise of ethno-political conflicts, namely social cohesion. Social cohesion refers to the absence of latent societal polarization (e.g. wealth inequality or ethnic tensions) and the presence of social bonds, such as norms of reciprocity, associations bridging social division, and institutions of conflict management like democratic political structures and independent judiciary (Berkman and Kawachi 2000: 175). Insofar as state structures are responsive to citizenry and cross-cutting network relations among diverse communal groups prevail, a society possesses the inclusive mechanisms necessary to manage conflicts non-violently. As social cohesion weakens, dynamics of inequality, oppression, and exclusion potentially engender violent conflict (Colletta and Cullen 2000: 4-5). In the midst of armed ethno-political conflicts, the social fragmentation along ethnic lines dissolves social cohesion, significantly determining the political landscape of operating civil society organizations. Discourses re-producing hostile stereotypes and securitizing the ethnic 'other' favor the rise of securitizing CSOs with a clear ethnicist agenda and aggravate the work of CSOs trying to build up inter-groups relationships (Belloni 2008, Tocci and Kaliber 2011, also Lederach 1997: 13).

CSO Identity –Social Capital and Political Identity

Although contextual conditions define the working environment of civil society, the field of CSOs in ethno-political conflicts is by no means homogeneous with regards to the organizational identities. Civil society functions are carried out by a variety of actors featuring different kinds of memberships, operating structures, and political agendas, all of which are adapted to the constraints imposed by conflict. The respective organizational backgrounds and political identities play a major role in determining the (de-)securitizing character of activism (Marchetti and Tocci 2011b). Hence, an organization that is affiliated with a conflict party, or that overtly adopts an ethnicist agenda to represent its clientele, is more likely to nurture escalation, than an organization working on cross-ethnic understanding.

In his case study on rural Southern Mexico, Jonathan Fox (1996) points out that particularly in an authoritarian environment the emergence and growth of building-block civil society organizations depends on the spread of social capital. Social capital depicts "systems that lead to or result from social and economic organization, such as worldviews, trust, reciprocity, informational and economic exchange, and informal and formal groups and associations" (Colletta and Cullen 2000: 2). There is little contention over the importance of "norms of reciprocity and networks of civic

engagement" (Putnam 1993: 167) in facilitating collective action and, thus, increasing the breadth and density of societal organizations (see Fox 1996: 1089, Putnam 1993, Grootaert 1998, Corrochano 2005). In contexts characterized by authoritarian rule and ethno-political conflict, the collaboration between local and external civil society organizations is an important causal pathway in accumulating social capital (Fox 2007: 61 pp.). External non-governmental actors can provide positive and so-called anti-negative incentives to local and regional organizing efforts: Positive incentives include direct material inducements, enabling institutional frameworks and ideological resources. Anti-negative resources reduce the costs that repressive authorities may threaten to impose on those engaged in constructing autonomous social capital through 'naming and shaming' strategies and public campaigns. (Fox 1996: 1096, 1098). Since authoritarian regimes do not offer an enabling environment for civil society organizations, the leverage and protection provided by external actors might partially help to overcome restrictions (ibid: 1092, Fox 2007: 68, 70 pp.).

From a securitization point of view, the kind of social capital from which a CSO emerges is of importance. Robert D. Putnam differentiates between bridging social capital, incorporating all sectors of a community across diverse social cleavages, and bonding social capital, which develops alongside ethnic lines, social cleavages or conflict divides (Putnam 2000: 22-23). The kind of social capital is reflected in the political identity, which can be measured according to a nexus of exclusive/inclusive and egalitarian/non-egalitarian (Marchetti and Tocci 2011b: 54). Exclusive CSOs are only open to a limited section of the population, while inclusive organizations are open to the needs of all members of society. The egalitarian viewpoint represents a perception of all individuals as equal, whereas non-egalitarian associations proclaim the primacy of one group of individuals over another. Those characteristics combined, an agenda can either be labeled as multiculturalist (exclusive/egalitarian), civic (inclusive/egalitarian), assimilationist (inclusive/non-egalitarian) or ethnicist (exclusive/ non-egalitarian). Bridging social capital induces a CSO to have a cross-cutting constituency, connecting adversary groups and increasing social cohesion, while bonding social capital is rather expected to generate multiculturalist or ethnicist organizations.

Framework of Action – Different Kinds of Human Rights Articulations

CSOs can choose from a range of rhetoric strategies in framing their concerns. The language of human rights serves to gain legitimacy, alert Western public opinion, and put pressure on authoritarian regimes (Risse and Sikkink 2008, Franklin 2008). Human rights-related activities, however, bear a securitization potential as they articulate the transgression of the border that separates the acceptable and the unacceptable (Pia and Diez 2009: 20). Even if the overall goal is the institutionalized guarantee of human rights, the articulation of a threat to the very basic rights of an individual or group may have immediately securitizing consequences (Bonacker et al. 2011: 38-39).

Yet, it is not the articulation per se, but rather how human rights are invoked that has, intendedly or unintendedly, major implications for the (de-)securitizing effect of human rights work. In this regard, Pia and Diez (2009, 2010 and 2011) call attention to two significant attributes of human rights articulations: The collective or the individual as reference point of the human rights being invoked and the inclusivity of a human right. Collective rights do not only refer to, but also inscribe group identities, which may reinforce stereotypes or even be at the conflict's core. Individual and collective rights can clash with each other, if for example the claim for a collective right reasserts

the traditional community over the individual. Nevertheless, collective rights also represent a necessary tool to preserve the living conditions of cultural groups particularly in contexts where they are marginalized (Pia and Diez 2010: 51). The second dimensions asks whether human rights are invoked inclusively or exclusively on behalf of one conflict group. Even though individual rights are universal and thus inclusive by definition, in conflicts they are often only invoked for individuals belonging to a certain identity groups. So-called 'group rights' serve to address the selective violation of human rights (ibid). In contrast to inclusive human rights, exclusive rights, whether they refer to the individual or the collective, reinforce the conflict antagonism, risking securitizing effects. Pia and Diez, therefore, conclude that human rights articulations are most likely to have a de-securitizing effect, if they are inclusive and refer to the individual (ibid: 53, Pia and Diez 2009).

In most cases, activists can articulate human rights in more than one way. Albeit collective cannot be reduced to individual rights, it is a matter of decision to pursue a social aim by either invoking individual or collective, inclusive or exclusive rights. Equally important from a securitization perspective is the kind of threat to human rights identified in the articulation. While framing the social identity of a group as threat will inevitably securitize the conflict antagonism, de-securitizing articulations detach threats from social identities and focus on concrete issues or the violent past as threatening 'other'. De-securitizing activism emphasizes shared responsibility which also acknowledges own failings and does not uphold conflict identities (see Pia and Diez 2010).

Political Opportunity Structure – 'Filter' of Human rights activism

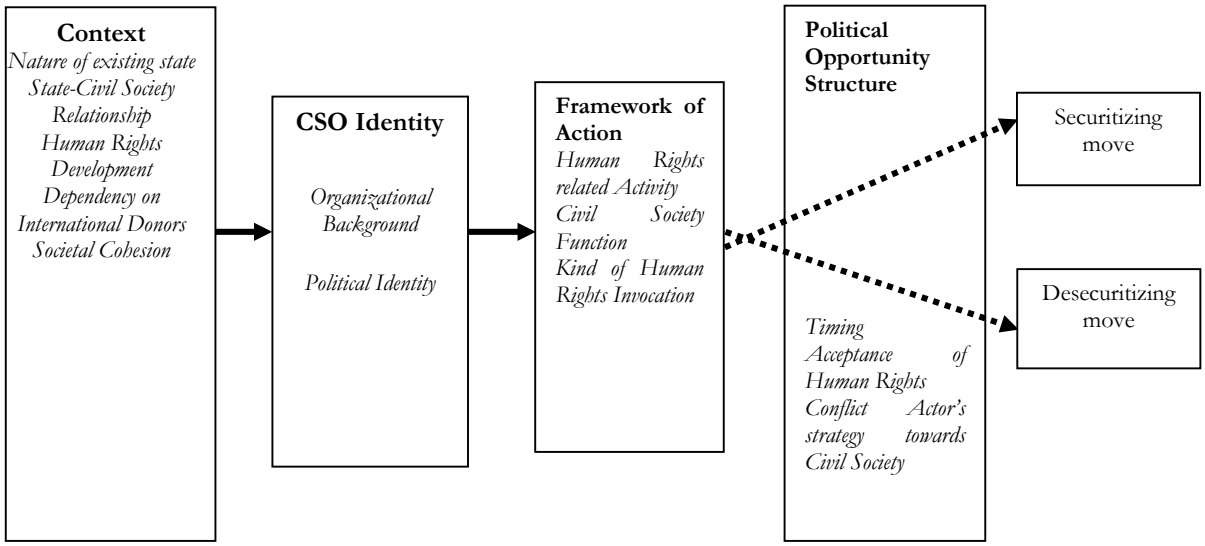
Instead of determining the (de-)securitizing character of human rights activism, the POS must rather be understood as a 'filter' that facilitates certain human rights interventions and aggravates others. In phases of escalating ethno-political conflict where subject positions are highly polarized, the environment tends to be more conducive for the conflict intensifying potential of an ethnicist agenda, whereas the space for maneuver increasingly narrows for civil society organizations working on cross-ethnic reconciliation (Marchetti and Tocci 2011b: 63, Ramsbotham et al. 2005). In addition to the timing of human rights work, the overall acceptance of human rights as universal, inalienable, and indivisible principles of social conduct decides upon the viability of de-securitizing activities. If human rights are solely perceived as a mere tool to legitimize political claims or even oppressive measures, reconciling human rights activities are not likely to fall on fertile ground and civil society rather refrains from adopting the framework (see Speed and Collier 2000: 901).

Finally, the conflict actors' strategy towards civil society impacts the human rights discourse. If a conflict actor wins the heart and minds of civil society organizations and succeeds in establishing a narrative of fighting for a good cause, civic engagement is more likely to take sides and to re-articulate the rhetoric of the established narrative (Bob 2005: 4-6). Armed uprisings resulting from social grievance and authoritarian rule can create windows of opportunities for the mobilization of contentious civil movements who further securitize the conflict to push for change (Brockett 37 pp., 64, 324 pp.). On the other hand, when all armed actors are portrayed as destroying the social tissue and perpetrating human rights violations, de-securitizing interventions demanding all actors to withdraw violence are more likely (see Bob 2005: p. 26 pp.).

Research Framework

Context, CSO identity, Framework of Action, and POS are not independent of each other, but form a conditional mechanism where each part creates structural constraints and opportunities for the following (cf. Bonacker, Braun, and Groth 2011). The context provides the environment in which CSOs operate and to which they need to adapt their identity. The CSO identity, in turn, conditions the organization's goals and the applied framework of actions. The POS finally amplifies or mutes the (de-)securitizing move resulting from CSO activities. Accordingly, the case analysis applied variable-guided process tracing to shed light on the mechanism linking the factors (figure 1). Following George and Bennett, variable-guided process tracing frames social mechanisms as a sequence of variables with the aim to identify a series of covering-law explanations (George and Bennett 2005: 225–227, also Beach and Pederson 2013). Theoretical discussion served not only the conceptualization of factors, but represents also the grid to finally unveil the mechanism that links the systematic patterns in the empirical material. Own data on the four factors and the outcome was gathered through the analysis of the CSO's published material and interviews with academics and civil society representatives, following semi-structured and open narrative designs (see table 3).

Figure 1: Conditional mechanism with explanatory factors and their structural features



The Zapatista uprising – "making ourselves heard"[45]

The EZLN surprised Mexico and the world by taking over four municipal capitals in Chiapas on January 1, 1994. The first communiqués issued by the Committee of Clandestine Indigenous Revolution – General Command (CCRI - CG) – the EZLN's supreme command structure – declared that the indigenous peoples of Chiapas took up arms to call attention to the severe living conditions they faced and in the hope that their struggle would help to create a more democratic Mexico including all Mexican people (Mattiace 1997: 32). The Zapatista uprising has been framed by its leadership and supporters as the final revolt of the marginalized indigenous people calling "Ya basta" (engl. enough) and finally demanding the rights they have been refused for so long

[45] EZLN communiqué (January 6 1994): "January 1 was our way of making ourselves heard" (EZLN 1994:72-73)

(Bob 2005: 117). Thus, the public appearance of the EZLN and the mobilization of the Zapatista movement[46] in 1994 marks the intensification and transformation of the conflict that developed between the Mexican state and indigenous communities in Chiapas, having its roots back in the Mexican history (see also Stephen 1997).

Indigenous communities have a historical continuity with pre-colonial societies that developed on their territories and consider themselves as distinct from other sectors of the societies now prevailing (see UN 2004, 2008). Although they hold a relatively small share of the nation's total population, indigenous people in Mexico represent, with approximately ten million persons, 29 percent of Latin America's total indigenous population (Yashar 1998: 25). Yet the national ideology of *mestizaje* (engl. racial mixing or miscegenation) has served to neglect the existence of living indigenous peoples, who maintain distinctive languages, cultures, and communities, as well as underpinning a system of political and societal exclusion (Speed and Collier 2000: 883, Yoshioka 1998). This had severe consequences for living conditions, particularly in Southern Mexico, which has long been one of the country's most poverty stricken regions (Bob 2005: 120-121, Stephen 1997: 87). In the federal state of Chiapas, indigenous communities have accounted for a disproportionate share of those that face grievous social and economic conditions. A core issue in this context is the uneven land distribution resulting from Mexico's colonial legacy. Large landholders established patrimonial structures that secured their economic and political power (Olvera 1997: 107, Stavenhagen 2003, De la Peña 2006).

Conflicts resulting from the exploitation of small and landless peasants previously fueled the Mexican Revolution in 1910. In response, Article 27 of the Mexican Constitution stipulated the re-distribution of land and the establishment of permanent communal land (*ejido*) (Yashar 1998: 35, Dietz 1996: 70-71, Neil 1998). But due to the lack of an effective agrarian reform, power structures remained and conflicts between large landholders (*ladino*) and indigenous communities about land titles continued (Stephen 1997: 88-89). Local elites used fraud, repression and intimidation to oppress indigenous and peasant communities who invoked Article 27 to claim their right for land. But official state authorities cooperated with landholders to maintain control of the rural areas and largely ignored the needs of indigenous communities (Speed and Collier 2000: 886, Fox 1996: 1093). Hence, discriminatory state policies, denied recognition, and structural exclusion created an environment where indigenous communities perceived themselves as threatened in their identity. The preservation of cultural characteristics and, thus, the existence as a distinct ethnic group became the core of an increasingly overt conflicts between indigenous communities and state authorities in the 1980s (Fox et al. 1999, Stavenhagen 1993).

By the early 1990s, a myriad of factors intensified the conflict and triggered its escalation (Bob 2005: 124). A series of liberal economic policies provided the grounds for the North American Free Trade Agreement (NAFTA) that was supposed to attract new investments in order to overcome economic crisis. The suspension of price protection of coffee and the amendment of Article 27 of the Mexican Constitution, allowing for the sold of communal land (ejido), in 1992 deteriorated the living conditions of small peasants and indigenous communities (García de León

[46] The article defines social movements as a loose association of organizations and collective engagement centered on and pushing forward values, identities, or cultural paradigms (Olvera 1997: 106). The Zapatista movement includes the EZLN as well as the Zapatista supporter base.

2005: 511). In Chiapas, the opportunities to achieve positive change within the political system vanished as the governor purged existing reform proposals and landholding oligarchy increasingly reacted with violence and deceit in the wake of growing social mobilization (Fox 1996: 1096). The armed uprising of the EZLN significantly transformed the ethno-political conflict. The EZLN represented itself as an army of national liberation in the tradition of Mexico's revolutionary past that wages war against the Mexican president and army. The rhetoric of the numerous declarations severely securitized the conflict. Thus, the EZLN claimed to speak for the indigenous people in Mexico and strived for a nationwide uprising in order to conquer the Mexican army, advance to the capital, and initiate summary judgments (EZLN 1993). The threat to existence was now to be responded by revolutionary means (EZLN 1993). The reference to Emiliano Zapata – a symbol of the revolution in which the Mexican nation state grounded its ideological legitimacy – emphasized that the EZLN portrayed the Mexican government and its politics as betrayal of the revolution and national heroes.

In Chiapas, the indigenous supporter base of the EZLN invaded large landholdings, ejected the landholding elite, and started to develop autonomy structures (Stahler-Sholk 2010: 271, Mattiace 1997: 45). Zapatistas enforced the indigenous right to exercise autonomously their own cultural tradition and self-determination on a municipal and regional level against the federal government (Zibechi 2008: 136, EZLN 1995).

Case Analysis

Context

In the aftermath of the Mexican Revolution, lasting from 1910-1917, the United Mexican States constituted as a federal republic, which was recognized for its stable state structures, rather uncommon in Latin America (Maihold 1996: 13). On the fundament of formal democratic institutions inscribed in the constitution, an integrative authoritarian state developed that provided for the stability of Mexico's political system. The hegemonic Institutional Revolutionary Party (Partido Revolucionario Institucional, PRI) governed the country for roughly 70 years by means of a corporatist structure maintained through co-optation, patronage, and repression (Horn 2004: 121).

In the late 1980s, however, the PRI's regime foundations started to come under pressure. Mexico's economic import substitution model reached its limits of exhaustion as foreign debts and the decline in oil prices finally induced a financial collapse (Faust 1996: 38-39). The increasing dependency on international donor agencies forced the regime to yield concessions concerning the opening of the political system and economic liberalization, which led to tensions with elites benefitting from former subsidies, aggravated the economic conditions of the agricultural sector, and endangered the alliances that kept the PRI system in charge. As a result, the regime increasingly lost its capability to integrate different fractions of the Mexican society. In order to maintain political power, the PRI decided to rely upon clientelistic practices, but concessions to the landholding oligarchy and economic elites rather polarized the political environment (Maihold 1996: 21-22). Social movements that could not be co-opted through traditional means anymore started to mobilize, posing a significant challenge to the fusion of state and society that had been a core characteristic of the PRI system. The overt discrepancy between legal foundations stipulated

in the Mexican Constitution and the PRI's authoritarian system that governed the country now became the focal point of public action. (Bizberg 2003: 160, Olvera 2003: 42 pp., Fox 1996: 1095). In response, the state securitized civil society activities as treason on the Mexican national project (Grammont, Mackinlay, and Stoller 2009: 30). Although the political elite increasingly realized the urgent need for concessions and cooperation, state structure remained highly irresponsive and repressive, despite its vanishing capability to profoundly co-opt emerging civil society (Bizberg 2003: 155 pp.).

The massive protests in 1994 and the overt sympathy for the EZLN demonstrated publicly the massive discontent of the now establishing civil society with the political leadership (Grammont, Mackinlay, and Stoller 2009: 30-31, Olvera 1997: 117). Two factors created a window of opportunity for the growing public opposition: First, the political weakness of the newly elected president Zedillo, who was not able to integrate the different cliques and tendencies within the PRI, induced overt internal conflicts over the party's fate. As consequence, the PRI regime started to disintegrate internally. Second, the integration of Mexico into the North American Free Trade Agreement (NAFTA) and the ambitions to become internationally recognized as Central America's leading power increased international attention. The state yielded to international pressure for political opening, granted fair elections, and even accepted civil society monitoring of the human rights situation throughout the country.

With authoritarian structures prevailing, however, human rights violations, particular in southern Mexico, remained pervasive. Beyond restrictions on freedom of association and freedom of speech, the militarization as well as the counterinsurgent campaign severely aggravated the working environment of civil society organizations in Chiapas (Bizberg 2003: 147-149). Here, human rights violations have not only been directed against civilians and Zapatista supporter base, but also against human rights activists (see AI 1995: 356, AI 1996, AI 1997: 368, HRW 1995, HRW 1996). The protracted social conflict and the exclusive system of patrimonial reign contributed to high social fragmentation between mestizo-dominated society and indigenous communities, low levels of social cohesion, and the prevalence of bonding social capital with only little cross-ethnic activities (Braig 2004: 272-273, González de Alba 2010).

CSO Identity – FrayBa

The organizational background of the Human Rights Center Fray Bartolomé de Las Casas provided well-established links to international human rights organizations and policy-makers. The Catholic diocese in San Cristóbal under Bishop Samuel Ruíz, on whose initiative FrayBa was founded in 1989, had long been recognized for its work with marginalized people in Chiapas, which did not only provoke conflicts with Chiapanecan elites, but also within the Catholic Church (Kurtenbach 2000b, also Loaeza Tovar 1996: 124 pp.). The diocese convened the first state-wide public indigenous forum, trained lay activists and promoted local self-empowerment projects (Kurtenbach 2000a: 228, Kurtenbach 2009: 450 pp.) The international reputation of Ruíz as a defender of human rights, particularly of indigenous rights, has been important for FrayBa to establish transnational cooperation with Human Rights Watch Americas, Amnesty International, and governmental international organizations, as well as to gain the trust of Chiapanecan oppositional groups (Bob 2005: 172, Hernández Díaz 2010: 146, Kurtenbach 2000a: 226-227).

The Mexican authorities and allied landowners had been highly suspicious towards the work of Ruíz and FrayBa. Yet, as the conflict intensified and international pressure induced president Salina's willingness to negotiate with EZLN leadership, the Catholic diocese appeared to be the only remaining actor able to serve as an intermediary between the conflict parties in peace talks (Kurtenbach 2008). The Catholic diocese, thus, has traditionally been one of the few institutions in Chiapas providing for bridging social capital within the highly fragmented society and was, therefore, accepted, as a mestizo authority, by indigenous communities. Further, Catholicism is particularly deep-rooted and widespread in rural Southern Mexico vesting the Catholic Church with legitimacy and repute within large parts of society (Kurtenbach and Paffenholz 1994). Ruíz mediated in the first peace talks in 1994 in San Cristóbal and the human rights center FrayBa became acknowledged by the Mexican government and the Zapatista as a neutral monitoring source. This in turn reinforced the organization's importance as a local hub for verified information on the conflict for international human rights organizations and foreign governments, particularly for those who could not send their own observer.

The international network and the institutional resources of the diocese, in turn, provided for some degree of leverage and protection, necessary to become involved with human rights in Chiapas. FrayBa's organizational background, producing bridging social capital in the conflict, critically shaped its political identity. Although FrayBa was established on the fundament of Christian ecumenical convictions, the non-governmental and non-profit organization works independent of any political ideology or religious creed. The CSO pursued an inclusive approach with the overall aim to develop inter-group dialogue, a culture of tolerance, and reconciliation between fractions (cf. CDHFBC 2014a, 2014b, and 1995c). FrayBa did not serve a clear-cut membership or identity group, but conducted issue-centered advocacy. The civic agenda fosters multiple identities and wants them to be recognized in a pluri-ethnic society (CDHFBC 1994: 1-3). Hence, FrayBa established ties to all conflict actors, but remained distant in order to reinforce the position as an acknowledged observer, whose information can be trusted.

Framework of Action – FrayBa

After the Zapatista uprising, the activities of FrayBa became centered on dispatching civil observer brigades (BRICOS) in order to monitor the conflict and conduct human rights accompaniment in support of civilians amidst violent conflict. Indeed, the status as a neutral organization enabled the CSO to effectively discharge its activities (cf. Kenny 2001). International observers working in BRICOs have been permitted and recognized by Mexican authorities and were granted access to conflict territories. The acceptance by combatants enabled FrayBa to realize the monitoring, advocacy, and protection function. Later on, the organization also started to provide legal assistance to communities that have been denied basic rights.

Issued reports and public statements particularly referred to universal and individual human rights, but also emphasized the role of structural and cultural violence in the progression of the conflict. Therefore, FrayBa actively supported the empowerment of indigenous communities in their demand for collective cultural human rights as stipulated in ILO convention 169 and the ICESCR (cf. CDHFBC 1996a, 1996b). The articulations of collective rights, however, were inclusive in character. The invocation of integrational rights did not exclude certain social identities, but underlined the equal status of all Mexican identity groups and urged the conflict parties to grant

the same rights to all Mexican people. Referring to Article 4 of the Mexican Constitution, acknowledging different Mexican cultural groups, FrayBa demanded the inclusion of all societal groups into the Mexican society without cultural assimilation, but through recognition of the plurality of customs and traditions (CDHFBC 1995a, 1995b, and 1995d). The invocations of universal and integrational human rights, therefore, were met with understanding by the conflict parties.

CSO Identity – Enlace Civil

Enlace Civil emerged from bottom-up, grassroots mobilization of the Zapatista supporter base. The Zapatista movement and their creation of the Municipios Autónomos Rebeldes Zapatistas (Rebel Zapatista Autonomous Municipalities – MAREZ) demonstrated that bonding social capital in authoritarian contexts can thicken quite independently of external allies, through sustained collective action by autonomous, local political movements (Fox 1996: 1094, also Corrochano 2005: 8). Excluded from PRI-dominated institutions, indigenous communities in Chiapas organized within the highly fragmented society against the political elite and large landowners to preserve their ethnic identity independent of mestizo paternalism. This process demonstrated the enormous trust and loyalties produced in horizontal associations (Fox 199: 1097, Nash 1997, Skoufias et al. 2010).

Whilst independent mobilization from below was fundamental, representing a second pathway of social capital accumulation (see Fox 1996: 1094), the growth and maintenance of Zapatista structures within the authoritarian state still benefited enormously from external allies. Once the state's counterinsurgency campaign was launched, the mobilization of solidarity networks at national and international levels was essential to exert international pressure, urging the president to declare a unilateral cease-fire after less than two weeks of fighting, rather than pursuing a militarily dissolution of the rebellion as happened in many Central American countries (Andrews 2011: 140). Thus, external allies turned out to be essential for the sustained bottom-up mobilization in one of Mexico's most remote indigenous regions (Salazar 2013, Olesen 2004). The societal capital produced within the global solidarity network, however, remained bonding social capital since networks of civic engagement have been organized along the conflict divide.

Enlace Civil was established in 1996 as the coordinator of solidarity activities in Mexico and the outward voice of the Zapatista communities. The organization was entrusted with crucial task of maintaining the global solidarity network and, thus, the capacity of the movement to survive. Due to establishing international ties and activists, coming particularly from Europe and the USA to conduct projects in the MAREZ in coordination with Enlace Civil, the organization gained international prominence. The Zapatista movement, thus, vested Enlace Civil with external allies providing for leverage and some degree of protection in the face of hostile landowning elites and federal authorities criminalizing supporting organizations (Zibechi 2008: 137, Díaz-Polanco 1997: 171, Andrews 2011: 141-142).The bonding social capital produced by the movement also shaped the CSO identity. As major hub for the solidarity network, Enlace Civil represented the indigenous communities organized within the Zapatista movement and shared the goal of breaking the circle of marginalization and poverty through the unilateral declaration of autonomy (see Barmeyer 2008). The organization adopted a multicultural agenda and re-produced bonding social capital, facilitating civic engagement of indigenous communities along the ethnic and political conflict

divide. Further, close coordination with the EZLN has been maintained protecting the MAREZ and, ultimately, Enlace Civil's staff working in the autonomous territories (Hernández Díaz 2010: 144).

Framework of Action – Enlace Civil

Enlace Civil supported the MAREZ through human rights accompaniment and the coordination of international solidarity activities. Further, the organization distributed urgent action requests and Zapatista material through the communication channels of the supporter network in order to raise international awareness, advocate for Zapatista demands, solidify alliances, and gain new supporters (Enlace Civil 2014a, 2014b, 1999a, Olesen 2006: 192, Andrews 2011). The activities, therefore, cover the protection, monitoring, advocacy, and service delivery function.

Published statements denounced human rights violations by the Mexican state on Zapatista territory. Here, individual rights were invoked on behalf of the members of Zapatista communities. Apart from group rights, issued reports and urgent action requests condemned repressive state policies towards the Zapatista communities as a breach of collective social, economic, and cultural rights, as provided by the ILO convention 169, the Mexican Constitution and the ICESCR. Enlace Civil argued that the denial of such rights and the devastating living conditions of indigenous communities legitimizes the Zapatista autonomy project (Enlace Civil 1998d, 1999b). Even though the organization committed to the equal status of all Mexican identity groups, the advocacy for collective human rights focused exclusively on the rights of the indigenous Zapatista communities (c.f. Enlace Civil 1998a, 1998b, 1998c).

Political Opportunity Structure

The federal government immediately reacted to Zapatista uprising with grave counterattacks forcing the EZLN combatants to retreat to the Chiapanecan highlands. Violent clashes during the first days of 1994 left 145 confirmed dead, hundreds wounded, and 20,000-35,000 people displaced (Bob 2005: 125, SíPaz 2000a, Physicians for Human Rights and HRW/Americas 1994: 7). In the face of growing international attention and upcoming national elections, however, the Mexican president Salinas declared a unilateral cease-fire on January 12 and the Zapatistas tried to use the growing civil mobilization in Mexico around the 1994 elections, inviting thousands of CSOs to the National Democratic Convention with the aim to formulate alternatives to the political system (Bob 2005: 133-134, Collins 2010: 781). Yet, the election of the PRI candidate Zedillo demonstrated that the regime still inhabited sufficient popular support to maintain power in Mexico and disillusioned the Zapatistas.

Realizing that the momentum for national change began to vanish, the EZLN changed strategies and fortified positions around their indigenous supporter communities. Following the official declaration of 32 autonomous municipalities (see EZLN 1995), the conflict started to face a new period of securitization, as the newly established federal government issued arrest warrants for Zapatista leaders and began a new military offensive in February 1995. The renewed military escalation was again responded to by massive civil society mobilization which caused the government to halt its campaign after few days without substantial military success. The peace talks in San Andrés that followed at first showed substantial results, but as the Mexican government refused to implement what has been negotiated, the Zapatistas rejected the

continuation. Even though no major military campaign was launched after the final blow of the San Andrés talks in late 1996, the army tightened its grip around Zapatista areas and paramilitaries, associated with state authorities and landowners, have been responsible killings and massacres, targeting the civilian supporter base to create an atmosphere of terror and fear. Thus, levels of violence and securitization in Chiapas remained high.

Further, the low level of acceptance of human rights severely aggravated the operating conditions of human rights CSOs, particularly of those working for reconciliation. While the Mexican state invoked specifically individual human rights to curtail indigenous self-governance and to portray cultural customs as pre-modern and illiberal, indigenous movements since the late 1980s themselves started to draw upon the stipulations provided by international covenants on basic rights to legitimize their claim for recognition of their ethnicity (Speed and Collier 2000: 878 pp., Anaya Muñoz 2009: 46, Mattiace 1997: 49). The EZLN built on this strategy justifying the insurgency through reference to the rights granted to ethnic minorities by international law and the Constitution of Mexico (Bob 2005: 117, 152, García de León 2005: 515). Human rights therefore became to be perceived as an 'empty concept' which can be adapted to any context and instrumentalized for any purpose, without any inherent reconciling and, thus, de-securitizing essence.

In the wake of oppression and severe human rights violations by Mexican armed forces in Chiapas, the Zapatistas achieved to embrace Mexican oppositional organizations and to establish a framing of the rebellion as a just fight against oppression, which caused widespread solidarity with the EZLN. The media coverage showed poorly armed Zapatista soldiers carefully targeted only military and government installations, while the army's massive counterinsurgency campaign included indiscriminate bombardments and the execution of indigenous civilians, conveying the image of a vengeful government (García de León 2005: 515, 516). The dismay over disproportionate government response rose and Zapatistas had come to be perceived as victims of long-term societal oppression and excessive government reprisals. In the face of growing civil engagement, repressive state measures were contrasted by Zapatista's responsiveness to forge a broad alliance with emerging Mexican civil society. The establishing Zapatista hegemony over the conflict narrative helped to create solidarity and mobilized anti-state activities, but also polarized the Mexican society and further securitized the conflict antagonism.

Outcome: De-securitizing move / securitizing move

FrayBa's activities after 1994 issued a de-securitizing move. Published statements and monitoring reports demand all conflict actors to comply with internationally acknowledged human rights and to find negotiated solutions on the basis of mutual respect and tolerance. The organization did not reinforce the position of one conflict actor over another, but rather focused on specific issues like the protection of unarmed civilians. On that note, albeit FrayBa acknowledged the threatening environment in Chiapas, the CSO detached the threat from a specific social identity through temporal securitization, advocating for a negotiated solution to overcome the threatening past. In de-securitizing the conflict, FrayBa applied a mixture of constructivist and de-constructivist strategies: The organization condemned all forms of violence to address exclusion and marginalization, as well as it used human rights to argue in favor of a pluri-cultural Mexican nation where mestizo and indigenous identity groups cooperate with each other.

Enlace Civil, on the contrary, pursued the securitization of the conflict, as a means to bring international attention to the injustice in Chiapas and the human rights violating behavior of the Mexican state. Facing a history of exclusion, marginalization and false state promises, Enlace Civil saw no point in reconciling conflict positions, but claimed – in the spirit of the Zapatista's '*Ya Basta'* – cultural and political rights for indigenous communities. The organization largely adopted the discourse of the EZLN that portrays the state as illegitimate and a threat to the survival of indigenous communities. In spite of Enlace Civil's strict commitment to peaceful means, the revolutionary fight was deemed necessary as self-defense. Enlace Civil's activities supported the MAREZ as a legitimate expression of resistance and the last option available. In this regard, the language of human rights was adopted as a tool to raise awareness for the threatening situation of indigenous communities, but also to define the state as a norm-violating threat and, ultimately, to transfer legitimacy to the rebellion.

Conditional Mechanisms

The conditional mechanisms of the de-securitizing move by FrayBa and the securitizing move by Enlace Civil illustrate that context conditions cannot preclude or cause a certain outcome; they rather restrict or enhance the options available to different CSOs. Facing the repressive state and a fragmented Mexican society, the cooperation with external allies was pivotal for operating in the conflict and bringing the neglected human rights situation in Chiapas to the national agenda. In the transition from the context factor to CSO identity, the organizational background appeared to be decisive. Since the context conditions did not provide an enabling working environment, both of the considered organizations strongly depended on the social context from which they emerged to provide leverage and protection. The kind of social capital produced within the respective social contexts critically influenced the political identity of the organization. In FrayBa's case, bridging social capital induced an inclusive civic agenda and issue-centered work. An organizational background characterized by bonding social capital induced Enlace Civil to advocate for a clear-cut constituency and adopt an exclusive multicultural agenda. The organizational background, more precisely the kind of social capital from which the organization emerges, represents the first tipping point in the conditional mechanism.

At first glance, the findings further prompt the conclusion that the framework of action is not directly related to the outcome. Both organizations delivered services, provided protection to communities, monitored the conflict and advocated for human rights. Additionally, both organizations adopted an egalitarian political identity. Yet, the level of inclusiveness of the political identity and its translation into concrete human rights activities is a second important tipping point in the transition from CSO identity to framework of action. Thus, in accordance with the inclusive political identity, FrayBa advocated for an issue-based agenda and demanded universal and integrational human rights applicable to all Chiapanecan citizens. Further, its activities transcended identity boundaries within the conflict focusing on the needs of those affected by violent conflict, regardless of their respective identity group. Enlace Civil, on the contrary, pursued an exclusive agenda advocating individual and collective human rights on behalf of the Zapatista communities. The case analysis shows that both human rights activities are political in nature and that the kind of political effect depends on the level of inclusiveness. Inclusive human rights articulations convey de-securitizing effects, since they challenge the 'self'-'other' divide. Exclusive articulations serve to

protect an identity group, but reaffirm the 'self' as threatened by the 'other' (cf. Laclau and Mouffe 1985).

The work of both organizations, finally, has been largely affected by the POS. The highly securitized conflict deteriorated working conditions and aggravated reconciling activities. The fact that collective human rights such as the right to cultural and political self-determination have been denied by the state and became conflict issues themselves and the state's framing of engagement on behalf of indigenous peoples as anti-state terrorism further intensified the securitizing character of exclusive activism.

Conclusion

The article examined the role of civil society organizations advocating for human rights within conflict transformation processes. Thus, the focus was not on how civil society can effectively pursue the implementation of certain human rights standards, but rather on the conditions that determine whether their activities facilitate inter-group reconciliation, entrench status quo, or even contribute to escalation in ethno-political conflicts. At the core of the presented theoretical approach lies securitization theory, whose attention on the discursive positioning of threats and the subsequent 'self'-'other' construction is of analytical importance to understand and transform the construction of antagonistic conflict identities. As the case illustrates, securitization can represent a vital strategy to make oppression and structural violence visible, which is why securitizing organizations are not necessarily the spoilers of peaceful and just transformation. Yet, from a constructivist conflict transformation perspective, highly securitized and violent ethno-political conflict need some de-securitization to set a basis where both identity groups accept each other as partners who can be lived with.

The case analysis of two human rights organization working in the Zapatista conflict served theory-building concerning the conditions under which CSOs issue securitizing or de-securitizing moves in ethno-political conflicts. Building on the insights of previous research by the SHUR project that there is no single sufficient explanatory factor, the article applied process tracing to comprehend the conditional mechanism by which context, civil society identity, framework of action, and POS determine the (de-)securitizing moves of CSOs. The close observance of both conditional mechanisms at hand unveiled two tipping points: The kind of social capital from which an organization develops and kind human rights discourse that is applied. Even though, as the analysis has shown, both tipping points cannot be singled out and only gain significance in the interaction with the context and the POS, the following hypotheses can be inferred that are worthwhile to be further worked on in larger-N designs: If an organization develops from bridging social capital, it shows an inclusive political identity and conducts integrational activities, which issue de-securitizing moves. On the contrary, if the social context from which an organization develops is characterized by bonding social capital, the CSO is exclusive in its identity and its activities reinforce the conflict antagonism, resembling securitizing moves. The second set of hypotheses concerns the inclusiveness of the human rights discourse. Integrational discourses, which include all social identity groups are the carrier for de-securitizing moves. Exclusive discourses, which invoke human rights exclusively on behalf one conflict group or the individual members of a group re-produce the conflictual 'self'-'other' narratives and convey securitizing moves.

Finally, the importance of the context, not only for the sheer ability for civil mobilization, but also for the political effects concerning conflict transformation, should prompt policy-maker to create an enabling environment for de-securitizing moves. Responsive and participative state structures, high social cohesion and inclusive societal structures, as well as de-securitized discourses are expected to provide the grounds for bridging social capital and reconciling activities. Yet, since context and POS alone cannot prevent securitizing moves, CSOs concrete strategies of engagement are of relevance as well. Advocating for the rights of people suffering from repression is sublime work, but the findings encourage organizations to pursue their aims carefully. The chosen agenda and instruments to put forward claims have (de-)securitizing effects and, thus, paramount implications for the prospects of conflict transformation.

References

Amnesty International (1995): *Jahresbericht 1995*, Frankfurt: Fischer.

Amnesty International (1996): *Jahresbericht 1996*, Frankfurt: Fischer.

Amnesty International (1997): *Jahresbericht 1997*, Frankfurt: Fischer.

Andrews, Abigail (2011): "How Activists 'Take Zapatismo Home': South-to-North Power Dynamics in Transnational Social Movements", *Latin American Perspectives* 38 (1), pp. 138-152.

Austin, John L. (1962) How to do Things with Words. Oxford: Oxford University Press.

Baechler, Günter (2004): "Conflict Transformation through State Reform", in: *Berghof Hand-book for Conflict Transformation*, [Online], [Accessed 15 October 2013], Available from: http://www.berghofhandbook.net/uploads/download/baechler_handbook.pdf.

Balzacq, Thierry (2005): "The Three Faces of Securitization: Political Agency, Audience and Context", *European Journal of International Relations* 11(2), pp. 171–201.

Balzacq, Thierry (2011): "A theory of securitization: origins, core assumptions, and variants", in: Thierry Balzacq (ed.) (2011): *Securitization Theory: How Security Problems Emerge and Dissolve*, London and New York: Routledge: pp. 1-30.

Barmeyer, Niels (2008): Taking on the State: Resistance, Education, and other Challenges Facing the Zapatista Autonomy Project, *Identities* 15 (5): pp. 506–527.

Barnes, Catherine (2005): "Weaving the Web: Civil-Society Roles in Working with Conflict and Building Peace", in: Paul van Tongeren, Malin Brenk, Marte Hellema, and Juliette Verhoeven (eds) (2005): *People Building Peace II: Successful Stories of Civil Society*, London: Lynne Rienner, pp. 7-24. 87

Beach, Derek and Rasmus Brun Pedersen (2013): *Process-Tracing Methods. Foundations and Guidelines*, Ann Arbor: University of Michigan Press.

Belloni, Roberto (2008): "Civil Society in war-to-democracy transitions", in: Anna K. Jarstad and Timothy D. Sisk (eds) (2008): *From War to Democracy: Dilemmas of Peacebuilding*, Cambridge: Cambridge University Press, pp. 182-210.

Berkman, Lisa and Ichiro Kawachi (2000): *Social Epidemiology*, New York, Oxford: Oxford University Press: 174-90.

Bernshausen, Sirin and Thorsten Bonacker (2011): "A Constructivist Perspective on System Conflict Transformation", in: D. Körppen, N. Ropers & Hans J. Gießmann (eds.) (2011): *The Non-Linearity of Peace Processes – Theory and Practice of Systemic Conflict Transformation*, Opladen/Farmington Hills: Barbara Budrich Verlag, pp. 23-38.

Bigo, Didier (2000): "When Two Become One: Internal and External Securitisation in Europe", in: Morten Kelstrup and Michael C. Williams (eds) (2000): *International Relations Theory and the Politics of European Integration. Power, Security and Community*, London: Routledge, pp. 171–204.

Bigo, Didier (2002): "Security and Immigration: Toward a Critique of the Governmentality of Unease", *Alternatives* 27 (2002), Special Issue, pp. 63-92.

Bizberg, Ilán (2003): "Transition or Restructuring of Society?", in: Joseph S. Tulchin and Andrew D. Selee (eds.) (2003): *Mexico's Politics and Society in Transition*, Boulder: Lynne Rienner, pp. 143-178.

Bob, Clifford (2005): *The Marketing of Rebellion: Insurgents, Media, and International Activism*. Cambridge: Cambridge University Press.

Bonacker, Thorsten, Christian Braun, and Jana Groth (2011): "The Impact of Civil Society on Conflict", in: Raffaele Marchetti and Nathalie Tocci (eds.) (2011): *Civil society, conflicts and the politicization of human rights*, Tokyo: United Nations University Press, pp. 220-242.

Bonacker, Thorsten, Thomas Diez, Thorsten Gromes, Julia Groth and Emily Pia (2011): "Human Rights and the (de)securitization of conflict", in: Raffaele Marchetti and Nathalie Tocci (eds.) (2011): *Civil society, conflicts and the politicization of human rights*, Tokyo: United Nations University Press, pp. 13-46.

Botes, Johannes (2003): "Conflict Transformation: A Debate over Semantics or a Crucial Shift in the Theory and Practice of Peace and Conflict Studies", *International Journal of Peace Studies*, Vol. 8, No. 2, pp. 1-27.

Braig, Marianne (2004): "Fragmentierte Gesellschaft und Grenzen sozialer Praktiken", in: Walther L. Bernecker, Marianne Braig, Karl Hölz und Klaus Zimmermann (eds.) (2004): *Mexiko heute. Politik.Wirtschaft.Kultur*, third edition, Frankfurt: Vervuert Verlag, pp. 271-308.

Brockett, Charles D. (2005): *Political Movements and Violence in Central America*, Cambridge: Cambridge University Press.

Browning, Christopher S. and Matt McDonald (2011): "The future of critical security studies: Ethics and the politics of security", European Journal of International Relations 21 (1), pp. 2-21.

Butler, Judith (1997): *Excitable Speech. A Politics of the Performative*, London: Routledge.

Buzan, Barry (1993): "Societal Security, State Security and Internationalisation", in: Ole Wæver, Barry Buzan, Morten Kelstrup, and Pierre Lemaitre (eds.) (1993): *Identity, Migration and the New Security Agenda in Europe*, London: Pinter, pp. 41-58.

Buzan, Barry and Ole Wæver (1997): "Slippery? Contradictory? Sociologically Untenable? The Copenhagen School Replies", *Review of International Studies* 23(2), pp. 241–250.

Buzan, Barry, Ole Wæver, and Jaap de Wilde (1998): *Security: A New Framework for Analysis*, London: Lynne Rienner.

Buzan, Barry and Ole Wæver (2003): *Regions and Powers. The Structure of International Security*, Cambridge: Cambridge University Press.

Campbell, David (1998): *National Deconstruction: Violence, Identity and Justice in Bosnia*, Minneapolis: University of Minnesota Press.

Centro De Derechos Humanos Fray Bartolomé de Las Casas (CDHFBC) (1994): *En la Ausencia de Justicia. Informe Semestral Julio a Diciembre de 1993*, San Cristóbal de Las Casas, Chiapas: Centro de Derechos Humanos "Fray Bartolomé de las Casas" (CDHFBC), [Online], [Accessed 15 January 2013], Available from: http://www.frayba.org.mx/archivo/informes/940201_en_la_ausencia_de_justicia_ frayba.pdf.

CDHFBC (1995a): *Informe Zona Norte "El Otro Cerco"*. Octubre 1995, San Cristóbal de Las Casas, Chiapas: Centro de Derechos Humanos "Fray Bartolomé de las Casas" (CDHFBC), [Online], [Accessed 15 January

2013], Available from: http://www.frayba.org.mx/archivo/informes/951012_informe_zona_norte_ fray-ba.pdf. 90

CDHFBC (1995b): *Detención y expulsión de sacerdotes de la Diocesis de San Cristóbal de Las Casas. Junio de 1995*, San Cristóbal de Las Casas, Chiapas: Centro de Derechos Humanos "Fray Bartolomé de las Casas" (CDHFBC), [Online], [Accessed 15 January 2013], Available from: http://www.frayba.org.mx/archivo/informes/950622_expulsion_sacerdotes_ fray-ba.pdf.

CDHFBC (1995c): "Boletin informativo de Alianza Civica-Chiapas", *Boletin Informativo* 3 Enero de 1995, [Online], [Accessed 15 January 2013], Available from: http://www.frayba.org.mx/archivo/boletines/950112_hechos_y_eventos_en_chiapas.pdf.

CDHFBC (1995d): "Ofensa policiaco militar", *Boletin Informativo* Febrero de 1995, [Online], [Accessed 15 January 2013], Available from: http://www.frayba.org.mx/archivo/boletines/950210_ofensiva_policiaco_militar.pdf.

CDHFBC (1996a): *Ni Paz ni Justicia: informe General y Amplio acerca de la guerra que sufren los Ch'oles en la Zona Norte de Chiapas (Diciembre de 1994 a Octubre de 1996)*. San Cristóbal de las Casas, Chiapas: Centro de Derechos Humanos "Fray Bar-tolomé de Las Casas" (CDHFBC), [Online], [Accessed 15 January 2013], Available from: http://www.frayba.org.mx/archivo/informes/961012_ni_paz_ni_justicia_frayba.pdf.

CDHFBC (1996b): *Let's raise our voices for justice!; Annual report July 1994 to June 1995*, San Cristóbal de Las Casas, Chiapas: Centro de Derechos Humanos "Fray Bartolomé de las Casas" (CDHFBC), [Online], [Accessed 15 January 2013], Available from: http://www.frayba.org.mx/archivo/informes/960220_let%5Cs_raise_our_voices_for_justice_frayba.pdf.

CDHFBC (2014a): *About us*, [Online], [Accessed 15 January 2013], Available from: http://www.frayba.org.mx/sobre_nosotros.php?hl=en.

CDHFB (2014b): *Description of Areas*, [Online], [Accessed 15 January 2013], Available from: http://www.frayba.org.mx/sobre_nosotros_areas.php?hl=en#1.

Coletta, Nat J. and Michelle Cullen (2000): *Violent Conflict and the Transformation of Social Capital. Lessons from Cambodia, Rwanda, Guatemala, and Somalia*, Washington, D.C.: World Bank.

Collier, George (1994): *Basta! Land and the Zapatista Rebellion in Chiapas*, Oakland: Food First.

Corrochano, David H. (2005): "Social Capital And Democracy In Mexico: The Social Limits Of Political Change", *Social Forces* 84 (1), pp. 1-16.

De Grammont, Hubert C., Horacio Mackinlay and Richard Stoller (2009): "Campesino and Indigenous Social Organizations Facing Democratic Transition in Mexico, 1938—2006", *Latin American Perspectives* 36 (4): pp. 21–40.

De la Peña, Guillermo (2006): "A new Mexican nationalism? Indigenous rights, constitutional reform and the conflicting meanings of multiculturalism", *Nations and Nationalism* 12 (2), pp. 279-302.

Derrida, Jacques (1976): *Of Grammatology*, Baltimore: John Hopkins University Press.

Díaz-Polanco, Hector (1997): *Indigenous Peoples in Latin America. The Quest for Self-Determination*, Boulder: Westview Press.

Dietz , Gunther (1996): "Indianische Bewegung und 'Zapatismo' im ländlichen Mexiko. Vom Assistentialismus zur Regionalautonomie", *Lateinamerika. Analysen-Daten-Dokumentation*, 24/1996, pp. 67-88.

Dudouet, Veronique (2007): Surviving the Peace: Challenges of War-to-Peace Transitions for Civil Society Organizations, *Berghof Report Nr. 16*, Berlin: Berghof Research Center for Constructive Conflict Management, [Online], [Accessed 15 October 2013], Available from: http://www.berghof-conflictresearch.org/documents/ publica-tions/br16e.pdf.

Dukes, E. Franklin (1999): "Why Conflict Transformation Matters: Three Cases", *Peace and Conflict Studies* 6 (2), pp. 47-66.

Edwards, Michael (2004): *Civil Society*, Cambridge: Polity Press.

Enlace Civil (1998a): *Report 1996-1998. Zapatista autonomous municipalities. The Resistance of the Indigenous Communities in Response to the War in Chiapas*, [Online], [Accessed 15 January 2013], Available from: http://flag.blackened.net/revolt/mexico/comment/auto_munc_nov98.html.

Enlace Civil (1998b): *Observers report from Union Progreso and Alvaro Obregen, municipality of El Bosque*, [Online], [Accessed 15 January 2013], Available from: flag.blackened.net/revolt//mexico/accounts/el_bosque_dec98.html.

Enlace Civil (1998c): *Observers Report*, [Online], [Accessed 15 January 2013], Available from: http://www.driftline.org/cgi-bin/archive/archive_msg.cgi?file=spoon-archives/aut-op-sy.archive/aut-op-sy_1998/aut-op-sy.9810&msgnum=111&start=14940.

Enlace Civil (1998d*): Declaration of Social and Non-Governmental Organizations of San Cristobal De Las Casas, Chiapas*, [Online], [Accessed 15 January 2013], Available from: http://list.jca.apc.org/public/asia-apec/1998-June/000465.html

Enlace Civil (1999a): *Report 05. June 1999*, [Online], [Accessed 15 January 2013], Available from: http://flag.blackened.net/revolt/mexico/ezln/1999/amc_no_highway_jun.html.

Enlace Civil (1999b): *Government Violating Mexican Laws with Expulsion of International Observers*, [Online], [Accessed 15 January 2013], Available from: http://www.rehberg.net/nonviolentways/xenomex.html.

Enlace Civil (2014a): *Inicio*, [Online], [Accessed 15 January 2013], Available from: http://www.enlacecivil.org.mx/index.html.

Enlace Civil 2014b: *Áreas de Trabajo*, [Online], [Accessed 15 January 2013], Available from: http://www.enlacecivil.org.mx/areastrabajo.html.

Enlace Civil (2014c): *Contexto*, [Online], [Accessed 15 January 2013], Available from: http://www.enlacecivil.org.mx/contexto.html.

EZLN (1993): "Declaración de la Selva Lacandona: Hoy decimos ¡basta!", December 31, 1993, in: EZLN (ed): *Declaraciones de la Selva Lacandona*, [Online], [Accessed 15 January 2013], Available from: http://espaciolibremexico.files.wordpress.com/2012/10/pdf.pdf.

EZLN (1994): *Documentos y comunicados*, vol. 1, Mexico D.F.: Ediciones Era.

EZLN (1995): "Tercera Declaración de la Selva Lacandona", January 1, 1995, in: EZLN (ed): *Declaraciones de la Selva Lacandona*, [Online], [Accessed 15 January 2013], Available from: http://espaciolibremexico.files.wordpress.com/2012/10/pdf.pdf.

Fearon, James D., und David D. Laitin (2000): "Violence and the social construction of ethnic identity", *International Organization* 54 (4): 845–77.

Foucault, Michel (1969): *Die Ordnung der Dinge. Eine Archäologie der Humanwissenschaften*, (Les Mots et les choses. Une archéologie des sciences humaines), translated by Ulrich Köppen, Frankfurt: Suhrkamp.

Forster, Rainer and Mark Mattner (2006): *Civil Society and Peacebuilding, Potential, Limita-tions and Critical Factors*, Washington, DC: World Bank.

Fox, Jonathan (1996): "How Does Civil Society Thicken? The Political Construction of Social Capital in Rural Mexico", *World Development* 24(6), pp. 1089-1103.

Fox, Jonathan (2007): *Accountability Politics: Power and Voice in Rural Mexico*, Oxford: Oxford University Press.

Fox, Jonathan, Gaspar Rivera and Lynn Stephen (1999): "Indigenous Rights and Self-Determination in Mexico", *Cultural Survival Quarterly* 23 (1).

Franklin, James C (2008): "Shame on You: The Impact of Human Rights Criticism on Political Repression in Latin America", *International Studies Quarterly* 52 (1), pp. 187–211.

García de León, Antonio (2005): "From Revolution to Transition: The Chiapas Rebellion and the Path to Democracy in Mexico", *Journal of Peasant Studies* 32 (3-4): 508–527.

García-Durán, Mauricio (2010): "Interaction between Conflict Transformation and Human Rights in the Face of Ongoing Armed Conflict in Colombia" in: Véronique Dudouet and Beatrix Schmelzle (eds.) (2010): *Human Rights and Conflict Transformation: The Challenges of Just Peace*, Berghof Handbook Dialogue No. 9, Berlin: Berghof Conflict Research, 95-104.

George, Alexander L. and Andrew Bennett (2004): *Case Studies and Theory Development in the Social Science*, Cambridge: MIT Press.

Gheciu, Alexandra (2006): "'Civilizing' the Balkans, protecting Europe: the international politics of reconstruction in Bosnia and Kosovo", in: Jeff Huysmans, Andrew Dobson and Raia Prokhovnik (eds.) (2006): *The Politics of Protection. Sites of insecurity and political agency*, London: Routledge.

González de Alba, I.G. (2010): "Poverty in Mexico from an Ethnic Perspective", *Journal of Human Development and Capabilities* 11(3): pp. 449-465.

Gromes, Thorsten and Thorsten Bonacker (2007): "The Concept of Securitisation as a Tool for Analysing the Role of Human-Rights-Related Civil Society in Ethno-Political Conflicts", *SHUR Working Paper Series* 05/07.

Grootaert, Christiaan (1998): "Social Capital: The Missing Link?", *Social Capital Initiative Working Paper* 3, World Bank, Washington, D.C.

Gurr, Ted Robert (2000): *Peoples versus States: Minorities at Risk in the New Century*, Washington DC: United States of Peace Press.

Hansen, Lene (2000): "The Little Mermaid's Silent Security Dilemma and the Absence of Gender in the Copenhagen School", *Millennium: Journal of International Studies* 29(2), pp. 285–306.

Hansen, Lene (2012): "Reconstructing desecuritisation: the normative-political in the Copenhagen School and directions for how to apply it", *Review of International Studies* 38 (3), pp. 525-546.

Hernández-Díaz, Jorge (2010): "La Construcción de Ciudadanías Postliberales: Los Reclamos de Autonomía Municipal y Demandas Indígenas en México", *Latin American Research Review* 45 (4): pp. 138–165.

Horn, Hans-Rudolf (2004): "Aktualisierung der Verfassung von 1917", in: Walther L. Bernecker, Marianne Braig, Karl Hölz und Klaus Zimmermann (eds.) (2004): *Mexiko heute. Politik.Wirtschaft.Kultur*, third edition, Frankfurt: Vervuert Verlag, pp. 117-148.

Horowitz, Donald (2000): *Ethnic Groups in Conflict*, Berkely: University of California Press.

Human Rights Watch (1995): *World Report 1995: Mexico*, New York: Human Rights Watch, [Online], [Accessed 15 January 2013], Available from: http://www.hrw.org/reports/1995/WR95/AMERICAS-09.htm#P490_177020.

Human Rights Watch (1996): *World Report 1996: Mexico*, New York: Human Rights Watch, [Online], [Accessed 15 January 2013], Available from: http://www.hrw.org/reports/1996/WR96/Americas-09.htm#P784_190724.

Human Rights Watch (HRW)/Americas (1994): "Mexico, the New Year's rebellion: Violations of Human Rights and Humanitarian Law During the Armed Revolt in Chiapas", *Mexico,* 6 (3), [Online], [Accessed 15 January 2013], Available from: http://www.hrw.org/sites/default/files/reports/MEXICO943.PDF.

Huysmans, Jeff (1995): "Migrants as a Security Problem: Dangers of Securitizing Societal Issues", in: Robert Miles and Dietrich Thränhard (eds.) (1995): *Migration and European Integration: Dynamics of Inclusion and Exclusion*, London: Pinter, pp. 53-72.

Huysmans, Jeff (1998): "Revisiting Copenhagen: Or, On the Creative Development of a Security Studies Agenda in Europe", *European Journal of International Relations* 4 (4): pp. 479-505.

Huysmans, Jeff (2006): "Agency and the politics of protection. Implications for security studies", in: Jeff Huysmans, Andrew Dobson and Raia Prokhovnik (eds.) (2006): *The Politics of Protection. Sites of insecurity and political agency*, London: Routledge.

Huysmans, Jeff (2011): "What's in an act? On security speech acts and little security nothings", *Security Dialogue* 42 (4-5), pp. 371-383.

Jabri, Vivienne (1996): *Discourses on Violence: Conflict Analysis Reconsidered*, Manchester: Manchester University Press.

Jutila, Matti (2006): "Desecuritizing Minority Rights: Against Determination", *Security Dialogue* 37 (2): pp. 167-185.

Kaldor, Mary (2001): "A Decade of Humanitarian Intervention: The Role of Global Civil Society", in: Helmut K. Anheier, Marlies Glasius and Mary Kaldor (eds.) (2001): *Global Civil Society 2001*, Oxford: Oxford University Press, pp. 109-143.

Kaldor, Mary and Diego Muro-Ruiz (2003): "Religious and Nationalist Militant Groups", in: Helmut K. Anheier, Marlies Glasius and Mary Kaldor (eds.) (2003): *Global Civil Society 2003*, Oxford: Oxford University Press, pp. 151-184.

Keck, Margaret and Kathryn Sikkink (1998): *Activists Beyond Borders: Advocacy Networks in International Politics*, Ithaca: Cornell University Press.

Kenny, Karen (2001): "Human Rights Monitoring: How to Do It and Lessons Learned", in: Luc Reychler and Thania Paffenholz (2001): *Peacebuilidng. A Field Guide*, London: Lynne Rienner, pp. 199-215.

Kriesberg, Louise (2004): "State of the Art in Conflict Transformation", in: Austin, Alex, Martina Fischer and Norbert Ropers (2004): Transforming Ethnopolitical Conflict - The Berghof Handbook, Wiesbaden: VS-Verlag.

Kurtenbach, Sabine and Thania Paffenholz (1994): "Kirchen können in Kriegen vermitteln, El Salvador und Mosambik zeigen die Chancen kirchlicher Schlichtung", *Der Überblick* 3/94, pp. 16-119.

Kurtenbach, Sabine (2000a): „Zivilgesellschaft und zivile Konfliktregelung. Der Beitrag der Zivilgesellschaft zur Beendigung bewaffneter Konflikte", in: Peter Hengstenberg, Karl Kohut, Günther Maihold (eds.) (2000): *Zivilgesellschaft in Lateinamerika. Interessenvertretung und Regierbarkeit*, Frankfurt/M.: Vervuert, pp. 221-236.

Kurtenbach, Sabine (2000b): "Dealing with the past in Latin America", in: Luc Reychler and Thania Paffenholz (eds.) (2000): *Peace-Building: A Field Perspective*, Boulder and London: Lynne Rienner, pp. 543-552.

Kurtenbach, Sabine (2008): "Die Rolle der Kirchen bei der Konfliktregulierung in Zentralame-rika: Modell für andere Regionen?", in Manfred Brocker and Matthias Hildebrandt (eds.) (2008): *Friedensstiftende Religionen? Religion und die Deeskalation politischer Konflikte*, Wiesbaden: Verlag für Sozialwissenschaften, pp. 269-283.

Kurtenbach, Sabine (2009): "Zivilgesellschaftliche Akteure und Peacebuilding in Lateinamerika", in: Georg Ismar and Günther Mittag (eds.) (2009): *Soziale Bewegungen in Lateinamerika im 20. Jahrhundert*, Münster: Westfälisches Dampfboot, pp. pp.445-462.

Laclau, Ernesto and Chantal Mouffe (1985): *Hegemony and Socialist Strategy: Toward a Radical Democratic Politics*, London: Verso.

Lederach, John Paul (1995): *Preparing for Peace: Conflict Transformation Across Cultures*, Syracuse: Syracuse University Press.

Lederach, John Paul (1997): *Building Peace: Sustainable Reconciliation in Divided Societies*, Washington DC: US Institute of Peace.

Loaeza Tovar, Soledad (1996): "Las relaciones estado-iglesia católica en México 1988-1994. Los costos de la institucionalización", in: *Foro Internacional XXXVI* (143-144), pp. 107-132.

Maihold, Günther (1996): „Mexiko in der Modernisierungsfalle. Verpasste Transition oder Chance in der Systemkrise", *Lateinamerika. Analysen-Daten-Dokumentation*, 24/1996, pp. 13-37.

Marchetti, Raffaele and Nathalie Tocci (2011a): "Introduction", in: Raffaele Marchetti and Nathalie Tocci (eds.) (2011): *Civil society, conflicts and the politicization of human rights*, Tokyo: United Nations University Press, pp. 1-9.

Marchetti, Raffaele and Nathalie Tocci (2011b): "Conflict society and human rights: An analytical framework", in Raffaele Marchetti and Nathalie Tocci (eds.) (2011): *Civil society, conflicts and the politicization of human rights*, Tokyo: United Nations University Press, pp. 47-72.

Marchetti, Raffaele and Nathalie Tocci (2011c): "Conflict Society: Understanding the Role of Civil Society in Conflict", in: Marchetti, Raffaele and Nathalie Tocci (eds.) (2011): *Conflict Society and Peacebuilding. Comparative Perspectives*, New Delhi: Routledge, pp. 11-40.

Mattiace, Shannon (1997): "¡Zapata vive! The EZLN, Indian Politics, and the Autonomy Movement in Mexico", *Journal of Latin American Anthropology* 3 (1): pp. 32–71.

Merkel, Wolfgang and Hans-Joachim Lauth (1998): „Systemwechsel und Zivilgesellschaft. Welche Zivilgesellschaft braucht die Demokratie?", *Politik und Zeitgeschichte* 6 (7), pp. 3-12.

McDonald, Matt (2008): "Securitization and the construction of security", *European Journal of International Relations* 14(4), pp.563–587.

McSweeny (1999): *Securiry, Identity and Interests. A Sociology of International Relations*, Cambridge: Cambridge University Press.

Muñoz, Alejandro Anaya (2009): „Transnational and Domestic Processes in the Definition of Human Rights Policies in Mexico". *Human Rights Quarterly* 31 (1): 35–58.

Nash, June (1997): "The Fiesta of the Word: The Zapatista Uprising and Radical Democracy in Mexico", *American Anthropologist* 99 (2), pp. 261-274.

Neil, Harvey (1998): *The Chiapas Rebellion: The Struggle for Land and Liberty*, Durham: Duke University Press.

Olesen, Thomas. (2004): "The transnational Zapatista solidarity network: an infrastructure analysis". *Global Networks* 4 (1): pp. 89–107.

Olvera, Alberto J. (1997): "Civil society and political transition in Mexico", *Constellations, An International Journal of Critical and Democratic Theory* 4 (1), pp. 105-123.

Olvera, Alberto J. (2003): "Las tendencias generales de desarrollo de la sociedad civil en México", in: Alberto J. Olvera (ed.) (2003): *Sociedad civil, esfera pública y democratización en America Latina:* México D.F.: Fondo de Cultura Económica, Universidad Veracruzana, pp.42-70.

Olvera, Alberto J. (2010): "The Elusive Democracy: Political Parties, Democratic Institutions, and Civil Society in Mexico". *Latin American Research Review* 45 (S): pp. 78–107.

Paffenholz, Thania and Spurk, Christoph (2006): "Civil Society, Civic Engagement, and Peacebuilding", in: *Social Development Papers. Conflict Prevention and Reconstruction* 36, October 2006, Washington: World Bank, [Online], [Accessed 15 January 2013], Available from: http://siteresources.worldbank.org/INTCPR/Resources/WP36_web.pdf.

Paffenholz, Thania (ed.) (2010): *Civil Society and Peacebuilding. A Critical Assessment*, London and Boulder: Lienne Rienner.

Pia, Emily and Thomas Diez (2009): Human Rights in Conflict – Securitising or Desecuritising?, *SHUR Working Paper Series* 03/09.

Pia, Emily and Thomas Diez (2010): "Conflicts and the Politics of Human Rights Invocations", in: Véronique Dudouet and Beatrix Schmelzle (eds.) (2010): *Human Rights and Conflict Transformation: The Challenges of Just Peace*, Berghof Handbook Dialogue No. 9, Berlin: Berghof Conflict Research, pp. 47-55.

Pia, Emily and Thomas Diez (2011): "Human rights discourses and conflict: Moving towards desecuritization", in: Raffaele Marchetti and Nathalie Tocci (eds.) (2011): *Civil society, conflicts and the politicization of human rights*, Tokyo: United Nations University Press, pp. 204-219.

Pishchikova, Kateryna and Valeria Izzi (2011): "Engaging Civil Society in Peacebuilding", in: Marchetti, Raffaele and Nathalie Tocci (eds) (2011): *Conflict Society and Peacebuilding. Comparative Perspectives*, New Delhi: Routledge, pp. 11-40.

Putnam, Robert D. (1993): *Making Democracy Work: Civic Traditions in Modern Italy*, Princeton: Princeton University Press.

Putnam, Robert D. (2000): *Bowling Alone: The Collapse and Revival of American Community*, New York: Simon & Schuster.

Ramsbotham, Oliver, Tom Woodhouse and Hugh Miall (2005): *Contemporary Conflict Resolution. The prevention, management and transformation of deadly conflicts*, second edition, Cambridge: Cambridge University Press.

Risse, Thomas and Kathryn Sikkink (2008): "The Socialization of International Human Rights Norms into Domestic Practices. Introduction", in: Thomas Risse, Stephen C. Ropp, and Kathryn Sikkink (eds.) (2008): *The Power of Human Rights. International Norms and Domestic Change*, Eighth Printing, First Published 1999, Cambridge: Cambridge University Press, pp. 1–38.

Roe, Paul (2004): "Securitization of Minority Rights: Conditions of Desecuritization", *Security Dialogue* 35 (3): pp. 279-294.

Rüb, Friedbert (2000): "Von der zivilen zur unzivilen Gesellschaft: Das Beispiel des ehemaligen Jugoslawien", in: Wolfgang Merkel(ed.) (2000): *Systemwechsel 5. Zivilgesellschaft und demokratische Transformation*, Opladen: Leske+Budrich, pp. 173-201.

Schmitt, Carl (1996 [1932]): *The Concept of the Political* (translated by G. Schwab) Chicago: University of Chicago Press.

Searle, John R. (1968): Austin on Locutionary and Illocutionary Acts, *The Philosophical Review* 77 (4), pp. 405-424.

Sen, Amartya (2006): *Identity and Violence. The Illusion of Destiny*, New York: W.W. Norton.

Skoufias, Emmanuel, Trine Lunde, Harry Anthony Patrinos (2010): "Social Networks among Indigenous Peoples in Mexico", *Latin American Research Review* 45 (2), pp. 49-67.

Speed, Shannon, und Jane Fishburne Collier (2000): "Limiting Indigenous Autonomy in Chiapas, Mexico: The State Government's Use of Human Rights", *Human Rights Quarterly* 22 (4): 877–905.

Stahler-Sholk, Richard (2010): "The Zapatista social movement: innovation and sustainability", *Alternatives: global, local, political* 35 (3): 269–290.

Stavenhagen, Rodolfo (1992): "Universal Human Rights and the Cultures of Indigenous People and Other Ethnic Groups: The Critical Frontier of the 1990s", in: Asbjørn Eide and Bernt Hagtvedt (eds.) (1992*): Human Rights in Perspective: A Global Assessment*, Oxford: Blackwell, pp. 135-151.

Stavenhagen, Rodolfo (2003): "Mexico's Unfinished Symphony: The Zapatista Movement", in: Joseph S. Tulchin and Andrew D. Selee (eds.) (2003): *Mexico's Politics and Society in Transition*, Boulder: Lynne Rienner, pp. 109-126.

Stephen, Lynn (1997): "The zapatista opening: the movement for indigenous autonomy and state discourses on indigenous rights in mexico, 1970 −1996", *Latin American Research Review* 2 (2): 2–41.

Stritzel, Holger (2012): "Securitization, power, intertextuality: Discourse theory and the translations of organized crime", *Security Dialogue* 43 (6), pp. 549-567.

Style, Sophie (2000): „Community Regeneration in Chiapas. The Zapatista Struggle for Autonomy". *City* 4 (2): pp. 263–270.

Tarrow, Sidney (2005): *The New Transnational Activism*, Cambridge: Cambridge University Press.

Tate, Winifred (2007): *Counting the Dead – The Culture and Politics of Human Rights Activism in Colombia*, Berkeley, Los Angeles and London: University of California Press.

United Nations (2004): *The Concept of Indigenous Peoples: Background paper prepared by the Secretariat of the Permanent Forum on Indigenous Issues*, Workshop (New York, 19-21 January 2004), United Nations, Department of Economic and Social Affairs.), [Online], [Accessed 15 January 2013], Available from: http://www.un.org/esa/socdev/unpfii/documents/workshop_data_background.doc.

United Nations (2008): *United Nations Declaration on the Rights of Indigenous Peoples*, [Online], [Accessed 15 January 2013], Available from: http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf.

Väyrynen, Raimo (1991): "To Settle or to Transform? Perspectives on the Resolution of Na-tional and International Conflict", in: Raimo Väyrynen (ed.) (1991): *New Directions in Conflict Theory: Conflict Resolution and Conflict Transformation*, London: Sage, pp. 1-25.

Wæver, Ole, (1993): "Societal Security: The Concept", in: Ole Wæver, Barry Buzan, Morten Kelstrup and Pierre Lemaitre (eds.) (1993): *Identity, Migration and the New Security Agenda in Europe*, London: Pinter, pp. 17–40.

Wæver, Ole (1995): "Securitization and Desecuritization", in: Ronnie D. Lipschutz (ed.) (1995): *On Security*, New York: Colombia University Press, pp. 46-86.

Williams, Michael C. (2003): "Words, Images, Enemies: Securitization and International Politics", *International Studies Quarterly* 47(4), pp. 511–531.

Wimmer, Andreas (2004): "Introduction: Facing Ethnic Conflicts", in: Wimmer, Andreas et al. (eds.) (2004): *Facing Ethnic Conflicts. Towards a New Realism*, Maryland, Boulder: Rowman and Littlefield, p. 1-20.

World Bank (2006): *Civil Society and Peacebuilding. Potential, Limitations and Critical Factors*, Social Development Department, Sustainable Development Network, Report No. 36445-GLB, December 20, 2006, [Online], [Accessed 15 January 2013], Available from: http://siteresources.worldbank.org/EXTSOCIALDEVELOPMENT/Resources/244362-1164107274725/3182370-1164110717447/Civil_Society_and_Peacebuilding.pdf.

Yashar, Deborah J. (1998): "Contesting Citizenship: Indigenous Movements and Democracy in Latin America", *Comparative Politics* 31 (1), pp. 23-42.

Yoshioka, Hirotoshi (2010): „Indigenous language usage and maintenance patterns among indigenous people in the era of neoliberal multiculturalism in Mexico and Guatemala", *Latin American Research Review* 45 (3): pp. 5–34.

Zibechi, Raúl (2008): *Autonomías y Emancipaciones: América Latina en Movimiento*, Mexico City: Bajo Tier

Female Jihad – Women in the ISIS

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Abstract

The Islamic State of Iraq and Syria (ISIS) has recently been able to recruit hundreds of women from around the world. This development may pose a severe threat to international security. This paper addresses the question: Why should Western women want to join a political struggle like the ISIS that so blatantly oppresses them? Based on the concept of female Jihad women do not seek the male's honor (sharaf) through martyrdom but take up mainly non-combatant roles. Following this notion, it can be hypothesized that through female Jihad these women aim for a form of emancipation in the new Caliphate. Along the Merriam Webster's definition of emancipation, the women's motivation to join ISIS as a form of emancipation is analyzed with very recent accounts from women in Syria over social media as well as experts' evaluations. The findings reveal that from a Western point of view the women participating in the ISIS often seem to be instrumentalized in order to enforce misogynistic ideologies, and thus, are still acting within a strongly patriarchal system. Yet, the emancipation is very real for many women that do take the journey (hijra) and perceive the confinements of such a system not as restricting. The paper underlines the importance of understanding the mechanisms within female Jihad and the security threat it poses. Female jihadist propaganda may be especially dangerous because we do not take these motivations as valid nor female Jihad as serious as the (predominantly) male suicide bombings.

Keywords

Caliphate, female foreign fighters, female Jihad, international security, ISIS.

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Introduction

The Islamic State of Iraq and Syria (ISIS) has recently been able to recruit hundreds of fighters from around the world. Even more compelling is the fact that over 550 Western women have joined the radical Islamic organization who proclaimed its Caliphate in 2014 (Neumann 2015). This unprecedented number of female recruits to ISIS has attracted much media attention, and the organization's treatment of women as well as its social media propaganda has been intensely debated. Numerous scholars have tried to uncover the driving forces that lead these women to take on the journey (*hijra*) to Syria/Iraq, yet, many misperceptions concerning the roles the women take up in ISIS persist.

This paper addresses the question: Why should Western[47] women want to join a political struggle like the ISIS that so blatantly oppresses them? Based on the concept of female Jihad women do not seek the male's honor (*sharaf*) through martyrdom but take up mainly non-combatant roles. Following this notion, it can be hypothesized that through female Jihad these women aim for a form of emancipation in the new Caliphate. Along Merriam Webster's definition of emancipation, the women's motivation to join ISIS as a form of emancipation is analyzed with very recent accounts from women in Syria/Iraq over social media as well as experts' evaluations. From a Western point of view, the women joining ISIS often seem to be instrumentalized in order to enforce misogynistic ideologies, and thus, are still acting within a strongly patriarchal system. Yet, the emancipation is very real for a large number of women that do take the journey and perceive the confinements of such a system not as restricting.

For many Muslim women joining ISIS is a duty they have to fulfill due to the call for Jihad. This paper however, focusses on the underlying pull-factors of female empowerment that serve as additional motivators to some of the (especially younger) muhajirat (female migrants) and does not intend to denounce any individuals whose motivation may go beyond this pure sense of duty, rather, it wishes to investigate the phenomenon from a gender-perspective.

In the light of these developments there is a stark need for identifying and understanding the mechanisms within female Jihad and the threat it poses to international security. Research combining gender and conflict studies becomes indispensable as a gender-specific interpretation of Jihad is key to understanding the driving forces for women to join ISIS. Such an approach does not only hold essential scientific but also central practical relevance within the current political and societal landscape. Particularly the female jihadist propaganda is dangerous, firstly, for we do not take such aspirations as valid, and secondly, because female Jihad due to its less violent nature is not perceived as very serious in comparison to the (male) suicide bombings.

[47] The analysis covers Western women due to language abilities. The bias this may cause will be discussed under section 'Method and Data'.

Literature Review

The phenomenon of young women traveling to Syria and/or Iraq to join ISIS is a very new one. Hence, there are still many mechanisms within this current development that require investigation in order to not only better understand but also recognize whether and what kind of threat these dynamics could pose to international security.

Much research has focused on the motivation of (Western) Muslima to join ISIS (Perešin 2015; Petrou 2015; Sherwood et al. 2014; Zakaria 2015). Most journalists and scholars have been able to make use of the social media propaganda, in which a large part of the female migrants are involved. An important contribution has been made by Erin Marie Saltman and Melanie Smith who published a report in May 2015 (Saltman and Smith 2015) for the Women and Extremism (WaE) project of the Institute of Strategic Dialogue (ISD) following a primary report launched in January the same year (Hoyle et al. 2015). The research project aims to give insight into why "females are being radicalized into violent extremist networks" such as the ISIS (Saltman and Smith 2015). Whereas the first report started to follow female migrants social media postings focusing on these women's self-identified reasons for migration (Holye et al. 2015), the second report was successful in identifying important push- and pull- factors that lead women to the decision to join ISIS as well as portray some of the muhajirat, their journey and roles in the ISIS by collaborating with the ICSR and the female wing of its Foreign Terrorist Fighter (FTF) database (Saltman and Smith 2015). The second report's findings show a large diversity in the roles of females being radicalized, unmasking the popular notion of 'jihadi brides' as reductionist (Saltman and Smith 2015). Many other scholars have reached a similar conclusion: there is no specific profile of a muhajirah, which renders it very difficult to counter this development (Perešin 2015; Petrou 2015; Zakaria 2015). Saltman and Smith's report therefore also addresses the prevention and de-radicalization options in the space of counter-extremism such as the "need for better infrastructure and capacity building within de-radicalisation programmes that handle returnees from Syria and Iraq" especially concerning gender dynamics (Saltman and Smith 2015: 6). They particularly suggest the use of "counter-narratives and counter-extremism messaging" targeted at females in order to neutralize the original extremist propaganda (Saltman and Smith 2015: 6).

One of the most important findings of the second WaE-Report is the fact that most muhajirah do not assume combat roles; instead "the responsibility of Western women under ISIS-controlled territory is first and foremost to be a good wife to the jihadist husband they are betrothed to and to become a mother to the next generation of Jihadism" (Saltman and Smith 2015: 5). This is not coincidental but has to do with the essential differentiation between male and female Jihad. Scholars have looked into Islamic literature concerning Jihad for women already before the rise of ISIS (cf. Cook 2005 for an overview). A useful concept of female Jihad based on Cook's research has been provided by Katharina Von Knop (2007) who looked at the phenomenon of women waging Jihad for Al-Qaeda addressing the misconception that female Jihad does not simply equal female suicide bombings (Von Knop 2007).

This concept of female Jihad shall serve as a starting point for my analysis and help to further understand the motivation of women to join ISIS, contributing to the current research on women in ISIS.

Conceptualizations and Theoretical Framework

Female Jihad

Understanding that there is a gender-specific interpretation of Jihad that adheres different roles to men waging Jihad than it does to women is key to understanding the aspirations of female migrants to ISIS and recognizing the potential threat. Jihad, literally 'to struggle', does not necessarily refer to armed struggle (Saltman and Winter 2014: 6). According to Katharina Von Knop the "concept of the female Jihad means that the women carry out a political act by supporting their male relatives, educating their children in the ideology and facilitating terrorist operations" (Von Knop 2007: 397). Women do not seek the male's honor (*sharaf*) through martyrdom as they are not able to achieve it but are bound by the female honor (*ird*) which they instead seek (Von Knop 2007: 410). Von Knop argues that like men women are interested in power but their realm of action is restricted to the domestic (family) sphere by the society they are living in (Von Knop 2007: 399). Encouraging male relatives to become martyrs and facilitating jihadist operations gives women power and access to the public realm (Von Knop 2007: 399). Thus, female Jihad allows women to gain strong influence on the current as well as the next generation of jihadists (Von Knop 2007: 411).

Whether women are allowed to take part in fighting has been debated, especially since the 1990s (Cook 2005: 378). Historically, women did participate in battles (Cook 2005: 376). The fact that since the beginnings of Islam the religion has split into many different sectarian groups following different interpretations renders it difficult to assess whether women are intended to physically fight Jihad. A widely accepted overview over Jihad stems from Muhammad Khayr Haykal who points out the distinction between Jihad as *fard kifaya* (the obligation of Jihad lies upon part of the Muslim community, the *ummah*) and Jihad as *fard 'ayn* (the obligation lies upon every member of the *ummah*); only in the case of *fard 'ayn* are women expected to fight (Haykal 1993: 995-97).

Following this, it depends on the evaluation of ISIS what the current state of the *ummah* is. Even though Abu Bakr Naji's 'The Management of Savagery' (McCants 2006) does not mention the role of females in Jihad, other guidelines have been published. Online supporters of ISIS (namely the Al-Khanssaa Brigade's media wing) started circulating a document named 'Women in the Islamic State: Manifesto and Case Study' with the aim to clarify the role of the women in the ISIS (cf. Winter 2015a). It states that women must only fight when the "situation of the ummah has become desperate" (Winter 2015a: 8). Accordingly, women are not to take up an active role in combat or suicide bombing activities at the moment, as for instance women in Chechnya or in Sri Lanka did (cf. Winter 2015a: 8; Von Knop 2007: 410).

Yet, not only the internet provides instructions for female Jihad but female jihadists often organize in so-called sisterhoods. These sisterhoods provide a sense of belonging to the female migrants and guidance on how women should practice Jihad: how to educate their children in the ideology, how to persuade their husbands and male relatives etc. (Von Knop 2007: 407-408). The central question however remains: What do these women have to gain through carrying out the female Jihad? At first sight this seems irrational for if they properly carry out the female Jihad their husbands die as martyrs in suicide attacks with which they lose the breadwinner of their family and the guarantee for the survival of their children (Von Knop 2007: 408). Still, this system allows

them to gain two things: firstly, by following through the ideology they comply with their duty of (female) Jihad securing their place in paradise (jannah) and respect in the present, and secondly, they gain power over their husband and their children (Von Knop 2007: 408). Additionally, when the female jihadists lose their husband and with that the family income, the jihadist organization takes care of the widows and their children (Von Knop 2007: 408).

Hypothesis

The motivation of women to join ISIS may thus, go beyond a pure sense of religious duty, and incorporate a wish for female empowerment and emancipation. Based on the concept of female jihad women may next to the godly reward aim to **gain power** over their husbands and families and **respect** in society. Especially the younger muhajirat - most of these female migrants are in fact only teenagers – may be pulled towards ISIS because they wish to **take control of their lives** in their search of identity and belonging, seeking respect as a (Muslim) woman. The youth has also in the West historically been prone to radicalization, trying to escape the society and rules they live in, testing and trespassing boundaries, in the process of self-finding.

Following this notion, it can be hypothesized that through female Jihad these women aim for a form of emancipation in the new Caliphate. The women's motivation to join ISIS as a form of emancipation is analyzed and opposed to the concept of Western emancipation in section 4.

Western Female Emancipation

To challenge the hypothesis, I will conceptualize emancipation from a Western perspective through its definition in the Merriam Webster, where emancipation is defined as following: *the act or process of emancipating* → emancipating being: *to free (someone) from someone else's control or power*, full definition:

1: *to free from restraint, control, or the power of another; especially: to free from bondage*

2: *to release from paternal care*[48] *and responsibility and make sui juris*

3*: to free from any controlling influence (as traditional mores or beliefs)*

(Merriam-Webster, 2015)

Female emancipation from a Western perspective can thus be conceptualized as *freeing women from restraint or control.*

Method and Data

I chose to perform a content analysis, where six tumblr blogs of Western muhajirat were scanned for information concerning their motivations to join the ISIS covering a period of up to one year. To ascertain the veracity of the blogs, I worked together with other researchers confirming the blogger's interactions with others jihadi bloggers, the time the blog was active and if de-activated at some point whether it could be connected to elsewhere confirmed events. Choosing to use

[48] *Paternal care* can be interpreted as parental care, but in our case we will also look at the structure of this term which can be applied to Muslim women often being dependent on a "male guardian", which has frequently been compared to the legal and social situation of a minor. Also, the etymology of the term *emancipation* from the Roman law shows it as *the freeing of a son or wife from the legal authority (patria potestas) of the pater familias, to make his or her own way in the world* (Harper, 2014).

social media served two causes: firstly, it allowed to obtain an intimate picture of the women's thoughts and world views, and at the same time let us gain insights into the propaganda mechanisms of ISIS. The online conversations between an American girl and an ISIS recruiter, as well as two reports from journalists who disguised as teenage girls willing to join ISIS and undergoing grooming, allowed to take up the different perspectives and gain valuable insight into ISIS propaganda techniques. The primary material therefore stems from the female migrants themselves either obtained through their social media communication. Additionally, I was able to interview a person who had worked with women in refugee camps in Iraq and Syria for two years. Due to the limited accessibility to and the great amount of data provided by the blogs I have limited my research to a sample of six women and a maximum period of one year for the blogs. I have chosen to focus only on English-speaking female migrants due to my lack of proficiency in the Arabic language which invariably lead to a sample of women traveling from non-Arab countries. This most likely affected the findings of my analysis and one has to keep in mind that they may not be valid for females migrating from Arab countries. As long as this is not overlooked it should not create any bias although efforts have to be made to include the tracking of Arabic-speaking profiles into future research – which up to now has been largely ignored (cf. Hoyle et al. 2015; Perešin 2015; Perešin and Cervone 2015; Saltman and Smith 2015). The female ISIS migrants that make up my dataset have been included because a) they self-identified as such and b) seem to reside in ISIS-controlled territory (at least for a certain period of time). Evidence that geographically located the individual in Syria or Iraq stems from other ISIS online accounts and photographs, or media reports.

Findings

My hypothesis suggested that women joining ISIS may aim for a form of female emancipation. The findings have shown that many of the women from my sample did see seek a form of emancipation in joining ISIS, manifesting itself in the following **pull-factors**:

- Pride travelling to Syria and **taking control** of their lives as opposed to these push-factors:

a) Parental restrictions → In search for **identity, community** and a sense of **belonging,** where sisterhoods play an important role

b) Feeling deprived of choice through traditions → Taking **independent decisions** concerning their lives and future

c) Being perceived as victims of Islam in Western countries → Yearning to f**ree themselves from Western restrictions**

- Gaining **power and control** over their husbands/families
- Gaining **respect** from the community as a female jihadist

The narratives of the different individuals that have been analyzed via their social media output have produced these different pull- (and underlying push-) factors. This study has been able to reveal that due to the differences in the roles men and women play in ISIS and what is expected of them, the women from my sample have a gender-specific expectation of empowerment that does not coincide with the Western understanding of female emancipation. After the display of

the findings in more detail, a discussion of the emancipation-hypothesis follows, which will thus lead us to the aspect of ISIS propaganda.

Taking control of their lives

a) Parental Restrictions

When the young women and girls write about their families they often portray a picture of **detachment**, that they do not feel understood by them:

> "yaaaay my niqaab has arrived today […] I really do not care what my parents opinion of this will be!" – Umm Layth

Feeling **restricted by their parents' control** these often only 15 year old girls make their journey to Syria, finally **taking charge of their lives**. The families at home are then replaced by their "new families": the **sisterhoods**.

> "The family you get in exchange for leaving the ones behind are like the pearl in comparison to the Shell you threw away […] The strengh of the brotherhood and sisterhood here is most definitely shown through difficulties where someone who has no blood ties with you and not even a relation will make sure if their Muslim sister is in need of anything and if there is any problems." - Umm Layth

Many state that the **bond** they existing between the sisters is much stronger than anything they have known before, a true **community**, nothing like the "fake relationships" they had at home.

> "seeing the true sisterhood of islam purely fisabelilah [in the way/cause of Allah] was truly an emotional moment. Once you start speaking to them the sisters treat you like their own and share everything with you, are always look after you and fussing over you subhanAllah [glory to God] may reward them." - Umm Uthman

b) Freedom of Choice

"Groups like ISIS can also offer a certain kind of freedom from patriarchal traditions and cultural mores" (Zakaria 2015). When in traditional Muslim families remarrying after a divorce or as a widow is impossible "within jihadi realms, that prohibition does not apply; for instance widowed women (of which there are many owing to frequent deaths of ISIS fighters) are immediately married again. A devout woman, despite her lost virginity, is still considered pure and marriageable because she wants to fight" (Zakaria 2015). In fear of being married to someone whom their father decides on, often being **deprived of choice**, these women see the Caliphate as a realm of freedom. The idea of traveling to the Caliphate to meet a fighter and choosing whom to marry is a defiant **step of independence**.

> "Choose your company wisely." – Umm Layth

The result of such possibilities:

> "Marriages here are the most beautiful thing […] most here are mixed marriages. some interesting mixes of kids ive heard.. half swedish half Afghani, half somali half german, a mix of Nigerian Indonesian and iraqi, chinese and Indian. Malaysian and maghribi […] All United under لا اله الا الله [Allah]." – Umm Ubaydah

c) Perceived Victims of Islam in Western Countries

Muslim women in Western countries are often **victimized**, perceived as oppressed women without rights and often neither respected from non-Muslim men nor women. "A great deal of racist violence is also directed at Muslim women, who are more visible than men", who have to cope with exclusion up to right-out hostilities (Khan 2015). Thus, by traveling to Syria/Iraq and taking up an important and respected role in the new Caliphate they aim to **take over control of their lives**. "Many of them are eager to portray themselves as strong women and often make fun of the Western stereotype of 'the oppressed Muslim woman'" (Hegghammer in Gilsinan 2014).

> "We are created to be mothers and wives — as much as the western society has warped your views on this with a hidden feminist mentality." - Umm Layth

It is important to understand that the hijab (Veil) is not perceived as a form of repression, "but as an act of liberation and faith that endows a female Muslim's life with honor, an aura of respect and dignity. It is also a symbol of power over their husbands as being a good Muslima who follows the 'true' Islam" (Von Knop 2007: 409). ISIS can offer an escape from this "ghettoized status of Islam in the West" as well as it may provide a legitimate response to the victimization of Muslim women and the US-led wars in the name of female emancipation and women's rights (Zakaria 2015).

> Often they feel remorse towards the West:
>
> *"let down by the entire world, by many people, by many Muslims, by any support internationally"* - Umm Layth

confined in a system where they cannot freely exercise their religion yearning to **free themselves from Western restrictions.**

Gaining Power over their Husbands/Family

A pull-factor we observed that can be directly derived from the concept of female Jihad is the prospect of gaining power over their family members.

> "you raised my status as a woman, from a from a girl I become a mother, and with that I have become stronger" – Shams

> "sisters our role is more important than any other, and even the brothers know they are not as capable and as strong as a women is created to be. It is a part of our Fitrah [nature] to be wives and mothers, and we are not created like man. […] The 4 greatest women in Islam = Khadeejah, Asia, Fatimah and Maryam. So we as muslim females should view these women as our role models as these were the most blessed in the sight of Allah. […] What made them so unique was that they raised the best of men. They raised true slaves of Allah. Their role as mothers were so important since their upbringing resulted in the future of their child - through which they gained countless ajr [rewards]. […] you may gain more ajr [rewards] by spending years of sleepless nights by being

> a mother and raising your children with the right intentions and for the sake of Allah than by doing a martyrdom operation." – Umm Layth

Von Knop (2007: 409) explains as an example: "To guarantee that the son will still follow the word of his mother and that the mother continues to be the only true love in his life, even after he has married, she selects a wife for him that he is unlikely to fall in love with. Having chosen such a wife for him, she remains the most important woman in his life. This behavior is the knowledge they teach each other in the Sisterhoods".

Respect in Society

An often reoccurring issue in the accounts of the women is the advice for muhajirah to get married as soon as they arrive not only to move slightly more freely but because the status as a wife and mother to mujahideen is **honoured** (Zakaria 2015).

> "I urge all my sisters to **come and gain true honour** by living under the law of Shariah, by marrying a brother who puts Allah before his desires and by being in the forefront of this Islamic revival." – Umm Layth

The "greatest honor" for them is if their husbands or sons die as martyrs (Von Knop 2007: 410):

> "my heart was content knowing that my husband had left this dunya [world] striving in the way of Allah". – Umm Khattab

> "Life goes on. Seriously I don't think I've met a wife of shaheed (martyr) that is depressed knowing the reward. It's such a great honour which Allah bestows on us." - Umm Khattab

Thus, these women use the prospect of **honor and respect** in society to encourage other women to join ISIS and become female jihadists.

Discussion

Emancipation?

> "You look at me and call me oppressed,
> Simply because of the way I'm dressed.
>
> You know me not for what's inside,
> You judge the clothing I wear with pride.
>
> My body's not for your eyes to hold,
> You must speak to my mind, not my feminine mold.
>
> I'm an individual, I'm no mans slave,
> It's Allah's pleasure that I only crave. […]
>
> Man doesn't tell me to dress this way,
> It's a Law from God that I obey.
>
> Oppressed is something I'm truly NOT,
> For liberation is what I've got.
>
> It was given to me many years ago,
> With the right to prosper, the right to grow.

I can climb mountains or cross the seas,
Expand my mind in all degrees.

For God Himself gave us liberty,
When He sent Islam to you and me!"

– Muslimah – The Bird of Jannah 2015

"These women do not wish to emancipate themselves in the sense of feminism", says Géraldine Casutt, doctoral researcher at the University of Fribourg, for it is too much of a Western notion, incorporating the image of a woman that does not reflect these women (in Gumy 2014). Their goal is not gender equality, "which they perceive as hypocrisy", rather in Muslim society, women are seen and see themselves as complementary to men (Casutt in Gumy 2014). Although Casutt states it may be referred to as *Femislamism*, I find this term confusing as it is also used by Muslim feminists who actually do aim for gender equality (Hobson 2014). My suggestion is to call it *Islamicipation*, being a form of emancipation "*from* the Western society, its social norms, clothes and the image of the woman in the advertisements" (Casutt in Gumy 2014, cf. Winter 2015c). As my findings have shown, the women joining ISIS are tempted by the utopia of the Caliphate which seeks to modulate Muslim community. Feeling "estranged and oppressed everywhere" these women wish to change the gender roles within society – not wanting to take the place of the men however, rather their role models are the wives or sisters of the Prophet (Casutt in Gumy 2014; cf. Umm Layth April 9, 2015; Winter 2015b). Understanding this fact is crucial.

"*T*he strictly segregated forms of leadership practiced by a group like ISIS can seem attractive to women who also believe strongly in its general Islamist vision" (Zakaria 2015). As an example we can take the all-female brigades operating in Syria's northern city of Raqqa: *al-Khanssaa* and *Umm al-Rayan* (Alami 2014). The aim of the brigades is to ensure women follow the religion correctly and punish them if they fail to (Al-Bahri 2014, Zakaria 2015). "Jihad is not a man-only duty. Women must do their part as well" Abu Ahmad, an ISIS official, explains, "we have given them their own facilities to prevent the mixture of men and women" (in Al-Bahri 2014). "This is 'complementarity' at work: it justifies segregation of the sexes while appearing to provide a ladder to leadership for ambitious young jihadi women" (Zakaria 2015).

Although it seems that women are assuming new and more powerful roles within ISIS residents of Raqqa fear that any notion of female empowerment effected by the brigades is just as fast diminished by the even harsher restrictions they had been tasked with to impose on the local women (Al-Bahri 2014). Women in the brigades may thus gain a lot of power and respect from other ISIS fighters but is this really female emancipation?

Taking up the concept of Western emancipation, we may say that these women are, not entirely but, more (1) *free from restraint, control, or the power of another,* in the way that they take control, they can be commanders of a brigade and exercise power over others (even if it is "only" other women). Likewise, are they, if only partially, (2) *released from paternal care and responsibility and make sui juris* by being able to take decisions and perform their "jobs" without a male guardian. However, they are not (3) *free from any controlling influence (such as traditional mores or beliefs)* because their actions are driven by traditional morals and especially their belief (a strict interpretation of Islam).

Hence, even if these women gain power and respect they still are confined within a misogynistic and paternalistic system from which they cannot escape.

Yet again, some Western scholars have argued that these female brigades fully empower women engaging them in combat (cf. Perešin and Cervone 2015). However, in accordance with the concept of female Jihad, the brigades are (at least at this point) not involved in any terror acts or combat, their major role being the execution of counter-insurgency operations in areas controlled by ISIS (TRAC, 2014).

We can thus conclude, that women participating in the brigades – no matter how much they may believe they have more control or power – are nonetheless not regarded as equal to men; rather they are being instrumentalized by ISIS, rejecting the notion of emancipation in the Western sense, not however, in the understanding of *Islamicipation*.

If we look more general at my findings taking up the concept of Western emancipation, we can state that the women migrating to join ISIS may feel that they are (1) *free from restraint, control, or the power of another*, by leaving their (often Western) families and (2) *removing themselves form paternal care*[49], to finally take control of their lives. However, (2) *paternal care* may be removed temporarily but as most of these women will marry an ISIS fighter, they very soon will be back under the "protection" of a male guardian (without one, as many muhajirat themselves admit, life in the Islamic State is extremely difficult). Hence, all the constraints they remove are replaced by new (and more severe) restraints than before facing an entire system (3) *of controlling influences* coming from the beliefs and ideology prevailing in the Islamic State.

From a Western perspective this is still a far cry from female emancipation. Yet, it can be argued that for a muhajirah it is her free will to believe in specific mores and to live under sharia Law, just as Westerns live under the specific laws of their state and according to their traditions. Their idea of freedom does not define itself through the absence of rules and freeing the woman entails freeing her from the subordination of man (as in secular states) and being subordinated only under God (the attraction of the Caliphate). Simply because in the Islamic State (as it in fact is the case in many Muslim states) Religion and politics are not separated as in most Western and secularized countries, this does not signify that women in Western countries are truly emancipated according to this understanding. Lastly, as my findings confirm, Western women migrating to live under ISIS and support the system may feel more emancipated choosing to live in a state that lets them live the beliefs and traditions they call theirs than in a Western country where the laws forbid them to pursue this (veiling for example).

In regard to my hypothesis, we can conclude that the women in my sample are seeking a new form of female emancipation, what we can call *Islamicipation*. Yet, we have to keep in mind that these are all women originating from non-Arab countries. I have doubts that the theory holds true for women joining ISIS from within Syria, Iraq and other Arab countries but future research in Arabic may test the hypothesis and give us more insight.

[49] Here, in the significance of parental care.

ISIS Propaganda – A New Threat!

Still, from what we hear in the media, NGO and government reports (cf. Pillay 2014; Todenhöfer 2015; UNHRC 2014; Williams et al. 2014) most of us will have trouble comprehending how anyone can see a form of emancipation in this. The question therefore arises, what are these women leaving out in their accounts? It is thus, very important to recognize that much of it is part of propaganda.

Charlie Winter, senior researcher in transnational Jihadism at the Quilliam Foundation, has intensively analyzed ISIS' propaganda strategies for over a year, providing valuable insight into the mechanisms of ISIS' propaganda construct and the women's role within it (Winter 2015b). Additionally, two of ISIS' propaganda texts (MEMRI 2014; Winter 2015a) concerning the women in ISIS allow us to get a clearer picture of the situation. Lastly, the conversations (Rukmini 2015) of a young American woman who was groomed by an ISIS fighter and recruiter, as well as two reports (Erelle 2015; MoS Reporter 2015) from journalists who were disguised as teenagers and in contact with ISIS recruiters give us sobering insights into the propaganda mechanisms of ISIS.

The main mechanisms I found are the following (cf. also Winter 2015b):

- People are neither radicalized by propaganda nor recruited by it, propaganda itself can only catalyze and concentrate sympathies: preconditions are necessary
- The utopianism that ISIS has created with the declaration of the Caliphate allows it to stand out from all other jihadist movements and creates a massive appeal for recruits
- Through outsourcing its propaganda dissemination it becomes much harder to tackle due to a lack of centralization
- In combination with using social media platforms an army of self-appointed media-jihadists has emerged resulting in an unprecedented dynamic of dissemination

In this context, young Muslim women are thrice as vulnerable to be recruited because most of them are a) still teenagers, in search of their identities and place in society, wishing to grow up and take charge of their lives and b) Muslim, and hence may not feel as home or welcome in the Western society experiencing isolation and sometimes even harassment and c) female, trying to gain respect within their surroundings. Most of all, these individuals, as it lies in human nature, seek appreciation – and this is the major weapon ISIS has been using: tailoring to different audiences around the globe, but providing a common purpose, a sense of belonging, of brother/sisterhood, equality and unity (cf. Kuehnast 2015; Winter 2015b). This is precisely where the "coalition" is still running miles behind (Benotman and Winter 2015). The dangers are, firstly, the women's motivations to join ISIS are not taken seriously and trivialized to youthful romanticism and secondly, the image of female Jihadists in media is distorted leading to the underestimation of the long-term magnitude of the women's role in creating a hatred-filled, revenge-seeking and military-trained next generation (a dynamic that has led to the insuperability of the Palestinian-Israeli conflict). The actual threats are: an expanding and protracted war that, like the civil war in Somalia, includes a myriad of different actors that are by no means willing to compromise due to a growing sacralization of the conflict (cf. Kaldor 2012; Vidino et al. 2010). The major difference however is, that the global-Salafi jihadism of ISIS is intent on expanding the

Caliphate and exterminating all the unbelievers. At the moment this may still seem far away from reality and, as it lies in human nature, most states are mainly preoccupied with the occasional returnees. But fact is, international peace is at stake and the longer we ignore the massive threat that female jihadists and their role in building the Caliphate's new generation of jihadists pose to security, the more difficult it will become to counter it.

The focus of current programs has to shift from merely fighting active terrorism (the symptoms) to the root of the problem: ISIS' long-term (propaganda and state-building) strategy and prevention and re-integration measures in the countries where individuals are being successfully recruited (cf. Saltman and Smith 2015). The problem seems to be that there is no one audience being targeted, not one specific profile of potential migrants or jihadists, and much more research needs to be done to identify the different mechanisms of how the propaganda works in different places and find ways to counter these separately instead of trying to tackle the entire package as one (cf. Winter 2015b). Identifying driving forces that lead young people to join ISIS is a big step forward, however it has also uncovered a truth that we may not want to hear: the fact that propaganda itself does not radicalize a person. We must therefore take a closer look at our own societies and find out why so many young people feel isolated in their societies, their schools, their own families, that actually create this space for radicalization. Hence, tackling the security threat may also need to involve intra-state steps on a micro-level, reconsidering national, regional and local integration and de-radicalization[50].

Conclusion

This study revealed that the women from my sample hold gender-specific aspirations of empowerment in their motivation to join ISIS. These aspirations however, do not coincide with the Western understanding of female emancipation - rather this is a form of emancipation *from* Western society. The findings further reinforce the understanding of female Jihad, along my conception, as taking up a supporting role as wife and mother, catering for the next generation. Such a gender-specific interpretation of Jihad becomes crucial for understanding the driving forces for women to join ISIS and do away with common misconceptions as "jihadi brides" or "female suicide bombers".

Likewise, the analysis gives insight into the mechanisms of the ISIS propaganda, which becomes important in order to recognize the threat this development poses to international security. Female jihadist propaganda is especially dangerous, firstly, because these women's aspirations are not taken seriously, and secondly, for female Jihad as a non-combatant form of struggle is immensely underestimated. This paper has tried to identify several important aspects of female involvement in ISIS, and by better understanding the driving forces that lead women to join the organization it aims to pave an exit road as well as strengthen prevention efforts. Nonetheless, this study has only scratched the surface of the dynamics that will affect international security immensely in the near future, and hopes to point to a number of aspects that must not go unnoticed.

[50] For an overview of some useful de-radicalization strategies in European countries see: Saltman and Smith 2015:51-69.

References

Primary Sources

Anonymous (2015): Interview with UNICEF Consultant for the Syrian Refugee Crisis and Iraqi Crisis Response, August 30, 2015.

Shams, http://diary-of-a-muhajirah.tumblr.com Last accessed: June 8, 2015.

Umm Haritha, http://umhurairah.tumblr.com/post/70405744020/al-khanssaa-umm-layth-aqsa-and-umm-haritha Last accessed: October 27, 2014.

Umm Khattab, http://ummkhattab.tumblr.com Last accessed: November 17, 2014.

Umm Layth (Aqsa Mahmood), http://fa-tubalilghuraba.tumblr.com/page/2 Last accessed: August 10, 2015.

Umm Ubaydah, http://al-khanssa.tumblr.com/ Last accessed: July 23, 2015.

Umm Uthman, http://ummubaydah.tumblr.com/ Last accessed: August 10, 2015.

Winter, Charlie (2015a): 'Women of the Islamic State: A Manifesto on Women by the Al-Khanssaa Brigade', London: Quilliam Foundation. Accessible at: http://www.quilliamfoundation.org/wp/wp-content/uploads/publications/free/women-of-the-islamic-state3.pdf (Last accessed: August 29, 2015).

MEMRI (2014): 'Islamic State (ISIS) Releases Pamphlet On Female Slaves' Jihad and Terrorism Threat Monitor. The Middle East Media Research Institute. Accessible at: http://www.memrijttm.org/islamic-state-isis-releases-pamphlet-on-female-slaves.html (Last accessed August 23, 2015).

Secondary Sources

Cook, David (2005): 'Women Fighting in Jihad?', Studies in Conflict and Terrorism, 28(5), pp. 375-384.

Gumy, Serge (2014): Interview with Géraldine Casutt 'Il ne faut pas négliger le pouvoir des femmes dans le djihadisme' [translated to English by the author], Fribourg: La Liberté. May 2, 2014, p. 3.

Haykal, Muhammad Khayr (1993): 'al-Jihad wa-l-qital fi al-siyasa al-shara'iyya' (English: 'Jihad and Fighting according to the Shar'ia Policy'), Beirut: Dar al-Barayiq, Vol. II., pp. 995-997.

Kaldor, Mary (2012): 'New and Old Wars', 3rd edition, Stanford: Stanford University Press, pp. 1-256.

McCants, William (2006): 'The Management of Savagery' (translated, original in Arabic from: 2004) John M. Olin Institute for Strategic Studies. Cambridge: Harvard University, pp. 1-268.

Perešin, Anita and Alberto Cervone (2015): 'The Western Muhajirat of ISIS' Studies in Conflict and Terrorism, 38(7), pp. 495-509.

Rukmini Callimachi (2015): 'ISIS and the lonely young American', New York: New York Times, June 27, 2015.

Saltman, Erin Marie and Charlie Winter (2014): 'Islamic State: The Changing Face of Modern Jihadism', London: Quilliam Foundation, pp. 1-71.

Todenhöfer, Jürgen (2015): 'Inside IS – 10 Tage im Islamischen Staat', München: C. Bertelsmann Verlag, pp. 1-288.

Vidino, Lorenzo, RaffaelloPantucci and Evan Kohlmann (2010): 'Bringing Global Jihad to the Horn of Africa: al Shabaab, Western Fighters and the Sacralization of the Somali Conflict', In: African Security, 3(4), pp. 216–238.
Von Knop, Katharina (2007): 'The Female Jihad: Al Qaeda's Women', Studies in Conflict and Terrorism, 30(5), pp. 397-414.

Zakaria, Rafia (2015): 'Women and Islamic Militancy', Dissent Magazine 62(1). Philadelphia: The University of Pennsylvania Press, pp. 118-125.

Secondary Sources Online

Alami, Mona (2014): 'Women on the front lines – Jihadist groups are increasingly using women in combat roles', Now Media. Reports. February 2, 2014. Accessible at: https://now.mmedia.me/lb/en/reportsfeatures/535456-women-on-the-front-lines (Last accessed: August 30, 2015).

Al-Bahri, Ahmad (2014): 'All-Female ISIS Brigade Cracks Down on Women in Raqqa', Syria Deeply. Articles July 15, 2014. Accessible at: http://www.syriadeeply.org/articles/2014/07/5799/raqqa-all-female-isis-brigade-cracks-local-women/ (Last accessed: August 30, 2015).

Benotman, Noman and Charlie Winter (2015): 'Islamic State – One Year On Understanding and Countering the Caliphate's Brand', Quilliam Foundation. Accessible at: http://www.quilliamfoundation.org/wp/wp-content/uploads/publications/free/quilliam-strategic-assessment-is-one-year-on.pdf (Last accessed: August 29, 2015).

Erelle, Anna (2015): 'Skyping with the enemy: I went undercover as a jihadi girlfriend', The Guardian. Accessible at: http://www.theguardian.com/world/2015/may/26/french-journalist-poses-muslim-convert-isis-anna-erelle (Last accessed: August 30, 2015).

Gilsinan, Kathy (2014): 'The ISIS Crackdown on Women, by Women - ISIS's all-female brigade and the slowly growing role of female jihadis', The Atlantic, International. July 25, 2014. Accessible at: http://www.theatlantic.com/international/archive/2014/07/the-women-of-isis/375047/ (Last accessed: August 30, 2014).

Harper, Douglas (2014): 'The Etymology of "Emancipate"', Online Etymology Dictionary. Accessible at: http://www.etymonline.com/index.php?term=emancipate (Last accessed: August 30, 2015).

Hobson, Clementine (2014): 'Femislam: the Quran and gender equality', The ISIS. Accessible at: http://isismagazine.org.uk/2014/05/femislam-the-quran-and-gender-equality/ (Last accessed: August 27, 2015).

Hoyle, Carolyn, Alexandra Bradford and Ross Frenett (2015): 'Becoming Mulan?: Female Western Migrants to ISIS', Institute for Strategic Dialogue. Accessible at:

http://www.strategicdialogue.org/ISDJ2969_Becoming_Mulan_01.15_WEB.PDF (Last accessed August 11, 2015)

Khan, Deeyah (2015): 'For Isis women, it's not about 'jihadi brides': it's about escape', The Guardian, Observer. Accessible at: http://www.theguardian.com/world/2015/jun/21/isis-women-its-not-about-jihadi-brides-its-about-escape (last accessed August 22, 2015)

Kuehnast, Kathleen (2015): 'Women Under ISIS Rule: From Brutality to Recruitment', Testimony before the House Foreign Affairs Committee, U.S. House of Representatives. Accessible at: http://www.usip.org/publications/2015/07/28/women-under-isis-rule-brutality-recruitment#video (Last accessed: August 27, 2015).

Merriam-Webster (2015): 'Full Definition of "Emancipate"', Merriam-Webster Dictionary. Encyclopedia Britannica. Accessible at: http://www.merriam-webster.com/dictionary/emancipate (Last accessed: August 30, 2015).

MoS Reporter (2015): "'LOL!" UK schoolgirl jihadi's sick reaction to the Tunisian beach massacre in a series of extraordinary messages with undercover MoS reporter', Daily Mail. Accessible at: http://www.dailymail.co.uk/news/article-3149629/Laugh-loud-UK-schoolgirl-jihadi-s-sick-reaction-Tunisian-massacre-series-extraordinary-online-messages-undercover-MOS-reporter.html (Last accessed: August 30, 2015).

Muslimah – The Bird of Jannah (2015): 'Post From August 24, 2015', Hijabi Sisterhood Facebook Page. Accessible at: https://www.facebook.com/pages/Muslimah-the-Bird-of-Jannah/1403609539869537 (Last accessed: August 30, 2015).

Neumann, Peter R. (2015): 'Foreign Fighter total in Syria/Iraq now exceeds 20,000; surpasses Afghanistan conflict in the 1980s', ICSR Department of War Studies, King's College London. Accessible at: http://icsr.info/2015/01/foreign-fighter-total-syriairaq-now-exceeds-20000-surpasses-afghanistan-conflict-1980s/ (Last accessed: August 30, 2015).

Perešin, Anita (2015): 'Fatal Attraction: Western Muslimas and ISIS', Perspectives on Terrorism 9(3), pp. 21-38. Accessible at: http://www.terrorismanalysts.com/pt/index.php/pot/article/view/427 (Last accessed: August 30, 2015).

Petrou, Michael (2015): 'What's driving teen girls to jihad?', Maclean's, Rogers Media. Accessible at: http://www.macleans.ca/society/teen-girl-jihadists/ (Last accessed August 11, 2015)

Pillay, Navi (2014): Syria: Soaring Number of Executions in Violation of International Law. Office of the High Commissioner for Human Rights, United Nations (OHCHR). Accessible at: http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14173&LangID=E (Last accessed: August 30, 2015).

Saltman, Erin Marie and Melanie Smith (2015): 'Till Martyrdom Do Us Part – Gender and the ISIS Phenomenon', Institute for Strategic Dialogue. Accessible at: http://www.strategicdialogue.org/Till_Martyrdom_Do_Us_Part_Gender_and_the_ISIS_Phenomenon.pdf (Last accessed: August 11, 2015).

Sherwood, Harriet, Sandra Laville, Kim Willsher, Ben Knight, Maddy French and Lauren Gambino (2014): 'Schoolgirl jihadis: the female Islamists leaving home to join Isis fighters', The Guardian, World News. Accessible at: http://www.theguardian.com/world/2014/sep/29/schoolgirl-jihadis-female-islamists-leaving-home-join-isis-iraq-syria/print (Last accessed: August 10, 2015)

TRAC (2014): 'Al-Khansaa Brigade', Terrorism Research & Analysis Consortium. Accessible at: http://www.trackingterrorism.org/group/al-khansaa-brigade (Last accessed: August 30, 2015).

UNHRC (2014): 'Rule of Terror: Living under ISIS in Syria. UN Report of the Independent International Commission of Inquiry on the Syrian Arab Republic.' UN Human Rights Council. Conference Room Paper. November 14. Accessible at: www.ohchr.org/Documents/HRBodies/HRCouncil/CoISyria/HRC_CRP_ISIS_14Nov2014.pdf (Last accessed: January 7, 2015).

Williams, David; Matthew Blake; Martin Robinson and David Martosko (2014): 'They have vicious plans for them': Fears for hundreds of Yazidi 'slave' women captured by ISIS fanatics in Iraq as America wipes out terrorist convoy after launching SECOND round of bombing. Daily Mail. Accessible at: http://www.dailymail.co.uk/news/article-2719698/President-Obama-authorises-airstrikes-Iraq-defend-civilians-Islamic-militants-swarming-country.html#ixzz3O9P2Y6pU (Last accessed: August 30, 2015).

Winter, Charlie (2015b): 'The Virtual 'Caliphate': Understanding Islamic State's Propaganda Strategy', Quilliam Foundation. Accessible at: http://www.quilliamfoundation.org/wp/wp-content/uploads/publications/free/the-virtual-caliphate-understanding-islamic-states-propaganda-strategy.pdf (Last accessed: August 29, 2015).

— — (2015c): 'Guest Post – 'Women of the Islamic State: Beyond the Rumor Mill", Jihadology. Accessible at: http://jihadology.net/2015/03/31/guest-post-women-of-the-islamic-state-beyond-the-rumor-mill/ (Last accessed: August 28, 2015).

Appendix

Interview: Anonymous female Yazidi refugee

1- What is your conception of female Jihad? If you do not have any, what was the ISIS rule on it? Are women allowed to fight? If yes, under which circumstances? Otherwise, what is the role of a female Jihadist?

I don't know what is Jihad about. They stormed our towns and separated men from women, they took men somewhere we don't know and took us to their bases. Women aren't allowed to fight. First they need to go under a religious orientation then they will be given to fighters of ISIS.

2- How did it happen that you were taken by ISIS?

This happened August 2014, when ISIS stormed Mousl and they captured Sinjar immediately and we were captured by ISIS fighters and taken to their bases.

3- Did you live with your family before? Where you raised Muslim? Sunni, Shi'a or something else?

I lived with my family, we are Yazidis and in ISIS'S point of view we are considered devil worshipers unlike Jews and Christians.

4- What did they tell you why they took you?

They gathered us and put us in groups, they were shouting and laughing most of the time. They were very angry and kept saying that we are devil worshipers. They said we will be given a chance to convert to Islam and be purified from the sins and later on will be taken by fighters.

5- Do you know what happened to your family?

Some of the families were killed and buried in mass graves, some families were kept under ISIS captivity. Some families were divided and taken to different parts in Syria and Iraq (Raqqa and Mousl). The majority of families were displaced and took refuge in Duhok in Kurdistan region of Iraq.

6- How were you treated by the ISIS? Were you supposed to marry a mujahideen? What was your role?

Some were treated well, others were abused verbally and physically. We have to convert to Islam before being able to marry any of the fighters. The ones who married. They were used as sex slaves or were kept inside and looked after the houses of the mujahedden.

7- Did you meet any other women/girls that were taken by the ISIS? Were there many young girls? Were the women/girls treated differently depending on where they came from and whether they were Sunni, Shi'a, Yazidi, Christians, etc.?

I met some Christians, they were treated differently from Yazidis, The treatment of Christian girls were much better than the Yazidis as they are not considered devil worshipers.

8- Do you know anything about the slave markets?

I was sold for a Saudi fighter in the center of Raqqa, he bought me for 500 $. The place of the market was in the center of Raqqa near a huge hotel where women and children were kept there. It was like a big jail. Many cases of relatives buying their children and women through agents or tribe leaders.

9- Did you meet any women/girls who came by their free will to the Caliphate to become female jihadists/ wives of mujahideen? Were they treated a lot differently? Did they talk bad about the West?

I didn't ask this question to them and they never brought up this issue. The following 2 questions are also related to this question.

10- How did you manage to leave? Did you get help?

We were able to flee with the support of locals in Raqqa and Mousl. There are many cases, some were helped by the wife's of fighters to flee. Some managed to flee with the support of fighters (ISIS) themselves, they didn't agree to enslave these girls. Others were either bought or ransomed by their relatives and went to Turkey and from their to Iraq.

11- Is there anything else you would like to share?

The experience of being a salve is something beyond imagination. It needs a lot of time to explain and tell the details.

Transnational Terrorism and International Relations: Exploring Postcolonial Interventions in the Case of Boko Haram

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Abstract
This paper reproduces a Postcolonial critique of mainstream International Relations-theory by emphasising the ontological and epistemological fallacies, as well as historical omissions that guard it's Eurocentric and racist ontology. With this critique in mind, a rough illustration of the complex situation in Nigeria, concerning Boko Haram, follows that highlights the group's violent turn, socio-economic structures conducive to the recruitment of humans, and transnational discursive interferences. Being aware of the intrinsic connection between culture and imperialism, articulated by Edward Said, the present article posits that mainstream International Relations-theory is not apt to analyse representations of power, crisis that are transnational in character or involve violent non-state actors.

Key Words
Boko Haram, Eurocentrism, Imperialism, International Relations, Postcolonialism, Transnationalism

[51] Regarding my own positionality, I consider it as immensely important to portend to the white privileges of global reach that reproduce, as epitome of power, the cartesian-capitalistic-Western-white-heteronormative-male as normative ideal, and which also made possible the following lines. Therefore this paper seeks to engage epistemologically and methodologically in what Mignolo (2000: 67) coined as "border thinking" or "an other thinking", being critical of various forms of knowledge and seeking to work "toward the audibility of the voices of […] Others" (Beier 2005:36).

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Introduction

Admittedly, the title of this paper may lead to the hasty conclusion that the following lines are concerned with a thorough case-study of the non-state group Boko Haram in Nigeria. Albeit, the latter will partially be scrutinised further, the present paper primarily discusses various failures of mainstream International Relations[52]-theory (thereafter mainstream-IR) when scrutinised from a Postcolonial perspective and furthermore, when trying to grapple with the occurrence of transnational non-state actors. Hence, the following pages are not interested in performing an inherently contradictory melodrama, as an enactment of Postcolonialism within the realm of mainstream IR would draw to a close, but intend to inquire what elements constitute a viable critique of the former aimed at the latter. Indeed, literature on the relationship between the two disciplines has been scarce and temporally fragmented over several years, therefore only nonsensical statements would argue that the small concessions to Postcolonialism within main textbooks of IR (cf. Baylis et al 2008[1997]: 994sqq.) resemble an adequate acknowledgment. Accordingly, this paper intents to contribute to this hitherto limited discourse and asks further, to what extent a Postcolonial excursion into the complex situation in Nigeria, regarding Boko Haram, can enrich a more nuanced understanding of this phenomenon, coincidentally revealing the analytical failures of mainstream IR. Methodologically speaking, the present article relies upon a literary discussion.

The first part of this paper will outline the Postcolonial critique arguing against mainstream IR, by focusing on the *interdependent*[53] ontological and epistemological fallacies, as well as historical omissions, which in concert forearm the discipline's Eurocentric and racist assumptions. Alongside these protruding elements, an additional emphasis pertains to the significance of cultural representations that is unambiguously connected to the exercise of knowledge and power, as Said (2003 [1978]: 5) trenchantly put it "that ideas, cultures and histories cannot seriously be understood or studied without their force or more precisely their configurations of power, also being studied". This outlook will assist the subsequent sections, when illustrating the transnational ramifications pertaining to Boko Haram.

After engaging in Postcolonial criticism analogous to mainstream IR, the present paper directs the attention towards its second part and the following, though only fragmentary, illustration that focuses on Boko Haram. Approaching this issue, influenced by the virtues of Postcolonialism, this section highlights the transnational and complex character of the circumstances. By seizing upon the power-effect of cultural representation, advanced by Said, transnational discursive practices are also part of the analysis.

The third, and concluding, section of the present paper summarises the Postcolonial critique towards mainstream IR and the inferences emerging out of the illustration regarding Boko Haram. Hence, by putting the theoretical critique in conversation with empirical implications, this treatise

[52] Mainstream International Relations-theory is here defined as most notably the school of (Neo-)Realism, the discipline is based on and which is still, often uncritically, taught in introductory lectures to International Politics. Being aware of the already multiple existing critiques from various perspectives, this paper draws upon elements of *inter alia* constructivism-IR, post-modernism or post-structuralism.

[53] At this point it is important to note that none of the sub-sections of the Postcolonial critique concerning mainstream IR can be read separately. They are unequivocally interdependent and connected to each other.

argues concisely that through mainstream IR's massive ontological and epistemological inadequacies, the discipline is not able to theoretically analyse transnational phenomena and therefore deduces to refrain from applying the devices of this discipline to construe international occurrences, as it obscures structures that profit the powerful.

Postcolonialism vs. Mainstream IR: Interdependent Fallacies, Omissions and Assumptions

When putting Postcolonialism in dialogue with mainstream IR, Said's arguments in the Introduction to *Orientalism* cannot be disregarded. By employing Gramsci's notion of hegemony, he*[54] (ibid.: 6sq.) exemplifies that culture takes up, in concert with other knowledge-related aspects, an integral role when establishing political power and Orientalism, as an all-encompassing discourse, is not just an insubstantial story about the Orient, but imbues various forms of knowledge production which concomitantly work with a neat placement of power that repetitively puts "the Westerner" in the executive position over the Other - irrespective of changes in contexts. Culture as a hegemonic project, influenced heavily by imperialism, is therefore also central to the production of knowledge, while possible inherent hindrances do not act as obstacles to individuals engaged in intellectual work, but on the contrary, reveal themselves as fecund grounds, as Said (ibid: 14) argues further. In addition, the stark interdependence between imperialism and culture, as a hegemonic discourse, is emphasised more intensively by the Palestinian-US-American scholar in consonant with one of his* later writings *Culture and Imperialism*, when neatly summarising that:

> [n]either imperialism nor colonialism is a simple act of accumulation and acquisition. Both are supported and perhaps even impelled by impressive ideological formations that include notions that certain territories and people *require* [italics in original] and beseech domination, as well as forms of knowledge affiliated with domination: the vocabulary of classic nineteenth-century imperial culture is plentiful with words and concepts like "inferior" or "subject races", "subordinate peoples", "dependency", "expansion", and "authority". Out of the imperial experiences, notions about culture were clarified, reinforced, criticized, or rejected. (Said 1994: 9).

As such, imperialism is of crucial importance to the exercise of knowledge as the mission of the West to conquer, *inter alia*, foreign people, territories, knowledges and polities is legitimised and firmly established within the traits of an imperial-cultural discourse.

Ontological and Epistemological Fallacies

This section is concerned with initiating a Postcolonial critique towards mainstream IR by alluding to ontological and epistemological fallacies that are inherent to the discipline. The aforementioned linkage between imperialism and culture also encloses the barely examined emergence of mainstream IR, which materialised out of the climax of imperialism at the beginning of the 20th century, therefore complicit as an ideologically imbued deliberation (cf. Jones 2006: 3). This is exemplified by Morgenthau's (1948: 26sqq.) far-reaching argument in *Politics Among Nations*, for semiotically and conceptually re-defining "imperialism", because of the arbitrarily appropriation of the expression, as an objective terminology that analytically can be useful for IR; furthermore

[54] Asterisks in this paper are used to critically bring into question heteronormatively gendered linguistic designations and should encourage the reader to question power mechanisms that are operating through language.

contending that an ominous "devil theory" claims that industrial and financial interests urged the United States (US) to partake in the First World War.

As one of the founding fathers of IR, Morgenthau (ibid.: 8-9, 34) is confident in asserting that imperialism is the attempt of a particular sovereign Western nation-state to abolish the existing status quo, that is, the actual and current distribution of power among those entities, although his claims hinge on an ontological and epistemological fallacy - again approved by the "culture of Imperialism" as Krishna (2013: 125) so trenchantly put it - proclaiming that said action is never motivated out of economic interests, but rather amounts to a simple positional reconfiguration within the existing realm of power. Following this reasoning, Neorealists, like Waltz (1978: 136sqq.), further theoretically circumscribed the power-battled-domain of IR as an inherently anarchical sphere, where sovereign nation-states seek the attainment of their self-interests.

Thus, the imperial-cultural discourse at the time of the theoretical inauguration of mainstream IR, which also cultivated various other scientific disciplines and knowledges, incipiently prompted a defence of imperial practices by attempting to ideologically sanitise and objectify the terminology of imperialism - contemplating to bleach out the dark side of this manichean coin. Therefore, imperialism is not merely the venture of a "great power" to demolish the actual distribution of power amid those, but is an ambiguous, transhistorical process rooted within myriad exploitative socio-cultural elements and laws that act inherently genocidal, dispossessing and discriminatory against Indigenous peoples and knowledges; subjectively affecting both, colonised and coloniser[55], while aiming at the structural proliferation of the prerequisites for the reproduction of capitalism (cf. Amin 2009[1989]: 209sq.; Grovogui 1996: 49; Said 1994: xiiisqq.). Consequently, a Postcolonial critique of mainstream IR recognises the necessity to propel a proper historical account of imperialism into the discussion - not one solely applying to the affair between sovereign Western nation-states, but one which scrutinises the imperial relationship of dominance between conquerer and subordinate, synchronously identifying imperialism as constitutive part of the edifice of mainstream IR (Chowdhry, Nair 2002: 2, 11; Darby, Paolini 1994: 379; Georgis, Lugosi 2014: 78).

Thus, such a historicity would emphasise the introductory mentioned ontological and epistemological fallacies, which are not only prominent within the conceptualisation of imperialism, but also pertain to the sovereign Western nation-state, which numerous authors (cf. Baylis et al 2008[1997]: 99sqq.; Waltz 1978: 72) accede the exclusivity of being the lone actor within the anarchical system of IR. The urgency of a revised historical account is underlined by Sørenson's (2011: 117) perpetual exclusion of formally decolonised nation-states, reasserting that through international standards, which also "great powers" are obliged to, former colonised states are protected from the reappearance of colonialism or the usurpation by more powerful states - neglecting the most recent imperialistic invasions by the United States, *inter alia*, of Iraq (cf Chomsky 2005). Ayers (2012: 576) emphasises that this dogma is even more apparent, in the "double standard" Western nation-states are operating with in the international sphere; whereas the latter organise their affairs on the premise of official international law, 'failed states', frequently with a distinct colonised history, are subject to extraordinary methods and procedures. Besides,

[55] The present paper is not explicitly distinguishing between colonialism and imperialism, as such a clear historical discontinuity between the two ought to exist, but the two are entangled with each other as, *inter alia*, genocidal and exploitative practices, as well as a thorough subversions of knowledges pertain to both.

Beier (2005: 15) quit rightly adds that by limiting the focus on the notion of the sovereign Western nation-state, Indigenous societies and the constitutive colonial as well as imperial circumstances of mainstream IR are neglected, resulting in the denial of the political existence of numerous peoples and the scholarly reproduction of colonialism. The reasons why this analytical predominance of the sovereign Western nation-state is problematic, will be addressed later.

To sum up briefly: two, above depicted, ontological and epistemological fallacies by mainstream IR arise, first, out of the conceptualisation of the international sphere exclusively in terms of sovereign Western nation-states, inherently excluding (and continuing to do so) formally decolonised polities, while denying Indigenous peoples and other political communities their existence; as well as, secondly, the delusional misconception of imperialism as a phenomenon not being related to economic interests and exclusively pertaining to power-struggles between sovereign Western nation-states, within an inherently anarchical environment, concomitantly eliding the colonising histories of those actors.

Historical Omissions

The urgent necessity of an accurate historicity in mainstream IR has already been invoked during the delineation of the ontological and epistemological fallacies that are inherent to this discipline. Albeit, there has been what Teschke (2003: 271) terms a "historical turn" within the theoretical sphere of international politics, to which the author certainly contributed to with *The Myth of 1648* and that has also been accredited to the work of Buzan and Little (2000: 3sqq.) - who emphasised the desperate lack of historical awareness within the discipline and aimed at amending this dilemma by resorting to "3500 BC when the Sumerian city-states began to interact in the area between the Tigris and the Euphrates" (ibid.: 1) as genesis of mainstream IR - those accounts do not manage to abandon the analytical as well as imaginary supremacy of a globally isolated and imperial inactive Europe. Teschke (2003: 7sqq.), though conceding that methods of material reproduction - as colonialism is indicative of such - structurally impinge upon IR and typically the formation of the nation-state, solely re-traces the emergence of these political concepts among European fragments of history, while Seth (2013: 17sq.) critically points to the recurring evocation of the foundational myth of Europe, as the native encapsulated land of the modern nation-state, present within the work of Buzan and Little (2000).

These figments chiefly rest on the constant recital by mainstream IR of 1648 and 1919 as the originating dates of the discipline. The former, most prominent for the establishment of the sovereign nation-state is also identified by Teschke (2003: 245) as the gene locus of the discipline's deception, as not only modern but also absolutist patterns of sovereignty converged upon this historical moment, while de Carvalho et al (2011: 740) further argue that the Peace of Augsburg (1555) was actually more significant to the establishment of the European order, than the one of Westphalia (1648), which essentially redeemed elements of sovereignty. On the other hand the latter, 1919, is regularly referred to as mainstream IR's birthdate as a standalone discipline, as in the aftermath of the First World War scholars attempted to comprehend the logic behind the outbreak of violence - between the sovereign Western nation-states that is - with the benevolent intention of thwarting the reiteration of such an experience. Nevertheless, the decontextualised prevalence of 1648 and 1919 obscures the imperialistic background, the inherently racist and

Eurocentric discourse in which the founding scholars gyrated, infusing them to regularly beseech the notion of a supreme Western civilisation (ibid.: 749sq.)

This non-reflective approach relating to their own geopolitical position, which is partly due to the positivist beliefs of IR at the time (cf. de Carvalho et al 2011: 746), led scholars to the confident assumption to erect this discipline on the calamitous and genocidal ruins of colonialism and imperialism. Sankaran Krishna aptly points out that

> [f]ounded as it [IR] is on discourses that justified, abstracted and rationalized the genocide of the populations of the so-called new world, the enslavement of Africans, and colonization of the Asians, the discipline of IR is one giant strategy of containment (Krishna 2001: 407, 408)

Additionally, this dogma is prominent within other narratives of mainstream IR, as he* (2001: 404) rightfully questions the overtly dubious assumption that the historical phase between 1815 and 1914 is distinguishable as a time of tremendous peace, ignoring imperial endeavours like the Opium Wars (1839-1842 and 1856-1860[56]) between China and the British Empire that left behind a Chinese populace in miserable and subordinate conditions (cf. Lovell 2011: 38). Furthermore, Chowdhry and Rai (2009: 87) build upon Krishna's exposure of IR's historical omission and appropriately coin this the "misnamed Hundred Years of Peace", emphasising that colonised peoples were not apprehended as sovereign subjects and therefore 'war' and 'peace' did not apply to those Others. This perception is even further reiterated and succeeds within Security Studies, which clings to these nation-state-centric conceptualisations and thereby excludes vulnerable and colonised populations, who constitute the majority of people globally (Barkawi, Laffey 2006: 332; Shaw 2002: 61).

Accordingly, neither colonialism and imperialism are of substantial significance to the analysis of mainstream IR, nor are the current relationships between the Global North and the Global South. Concealing itself behind the mask of nation-state sovereignty, established on the Western bricks of the First World War and a resistant positivistic stance - indifferent to the own geopolitical and -social positionality (cf. Darby, Paolini 1994: 374, 378) - the discipline ideologically dismisses a historical account that includes the baffling amount of genocidal practices that where unleashed by the Western colonial and imperial powers. The here solicited historical omissions are associated with the ontological and epistemological fallacies discussed in the section beforehand and not only address mainstream IR's disdain of the protracted practices of colonialism and imperialism, but rather emphasise that historical omissions - like the inertia towards the Opium Wars or the slave trade (Jones 2006: 4) - were deliberately posited as evidence by and therefore are partially co-constitutive of the imperial-cultural discourse that incubated mainstream IR.

Although authors of the historical turn, as Teschke (2003) or Buzan and Little (2000), have made inroads into closer scrutinising the fragile historical structure the discipline rests on, those works have not managed to unfetter themselves from the imagination of a globally isolated Europe where the ideational model of the sovereign Western nation-state endogenously came into existence, purposely disregarding that the treaties of Westphalia and Augsburg coincided with the practices of genocidal colonial regimes (cf. Seth 2011: 173). Thereby this paper argues, joining Barkawi and Laffey's (2006: 344) insight, that without critically scrutinising the historical and discursive imperial

[56] For the historical dates see Pletcher (2015).

contexts of mainstream IR and its surrounding sub-disciplines, like Security Studies, cursory inquiries inevitably side with the more powerful, imperial Western power and not the vulnerable, colonised and oppressed peoples. This fatality is necessitated by the intrinsic Eurocentric assumptions of mainstream IR, which will be discussed in the following paragraph.

Eurocentric and Racist Assumptions

Merging the *interdependent* arguments from the preceding two sections; first, the ontological and epistemological fallacies contingent upon the notion of the sovereign Western nation-state being the exclusive actor within the anarchical international system and the argument for a non-economic and non-exploitative definition of imperialism; as well as, secondly, the historical omissions that neglect the actual colonial and imperial endeavours of its actors, mainstream IR arises out and is indicative of an imperial-cultural discourse. This section will outline the discipline's inherently Eurocentric and racist assumptions that are supported by the aforementioned fallacies and omissions, resulting in a summary of the advanced Postcolonial critique aimed at mainstream IR.

To solidify the argument that mainstream IR is part of an imperial-cultural discourse, a few of the following lines are briefly recapitulating the aforesaid. First and foremost, the inherent Eurocentrism of the discipline is demonstrated by the restricted validity of the conceptualisations of 'war' and 'peace' that only apply to the relations between sovereign Western nation-states, while violent altercations within the colonised world are denigrated as peripheral, asymmetrical conflicts or "small wars", as Barakawi and Laffey (2006: 330, 332) already have alluded to. In turn, this dogma then contributed to the deception of the discipline that the period between 1815 and 1914 was characterised by an omni-prevalence of peace (Chowdhry, Rai 2009: 87). Furthermore, because of the Eurocentric misconception of sovereign Western nation-states as the exclusive international actors, Indigenous peoples were denied their political existence (Beier 2005: 15) and simultaneously served as the oppositional projection surface in the process of Othering.

Othering then, as Persaud and Walker (2001: 375) briefly circumscribe it as a multi-layered political and social process that produces and consequently inscribes, *inter alia*, racialised and gendered differences into identities, is, although rather unapparent, tremendously important to understand mainstream IR. As indicated in the previous section, concerned with the historical omissions, Western civilisation was apprehended by the founding IR-scholars as supreme in relation to others. Nevertheless, the question therefore arises; how social processes are coupled with the notion of the sovereign nation-state that is primarily confined to the principle of territorial integrity. Doty addresses this by pointing to the linkage between political space and the formation of identity, stating that:

> [w]hile ostensibly attached to territory, […] spatial differentiations depended upon and were/are made possible by a series of oppositional constructs that are quite familiar to us:, *e.g.* [italics in original]: traditional/modern, backward/advanced, democratic/totalitarian and so on (Doty 1993: 455).

Bolstering the assertion that mainstream IR is not exclusively bound to the principle of territorial integrity, but also relied in its constitutive stages on the processes of cultural Othering, is neatly underlined by the jingoistic truism of the discipline that its designed political entities are also characterised by a distinct cultural identity (Seth 2011: 178). Furthermore, Said points to the

continuity of this misperception by trenchantly arguing that "[i]n time, culture comes to be associated, often aggressively, with the nation or the state; this differentiates 'us' from 'them' almost always with some degree of xenophobia" (Said. 1995: xiii). As this doctrine is also inherent to mainstream IR, the assessment follows that a racist ontology is operating at the foundation of the discipline, relying on a taxonomy that invokes essentialistic terms to classify human beings - repetitively constructing a normative ideal in relation to its deviant Other.

Thereby, categorisations such as 'Race' function as identity markers that are inherently endowed with clear configurations of power, which constantly reproduce a dominant - often European - model antithetical to a subordinate, aberrant - often non-European - Other (cf. Jones 2006: 2). Krishna (2001: 408) concisely accentuates this by pointing out that during the "discovery of the New World" the former coopted the highly esteemed terminologies, like civilisation, culture, science, property, and rationality, while using the negatively connoted adversarial conceptualisations such as barbarianism, superstition, and irrationality to describe the latter[57].

Hence, this antagonistic inherently Eurocentric and racist vocabulary, which confirmed the supremacy of the sovereign Western nation-state, was also employed at the founding moment of mainstream IR in 1919, at a juncture whereas the discipline struggled to comprehend the tragic devastation of the First World war, its main actors were deeply entrenched within colonial and imperial practices that were justified by exactly this terminology, purporting the need to 'civilise' 'Barbarians' (cf.Ayers 2012: 577; Jones 2006: 2; Salter 2002: 15sq.). Thus, as Said pointed out earlier that the construction of a homogeneous cultural identity, which should fit onto the spatially defined framework of the nation-state, operated accordingly racist as processes of Othering - defining what 'we' as a nation are in eliding, denunciating what 'we' are not and synchronously ascribing it to what constitutes 'them' - are also embroiled in the making of the ideology of mainstream IR. Morgenthau (1948: 96sqq.) underscores this argument by defining "National Character" (ibid.: 96) and "National Morale" (ibid.: 100) as decisive elements that determine the power capability of one sovereign Western nation-state. Consequently, the actuality of a homogenous cultural identity is essential to mainstream IR.

Simultaneously, this implies that humans not identifying with the outlined parameters of the Eurocentric political entity have to be assimilated, the 'Barbarians' need to be 'civilised' or integrated into sovereign nation-states. The sustained and reproduced supremacy of this model then attained, as Chowdhry and Nair argue,

> cognitive authority, and a hegemonic and disciplining effect on global politics. It has not only ignored the question of representation, but has also assumed that mainstream IR's language is universal and unproblematic, giving it the authority to speak for and about others (Chowdhry, Nair 2002: 14).

Thus, for mainstream IR, Eurocentric sovereignty universally characterises the nation-state as highest political authority, which struggles in an anarchical environment for the attainment of its self-interests, and concomitantly works as an ontologically exclusionary device denying political communities that value different political elements or pursue a peculiar conceptualisation of sovereignty, like Indigenous peoples, their actual existence and place within the discipline (cf. Beier

[57] For a detailed account of the evoked tropes that legitimised the European conquest of territories, human beings, and knowledges see Anne McClintock's (1995) *Imperial Leather: Race, Gender and Sexuality in the Colonial Contest*.

2005: 15; Chowdhry, Rai 2009: 87). Therefore, sovereignty also services as an incentive to 'civilise', to make Indigenous people apt to integrate themselves into the Eurocentric fabric of the nation-state.

Albeit, racism in mainstream IR works twofold. First, as portrayed above, by the dominance of the sovereign Western nation-state being the solely acknowledged political organisation with a homogenous cultural identity supporting it and, secondly, after universally implanting this model[58] mainstream IR still renders formally decolonised states insignificant to the anarchical field, terming insufficient state formations as "failed states"[59] that endogenously are not able to adhere to the Eurocentric conceptualisation (Ayers 2012: 571).

Summarising the Postcolonial critique of mainstream IR, the three previously depicted, interdependent critical threads concatenate here to a coherent rope that leads to the main argument of this paper, disclosing mainstream IR as a direct output of an imperial-cultural discourse that is inherently Eurocentric and racist. How so? Explained in the section concerning ontological and epistemological fallacies, one of mainstream IR's foundational works, *Politics Among Nations* (1948), engages in a defence of the conceptualisation of imperialism, while proposing a non-economic version that is aimed at sanitising the exploitative and genocidal content of the term. By only awarding the sovereign Western nation-state the capability to engage in mainstream IR, deviant forms of political organisation, like those by Indigenous peoples, are rejected. These epistemic misconceptions are maintained by providing a historical account that is rife with omissions, ideologically operating in favour of mainstream IR, as the period between the Congress of Vienna (1814-15[60]) and the outbreak of the First World War (1914[61]) are interpreted as inherently peaceful - purposely ignoring the meanwhile ongoing genocidal phases of colonialism and imperialism. Despite seminal works investigating the dubious foundational historic dates (1648 and 1919) of the discipline, like those of Teschke (2003) or Buzan and Little (2000), those authors were not able to break free from the illusion that the sovereign Western nation-state endogenously emerged out of an intra-European constellation that was isolated from other regions, peoples, and knowledges - despite the existing colonial and imperial Western empires at the time. Those fallacies and omissions then constitute the reasons for and consequences of Eurocentric and racist assumptions that are inherent in the construction of mainstream IR. By only admitting the notion of the sovereign Western nation-state into the anarchical realm of IR, other political entities that work with peculiar ideational conceptions are denied their existence and autonomy. In unison processes of Othering are deployed to 'civilise' the 'Barbarians' so that that the chimera of a sovereign nation-state congruent with a homogenised culture can be preserved, constructing antithetical identities of 'us' and 'them', while the former always retains the interpretational sovereignty and power over

[58] One of the justifying arguments for universally enforcing the Eurocentric concept of sovereignty relies upon the misperceived non-violent behaviour of sovereign Western nation-states - rendering the Era of the Cold War as an inherently peaceful one, as Krishna (2001: 406) demonstrates. Ruggie (1993: 163) approves this and supports the assumption that through the mutual recognition of sovereign nation-states, violent political action - between them - decreased.

[59] Ayers (2012: 572) concisely argues that "'failed states' are characterised as those where the government does not possess the monopoly of the means of violence, or are considered a threat to Western security, such as the 'rogue' states of the 'axis of evil' infamy".

[60] For the historical date see Encyclopedia Britannica (2015).

[61] For the historical date see Showalter (2015).

the latter. On the other hand, mainstream IR's inherent racism is displayed when nation-states follow the Eurocentric instructions on how to model a political entity, but only manage to insufficiently do so. Deviant and faulty emulations are willingly termed by its ideology as 'failed states,' providing the sovereign Western powers with an impetus to actively intervene and resume their imperial and colonial exploitations. Therefore, mainstream IR is based upon the elision of colonialism and imperialism, obscuring its ideological underpinnings aided by an ostensibly humanistic vocabulary of 'humanitarian intervention' or 'development', reiterating its intuition of universality (cf. Ayers 2012: 571sqq.). With this critique in mind, the present paper now directs the attention towards a rough illustration of the events in Nigeria concerning Boko Haram.

A Postcolonial Excursion into Boko Haram

This short excursion into the case of Boko Haram focuses on highlighting the complex and transnational character of this situation by sketching out the violent turn of the group, its recruiting audience, structural factors in northern Nigeria that contributed to Boko Haram's proliferation, the Multi-National-Joint-Taskforce (MNJTF) battling the group, and global discursive interferences regarding the issue. Hence, the following section is not keen on proposing a solution to this subject, but points to its complex structure. Sadly, this paper is not able, due to limitations in pages, to include the colonised history of Nigeria.

From the outside, as this paper speaks from a Western-European context, the situation in Nigeria can readily be coined as devastating, as fom the violent turn of Boko Haram in 2009 until mid-2015, an estimated 15,000 people have fallen victim to this crisis (Comolli 2015: 109). Weeraratne (2015: 7, 9) estimates that around three Million people live under the rule of the group in the northeastern region of Nigeria, especially in Borno State that is bordered by Niger, Chad and Cameroon. Boko Haram has thoroughly enforced Sharia rule over its controlled territory and operates along the porous Nigerian borders, crossing them for strategic reasons, training or recruitment.

However, to comprehend its violent approach, this paper draws attention to the historical emergence of Boko Haram not intended to excuse its atrocities. "Jama'atu Ahlis Sunna Lidda'awati Wal-Jihad" (people of the tradition of the Prophet for preaching and striving), which is the exact and self-definition of the group, while the denomination "Boko Haram"[62] is a label used by the media based on popular impressions of the actor's operations, came into existence in 2002 as students of the University of Maiduguri, dissatisfied with Western education, turned to Mohammed Yusuf at the Al-Haji Muhammadu Ndimi Mosque for support, organised themselves and since then oppose the totality of Western culture (Onapajo, Uzodike 2012: 26sq., Weeraratne 2015: 2). Various accounts (cf. Aliyu et al 2015: 315; Hansen, Aliyu Musa 2013: 286; Yusuf 2013: 386;) emphasise that Boko Haram was at its incipient stages a peaceful organisation that under Yusuf strived to pursue the attainment of it's goals even through legal matters, backed by local politicians. In July of 2009, Boko Haram attacked numerous prisons which resulted in a response of special military units of the Nigerian police force that also lead to the successful capture of Yusuf, as Hansen and Aliyu Musa (2013: 286) annotate. Subsequently, Yusuf was extra-judicially

[62] Despite this false nomenclature, the present paper will also use "Boko Haram" instead of Jama'atu Ahlis Sunna Lidda'awati Wal-Jihad, as the former term is more widely known.

massacred by the state, whose agents act with impunity, resulting in the violent, partially terroristic, and destructive stance the most-known fraction of Boko Haram, led by Abubakar Shekau, displays today[63]. This points to the immensely fragmented character of the group and it's assumed multiple cells, making it difficult to paint a coherent picture of Boko Haram[64] (ibid: 286sq.; Aliyu et al 2015: 315; Onapajo, Uzodike 2012: 30; Weeraratne 2015: 18; Yusuf 2013: 385).

The recruitment audience for Boko Haram has not altered; still dissatisfied young people, unemployed, migrants from Sudan, Chad or Niger, and former Almajirai[65] are prone to join the group. The high unemployment (70-80%) and poverty rate (72% living below the poverty line) in the North, the incompetence as well as unwillingness of the Nigerian government to transfer the accumulated wealth out of oil-business to the broader public, have contributed to the growth of disenchanted people. (Hansen, Aliyu Musa 2013: 287; Onapajo, Uzodike 2012: 27; Tonwe, Eke 2013: 234sqq.). Thus, it is to no surprise that the governor of Borno State, Kashim Shettima, stated that

> despite his "misguided ideology", the late leader of the *Boko Haram* [italics in original] was able to retain the loyalty of his followers through, among others, provision of a meal a day to each member, setting up a youth empowerment scheme and organising cheap marriages among them (Yusuf 2013: 380).

Onapajo and Uzodike (2012: 34) highlight the reasons, why the economic sector has been failing so many young humans and point to it's restructuring in the wake of the neoliberal surge, disguised as the IMF and Worldbank-imposed Structural Adjustment Programmes (SAPs) which swept across the country during the 1980s and 1990s, redirecting economic policy away from agricultural production - which was primarily focused on the North - to the exploitation of oil resources in the southern area of Nigeria. Although at the beginning of the 1990s Anyanwu (1992: 6sqq.) already posited that poverty was widespread, the economy was heavily dependent on oil, and economic benefits should domestically be disseminated more equally; the 1986-SAPs of the Babangida administration (1985-1993[66]) did not ameliorate the crises. Therefore, an enormous neoliberal transformation within the social relations of allocation and production in Nigeria partially gave rise to the non-state group Boko Haram.

Given its recent violent interactions, especially the abduction of more than 250 girls from a school in Chibok and the increased territorial control in northeastern parts of Nigeria, Boko Haram emerged as a distinct regional actor (Weeraratne 2015: 2). Through its cross-border operations, which have enabled the group to easily obtain weapons, hide from Nigerian forces, or to use the Niger desert for training; Nigeria, Niger, Chad and Cameron set up the MNJTF to militarily engage Boko Haram. Partially financed by the US and Great Britain, as well as the involvement of France in intelligence sharing, not only regional nation-states, but also the "great powers", imperial

[63] For a more detailed account of the groups' violent strategy, see Aliyu et al (2015: 312sqq.), of how it's activities have changed and expanded over the years see Weeraratne (2015: 4sqq.).
[64] Thus, the more violent fraction, presumable under the leadership of Abubakar Shekau, even executed one of its own members that was engaged in a peaceful dialogue to end the conflict (Hansen, Aliyu Musa 2013: 286sq.).
[65] Almajirai are males between primary-school age and their twenties that were sent by their parent to enrol in college, to study the Qur'an while being obliged to earn their own living. In contrast to Almajirai in rural parts, who help out their teachers on the farm, those in urban centres have to make their living through begging (Hoechner 2011: 713sqq.). As they live in miserable conditions Almajirai are easy recruiting targets for extremist groups (Tonwe, Eke 2013: 235).
[66] For the historical date see Olawale (2014: 81).

entities, are expressing their interests in a military solution to the inherently transnational conflict, that is contributed to by South African private contractors (Aliyu et al 2015: 8; Comolli 2015: 110sqq.).

On a more discursive level, Michelle Obama (First Lady of the US) added her* voice to the social media campaign "#Bringbackourgirls" which is aimed at internationally raising awareness of the abduction of the aforementioned school girls in Chibok. Obama stated that her husband had outreached to the Nigerian government to assure every support needed to find the schoolgirls (The Guardian 2014). The First Lady's intention was bolstered at this year's anniversary of the abduction by Nobel Peace Price Winner Malala Yousafzai (2015), calling upon "the Nigerian authorities and the international community to do more to bring you [the abducted school girls] home". Meanwhile Jumoke Balogun (2014), a Nigeran-American journalist, has questioned the social media campaign and rightfully indicated that it further legitimises the attainment of US interests in the region. Simultaneously, newly elected president Muhannadu Buhari, though being opposed towards the engagement of private contractors, has endorsed the military support by the US - contrary to his predecessor (Buhari 2015; Comolli 2015: 113).

Conclusion

As introductory stated, this paper is not concerned with a thorough case study of the complex situation in Nigeria, regarding Boko Haram. Rather, the past lines primarily intended to reproduce a profound Postcolonial critique directed at mainstream IR, with the concluding aim to showcase the various failures of the discipline. To briefly recall this; mainstream IR operates with Eurocentric and racist assumptions that are safeguarded by ontological and epistemological fallacies, as well as grave historical omissions - all part of the imperial-cultural discourse out of which mainstream IR emerged.

The discipline would fail on various levels to construe the situation in Nigeria. First, by adopting the theoretical stance that only sovereign nation-states can engage within IR, Boko Haram as a non-state actor utilising terrorism[67] as a "form of politically motivated violence" (Jackson et al 2011: 116) would not be noticed by the discipline. Secondly, this also pertains to the transnational character of the MNJTF which operates across the borders of the main nation-states Nigeria, Cameroon, Chad and Niger. Admittedly, the argument that the MNJTF mirrors a temporally confluence of self-interests by various (regional) nation-states remains viable, unless troops actually materialise out of this notion and attain an inherent transnational character - synchronously falling out of the ontological realm of the discipline.

On a third level, mainstream IR is not concerned about representations in the international sphere and is completely baffled when trying to scrutinise a social media campaign, which exerts pressure upon governments within the transnational anarchistic terrain of the internet. Postcolonialism (*not* Postcolonial-IR) tends more to identities and their portrayal. Thus, when humans with high transnational esteem, like Obama and Yousafzai, argue from their positions, the imperial-culture

[67] This paper agrees with the appraisal of Jackson et al (2011: 160sq.) that a concrete definition of the practice of terrorism in relation to national borders or their transgression is, in many cases as here with Boko Haram, severely problematic as ambitions, targets and the obtainment of resources by violent non-state actors pertains to various regional, national, or international contexts.

discourse's patterns of power surface, demonstrating that while numerous voices speak for the Other, those two emerge as especially vociferous and echo from the White House to northeastern Nigeria. Those allegedly humanistic appearing assertions of Obama and Yousafzai, as mentioned above, easily reveal themselves as inherently imperialistic and actually, by supporting the Nigerian government, constitute an intensive call for a violent solution to this conflict that conceals the discriminatory, violent politics of the Nigerian government; ultimately augmenting the flow of tears and blood of oppressed Nigerians.

The short excursion into northern Nigeria was carried out to illustrate the sheer complexity of the situation. Due to limits in resources the imperial and colonial story of Nigeria could not be reviewed, but would have explained the ideological and socio-economic context intrinsic to the emergence of Boko Haram. A historical step back into colonial times would have provided further insights because, as Hansen and Aliyu Musa (2013: 288) already argue, the encounter between the British conquerers and their Muslim adversaries in the North indicates transhistorical ramifications that echo into the present time. Otherwise, by neglecting historical or macro-structural processes, shortsighted statements, as from CNN-Reporter Isha Sesay (2015), emerge that hastily label members of Boko Haram "fanatical thugs", ignoring the desperate situation those humans might have been subjected to.

Concluding, this paper has exemplified how a Postcolonial critique of mainstream IR reveals the discipline's Eurocentric and racist assumptions that are based on ontological and epistemological fallacies, as well as historical omissions. In the next step, a rough illustration of the manifold situation in Nigeria, regarding Boko Haram, led to the assertion that mainstream IR fails to analytically elucidate these circumstances and is paralysed when trying to make sense of transnational processes and cultural representations, whether they materialise on the ground or manifest themselves in a discursive way. Here, a Postcolonial perspective can provide remedy as discursive cultural representations are part of the analytical vehicle of the discipline and a more critical, historical perspective onto colonialism and imperialism opens up the possibility for an analysis that immerses into knowledge-systems that include the continuous relevant stories of the vulnerable, marginalised and oppressed peoples.

References

Anyanwu, John C. (1992): President Babangida's Structural Adjustment Programme and Inflation in Nigeria. In: Journal of Social Development in Africa 7:1, pp. 5-24.

Amin, Samir 2009 [1989]: Eurocentrism. Second Edition, New York: Monthly Review Press.

Aliyu, Ahmed; Moorthy, Ravichandran; Bin Idris, Nor Azizan (2015): Towards Understanding the Boko Haram Phenomenon in Nigeria. In: Asian Social Science 11:10, pp. 307-317.

Ayers, Alison J. (2012): An illusion of the epoch: Critiquing the ideology of 'failed states'. In: International Politics, 49:5, pp. 568-590.

Balogun, Jumoke (2014): Dear Americans, Your Hashtags Won't #BringBackOurGirls; You Might Actually Be Making Things Worse http://www.huffingtonpost.com/jumoke-balogun/hashtags-wont-bringbackourgirls_b_5292312.html [Accessed on: 25/08/2015].

Barkawi, Tarak; Laffey, Mark (2006): The postcolonial moment in security studies. In: Review of International Studies 32, pp. 329-352.

Baylis, John; Smith, Steve; Owens, Patricia (2008[1997]): The Globalization of World Politics. An introduction to international relations. Fourth Edition. Oxford: Oxford University Press. E-Book.

Beier, Marshall J. (2005): International Relations in Uncommon Places. Indigeneity, Cosmology and the Limits of International Theory. New York, Hampshire: Palgrave Macmillan.

Buhari, Muhammadu (2015): Muhammadu Buhari: We Will Stop Boko Haram. http://www.nytimes.com/2015/04/15/opinion/muhammadu-buhari-we-will-stop-boko-haram.html?_r=0 [Accessed on: 25/08/2015].

Buzan, Barry; Little Richard (2000): International Systems in World History: Remaking the Study of International Relations. Oxford: Oxford University Press. E-Book.

Chomsky, Noam (2005): Imperial Presidency. In: Canadian Dimension 39:1. http://www.chomsky.info/articles/20041217.htm [Accessed on: 17/08/2015].

Chowdhry, Geeta; Nair, Sheila (2002): Introduction: Power in a postcolonial world: race, gender, and class in international relations. In: Chowdhry, Geeta; Nair, Sheila (eds.*): Power, Postcolonialism and International Relations. Reading race, gender and class. London and New York: Routledge, pp. 1-32.

Chowdhry, Geeta; Rai, Shirin M. (2009): The Geographies of Exclusion and the Politics of Inclusion: Race-based Exclusions in the Teaching of International Relations. In: International Studies Perspectives 10, pages 84-91.

Comolli, Virginia (2015): The Regional Problem of Boko Haram. In: Survival: Global Politics and Strategy 57:4, pp. 109-117.

Darby, Phillip; Paolini, A.J. (1994): Briding International Relations and Postcolonialism. In: Alternatives 19, pp. 371-397.

de Carvalho, Benjamin; Leira, Halvard; Hobson, John M. (2011): The Big Bangs of IR: The Myths That Your Teachers Still Tell You about 1648 and 1919. In: Millenium: Journal of International Studies 39:3, pp. 735-758.

Doty, Roxanne Lynn (1993): The Bounds of 'Race' in International Relations. In: Millenium: Journal of International Studies 22:3, pp. 443-461.

Encyclopedia Britannica (2015): Congress of Vienna. http://global.britannica.com/event/Congress-of-Vienna [Accessed on: 25/08/2015].

Hansen, William W; Aliyu Musa, Umma (2013): Fanon, the Wretched and Boko Haram. In: Journal of Asian and African Studies 48:3, pp. 281-296.

Georgis, Miriam; Lugosi, Nicole V. T. (2014): (Re)inserting race and indigeneity in international relations theory: a post-colonial approach. In: Global Change, Peace and Security 26:1, pp. 71-83.

Grovogui, Siba N'Zatioula (1996): Sovereigns, Quasi Sovereigns, and Africans. Race and Self-Determination in International Law. Minneapolis, London: University of Minnesota Press.

Hoechner, Hannah (2011): Striving for Knowlede and Dignity: How Qur'anic Students in Kano, Nigeria, Learn to Live with Rejection and Educational Disadvantage. In: European Journal of Development Research 23, pp. 712-728.

Jackson, Richard; Jarvis, Lee; Gunning, Jeroen; Smyth, Marie Breen (2011): Terrorism. A Critical Introduction. Hampshire: Palgrave Macmillan.

Jones, Branwen Gruffydd (2006): Introduction: International Relations, Eurocentrism, and Imperialism. In: Jones, Branwen Gruffydd (ed.): Decolonizing International Relations. Rowman & Littlefield Publishers Inc.: Lanham, pp. 1-19.

Krishna, Sankaran (2001): Race, Amnesia, and the Education of International Relations. In: Alternatives 26, pp. 401-424.

Lovell, Julia (2011): The Opium War. Drugs, Dreams and the Making of China. Basingstoke, Oxfod: Picador.

McClintock, Anne (1995): Imperial Leather. Race, Gender and Sexuality in the Colonial Contest. New York, London: Routledge.

Mignolo, Walter D. (2000): Local Histories/Global Designs. Coloniality, Subaltern Knowledges, and Border Thinking. Princeton, Oxford: Princeton University Press.

Morgenthau, Hans J. (1948): Politics Among Nations. The Struggle for Power and Peace. New York: Alfred A. Knopf.

Onapajo, Hakeem; Uzodike, Ufo Okeke (2012): Boko Haram terrorism in Nigeria. In: African Security Review 21:3, pp. 24-39.

Olawale, Salami B. (2014): The Prelude to Babangida Regime's Foreign Policy Initiatives. In: Mediterranean Journal of Social Science 5:3, pp. 81-85.

Persaud, Randolph B.; Walker, R.B.J. (2001): Apertura: Race in International Relations. In: Apertura 26, pp. 373-376.

Pletcher, Kenneth (2015): Opium Wars. In: Encyclopedia Britannica. http://global.britannica.com/topic/Opium-Wars [Accessed on: 16/08/2015].

Ruggie, John Gerard (1993): Territoriality and beyond: Problematizing Modernity in International Relations. In: International Organization 47:1, pp. 139-174.

Salter, Mark B. (2002): Barbarians and Civilization in International Relations. London: Pluto Press.

Said, Edward W.(1994): Culture and Imperialism. New York: Vintage Books.

Said, Edward W. (2003[1978]): Orientalism. London: Penguin Books.

Seth, Sanjay (2011): Postcolonial Theory and the Critique of International Relations. In: Millenium: Journal of International Studies 40:1, pp. 167-183.

Seth, Sanjay (2013): Postcolonial theory and the critique of international relations. In: Seth, Sanjay (ed.): Postcolonial Theory and International Relations. A critical introduction. London, New York: Routledge, pp. 15-31.

Shaw, Karena (2002): Indigeneity and the International. In: Millenium: Journal for International Studies 31:1, pp. 55-81.

Sesay, Isha (2015): #BringBackOurGirls, one year on: 'We should all feel shame' http://edition.cnn.com/2015/04/14/opinions/sesay-bring-back-our-girls-one-year-on/ [Accessed on: 25/08/2015].

Showalter, Dennis E. (2015): World War I. http://global.britannica.com/event/World-War-I [Accessed on: 25/08/2015]

Sørensen, Georg (2011): 'Big and Important Things' in IR. Structural realism and the neglect of changes in statehood. In: Booth, Ken [ed.*]: Realism and World Politics. Oxon, New York: Routledge, pp. 107-123.

Teschke, Benno (2003): The Myth of 1648. Class, Geopolitics, and the Making of Modern International Relations. London, New York: Verso.

The Guardian (2014): Michelle Obama: Barack and I see our own daughters in Nigerian schoolgirls. http://www.theguardian.com/world/2014/may/10/michelle-obama-nigeria-schoolgirls-kidnapping-boko-haram [Accessed on: 25/08/2015]

Tonwe, Daniel A.; Eke, Surulola (2013): State fragility and violent uprisings in Nigeria. In: African Security Review 22:4, pp. 232-243.

Waltz, Kenneth N. (1979): Theory of International Politics. Reading et al: Addison-Wesley Publishing Company.

Weeraratne, Suranjan (2015): Theorizing the Expansion of the Boko Haram Insurgency in Nigeria. In: Terrorism and Political Violence, pp. 1-25.

Yousafzai, Malala (2015): My Open Letter to the Abducted Chibok Schoolgirls. https://medium.com/stronger-than/malala-s-open-letter-to-the-abducted-chibok-schoolgirls-4af420a5d19d [Accessed on: 25/08/2015].

Yusuf, Hakeem O. (2013): Harvest of violence: the neglect of basic rights and the Boko Haram insurgency in Nigeria. In: Critical Studies on Terrorism 6:3, pp. 371-391.

A new era for global energy governance?
The environmental imperatives and the EU perspective

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Abstract

The ongoing restructuring of the global energy scene necessitates both national governments and energy associated institutions to reconfigure their agenda, reconsider their priorities and even undergo internal reforms in order to adapt to the current and future energy trends. The prospect of global energy governance, within a reformed institutional framework, emerges as a pivotal issue for global politics. The purpose of this research paper is twofold; to analyze the evolution of global energy governance and energy institutions around two key topics: the expansion of renewable energy (RE) sources and technologies and the climate change mitigation. Besides, to identify the role of the European Union (EU) as global energy and environmental actor. The research paper will focus on the EU's positioning in the international energy and environmental initiatives and the role of renewable energy (RE) in its energy policy configuration.

Keywords

Climate change mitigation, European Union (EU), energy transition, environmental protection, global energy governance, renewable energy.

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Introduction

Multiple changes afoot the global political scene, with the most noticeable to be the rise of new economic poles beyond the traditional ones. The interplay between the traditional major powers and the emerging, shape the current political dynamics marked by power dispersion and intense interdependences. In this contemporary global context, important transitions take place around the issues preoccupying traditionally the international energy agenda. *Many of the long-held energy tenets of the energy sector are being rewritten* (WOE, 2013).The quest of secure, fairly –priced and environmentally friendly energy sources remain the core element shaping the international energy agenda. Remarkable are though the shifts we identify in the determinants of the same agenda namely the energy mix trends, the energy flows and the supply-demand chain centre of gravity.

The dispersion of political power, due to the emergence of new economic superpowers, accrues the multi- polarity of the international system. At the same time, the new critical energy challenges arise lying at the intersection of conventional energy security concerns and the emergence of environmental imperatives due to climate change and energy resources scarcity. These two facts – power multi- polarity and the renewed energy challenges are inextricably interlinked in the configuration of the new poles of the global energy system. The relationship between energy transitions and international security is differentiated from the past and a new energy order emerges: the need to move to a de-carbonized and affordable energy system would be the latest in a long series of global energy transitions (Lesage et al., 2010).

Fossil fuels will continue to dominate the global energy demand and consumption and climate change mitigation as well as the realization of other environmental goals will continue to be subjected in domestic and international energy policies. However, the rise of renewable energies, in the race for clean energy economies, could transform radically the geographical distribution of the world's energy resources resulting in the reconfiguration of global energy system. Energy related institutions should get adapted to this newly shaped global energy structure while, new energy institutions arise in order to fill in the regulatory gap caused.

This research paper investigates the interplay between the environmental concerns and energy use as an important component for the global research agenda regarding energy governance. We try to bridge multiple issues areas and to explore the connection among them in order to evaluate the effectiveness of RE expansion in climate change combat but principally the way the question of environmental sustainability became a core element of the energy global institutional context and one of the EU energy policy pillars

Literature Review

Energy issues constitute a rich but rather underexplored theoretical field for IR and global governance scholars and policy makers. Traditionally, environmental politics, both their global and regional dimensions, dominate the relevant literature with early scholars focusing on the way international community dealt with environmental issues (treaties, institutions etc.) and more recent ones taking into consideration the economic development quest. As Falkner argues (Falkner, 2014), one of the key factors that has brought together the global environmental politics study and energy research is the threat of climate change. In this research paper, energy and environmental issues are considered inextricably connected. We are in accordance with Falkner's

argument and we argue, further, that RE expansion has also contributed to the merging of environmental and energy IR research.

In a similar way, extensive literature exists around the issue of the EU as global actor in international environmental politics. The external energy relations of the EU have attracted the academic interest in the aftermath of the gas supply crises of 2006- 2009 and they cover mostly the geopolitical aspects of the relation between the EU and its major energy partners. The evolution of EU energy policy by means of concrete goal setting, including climate change mitigation through RE expansion and the pursuit for a "common" external energy voice has contributed to the evolution of the notion of the EU actorness in global energy politics.

The majority of energy politics scholars point out the fragmentation of global energy governance (Florini, Sovacool, 2011) in terms of the existing institutions dealing with energy issues and their performance. This research paper draws the attention to two key facts. Due to the shifts occurring in the global energy system, both contemporary energy governance and the relative research have to merge traditional energy security concerns (security of supply, oil pricing etc.) with the quest of environmental sustainability. The climate change mitigation, having RE expansion as a key tool, is restructuring, thus, global energy governance as a notion and as a global politics imperative.

Theoretical Framework

Energy and environmental are both multidisciplinary issues by nature and research study. This research paper focuses on the intersection of global energy and environmental politics analysed through the theoretic lenses of International Relations (IR), EU actorness in international affairs and the EU policymaking process.

More specifically, the concept of global energy governance will be, more narrowly, built upon the subfields of global governance and institutionalisation. The study will be developed around the international organisations dealing energy and RE expansion. The case study of the EU's energy and environmental actorness, focuses on the EU energy and climate policy goals configuration, given the special nature of the EU; i.e. a transnational institution, with growing and challenging energy demands with an international status allowing it to pursue cooperation schemes.

It will become, however, apparent that the analysis will be developed wider than the strict boundaries of IR (institutionalisation/governance theories) and the configuration of the EU energy policy, integrating International Political Economy (IPE) which takes into consideration the economic and trade flows, production and fiscal limitations and the public-private sectors, often, competing interests.

Conceptualization & Operationalization

The notions of governance & global governance

Conceptualizing and arriving to a common understanding of the notion of governance has begun to preoccupy the various disciplines of IR and public policy research area in recent decades. However, we can argue that the question of governance, within the global world, order has been crucial for the development of the different theories of world politics.

The rationalist paradigm in IR, has traditionally associated the term "governance" with the state actors and national governments, based on the main presumption of states being the key actors in international relations striving to maximize their own power and security. Hence, only states can provide the means for governance exercise.

More recent IR theories have focused their analysis on governance exercise by multiple actors such us: non- states actors; international organizations, non- governmental organizations (NGOs), transnational corporations, civil society movements etc. In the absence of a formal world government (Bull, 1977), (Miller, 1998), the governance of the global-scale issues cannot be handled solely by the state actors.

In general terms, governance arises when the nation-states understand the existing interdependence between them; the power exercise and behavior of each national state within the international system, affect the degree of resources, capabilities, and influence in the international affairs of the other states. Interdependence could increase the conflicting situations between the states when the interests pursue of an individual state interferes or overlaps the efforts of the others to achieve their own goals. Interdependence, at the same time, offers the basis for cooperation and collective -action; the more intensive the interdependence becomes, the more imperative the need of cooperation becomes (Nye, Keohane, 1997). The nation states' interests are inextricably interconnected to the extent to which the inability of cooperation frequently produces joint losses instead of common gains.

Within this theoretical framework, the concept of governance can refer to a multitude of processes where the various actors of the international system use mechanisms and rules in order to achieve certain desired goals. Governance connotes joint goal- oriented activities. It implies a system of rule that cannot be sustained by a traditionally organized governmental system.

The globalization process has accelerated the academic study upon the notion of governance, and mostly the notion of global governance. Globalization's main consequence is the intensification and the interdependence of economic and social activities thus, the emergence of an international network. Within this network, the volume of interaction is so great that the operative causes of many facts can be found in another geographic area or activity sector.

The IMF has considered, in 2000, four aspects of globalization: trade and transactions acceleration, capital and investment movement, migration and movement of people and the dissemination of knowledge and technology. However, the most important aspect regarding the current globalizing processes is the rapid and continuous way of interaction between business and work organization, economic transactions, socio-cultural resources and the natural environment.

The globalization associated aspects bring into play the question of global governance in a more imperative way. The multitude of actors and the multifaceted results of their actions amplify the demand for governance in international affairs either require a set of new rules or the establishment of a cross-border decision-making process. In the absence of a global government, a cross-border rule setting is a difficult task (Florini, Sovacool, 2009). The global economic crisis has proved that globalization renders the national governments less capable to deal effectively with issues preoccupying their state's territory.The current environmental challenges such as climate change,

cross-boundary water and air pollution, and over-fishing of the ocean are, also, directly linked to globalization.

There exist two options for global governance. On the one hand, the nation-states proceed to the signing of treaties or international agreements that serve as international guidance regarding global affairs and on the other, nation states pursue the institutional arrangement of international affairs via the evolvement of international organisations; World War II has been succeeded by a plethora of international organisations, with the United Nations (UN) to be the more preeminent of them, founded to deal with a range of global issues, from world peace to environmental sustainability, which nation states seemed to have difficulties addressing. The effectiveness of an international institution is measured by the extent to which its operation impels the various actors to behave in a different way than they would in the absence of such an institution.

The emergence of global energy governance

The nation states have been always the central players regarding energy resources management and environmental issues. The link between energy, economic development and national security has often made governments reluctant to address energy in global governance (Karlsson, 2011). However, the energy and environment issues constitute the most typical example of a multifaceted affair of global interest that implies the interaction of numerous and heterogeneous state and non-state actors.

The globalization era has affected also energy and environmental issues as governments have progressively given up the control of the strategic sectors of their economies by putting more confidence in markets, private initiatives and technology evolution (Yergin, 2011). The energy sector has been heavily influenced by these developments and new areas to investment and exploration have been opened led, principally, by private companies.

Energy and environmental issues, mostly climate change, are by their very nature transnational affairs since action responsibilities are difficult to attribute and the activities of one nation state might affect proximal and faraway regions (Luterbacher et al., 2001)

The energy sources scarcity coupled with their uneven distribution and the existing differences in natural constraints could influence the balance of power between nation- states. Additionally, the environmental challenges present an increased global challenge. They are expected to intensify the imbalances and the inequalities between developing and developed countries thus, to become a more frequent underlying reason of interregional and international disputes.

These new types of conflict will require the creation of new types of international interaction and cooperation. The current international structures seem insufficient to alleviate the current situation, particularly regarding climate change mitigation, and thus the reinforcement of the existing international institutions dealing with relevant issues becomes more and more essential.

Admittedly, the issues pertaining global energy governance require an innovative approach regarding governance at international level. The setting of rules that the global governance implies has to face two basic conceptual problems: the definition of common goods and the definition of externalities. The energy field includes numerous public goods issues and cross- border

externalities which are beyond the jurisdiction of national governments to address individually (Florini, Sovacool 2009).

In economic terms, the tragedy of the commons (Garrett Hardin,1968)(ElinorOstrom, 1990), signifies the depletion of a shared resource by individuals or nation states acting in an independent and rational way serving each one's self-interest, despite the understanding that the depletion of the common resource is harmful to the long-term common best interests. In recent years, the concept of commons is considered in relation to the issue of sustainable development engaging the economic growth with environmental protection, and the debate over global warming. It is related, also, with a variety of energy resources depletion such as water, deforestation and convention, non-renewable sources such as oil, gas and coal.

The trans-boundary externalities are caused by incidental byproducts of activities; Trans-boundary negative externalities, with environmental pollution to be the most obvious example, arise when the activities taking place within the territory and jurisdiction of one state nevertheless produce, normally unintended, consequences that affect the welfare of another state (Young, 1997).

Methodology

This study has been based in a combination of research tools as for energy and environment are multifaceted issues and they are more appropriately studied and better understood via a multidisciplinary analysis.

At a first place, we have used a descriptive research methodology in order to outline the current global energy trends. Following, based on the IR institutionalization theory, we argument on the emergence of energy governance institutionalization and the climate change mitigation factor.

For the scope of this study, we are going to present International Renewable Energy Agency (IRENA), the Renewable Energy and Energy Efficiency Partnership (REEEP) and International Energy Agency's (IEA) contribution to RE promotion .The selection was based on three criteria; they are outside the United Nations (UN) system their focus on RE sources and technologies and the "international" dimension of their jurisdiction. At the final part, we analyze the case study of the EU as a prominent example of energy transition through concerted efforts for RE development.

Analysis and Findings

The current global energy trends and challenges

Admittedly, the primary energy sources, oil and gas, have been politically charged commodities (Goldthau, Vitte, 2010) mainly due to the consumers concerns about supply security of supply and accessibility to the limited resources.

In their attempts to establish effective global energy governance tools, states, non –state actors and the various energy policy makers, have been primarily preoccupied by the geopolitical dimension of energy security and the supply chain smooth operation. It is important, though, for nation states, policy makers and energy scholars to broaden their perspective on how global energy governance can be achieved rather than focusing exclusively on the energy supply side and, thus, hydrocarbons transportation from producers to consuming countries. The effectiveness of the

current institutional architecture in setting up rules has to be accessed as well as the ability to assure the smooth operation of energy markets, which are the major actors of the global energy system. Besides, the institutional architecture of global energy system should be evaluated on the basis of the necessary reforms in order to respond effectively to the following major trends of the global energy system:

- The growing global GDP will contribute to the further grow of energy demand especially in the emerging economies. The rise of new consumers, such as China and India change rapidly the framework conditions of global energy markets and reorient energy commerce flows from West to East.

- An energy mix transformation is observed worldwide, with a decreasing volume in oil consumption and a gradual rise of natural gas. In recent years, a global gas market is under development driven by the expansion of liquefied natural gas (LNG) trade that is projected to increase especially in the Asia- Pacific region. The falling of indigenous gas resources have contributed also to the steady growth of shale gas drilling especially in North America.

- Environmental sustainability and climate change mitigation emerge as a global energy target. The steady increase in the use of renewable energy sources in a global scale creates the conditions for the development of a renewable energy sources (RES) global market. China is a pioneer in renewable energy (RE) technologies worldwide competing with USA and the EU. Besides, the Fukushima nuclear accident in 2011 raised questions of nuclear plants future and the possible alternative of this type of energy source.

Institutionalization of global energy cooperation. Climate change mitigation and RE promotion

Douglas North defines institutions (Douglas North, 1990) as the rules of the game according to which the various actors play. Institutions are structured by informal (declarations, norms) and formal constraints (rules, regulation, law enforcement) and they usually make use of an enforcement mechanism (Goldthau, Vitte, 2010).

The study of institutionalization of global energy cooperation is based on the assumption that the increasing interdependence of energy and environmental issues in a global scale increases, as well, the burden of cooperation failure. The energy market failures make the role of institutions crucial in setting incentives for cooperation and competition, in terms of lowering the prices and enhancing the quality of products and services, amongst state and non-state actors.

This study attempts to explain how the international energy institutions can increase the governments' concern on global energy and environmental issues and how they can increase the national capacity in dealing with these issues and setting –up a norm – generating process on commonly defined goals in the field of RE promotion and climate change mitigation.

Since the 1990s, climate change has become a major challenge, for both global and energy politics, with the core dividing line between advanced and developing economies (Dreyer, Stang 2014). Developing countries charge the developed ones with the primary responsibility of greenhouse gas emissions and remain reluctant to take on binding emission reduction targets (Dreyer Stange 2014).

Renewable energy promotion is a key component for a global sustainable energy transition and one of the major avenues to reduce CO2 emissions (Karlsson-Vinkhuyzen, 2012). The high cost of initial installation and implementation hinders large –scale renewable energy technologies investment in developing countries.

The creation of a stable and encouraging investing environment is based on a multilateral coordination including economic and trade provision, technology transfer, environmental and climate change mitigation treaties and other global political economy tools. Coordination in RE promotion emerges as a global public policy issue.

The **International Energy Agency (IEA)** was established in 1974, following the oil shocks in 1970s, in the framework of OECD oil consumer countries. IEA's main objective is the prevention of the global oil market malfunction and the creation of oil strategic reserves equal to 90 days of prior year's net for their respective oil imports.

IEA constitutes the most significant energy research organization. IEA's annual reports and databases consist of an important scientific tool for all energy actors, state and non-state, in the assessment of the present and expected energy facts and figures. It could be argued that IEA's scientific inputs could contribute positively in the day to day smooth functioning of global energy markets.

IEA is usually criticized for being a closed inter-governmental organization, with its membership limited to the OECD countries, promoting primarily oil consumption interests. A review of IEA membership status including the future major energy consumers like BRICS countries would definitely boost international energy cooperation and contribute positively in balancing global oil markets.

The emergence of sustainable development, as international policy objective, and the raising share of RE production and consumption, in order to tackle climate change, present a challenge for IEA. The establishment of IRENA in 2009 has led to a reconsideration of the prospects of renewable and sustainable energy solutions by IEA who added a separate RES division within the organization.

.The **International Renewable Energy Agency (IRENA)** was officially established in 2009[68] as the first intergovernmental organization dealing exclusively with RE issues and supporting member-states in their transition to sustainable energy solutions. IRENA vision is to offer an international platform for information and technical exchange as well as synergies and cooperation for all forms of RE.

IRENA is based in the United Arab Emirates and counts more than 149 members including the EU and recently China, a country with great potential in RE power production.

The governments of Germany, Denmark and Spain provided their strong support to IRENA's creation which provoked IEA's objections as the three countries are also IEA members.

[68] The idea of an RE international organization creation for RE lay back to 1981 United Nations Conference on New and Renewable Sources of Energy in Nairobi

IRENA's creation, itself, proves RE's growing importance in the global energy mix and the potential of an RE global market creation. However, IRENA is still in the making, acting mainly as an advisory body without imposing specific binding rules and constraints in its member states.

The United Kingdom and other partners launched the **Renewable Energy and Energy Efficiency Partnership** (REEEP) in 2002 at the Johannesburg World Summit on Sustainable Development (WSSD). Gathering 358 member organizations including NGO's, governments, industry associations and banks, REEEP became an international non-governmental organization in 2004 moving its headquarters to Vienna, Austria. REEEP's mission focuses on the reduction of greenhouse gas emissions and the acceleration of global market for sustainable energy primarily in developing and emerging countries markets (Parthon et al., 2010). REEEP is trying to identify which RE source and energy efficiency technology is the most appropriate for a specific region, advising its partners accordingly.

REEEP agency is differentiated from the other global energy agencies in three ways; REEEP has a different, more flexible, structure compared to the international governmental organizations, the majority of REEEP partners are non-governmental organizations (NGO) heads and it includes members from the RE industry and the financial institutions. The positive aspect of REEEP is the engagement of RE public and private actors, which, however has downsides: Regional and sectoral partners are willing to promote RE technologies at their benefit but they abstain from REEEP annual funding program, a fact that obliges the organization to be only be capable for short-term planning projects (Florini, Sovacool, 2009). Besides, the mission of REEP is applicable to a smaller scale compared to IEA or IRENA (Florini, Sovacool 2009). Thus REEP's activities focus on a more regional level.

Finally, REEEP follows an interesting funding process trying to fund exclusively the projects that are based in scale up business models and could be implemented in different countries, energy markets and regulatory frameworks. REEEP receives its funding from the engaged governments, basically from the UK and Norway, but also from banks, NGO's and business units.

IRENA and REEEP formalized their working relationship with a Memorandum of Understanding signed between the two bodies in 2011. Their co-operational framework will be based in the information and expertise exchange for a common synergy towards the enhancement of public awareness in favor of RE adoption.

The evolution of the EU as global energy and environmental actor

The EU is a *suis generis* case in the meaning that is neither traditionally understood as intergovernmental, regional organization nor, a state (Bretherton, Vogler 2006). Thus, both rationalist, prioritizing states as actors, and pluralist, conceptualizing a multi-actors system, approaches have not conceptualized the EU as international actor.

Perceiving the notion of actorness as the ability to stand as entity within the internal system and to exert influence beyond its borders, EU is an important external policy actor, whose influence is in constant transformation due to its internal developments (enlargements, Eurozone crisis etc.) in various policy areas, like the energy and environmental issues.

Energy has been the cornerstone of European integration. Steel and coal served as the pillars of the European Communities in early '50s. As the EU member-states industries and economies began to be depended on hydrocarbons use, their energy needs acquired an international dimension; the oil crisis of the '70s and the current gas disputes between Russia and Ukraine have shown that the lack of sufficient indigenous resources of the EU member–states causes severe imbalances between supply and demand, thus, making the EU dependent on foreign energy suppliers. Hence, energy security emerges as a core issue for the EU's external relations and policy orientations.

The Lisbon Treaty introduces a new legal status for the EU's international energy actorness. Also known as Reform Treaty, the Lisbon Treaty aimed to modernize EU structures so that EU functions more effectively after the entry of 12 new members. In addition, the Lisbon Treaty aims to strengthen the EU presence in the international affairs scene through the attribution of an "international legal status". This status will enable the EU to increase its role in the international scene and to promote its values and interests. The treaty supports the development of a common and cohesive foreign policy and the unity of the external action of the Union in all policy areas, including energy and environmental issues

Lisbon Treaty marks energy as priority domain, for the first time since the Founding Treaties. According to the Lisbon Treaty, the EU energy policy coordination should be based on the solidarity principle between member states, especially during energy supply crises. However, the exclusive right of each member-state to determine the operating conditions of its own energy resources, to choose its energy mix and the general structure of its energy supply will not be canceled. The Treaty does not provide a specific alignment mechanism of the EU member –states national energy interests.

The EC Communication on security of energy supply and international cooperation- "The EU energy policy: Engaging with partners beyond our borders" COM (2011) 539 published in 2011, is based on Lisbon's Treaty legal implications in the energy policy domain. This is the first EC Communication that, explicitly, invites the EU member -states to define objectives and joint actions in the field of the EU external energy relations.

This Communication tries to create a solid basis for a coordinated cooperation strategy between the EU and its energy partners in order to avoid the fragmentation of the EU internal energy market. The Communication contains a list of external energy policy recommendations including, inter alia, the strengthening and the modernization of the global energy governance system in order to facilitate the promotion of sustainable energy sources via the active cooperation between the EU and the International Energy Agency (IEA), the International Energy Forum (IEF), the International Partnership for Energy Efficiency Cooperation (IPEEC) and the International Renewable Energy Agency (IRENA).

Sustainability and RE development. An EU energy policy pillar[69]

Environmental sustainability presents a branch of the EU internal energy market integration as well as an important parameter of EU's energy security with significant external dimensions. The EU has entered actively the international debate on climate change mitigation since 1990's as supporter of Kyoto Protocol and the United Nations Framework Convention on Climate Change (UNFCCC) making its first commitments on emissions reduction.The EU renewable energy strategy is a key instrument towards a sustainable energy mix and the reduction of fossil fuels dependence and it is placed amongst the most ambitious ones on a global scale (Kottari, Roumeliotis 2013).

The significant support of the EU, and its member-states, for the renewable energies (RE) expansion is reflected in the Directive 2009/28/EC (hereafter the Directive) launched by the European Commission (EC) in 2009. This Directive, introduced binding legislative measures for the implementation of the 20-20-20 set of goals. The Directive includes inter alia the increase of the share of renewable energy, in the total gross final consumption (Segers, 2008) of the EU member–states, to be 20% by 2020. The Directive, also, requires the simplification of the administrative regimes faced by renewable energy, together with improvements to the electricity grid, to improve access for electricity from renewable energy.

The "EU package on climate and energy", which was agreed on by the European Parliament and the European Council in December 2008, passed into law in June 2009. According to the EC's 2013 Renewable Energy Progress Report, since the adoption of the Directive most EU member-states have experienced a significant growth in their renewable energy consumption. As data and analysis prove, the EU as a whole is on its trajectory towards the 2020 targets with a renewable energy share of 13% in 2011. Nevertheless, the RE implementation progress varies greatly across the EU member-states. Germany, Sweden, Denmark and Austria are ranked in the first places of both RE targets implementation and energy production from RE across the different RE technologies while some other states need to undertake additional efforts.

Second, as said above, the Directive introduces, for the first time, mandatory national targets. Each member-state should enhance the effectiveness of its RE policy, so as to bridge the gap between the member-states having a well developed RE industry and those who do not, and in order to create a stable investment environment for the development of all RE technologies. The holistic, target based logic of this Directive seems, though, to set an important barrier towards the successful local implementation of RE policy and technologies (Michalena, Hills 2012).

Indeed, the issues related to RE are characterized by a great complexity stemming from the variety of potential RE sources and technologies. This complexity results from each member-state's different capabilities and special conditions and factors favoring, or not favoring, the development. Under the provisions of the Directive 2009/28/EC, member– states are required to draw up National RE Action Plans (NREAPs) including the provisions of each member-state to facilitate the RE development in order to achieve the 2020 target. According to the EU Commission

[69] This sub-section is part of the author's publication entitled RES development on the EU- the Greek case : Great potential with modest results, EUCERS Newsletter no 35, 2014: http://www.kcl.ac.uk/sspp/departments/warstudies/research/groups/eucers/newsletter35.pdf

Communication of 2011, entitled "Renewable Energy: Progressing towards the 2020", a review of NREAPs shows a faster pace of RE growth for all member-states in the years up to 2020. This fact could signify that the new approach starts bearing fruits.

The negative effects of the Eurozone crisis on the RE sector, especially regarding the capital costs, should not be neglected as well. The economic crisis combined with the delayed infrastructure projects, administration barriers and disruptive changes to support schemes, hampers the full implementation of 2020 RE targets.

2030 framework for climate and energy policies. What a place for RE?

The recently adopted EU 2030 framework for climate and energy policy responds to the UN call for a conclusion on climate change mitigation targets by March 2015, in order to set the agenda of the UN meeting of December 2015 in Paris, seeking a new global climate accord. The adoption of this framework may be described timely wise allowing the EU to defend its place as the global pioneer in setting climate mitigation measures (Buchan et al., 2014). However, this cannot even imply the effectiveness of these goals in regional (EU) level or a substantial positive contribution to the required, as defined by the environmental scientists, efforts required in a global scale.

The adoption of the 2030 framework for climate and energy policies was not only a matter of EU leadership in the international environmental negotiations; it was also an internal policy necessity as it was high time to review comprehensively and correct the inconsistencies of the 2007-2009 Climate and Energy package resulted in the "20-20-20" goals by 2020 (Marcu, Egenhofer 2014).

However, contrary to the 20-20-20 package, in 2030 framework, renewable energy regime is rather loose; a 27 % goal is set, "binding at EU level", but without the definition of national binding targets. It is highly disputable whether this goal is going to be delivered collectively, at EU level. It is, accordingly, highly disputable if national renewable energy policies would be adjusted to the 27% goal. The analysis of the previous section has precisely reveal EU member-states discrepancies in renewable energy promotion and the unsuccessful successful local implementation of RE policy and technologies.

Renewable energy expansion under the 20-20-20 regime has been primarily criticized for producing expensive forms of carbon abatement ((Buchan et al., 2014). However, renewable energy been proved more efficient in producing clean energy forms than the Emissions Trading System (ETS) did. ETS, though, has been chosen as the main EU's instrument (40% emission reduction) to combat climate change up to 2030.

Conclusions & Discussion

Similarly to other issues preoccupying the international relations agenda, it is more likely to continue to observe in the energy field various actors interplaying, often in a contradicting way, and trying to set up rules to serve their own interests,. Accordingly, like other international organizations, energy organizations are called to adapt to economic and geopolitical power shifting. Together the challenge of RE expansion and the energy transition towards low carbon economies constitute a compelling rationale for a sustained research agenda in global energy governance.

The institutional framework of the global energy governance is rather fragmented and divided up by energy source or sector. *The international legal regimes and the organizations dealing with energy tend to be limited in scope and membership with few synergies and are ill-equipped to handle the energy world of the future* (Dreyer, Stang 2014).

The emergence of RE sources and technologies, as a key tool for climate change mitigation, made the foundation of an organization like IRENA imperative. Whether the world needs another energy institution or a kind of an overarching energy institution with an integrated approach towards the energy and environmental issues able to harmonize the energy policies of the various energy players is a broader question but, such a prospect seem highly unlikely. An overarching regime able to bridge fundamental gaps in the interests of the players – producers, importers, transit countries, old and new CO2 emitters – is not very encouraging for the future (van de Graaf, 2012).

IEA's and IRENA's roles are supposed to be complementary, but – in reality their cooperative scheme is only limited to a joint approach of RE data and statistics and in expertise sharing in the fields of technology and operation. These initiatives, though, do not really open an institutionalised dialogue about the future of RE further deployment amongst the member-states of the two organisations, nor does it support the active engagement of the RE private actors. (Kottari, Roumeliotis 2013)

The EU as an energy consumer *par excellence* and due to its normative power will continue to attract the global energy interest. However, EU energy and climate policies, under the burden of the intergovernmental decision making process, are often competitive rather than complementary. EU needs to adopt a more integrated approach of global energy and environmental issues to achieve a higher level of credibility and to enhance its influence. *The EU will need to strengthen its ability to act coherently, consistently and as one at international level and engage in strengthening current multilateral regimes in energy field* (Dreyer, Stang 2014).

The newly formed European Commission, after the European Parliament elections, has reserved functional changes for the implementation of the EU energy and climate policy. The DGs energy and climate have been combined under a common portfolio, as recognition of the common and concerted action should be taken in both sectors. An Energy Union has been created in order to support efficiently member states in decreasing energy imports and the EU in leading the fight against climate change.

Although the so –called 20-20-20 targets have explicitly set rules towards a substantial reduction of green house gas emission through renewable energy and energy efficiency promotion, the new 2030 framework for climate and energy policies downgrades these policy instruments towards the Emission Trading Scheme (EU-ETS). We have observed that country-specific support schemes for renewable energy development haven't acquired the desired results and the RE development co-benefits haven't reached EU peripheral countries. We argue that effective EU RE governance manages to counterbalance economic efficiency, technological feasibility and political justice amongst EU member –states. We doubt that the 2030 framework set the appropriate preconditions for a future EU energy transition.

References

Bazilian Morgan et al., 2010: Opinion: An energy approach to climate change. *Energy for sustainable development* 14: 253-255

Betherton Charlotte, Volger John, 2006: The European Union as Global Actor. Routledge

Bull Hedley, 1977.*The anarchical society: a study of order in world politics*, Columbia University Press

Carpenter Anglela, 2012 : The role of EU as global player in environmental governance. *Journal of Contemporary European Research* 8 (2): 167-172

http://www.jcer.net/index.php/jcer/article/view/533/334 (Assessed 20/1/2013)

Buchan et al., 2014: Energy and climate targets for 2030: Europe takes its foot off the pedal, Oxford Institute for Energy Studies Comment: http://www.oxfordenergy.org/2014/10/energy-climate-targets-2030/ (Assessed 2/11/2014)

Creutzig Felix et al., 2014: Catching two European birds with one renewable stone: Mitigating climate change and Eurozone crisis by an energy transition, *Renewable and Sustainable Energy Reviews* (38): 1015-1028

Dreyer Iana, Stang Gerald. 2014: Energy moves and power shifts. EU foreign policy and global energy security, Report no 18, EU Institute for Security Studies.

European Commission, Climate Action, 2030 framework for climate and energy policies: http://ec.europa.eu/clima/policies/2030/index_en.htm

European Commission, DG Energy, Renewable Energy- Targets by 2020: http://ec.europa.eu/energy/renewables/targets_en.htm

European Commission, Directive 2009/28/EC on the promotion of the use of energy from renewable sources and amending and subsequently repealing Directives 2001/77/EC and 2003/30/EC: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=Oj:L:2009:140:0016:0062:en:PDF

European Commission, Communication 2011(31) Renewable Energy: Progressing towards the 2020 target: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0031:FIN:EN:PDF

European Commission, Communication (2011) 539 The EU energy policy: Engaging with partners beyond our borders: http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52011DC0539&from=EN

European Commission, Communication 2012(271) Renewable Energy: a major player in the European energy market: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2012:0271:FIN:EN:PDF

Eurostat, Share of renewable energy in gross final energy consumption: http://epp.eurostat.ec.europa.eu/tgm/table.do?tab=table&init=1&plugin=1&language=en&pcode=t2020_31

Florini Ann, Sovacool Benjamin K., 2009: Who governs energy? The challenges facing global energy governance. *Energy Policy* 37: 5239-5248

Flues Florens et al., 2014: Designing an EU energy and climate portfolio for 2030: Implications for overlapping regulation under different levels of electricity demand, *Energy Policy* (75): 91-99

Goldthau, Andreas and Witte, Jan Martin, 2010: *Global Energy Governance. The new rules of the game*. Brookings Institution Press

Hardin Garrett, 1968: The Tragedy of Commons.*Science Journal*162 (3859): 1243–1248. doi:10.1126/science.162.3859.1243

International Energy Agency, 2007: Toward a Clean, Clever and Competitive Energy Future:http://www.iea.org/publications/freepublications/publication/GermanyG8.pdf (Assessed 12/10/2011)

International Energy Agency, 2011:Deploying Renewables: Best and future Policy Practice: http://www.iea.org/publications/freepublications/publication/Deploying_Renewables2011.pdf (Assessed 15/1/2012)

Kitzing Lena et al., 2012: Renewable energy policies in Europe: Converging or Diverging? *Energy Policy* 51: 192-201

Keohane, R.O. & Nye, J.S., 1997: Interdependence in World PoliticsIn Crane, G.T. &Amawi, A., *The Theoretical evolution of international political economy: a reader*. New York: Oxford University Press

Kottari Maria, Roumeliotis Panagiotis, 2013: RE Governance Challenges within a "puzzled" institutional map In Michalena E., Hills J., (ed.) *Renewable Energy Governance. Complexities and Challenges*, Springer Publisher; series Lecture Notes in Energy 57: 233-248

Kottari Maria, 2014: RES development on the EU- the Greek case: Great potential with modest results, EUCERS Newsletter no 35: http://www.kcl.ac.uk/sspp/departments/warstudies/research/groups/eucers/newsletter35.pdf

Luterbacher Urs et al., 2001: International relations and global climate change, MIT Press

Mallon,Karl, 2006 :Renewable Energy Policy and Politics: A Handbook for decision making. Oxford:Earthscan Publications

Marcu Andrei, Egenhofer Christian, 2014: The new EU energy and climate package: Passing the test?, CEPS Commentary : http://www.ceps.eu/book/new-eu-climate-and-energy-package-passing-test (Assessed 15/1/2014)

Michalena Evanthie, Hills Jeremy M., 2012: Renewable energy issues and implementation of European energy policy: The missing generation? *Energy Policy* 45: 201-216

Miller Lynn H., 1998: Global Order. Values and Power in International Politics. Westview Press

Ostrom, E. et al., 1999: Revisiting the commons: Local Lessons, Global Challenges.*Science* 284(5412): 278-282 DOI: 10.1126/science.284.5412.278

Ostrom, E., 1990: Governing the commons: The evolution of institutions for collective action. Cambridge University Press

Reiche Dayel, Bechberger Mischa, 2004: Policy differences in the promotion of renewable energies in the EU member states. *Energy Policy* 32: 843-849

Rosenau James, Czempiel Ernst-Otto, 1992: *Governance Without Governement*. Cambridge University Press

Segers R., 2008: Three options to calculate the percentage renewable energy: An example for an EU policy debate. Energy Policy 36: 3243-3248

Van de Graaf Thijs, 2012: How is IRENA reshaping the global energy architecture. *European Energy Review*: http://thijsvandegraaf.be/wp-content/uploads/2012/04/20120329-EER-How-IRENA-is-reshaping-the-global-energy-architecture.pdf (Assessed 16/2/ 2013)

Van de Graaf Thijs, 2012: IRENA should be a platform where anybody who has good ideas is welcomed. *European Energy Review*:http://thijsvandegraaf.be/wp-content/uploads/2012/04/20120524-EER-IRENA-should-be-a-platform-where-anybody-who-has-good-ideas-is-welcomed.pdf Accessed 16 February 2013

Vogler, J. and Stephan, H.R., 2007: The EU in global environmental governance: Leadership in the making? *International Environmental Agreements* 7 (4):389-413

Young Oran, 1997: Global Governance: Drawing Insights from the Environmental Experience. MIT Press

Youngs Richard, 2013: The EU's global climate and energy policies: gathering momentum?, Working Paper no 18, FRIDE – European think tank for global action.

UN's Use of Private Military and Security Companies in Peacekeeping Operations - Is There a Legal Basis?

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Abstract

PMSCs are not only hired by states, the UN makes use of PMSCs as well. Due to the UN member states' passivity there has not been a single peacekeeping operation without the involvement of PMSCs since 1990. But is there a legal basis? The UN Charter neither provides a legal basis for peacekeeping operations nor does it mention PMSCs. For that reason peacekeeping operations were labeled Chapter VI ½ operations and the implied powers doctrine has been emphasized repeatedly as legal basis. May the implied powers doctrine be invoked as well for the use of PMSCs or does this go beyond the scope of its application? Additionally, the peacekeeping principles – the holy trinity – consent, impartiality and use of force only for self-defense, need to be analyzed in the context of PMSCs. In particular, the deployment of PMSCs as security personnel is described in more detail.

Keywords

Holy Trinity - Implied Powers Doctrine – Peacekeepers - Peacekeeping Operation – Private Military and Security Companies – PMSCs - United Nations

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Framing the issue

Recent years have witnessed an increase in the number of PMSCs operating in armed conflicts. PMSCs are not only hired by states, the UN makes use of PMSCs as well. There are two ways how PMSCs can be involved in peacekeeping operations. First: PMSCs can be hired by a member state and seconded to the UN. Second: The UN can hire the PMSC directly. This paper focuses on the second option.

The significance and importance of UN's use of PMSCs becomes even clearer when we examine the development of UN peacekeeping operations and the emerging needs of the future. Peacekeeping operations today are increasingly facing multi layered and challenging conflicts, often in complex environments where peacekeepers are directly targeted. The public perception focuses on the employment of PMSCs for the protection of peacekeepers, convoys and premises but apart from that, PMSCs are also involved in different ways (Pingeot 2012: 24 ff; Østensen 2011: 15 ff.). They are used for the maintenance and operation of high-tech equipment and for demining (Østensen 2013: 36; Sossai 2014: 406; Østensen 2014: 423). Besides that, PMSCs influence peacekeeping operations in an indirect way. PMSCs are hired for the training of peacekeepers. Due to this PMSCs play a part which must not be underestimated for peacekeeping operations. They also seek to gain an even more prominent role in peacekeeping operations. Even though PMSCs do not provide front-line peacekeepers, it is not correct to describe their involvement as limited to security tasks. Nevertheless, since security tasks are still one major field of application of PMSCs this paper will draw special attention to it. The UN Charter neither provides a legal basis for peacekeeping operations nor for the use of PMSCs. Therefore this aspect deserves special emphasis. In this context, the implied powers doctrine and the holy trinity - consent, impartiality and use of force only in self-defense – are of utmost importance.

So far, literature has mainly discussed the use of PMSCs by states. Thereby the status of PMSC personnel under international law and the application of International Humanitarian Law and Human Rights Law have been addressed. Different conclusions were drawn. While some authors submit that there is a legal vacuum, others deny any kind of legal gap. Very few authors problematize the legal basis, instead of that they evaluate the different approaches to regulate PMSCs.

This paper is divided into three main chapters: First the UN's use of PMSCs is shown on an empirical basis by evaluating previous peacekeeping operations, followed by an analysis of the legal basis of peacekeeping operations, focusing on the implied powers doctrine and the advisory opinions of the International Court of Justice (ICJ). The third Chapter deals with the specific situation of PMSCs in peacekeeping operations and questions whether the implied powers doctrine may be invoked as a legal basis as well and examines the compatibility of PMSCs with the holy trinity of peacekeeping.

The UN's use of PMSCs

To determine whether PMSCs are legally allowed to be used in peacekeeping operations it is necessary to identify the different ways of their commitment. It is unavoidable to separate PMSCs

which are entrusted with the fulfillment of the mandate and act as peacekeepers from PMSCs which are contracted to support the mission. To illustrate this classification, reference can be made to the Status of Forces agreement of the UN mission UNMISS, which uses the terms „member of UNMISS" and „contractor" to underline the difference. So far, PMSCs have never been entrusted with the fulfillment of the mandate (Janaby 2015, 167). The main tasks of PMSCs are

- protection of convoys / premises
- logistics
- disarmament, demining (Wulf 2005: 58).-

However, it needs to be determined if PMSCs could be deployed as peacekeepers in future missions. Therefore this paper examines the constellation PMSCs as peacekeepers, too. PMSCs could solve one of the major problems of peacekeeping operations: The member states' reluctance to second national troops to the UN. In particular, the western member states provide a very low number of troops. The status quo on 31st of May 2015: USA 36, Germany 158 and UK 284 soldiers. In contrast, the commitment of some developing countries: Bangladesh 8,078, Ethiopia 7,712 and Pakistan 8,234 soldiers (UN Department of Peacekeeping Operations 2015). After the cold war, various states reduced their national force contingents. At the same time, the permanent five stopped to veto in the Security Council which caused the number of peacekeeping operations to increase rapidly and thus the demand for peacekeeping personnel. Secretary-General Ban Ki-moon stressed the insufficient supply with troops as well: Today we face mounting difficulties in getting enough troops, the right equipment and adequate logistical support, (…) Supply has not kept pace with demand (Ban Ki-moon 2015). So there was a need to substitute national forces and PMSCs were regarded as the best available option to meet this demand (Seidl 2008: 22 f.). PMSCs considered the employment in peacekeeping operations as a new source of income and – even more important – as a means to improve their reputation.

The UN stresses the fact that they only hire Private Security Companies (UN Doc. A/69/338 2014, 2). However, the distinction between security and military companies is not convincing. Usually, the companies offer a wide range of tasks which include security and military tasks at the same time and it is not possible to draw a clear line between these two categories. Due to this it is more precise to state that the UN hires PMSCs to perform security tasks. While at the beginning the release of information on the UN's use of PMSCs was very limited, the amount and frequency at which information is provided have now increased. Although they release lists of contractors, they do not mention the specific tasks which they were hired for.

PMSCs in peacekeeping operations

In May 2014 the UN employed 30 PMSCs (unarmed and armed personnel). They used unarmed security personnel in 11 peacekeeping operations and in one support mission (UNMIL, UNMISS, UNISFA, MONUSCO, UNOCI, MINUSMA, UNIFIL, MINURSO, UNAMA, UNMIK, MINUSTAH, UNMOGIP). For two missions (MINUSTAH and UNAMA) they engaged armed security personnel (UN Doc. A/69/338 2014: 5). In 2013, the UN entered into a three years contract with the Italian company Selex on the use of drones, including personnel for their maintenance and control (Sossai 2014: 412). During the mission in Congo (MONUSCO), the UN

used reconnaissance drones for a better assessment of the complex situation, the protection of the civilian population, the protection of peacekeepers, the monitoring of arms embargoes and the monitoring of streams of refugees. During another mission in Congo (MONUC), the PMSC "Pacific Architects and Engineers" was hired for the management of 11 airfields. They were in charge of essential parts of the mission, drove UN vehicles, were recognized as peacekeepers by the local population, became targets of acts of violence and organized the evacuation of UN personnel (OIOS Audit report 2012; Østensen 2013: 36; Østensen 2011: 17). As the situation in the field got precarious, peacekeepers were withdrawn. The PMSC personnel stayed in the field to fulfill their contractual commitment. Their deployment was described as it may look like war, but it's peacekeeping (Østensen 2011:17; Lacey 2005). During the mission in East-Timor, the UN was supported by DynCorp with helicopters and satellite communication (Østensen 2011: 16). Already during the mission in Bosnia-Herzegovina (UNPOFOR) in 1992 the UN made use of PMSCs on a very broad basis. In total they hired five PMSCs (among others DSL and DynCorp). DSL provided 425 employees composed of 24 nationalities. They included architects, mechanics and analysts. As the mandate grew, the tasks grew as well. DSL provided mechanics and drivers for armed vehicles. Compared to the peacekeepers, the PMSC personnel stayed in the field for a much longer term (House of Commons 2001/2002: Appendix 6). DSL also supported the missions in Mozambique (ONUMOZ) and Angola (UNAVEM) (Lilly 2000: 55). With respect to the mission in Congo, (MONUC) a consortium of PMSCs made an offer concerning high-tech aerial surveillance, rapid police reaction and rapid humanitarian rescue capabilities. The UN rejected the offer. The transfer of these tasks to PMSCs was considered to be unacceptable, in particular because of their reputation as a new generation of mercenaries (Seiberth 2013: 44). The PMSCs also got in touch with the organizational level. For example, the UN Department of Management hired a specialized security firm to determine the structures of the Department of Safety and Security (UN Doc. A/63/379 2008: 7). Another common field of engagement for PMSCs is demining. Among others, Olive Group, EODT Technology, Armour Group and Ronco were hired by the UN (Østensen 2013:46). Moreover, PMSCs are involved at the forefront of peacekeeping operations. The US Global Peace Operations Initiative awarded a major contract concerning the training of soldiers to PMSCs. In numbers: By 2009 54,000 soldiers were trained by PMSCs, 45,000 of them were used in peacekeeping operations (Østensen 2013: 37f.).

To conclude: PMSCs are not used as front-line peacekeepers, but at the same time their use is not limited to the mere protection of UN personnel and premises (Østensen 2013: 35). They play an essential role in peacekeeping missions and contribute to the organization of the missions (Østensen 2014: 424 ff).

PMSCs as security guards

Already since the 1990s the UN uses PMSCs on a regular basis. At the beginning, the UN mainly hired local, unarmed companies for the protection of their personnel, followed by the employment of armed PMSCs in more complex environments where the host states were not capable to provide security for the peacekeepers (UN Doc. A/69/338 2014: 3).

Peacekeeping operations have undergone a significant change. Starting with observer missions in the 1940s, where the use of force was only allowed in self-defense, to robust peacekeeping missions according to Chapter VII UN Charter and authorized to use all necessary means. As a result of that development, peacekeepers themselves became targets of acts of violence. Due to this the demand for security personnel increased significantly. Since 2003 567 attacks on civil personnel have been taken place and 200 people have been killed (UN Doc. A/69/338 2014: 7). The budget for unarmed and armed PMSCs for the period 2013/2014 amounts in total to 42,125,298 US$ (UN Doc. A/69/338 2014:5). For 2016 there is an estimated budget of 244 Bn. US$ (UN Doc. A/68/339 2013: 7). Although resolution 55/232 of the General Assembly prohibits the outsourcing of any tasks which affect the security of personnel, delegations or visitors, in practice this is not be understood as a ban of PMSCs. The UN Guidelines on the Use of Armed Security Services from Private Security Companies as well as the reports of the UN Working Group require the cooperation with PMSCs with respect to security tasks (Cameron / Chetail 2013: 55). The Field Security Handbook represents one of the earliest sources with respect to UN's use of PMSCs. In Annex O it says: Should the host government be unable to provide the requisite security, under such rare and exceptional circumstances the organizations of the United Nations system may protect their offices, premises and personnel by employing security service companies providing armed guards. (the ultima-ratio-principle) (Department of Safety and Security 2006: O-1). The recruitment of PMSC personnel was not addressed in the Security Field Book, but was covered in documents at a later date. The Guidelines on the Use of Armed Security Services from Private Security Companies and the Security Policy Manual need to be highlighted in this context. Both documents were published by the United Nations Department of Safety and Security as a result of the Inter-Agency Security Management Networks. The documents determined that the security of UN personnel is in first place the host state's responsibility. Only in cases where neither the host state nor any other member state is capable to provide security, a private security company may be contracted. The Security Policy Manual (Chapter G No. 21) requires specific preconditions for PMSCs to get hired by the UN. These are listed in Chapter F No. 25 of the Guidelines on the Use of Armed Security Services from Private Security Companies. Among others they made reference to the Montreux Document and require a membership of the International Code of Conduct for Private Security Providers (ICoC). The Guidelines do not mention a membership to the Articles of Association of the ICoC since they were published afterwards. The Articles of Association implement the ICoC. While there are over 700 members to the ICoC, there are only around 160 members to the Articles of Association, so the wording of the Guidelines needs to be adapted.

Also, the UN Working Group drew its attention to the UN's use of PMSCs and evaluated the Guidelines on an expert meeting on 31st of July 2013. They criticized that the monitoring procedure is not executed by the UN itself and that it is not sufficient to rely on the assessments of the companies. Moreover, subcontracts cause a high lack of transparency. The UN Working Group also criticized the scope of application of the Guidelines which is limited to armed PMSCs, the lack of provisions with respect to attribution, the lack of any commitment to respect human rights via due diligence mechanisms and the lack of sanctions (UN Doc. A/69/338 2014: 10). In particular, the limited scope of application marks the Guidelines as insufficient to regulate the UN's use of PMSCs. Therefore there is – according to the UN Working Group - still a need for

an international legally binding convention (UN Doc. A/69/338 2014: 8, 22). At the fourth meeting of the open-ended intergovernmental working group to consider the possibility of elaborating an international regulatory framework on the regulation, monitoring and oversight of the activities of private military and security companies the UN's use of PMSCs was also discussed. The Under-Secretary-General for Safety and Security presented the report of the United Nations Department of Safety and Security. Thereby the ultima-ratio-principle was stressed several times, as well as the fact that there are only three missions where armed security firms are used (Afghanistan, Haiti and Somalia) and the UN's use of PMSCs was classified as a drop in the ocean. Based on the above this conclusion is not acceptable.

Legal basis

UN Charter

The UN Charter does not contain any provision with respect to peacekeeping operations (Feurle 2008: 33). Nevertheless UN peacekeeping operations are widely accepted as a legal instrument (Oswald/Durham/Bates 2010: 3). Neither it is possible to qualify them as chapter VI (pacific settlement of disputes) nor as chapter VII (action with respect to threats to the peace, breaches of the peace and acts of aggression) measures. This finds its expression in the term Chapter VI ½ measures, established by the former Secretary-General Dag Hammarskjöld (Bures 2008: 16). Chapter VI was discussed particularly with respect to early peacekeeping operations, which aimed to monitor ceasefire agreements (Smith 1993: 3). In contrast, Chapter VII was discussed with respect to peacekeeping operations of the newer generation. However, chapter VI cannot be invoked, since it is not in line with the possibility to use force as it is required for peacekeeping operations (Lüder 2004: 15). Chapter VII cannot be invoked either, since peacekeeping operations are not considered to constitute enforcement measures in terms of Art. 39 ff. UN Charter (Landshuter 2007: 53). Furthermore, it is questionable to invoke Art. 51 (Chapter VII) UN Charter, since it allows the use of force only until the Security Council has made a decision. Therefore, as soon as the Security Council has adopted the mandate, it is no longer possible to invoke Art. 51 UN Charter. (Landshuter 2007: 53). The ICJ addressed this question, too. It did neither refer to Chapter VI nor to Chapter VII, but instead claimed the Charter as a whole to be the legal basis for peacekeeping operations and therefore made reference to the implied powers doctrine (Landshuter 2007: 53).

Implied powers doctrine

To ensure that international organizations can fulfill their duties, specific powers are explicitly granted to them in the constituent documents. Prima facie they have only these powers which are mentioned in the constituent documents (Shearer 1994: 547). However, the implied powers doctrine determines the powers of international organizations on basis of their duties (von Arnauld 2012: 49). According to the implied powers doctrine, international organizations need to have the powers which are necessary to fulfill their duties effectively (Ruffert/Walter 2009: Rn 74). This is necessary since the constituent documents come with gaps (Klabbers 2009: 58), so the implied powers doctrine supplements the delegated powers doctrine (Kelsen 1957: 330) The initial point

of the implied powers doctrine is the need for interpretation of the wording of the UN Charter. In the context of international organizations, the teleological interpretation is the prevailing one. The effet utile, which is also mentioned in Art. 31 I and 33 IV of the Vienna Convention on the Law of Treaties, needs to be taken into account to determine the scope of its powers (Ruffert/Walter 2009: 73). The ICJ discussed this question several times. In its advisory opinion Reparation for Injuries Suffered in the Service of the United Nations the ICJ first compared states and international organizations and then focused on the implied powers doctrine. Under international law, the Organization must be deemed to have those powers which, though not expressly provided in the Charter, are conferred upon it by necessary implication, as being essential to the performance of its duties. This principle of law was applied by the Permanent Court of International Justice to the International Labour Organization (…) and must be applied to the United Nations. (ICJ Advisory Opinion Reparation for Injuries Suffered in the Service of the United Nations 1949: 182). The benchmark being essential to the performance of its duties has not been without criticism. Judge Hackworth wrote in his dissenting opinion: Powers not expressed cannot freely be implied. Implied powers flow from a grant of express power, and are limited to those that are "necessary" to the exercise of powers expressly granted. (Hackworth ICJ dissenting opinion Reparation for Injuries Suffered in the Service of the United Nations 1949: 197 ff.).

Despite this criticism, the wide understanding of the implied powers doctrine could prevail, as it is demonstrated in the subsequent decisions of the ICJ. In its advisory opinion Effect of Awards of Compensation Made by the United Nations Administrative Tribunal the ICJ confirmed its position once more (ICJ Advisory Opinion Effect of Awards of Compensation Made by the United Nations Administrative Tribunal 1953: 56). In its advisory opinion Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276, the ICJ once more confirmed that the powers of the UN to maintain international peace and security are not limited to the powers mentioned in Chapter VI,VII, VIII and XII (ICJ Advisory Opinion Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 1970: 52).

To conclude: The ICJ accepted the implied powers doctrine as a means to determine the powers of the United Nations whereby the requirements necessity and essentiality need to be stressed particularly (Janaby 2015: 167).

Specific case of PMSCs

Based on the findings above, the implied powers doctrine constitutes a legal basis for peacekeeping operations. However, the question arises if or to what extent PMSCs may be used in peacekeeping operations. Here it is necessary to differentiate between PMSCs as peacekeepers and PMSCs as contractors. Hence, depending on the classification of the PMSCs as peacekeepers or as contractors different requirements and issues need to be discussed. Likewise, it must not be neglected to analyze the use of PMSCs in light of the peacekeeping principles – the holy trinity – consent, impartiality and use of force only for self-defense.

The requirements for the application of the implied powers doctrine – necessity and essentiality – need to be reviewed for the specific case of PMSCs. If the Security Council determines a situation according to Art. 39 UN Charter and member states do not supply sufficient troops or troops which do not have the requisite training or equipment a case of necessity is given. The issue of insufficient supply of troops has already been addressed in the Brahimi report and in the New Partnership Agenda of the DPKO. They had agreed that the commitment of the member states needs to be evaluated already during the planning stage in order to avoid discrepancy between the actual demand and the resources provided (UN Doc A/55/305–S/2000/809; 1). Likewise, the supply with troops at the requisite pace could constitute necessity in terms of the implied powers doctrine (Cameron/Chetail 2013: 32).

PMSCs as peacekeepers

When PMSCs are used as peacekeepers, basically the same considerations apply as to the question of the legal basis of peacekeeping operations in general. However, with respect to PMSCs there is one specific requirement of the implied powers doctrine, which needs to be stressed in particular. The application of the implied powers doctrine must not contravene fundamental rules and principles of international law. So the question arises whether there is a principle under international law stating that force authorized by the Security Council may only be exercised by states. The UN Charter neither allows nor prohibits the use of force by PMSCs (Cameron/Chetail 2013: 33). Art. 48 UN Charter is invoked to demonstrate that only states may exercise force authorized by the Security Council (Janaby 2015:182). Although Art. 48 UN Charter stipulates a member state's obligation to carry out the decisions of the Security Council, it cannot be concluded that this implies the exclusion of the delegation to PMSCs. The drafting process of Art. 48 UN Charter, during which the inclusion of a reference to Art. 43 was discussed, supports this assumption (Simma et al. 2012: 1377), but at the same time Art. 48 could not be invoked as a legal basis for the delegation of the exercise of force to PMSCs, here the implied powers doctrine needs to be invoked once again. Thereby the rules of delegation have to be respected. The delegating authority needs to possess the delegated power (delegatus non potest delegare). The authority of the Security Council to create peacekeeping operations is now widely accepted. Moreover, the control over the mission must rest with the Security Council, no matter if the use of force is exercised by PMSCs or by states (Cameron/Chetail 2013: 33). As long as the decision making power to initiate peacekeeping operations rests with the Security Council, the delegation of power is regarded as legitimate (Sarooshi 1999: 238 f.). To fulfill these requirements, sometimes a very low benchmark, like periodical reports and the possibility to withdraw the authorization at any time, is set (ECHR 2007: Para 134). Based on this, an exclusion of PMSCs as peacekeepers is not justified.

PMSCs as contractors

When PMSCs are used as contractors (logistics, supply, guards etc.), different considerations need to be made. This time it is not about delegation, it is about treaty-making powers. The treaty-making power could be based on the constituent documents or the implied powers doctrine provided that the treaties serve the goal of effective functioning of the international organization

and promote its purposes and principles (Khan 1969: 74). With respect to the treaty-making powers of the UN, the Charter only provides indications, e. g. Art. 43, 57 and 63 UN Charter. In practice the UN signs far more treaties than envisaged by the founders, especially in the context of peacekeeping operations (Klabbers 2009: 256). The UN uses implied powers more frequently as express powers. The international personality and treaty-making capacity of the UN was expressed by the ICJ in the Reparation for Injuries Suffered in the Service of the United Nations case.

To conclude: Neither the exclusion of the use of PMSCs as peacekeepers nor the use of PMSCs as contractors can be justified. Nevertheless, the application of international humanitarian law may prove otherwise.

The holy trinity

The holy trinity is composed of three requirements: Consent of the host state, impartiality and the use of force only in self-defense.

Consent of the host state: The consent of the host state was a mandatory requirement especially with respect to peacekeeping operations of the first generation. Robust peacekeeping operations no longer require the consent of the host state. But even in these missions, the UN was always endeavored to obtain the host state's consent, since this enhances the prospects of success. Thereby the scope of the consent is understood differently. While some authors limit the consent to the mission as such, other authors see the possibility to split the consent, so the host state could consent to the mission but reject to the commitment of specific member states or demand territorial or functional restrictions. Hence, they could also reject to the involvement of PMSCs. Although the Secretary-General is not bound to the position of the host state, the UN nevertheless would intend to respond to the host state's request (Cameron / Chetail 2013: 22f).

Impartiality: Impartiality does not only refer to political issues, but also to economic interests. With respect to PMSCs, the focus rests on economic interests, in particular the exploitation of mineral resources. However, this does not allow the conclusion that PMSCs are less suitable for use in peacekeeping operations. Moreover, according to the latest UN documents, impartiality is now defined as compliance with the principles of the UN Charter.

Use of force only for self-defense: The use of force is the most controversially discussed characteristic of peacekeeping operations. According to the Capstone Doctrine, the restriction of the use of force to self-defense is still valid, although it is now interpreted clearly broader – as defense of the mandate with all necessary means. Due to this almost nebulous understanding, the use of PMSCs appears questionable, particularly if PMSCs act as peacekeepers and not as mere contractors. As self-defense is understood as defense of the mandate, PMSC personnel needs to participate directly in hostilities. With respect to its status under international law – civilians - this seems unacceptable and is opposed to the international consensus that PMSCs shall not take part in any actions which could amount to a direct participation in hostilities (Sossai 2014: 407). According to Janaby, self-defense measures do not amount to a direct participation in hostilities (Janaby 2015:153). To be classified as a direct participation in hostilities, belligerent nexus needs

to be demonstrated. In order to meet the requirements of belligerent nexus, an act must be specifically designed to directly cause the required threshold of harm in support of a party to the conflict and to the detriment of the other (Melzer 2009: 59). Measures of self-defense lack belligerent nexus (Melzer 2009: 61). According to this, peacekeeping operations could not amount to a direct participation in hostilities. However, this argumentation is too-short sighted for three reasons. First, self-defense requires an illegal attack. If the target is a military one, an attack could not be classified as illegal and there is no right to self-defense at all. There are several cases where the determination if the target is a civilian or military one could change ad hoc and the personnel hired to protect the target became legal targets and are no longer allowed to invoke the principle of self-defense. Second: The very broad definition of self-defense with regard to peacekeeping operations was not taken into account. Defense of the mandate allows using force on a tactical level. Therefore defense of the mandate exceeds the common understanding of self-defense and the statement that peacekeeping operations could not amount to a direct participation cannot be sustained. Lastly, this understanding is not in line with the Secretary's Bulletin concerning the applicability of international humanitarian law, which assumes the direct participation in hostilities (Heinze / Steele 2009: 141)

Conclusion

The UN does not (yet) recruit PMSCs as front-line peacekeepers, but their use is not restricted to the protection of peacekeepers and UN premises either. PMSCs are used in various ways and have an ever-increasing impact on peacekeeping operations. The implied powers doctrine can be invoked as legal basis for the use as peacekeepers as well as for the use as contractors. The use of PMSCs does not contravene any principle or fundamental rule of international law, rather the use of PMSCs can be described as a necessary and effective tool to maintain international peace and security and therefore to promote one of the major purposes of the United Nations. Nevertheless, the general operational capability of PMSCs does not exclude that the application of international humanitarian law and human rights law may lead to a different result on a case-to-case basis.

References

Bures, Oldrich 2008: United Nations Peacekeeping Saarbrücken VDM Verlag Dr. Müller

Cameron, Lindsey Chetail, Vincent. 2013: Privatizing War Cambridge Cambridge University Press

Department of Safety and Security. 2006. United Nations Field Security Handbook Accessible at WWW: http://psm.du.edu/media/documents/international_regulation/united_nations/other/un_field_security_handbook.pdf

European Court of Human Rights 2007: Grand chamber decision as to the admissibility of Application no. 71412/01 by Agim BEHRAMI and Bekir BEHRAMI against France and Application no. 78166/01 by Ruzhdi SARAMATI against France, Germany and Norway Accessible at WWW: http://hudoc.echr.coe.int/eng?i=001-80830#{%22itemid%22:[%22001-80830%22]}

Feurle, Klaudia. 2008. 'Privatisierung des Friedens,' e-thesis University of Vienn. Vienna

Hackworth, Green Haywood 1949: Dissenting Opinion - Reparation for Injuries Suffered in the Service of the United Nations ICJ Reports1949 174 ff.

Heinze, Eric A. Steele, Brent J. 2009: Ethics, Authority, and War: Non-State Actors and the Just War Tradition New York Palgrave Macmillan

House of Commons 2002: Committee on Foreign Affairs, Private Military Companies, Private Military Companies, Ninth Report of Session 2001 – 2002 London

ICJ Advisory Opinion 1970: Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970) ICJ Reports 1970 16 ff.

ICJ Advisory Opinion 1949: Reparation for Injuries Suffered in the Service of the United Nations

ICJ Reports 1949 174 ff.

ICJ Advisory Opinion 1953: Effect of Awards of Compensation Made by the United Nations Administrative Tribunal ICJ Reports 195347 ff.

Janaby, Mohammed Ghazi 2015: 'The Legality of the Use of Private Military and Security Companies in UN Peacekeeping and Peace Enforcement Operations', Journal of International Humanitarian Legal Studies 6 (1): 147 ff.

Kelsen, Hans 1957: The Law of the United Nations New York Frederick A. Praeger

Khan, Rahmatullah 1969: Implied Powers of the United Nations New-Dehli Vikas Publications

Ki-moon, Ban 2005: UN News Centre: UN to strengthen peacekeeping efforts amid rising demand Accessible at WWW: http://www.un.org/apps/news/story.asp?NewsID=31383#.VZOdC0Y71rI

Klabbers, Jan 2009 An Introduction to International Law Cambridge Cambridge University Press

Landshuter, Francisca 2007: Die Friedensmissionen der Vereinten Nationen Berlin Weißensee-Verlag

Lilly, Damian 2000: The Privatization of Peacekeeping: Prospects and Realities Disarmament Forum 2000 (3) 53 ff.

Lüder, Sascha Rolf 2004 Völkerrechtliche Verantwortlichkeit bei Teilnahme an „Peacekeeping"-Missionen der Vereinten Nationen Berlin BWV Berliner Wissenschafts-Verlag GmbH

Melzer, Nils 2009: Interpretive Guidance on the notion of direct participation in hostilities Geneva International Committee of the Red Cross

Office of Internal Oversight Services 2012: Audit of the implementation of aviation contracts in MONUSCO.
Accessible at WWW: http://usun.state.gov/documents/organization/211486.pdf

Østensen, Åse Gilje 2011: UN Use of Private Military and Security Companies: Practices and Policies Geneva DCAF

Østensen, Åse Gilje 2014: Implementers or Governors? International Community Law Review 16 (4): 423 ff.

Østensen, Åse Gilje 2013: In the Business of Peace in International Peacekeeping International Peacekeeping 20(1) 33 ff.

Oswald, Bruce Durham, Helen Bates, Adrian 2010: Documents on the Laws of UN Peace Operations Oxford Oxford University Press

Pingeot, Lou 2012: Dangerous Partnerships New York Rosa Luxemburg Foundation

Ruffert, Matthias Walter, Christian 2009: Institutionalisiertes Völkerrecht München C. H. Beck

Seiberth, Corinna 2014: Private Military and Security Companies in International Law Cambridge Intersentia

Seidl, Robert 2008: Private Sicherheits- und Militärfirmen als Instrumente staatlichen Handelns München Hans-Seidel-Stiftung e.V.

Shearer, I.A. 1994: Starke's International Law London Butterworth & Co Ltd

Simma, Bruno et al 2012: The Charter of the United Nations Oxford Oxford University Press

Sossai, Mirko 2014: The Privatisation of 'the Core Business of UN Peacekeeping Operations': Any Legal Limit? International Community Law Review 16 (4): 405 ff.

UN Doc A/55/305–S/2000/809 2000: Comprehensive review of the whole question of peacekeeping operations in all their aspects

UN Doc. A/63/379 2008: Comprehensive management audit of the Department of Safety and Security

UN Doc. A/68/339 2013: Report of the Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination

UN Doc. A/69/338 2014: Report of the Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination

Von Arnauld, Andreas 2014: Völkerrecht Heidelberg C. F. Müller

Wulf, Herbert 2005: Internationalisierung und Privatisierung von Krieg und Frieden Baden-Baden Nomos Verlag

Why Western Law Theories Do Not Settle Religious Issues?

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Abstract

The present study addresses the difficulty regarded on the gap between ideal/real on law and religion phenomena, and seeks to understand the motives and reasons for the inability of the western legal framework to deal with problems arising from religious practices. The paper starts from the assumption that mankind is not defined solely through social objects in which manifests itself in compact and concentrated way. There is a transverse dimension on humankind that works in active or latent way in the entire thickness of social reality, which does not fit in the immanence of Law. The transversality of religion and its reverberations in other spheres of human life is bounden to review the issue of deontological nexus that exists in the law. Thus, in this study concluding remarks, the problem of the gap on "Is-Ought problem" prevailing on Law Theory, may be primarily located in the binomial relation "Religion-praxis/Law-techné".

Keywords

Philosophy of Law; Political Philosophy; Religion; Sociology of Religion; Theory of Law.

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"We are sinful not merely because we have eaten of the tree of knowledge, but also because we have not eaten of the tree of life." – Kafka - Die Zürauer Aphorismen

Introduction

This paper questions arises from the difficulty regarded on the gap between ideal/real concerning Law (practice and theory) and religion (understood as a sociological phenomenon and also metaphysical experience). Under such issue the present study seeks to understand the motives and reasons for the inability of the Western legal framework to deal with problems arising from religious practices.

From these assertions, we may assume (hypothetically) that both Law and Religion have implicitly epistemological senses and forming practices. Whenever it comes to any problem in the world of experience, *i.e.*, a "Social Fact"[70], to be contemplated by law, there is a subject/object relation, in which the later emerges from the empirical, while the first is both the operator and "*telos"* of the law. However, religion is regarded as both, a social fact and a transcendent phenomenon to the subject, which means it is some phenomenical category apart from ordinary and secular affairs.

A socio-historical analysis on Western Modernity, concludes (or may imply) that religion, rather than disappearing from the modern world (as Weber and Freud forecasted), became one of several possibilities of belief in the social imaginary (Taylor, 2007, p. 209). Under such predication, the present study starts from the assumption that man in religion is not defined solely through social objects in which manifests itself in compact and concentrated way, since there would be a transverse dimension of the human phenomenon, which works in active or latent way, in the entire thickness of social reality, according to procedures specific to each society, which does not fit in the immanence of the legal normative text. Such transversality of religion and the reverberations in other spheres of human life is bounden to review the issue of deontological nexus that exists in the law. Thus, the problem of the gap on "Is-Ought problem" (or "*Sein-Sollen*") prevailing on Law Theory, may be primarily located in the binomial relation "*Religion-praxis/ Law-technê*".

In order to question the interaction between Law and Religion, the present study assumes that both of them lie inexorably intertwined with politics, such that certain relations generate social and psychological attitudes that may or may not become formally religious and/or legal. Thus, the underlying religious category is provided by the striking analogy between the behavior of the individual to the deity and behavior towards society. A critically important aspect is the sense of dependency (Simmel, 1997, p. 110). The problem seems to be that metaphysical dimension, the one that transcends the individual, is contained on human religiosity, however, subjective religiosity does not guarantee the existence of a realm beyond metaphysics, such as legal normativity (Simmel, 1997, p. 14). On such quarrel the present study starts its rhetorical contention from the idea that religious phenomena arises as some kind of rationalization of the world[71].

[70] Hereby understood as "*fait social*" or *"Sozialer Tatbestand"* on Durkheim (and sometimes post-weberian) terminology.
[71] The epistemological orientation of the present study is in accordance to the Rational Ttranscendentalism (also present in the phenomenology of Husserl) and the analytic philosophy of Wittgenstein (in its two phases). Thus, the paper confines itself to what can be arguably disputable, delimiting what is thinkable (Wittgenstein, 2010, p.179), so, the "psychologizing" of structures and relations between entities is something unrelated to this discussion.

Religion and its Epistemological Senses

Aiming to get hold of Religion as a Social issue (therefore also political and legal matter), this study returns to the classical mainstream of Sociology of Religion - Max Weber. The German sociologist is often regarded to take an objective and (some say) distant view of the sociological traditions of the institutions of religions, specially its inner human gearing. The work of Weber, before settling its quarrels on rationality and disenchantment, starts from searching some stipulation concerning the guidance of the Human Reason as part of 'Being'[72] (Koch, 1994, p.2). The ontological question in Weber contrasts with other classics, such as Durkheim and Marx, precisely because it structures its (then new) sociology of comprehension. Weber's ontology tries to give account on transcendence and immanence of the social body, and inquires how subjectified facts become objectified facticities, and eventually, how can they be socially shared. Bergman and Luckmann (1991 pp.28,29) locate and describe Weber's ontology in the *Ideengeschichte*[73] of Social Sciences:

> " The central question for sociological theory can then be put as follows: How is it possible that subjective meanings become objective facticities? Or, in terms appropriate to the aforementioned theoretical positions : How is it possible that human activity ('*Handeln*') should produce a world of things (chases)? In other words, an adequate understanding of the 'reality sui generis' of society requires an inquiry into the manner in which this reality is constructed. This inquiry, we maintain, is the task of the sociology of knowledge". (Berger, Luckmann, 1991, p. 29)

To answer this question (the interaction between the subjective and the transcendent which creates objective facticities) Weber starts from the assumption that all human beings seek a subjectively meaningful guidance to the world, which would be the source of both the religion and knowledge (Weber 1978, p. 499). The religious orientations have their origins in inner psychological desire to search or training intellectual shaping of meaning and unity of the world (Koch, 1994, p.4). In this sense, the human mind is led to reflect on ethical and religious issues, and not by material need, but by inner compulsion to understand the world as a significant Cosmos and take a position in relation to itself, i.e., an attempt to tune and suit human uncertain understanding to a portentously ineffable empirical reality (Weber 2004, pp. 282, 416-418).

Therefore, a metaphysical orientation, in theory, can assist in obtaining control over the external world of objects and provides the individual a subjective and functional significance. (Weber, 1958a: 136, 137) The individual has a psychological need for ethical guidance and a practical need for such orientation to the world of objects. The guidance is necessary because a person *has to act*[74] in the world but this action shall not be random, since the individual acts as a vector result of motives or agencies (Koch, 1994, p.4). In other words, even rhetorically, it is necessary just one reason[75] to provide the "meaning" or "intelligible reason" for our actions. As Weber suggested, we can describe the actions of a person who writes a numerical equation on a piece of paper, but to understand the reasons to such behavior it is necessary to infer, or even know, what motivated this particular action. (Weber 1978, p. 8) Weber suggested that material and ideal interests provide

[72] Understood as metaphysical and ontological issue (James, 1916, p.39) – albeit hereby concerning Social Science.

[73] Usually translated as "History of Ideas". However, the original German word is more accurate to describe and circumscribe such subject as epistemological category because of its inter and transdisciplinary method (Bevir, 1999, p. 32)

[74] It is noteworthy that Weber's work is essentially a sociology of human action (Gerth, Mills, 1958, p. 70-75)

[75] Strictly we should say '*Triebfeder*', sometimes translated as 'motivation', on kantian lexicon.

the motivation for action (Weber, 1958b, p.280), and these "ideal interests" are the ethical guidance which humankind owe to the world (Koch 1994, p.4). If every individual has the need to seek a rational orientation to the world, in which ontological conditions such guidance occurs? In other words: what are the conditions of human existence that serve to impound the available knowledge in conducting any action? At this point, the legacy of Kantian epistemology is evident in Weber work (Koch, 1994, p. 5). The human mind confronts the external reality, regardless of whether this proves as strictly physical or social, but always occurs as a strange and separate object of the mind. The dualism inherent in this position has its origins in the epistemology of Kant (1958). The fundamental ideas of modern epistemology, including religion studies, ultimately derived from the Kantian philosophical building, as Weber himself assumes (Weber, 1949, p. 106). The implications of this epistemological position are numerous, since the Kantian system is built on the notion of a distinction between the empirical world and the intelligibility realm (Kant 1958, p. 26), in such a way that man knows the empirical world through the action of the senses and the mind activity. However, the mind is limited in its ability to capture the empirical reality, due to the limited nature of the mechanisms employees towards understanding (Categories). The Categories of experience, our perceptual epistemological body, (which construct religious understanding) never transmit the complexity of the true nature of any object. Therefore, the objective reality lies in the field of metaphysics, so in being achievable only the appearance of reality. (Kant 1958, p. 54).

As a result of such Weberian and Kantian epistemological view, we may assume that each event in the social world also has a complex nature which human mind is unable to understand in its entirety. Hypothetically, even a minimal description of a slice of mere ordinary fact can never be exhausted from the categories of the individual (Weber, 1949, p. 78). This means that the parameters of social knowledge are restricted, which lies a problem defining a universalizing method to any aspect of social intelligible world (as Marx attempts to). The acceptance of the Kantian dualism on Weber understanding of Religion form the core of methodological strategy used in the study of social reality. As a separate object of empirical reality, the rational mind is to deal with a reality that is a foreign object itself, devoid of a priori sense - so science and religion build these directions, which are not predicates to the 'Real World' ineffable to human mind. In the study of society, as in the study of physical objects, their events will never be understood in its entirety, so the social world requires interpretation, sometimes through science, sometimes religion - both are methods of disenchantment[76] and rationalization of World, apparently itself meaningless, and therefore unreadable[77]. But, among such rationalizations, where would be the Law and Normative Order?

Normativity and its Dissentient Schematics on Social Facts

To expatiate on Legal Theory of the twenty century (and early twenty-first) is perforce to discourse on Hans Kelsen contribution on such lore. The Kelsenean perspective is unavoidable, even to its detractors. Even if this study (or any other) tries to appeal and recourse to authors like Hart,

[76] Strictly from the weberian concept of "*Entzauberung der Welt*".

[77] The weberian epistemological construct (in Ontology-way) what is essential is the search for knowledge, not gnosiological founding itself, and that distinguishes Max Weber from other Liberals, according to Merleau-Ponty (2006, pp 1- 2). Yet, it urges to point that there isn't such natural and necessary opposition between Weber and Marx – "Weber does not squarely oppose historical materialism as altogether wrong; he merely takes exception to its claim of stablishing a single and universal causal sequence". (Gerth, Mills, 1958, p. 47).

Dworkin, Rawls or even Ross[78], none of them would have the ability to analytically deconstruct and reedify our very *Episteme*[79] of Law as we know it (understood both as "*Lex aut Iuria*", or "*Gesetz oder Recht*").

Concerning valuational questions, the Kelsen's theory is confluent and tributary to Kant's work, while under "scientific" terms it fits into the context of the Vienna Circle, especially because of the parallels (not always in accordance) with the natural sciences (Posner, 2001: 3). However, it is of utmost importance the Kantian heritage related to a particular reading of the work of David Hume, specially his "Treatise of Human Nature" and the "ought-is" problem (Hume, 2011, p. 335). Hume the eventual possibility to infer a rule of conduct from a description of something that just happens in the world of empiricism, such as religious acts or beliefs. As a logical consequence, it is not feasible to build a moral-normative system from any ontological belief. Wherefore, apparently, is impossible to carry over the "Being" (or "Is") to "It should be," (or "ought to"), *i.e.*, to infer values from facts. Kant (1958, p. 72), distinguishes this disjunction among judgments and valuations between the Pure Reason that is expressed in the indicative about the judgments about reality ("*Sein*"[80]), and Practical Reason, which is expressed by imperatives ("*Sollen*").

From the Kantian interpretation of Hume's work, Kelsen structures his theory of normativity from writs propositions. For Kelsen the object of some science of the Law (which is the law itself) should, to some extent, be explained from explanatory methodologies from natural sciences, which aims to explain the actual and factual behavior of materiality. Such explanation establishes causal relationship to the empirical result, present in the sensible world, which "must necessarily" ("*muβ"*) occur (Kelsen 2003, p.86) and can be expressed in a similar way to natural laws ("*gemuβt*"). Under natural law cause and effect does not admit exceptions therefore "must" occur ("müβen").

The legal norm, as opposed to the natural law, is not able and cannot express the factual occurrence of something, i.e., lying on empirically cadre of the "Being" ("*Sein*"), therefore it isn't a logical and mandatory result of a necessary relation of cause and effect ("*Gemuβt"*). Unlike causality relations (v.g. religious social phenomena), the legal standard provides that, in certain circumstances, something is necessarily due in normative sense ("*Gesollt"*). Therefore, the Law (understood as "*Iuria*" or "*Recht*"), subject to its own science, must consist on groups of normative statements concerning the idea of "Should Be" ("*Sollen*"). Such statements are observed by Jurisprudence from legal propositions, which consist of normative causal links between any factual support ("*Tatbestand*") describing a possible illicit and the State reaction (Kelsen 2003, p. 126).These relations within "Is – Ought be" problem structure the static dimension of legal norm (Kelsen 2003 pp. 121-140), while the staggered hierarchical logic of the legal rules substantiates the so-called juridical dynamics, which has a vertex that holds an hypothetical last legitimacy towards all other judicial standards (Kelsen 2003, pp. 215, 221). The problem arises when one tries to establish similarities and differences up the normative command to a reality whose entirety is ineffable, as social outbreaks of religious nature. In theory, the law, with the aim of dealing with it, seems to make a certain syncretism of analytical categories such as "Interpretation", "Sense" and

[78] Jürgen Habermas, in some accordance with kelsenean theory, shall have some role ahead this paper argumentation,
[79] The present study evokes the '*Episteme*" idea under Foucault, i.e. "(...) conditions of possibility of all knowledge, whether expressed in a theory or silently invested in a practice" (Foucault, 1966, p. 168).
[80] Some specific words shall be consigned on both ways: its original idiom and some translation, in order to maintain the lexical specificity of the expression.

"Significance". (Amselek 2011, p. 42). This structural scheme of the legal norm might seem puzzled or inconsistent in the face of complex social phenomena, as the norm would guide human actions, and that itself (the norm) is a sense, *i.e.*, the significance of an act of volition (Kelsen 2003, p. 392)

To unravel this assertion we must assume that a legal norm is necessarily a valid standard (which means it is made under and to the extent of another superior normative standard) and therefore mandatory, otherwise it would not exist, since one that is not endowed with mandatory will not be truly a legal norm; Also, validity of the legal norm is the specific mode of existence of juristic standards, which always returns (as a rhetorical question) to another standard (on a higher legal degree) which is the basis of its legality and enforceability (Kelsen 2003, p. 246-). Thus, is perceived a retro-feed relation between "Being" ("*Sein*") and "Ought-to" ("*Sollen*") closing the normative world unto itself, shutting himself in any interpretation of legal wording. Somehow, social phenomena (including religious one) must be phagocytosed into this circular analytical relation. The answer seems to be within the logic of both instances – normative and social. But, could any action necessarily be determined by rule? Wittgenstein may add some ado at this point:

> "This was our paradox: no course of action could be determined by a rule, because every course of action can be made out to accord with the rule. The answer was: if everything can be made out to accord with the rule, then it can also be made out to conflict with it. And so there would be neither accord nor conflict here." (Wittgenstein, 1958, p.161)

From this premise (with which Kelsen would seem to agree) believes that an act of volition can have different meaning in different patterns. Regardless of the subjective meaning given to it by its originator *persona*, he subjectively desires that his commandment is obeyed by those to whom it is addressed: the act has the meaning objectively valid in the eyes of jurisdictional and, in theory, in the eyes of a third and uninterested person (Amselek 2011, p. 43), as an extraneous "*phainesthai*" to the axiological and gnosiological inconsistencies of "everything that is the case" [81](Wittgenstein, 2010, p. 134). This question of a hypothetical separate and flitted Sense to human experience, as an attempt to suit some legal norm to the epistemic multitude of civilization, opposite to the contingency of the world and individuality (understood as the Marxian concept of "*Gattugsmässigkeit*"[82]) appears on Theory of Law as reverberation of formal logic studies in the early twentieth century (Green, 2003, p.367). Regarding, therefore, the logic of a particular legal system, like any language, it is necessary that the interlocutors understand the signs, their structures and can assign meanings to express events and phenomena in the given language (or encoding). To understand a legal system is to allocate legal meanings to external manifestation of human conduct (Kelsen 2003, p. 48) despite its metaphysical and subjective meaning (like on religion). Consequently, the legal meanings assigned to single events, therefore, should be understood in terms of its functional contribution to maintaining the possibility sanction in the long chains of

[81] §1"*Die Welt ist alles, was der Fall ist*" (Wittgenstein, 2010, p. 134).

[82] Especially in Lukács, the concept of "*Gattugsmässigkeit*" constitutes the ultimate ontological foundation of the individuation process, with only real existence as a social being, so that outside society, there is not any possible individuation (Lukács, 2012. p. 196). However, the term developed in extensive way by the Hungarian philosopher naturally refers to Marx himself. The original Marxist work does not presuppose an abstract, isolated human individual, so the essence of being of each individual, "can only be understood as "gender"("*Gattung*") given in your "interiority" ("*Innere Als*") as some silent form ("*Stumme*"), which generally would connect to other individuals (Marx, 1978, p. 6). Why, therefore, the human universality of the Social Ontology is opposed to human ordinariness naturally set.

events in which they occur. (Green, 2003, p. 377).

It may be concluded, regarding the normative system framework, that the content of the law is contingent to social facts. As well as the logical analysis of language does not explain the meaning of words, logical analysis of legal systems does not explain the ratio between single social events and their primeval signification (Green, 2003, p. 380). In this sense, the early legal meanings can be attached by means of rules of imputation to generate basic legal meanings or conditions for sanction (etiological condition of legal standards). To interpret legal systems is to find a relation between these rules of attribution and the sentence structure, which means, to find and understand the sequence of social events that must be interpreted – even if these events seems to have no earthly reasonable explanation. It seems the problem lies in the communicative[83] process.

Immanence and Transcendence

Whenever it comes to concern any issue from the world of experience, i.e., a social fact to be contemplated by law, there is a conceit on a subject/object ratio, in which it the later emerges from the empirical orb, while the first is both operator and "teleological dictum" of the Law. With regard to this relation, what is proposed in this paradigmatic cut is, in short, a "Ptolemaic" perspective methodologically reverse to Kantian method, which arises from a "Copernican revolution" in philosophy. For such theoretical effort, religion is seen both as a social fact and as transcendent to the subject, namely, uranian, apart from ordinary and profane affairs. So, in this epistemic understanding that identifies with an opaque reality[84] (Žižek, 2001, p.82-83), lies a specific teleology that sees Man (beyond any hedonistic concern) inserted *into* Mankind (so, not just the individual subject) as a center for intellectual reflexion, including (and this is the case), the Jurisprudence as *Man's Law*. In this Ptolemaic theorizing scheme (one may say Geocentric, or, on more rigid philosophical lexicon, Anthropocentric thought), the current intellectual lead up proposes the study of some Uranian doctrines and disciplines towards the most immanently human concerns. In short, this section seeks to determine a starting point in the Anthropic Principle[85] in the construction of legal questioning previously stated. The study targets in the humane subject because understands that the religious man is not defined solely through social objects in which manifests itself in compact and concentrated way. There is, therefore, a transverse dimension of

[83] Cf. Quine: "The unit of communication is the sentence and not the word. This point of semantical theory was long obscured by the undeniable primacy, in one respect, of words. Sentences being limitless in number and words limited, we necessarily understand most sentences by construction from antecedently familiar words. Actually there is no conflict here. We can allow the sentences a full monopoly of "meaning" in some sense, without denying that the meaning must be worked out. Then we can say that knowing words is knowing how to work out the meanings of sentences containing them". (Quine, 1981, p. 63).

[84] In this particular ontological understanding, which its last plea lies in Lacan, the present study works on the so-called " Symbolic Real ", where lie both, religion as *praxis* and the law as *techné*, still having the " Imaginary Real " that holds the religious transcendence and its complete otherness well as the Kantian foundations of today's Law Theories. The "Real Real" presents itself as an epistemic monolith being terrifying and unspeakable, while the reality is expressed only on facts and absolute acts such as death, life, sex, etc., which are digested and made knowable in the first two instances of "Real" (Žižek, 2001, 10).

[85] Anthropic Principle generally refers to cosmology and physics, and states that any valid theory of the universe must be consistent with the very existence of human beings, for which the only universe we can see is what has humans. For now we ignore the fact that such a theory, in its most pseudo-scientific and vulgar form, lends itself to the nonsense of Christian fundamentalist groups, whose doited members refute the evolution of species and related theories. Thus the adoption of the concept of the Anthropic Principle in this article aims to diverse effect aimed by religious proselytism.

the human phenomenon, which works in active or latent way, explicit or implicit, in the entire thickness of social, cultural and psychological reality, according to procedures specific to each society (Simmel, 1997, p. 13).

The metanarrative of humankind can be seen as a dramatic and hopelessly painful description of the man's condition divided between two co-dependent and mysterious realities that cannot be fully defined and determined, namely, existence and transcendence (Jaspers, 1994, p. 174). Transcendence becomes important whenever the world known for empiricism and science does not show itself as self-sufficient and cannot be explained by its own categories. In this pathway we start from a problem faced by Descartes, and taken up by Edmund Husserl (Oizerman, 1988, p. 157) – can we ascertain, with absolute certainty, what we *know* from what we just *seem* knowing? In this sense, we can see us (as mankind) as a lonely warm light in the darkness[86], through and by which we try to name and give forms to uncertain and erratic experiences (sometimes oneiric), since the very notion of space/time to the rules of coexistence – and these one ultimately, try to keep that very light on. Furthermore, we can still cross the point explored by Jaspers to the weberian provisions about religions as rationalizations of the basic problems of the human condition, namely, contingency, impotence and scarcity. Given these basic problems, the religious concepts are crucial in human societies as guide the search towards direction and meaning to its existence and not merely an emotional adjustment, since it creates, in fact, cognitive safety when facing problems of suffering and death. Such basic problems persist, hence it becomes natural the existence of metaphysical answers, such religious and mythical ones (Weber, 2004: 279. However (and this is the problem), their social consequences cannot be naturalized under legal and judicial guise, because this social praxis is eminently linguistic, *ergo* uncertain and precarious [87].

Given this transversality of religion and its reverberations in other spheres of human life, it is necessary to review the issue of the deontic of law from holistic understanding of problems arising from the relation between religion and the law. Thus, the problem of the gap between "Is" and should "Ought-to" in-law, concerning the object of this study, it may be primarily located in the binomium Religion-practice/Law-Technique, however, this binomial relation seems to be developed from a *clinamen* perspective of the "Imaginary Real". This means that what really is criticized is the conflict and the chimera resulting from the antagonism between some legal framework and the various religious practices, so, the core of the criticism is an anthropogenic legal deontic confronted to some source of religious transcendence.

Both Law and Religion have implicitly teleological senses that form their practices. It is, therefore, urging to understand the particular difficulties regarded in the gap between ideal/real, and seeking some deep meaning of the religious fact, it supposes the existence of sense and meanings expressed on these experiences. The phenomenological method applied to the analysis of the religious fact, seeks, towards the achievement of it purpose, to promote phenomenological reduction (Husserl, 2008, p. 85), as from this procedure it is possible to catch the universal symbolic structures of religious phenomena. Religious thought is the result of an idea and a power of transcendence that

[86] As on Wittgenstein yale about the 'Red Campnula" (Wittgenstein, 2012, p 68).

[87] Again, the study searches some root on Wittgenstein (now the later one): "*We are talking about the spatial and temporal phenomenon of language, not about some non-spatial, non-temporal phantasm. . . . But we talk about it as we do about the pieces in chess when we are stating the rules of the game, not describing their physical properties. The question "What is a word really?" is analogous to 'What is a piece in chess?'* " (Wittgenstein, 1958, p. 108).

is in the human being. But his is born such feeling of transcendence? In the genesis of the notion of transcendence lies the lack of slow and transgenerational events (Sloterdijk, 2009, pp. 20-24), as well as unknowable facts regarded as violent, brutal (as in "*Real Real*" described by Žižek – 2010, p. 10) also, the the inability to one really reaches the other, and perhaps most importantly, the fact of human consciousness entails the ability to submit an intelligence that exceeds itself. On the other hand there is also depth of the human being, which allegedly lies in its religious dimension, in tune to something that unconditionally touches the individual. This depth of human beings actually lies in the absurdity of his existence (Camus, 2005, pp. 86), and his inability to deal with it gives vent to alleged manifestations of the sacred, exercises on imagination and the consequent creation of so-called myths. The "sacred" is therefore a means of backing and resignation in the face of an existence that has the power to annihilate us, and manifests itself not only in everyday things, but through everyday things (Eliade, 2010, p.17). In some irruption of the sacred (called hierophany) it is experienced some alleged religious breath, all of nature can manifest as cosmic sacredness[88]. But how come such ineffable experience is to be put on words, or mere human signs of 'positive' or 'negative'? It just does not happen.

Concluding Remarks - Transcendence Towards Immanence

The strangeness of the Law concerning Religion are superimposed the functionalists teleologies of both phenomena, antithetically opposed to each other. Namely, religion acts as Social Solvent while the Law can be a Social Dinamogenic.[89] The law attempts to rationalize facts and their logical sequence, including the phenomenal emanations gait of religion. However, the legal system does not share a generalized logic, immanent, through functional premises and conclusions (Perelman, 2004, p.46) so that applies directly to the world of empirical facts. The Law, therefore, does not share a pure logic, connected to the earliest reasons of Philosophy, but comes to organized thinking as a manifestation of knowledge, which seeks "Truth", similar to metaphysics and ontology. Unlike these two matters, however, the logical and legal methodology deal with criteria for some particular goal can be achieved, so it is merely a mean, no ant end. In a first completion of the strangeness of the Law to religious phenomenon, there is the ontological-transcendental idiosyncrasy of the latter that is not consistent to some mere rationalization of the facts, which derives from immanentist reasoning. Jurisprudence and its object, the Law, seeks, at first, enable the achievement of social purposes that couldn't be attain except through this same form of social control. That's how Law fosters particular purpose through promotion of abstract ideas and attitudes of its participants in a legally cohesive society, dynamogenically united. Such promotional function of social dynamogenic is accomplished through mechanisms of encouragement and discouragement, from a functional perspective (Bobbio, 2007, p.19), the latter are used in order to unite the disparate, while discouragement measures are used in order to preserve social cohesion, that is, some maintenance of the *status quo* of society.

Religion in its social functionality, inasmuch on the realm of "*Sein*", collides with the Law, as "*Sollen*", in its dynamogenic functionality, in such a way that works as a social solvent. Such an interpretation is a Weberian sociological tradition against some of Durkheim's ideas, in order to

[88] As in Mystical Experience told by Bergson (1932, p. 127) or Hume's Demea (Hume, 2005, p. 94).

[89] On parallel with chemistry and physiology, it is the idea of scaling some functional activity resulting from action of an exciter and agglomerating agent on a particular set of originally separate units.

position the parallax between traditional cultures to Judeo-Christian civilization. If the French sociologist saw that aboriginal cultures had their individuals united by religion (Durkheim, 2009, p.457), on the medieval-modern monotheistic culture, religion had the capacity to dissolve old belongings and established cultural lines (Pierucci, 2006, p. 120), including (nowadays) the law, as the very notion of Democracy, Secularism and Human Rights, in theory. The proselytizing universalist religion, i.e., with individual salvation proposal, tends to predominate over other socio-cultural phenomena (including the democratic state) and functions as a device that disconnects people from their cultural context of origin.

A crisis factor on Representative Democracy remains in its foundation rooted in Rousseau's "*Volonté Générale*", in view of the increasingly complex and compartmentalized society groups, in such a way that no longer sees a general will in which some assembly or parliament can be guided, but multiple and plural volitions, that legitimately dispute the prevalence in the political arena. The political faction that momentarily prevails misses the accession of multiple overdue volitions, which aggravates some feeling of mismatch between representatives and represented groups. Plurality is the new brand of democracy, whose new foundation comes to the protection of minorities and a substantive agenda on Fundamental Rights. (Cappelletti, 1993, p. 44).On this agenda is necessary to overcome two obstacles between at least two communicating individuals: the gnoseological and axiological abyss. The first takes up the idea that the limits of language mean the limits of the world (Wittgenstein, 2010, p 245). This means that language, which is the coacervate of legal norm, is immanent (thus, limited), while the thought, which is the source the hierophany, is unlimited, transcendent. Hence, there will be mismatch between what the subject thinks and what he tries to convey through language[90]. The Axiologic Abyss, in turn, refers to the gap between values/moral systems, and occurs because of relative moral evaluations. Each individual shall have his worldviews, which were determined by the understanding of the cosmos arising from both, cognoscitive devices and socio-historical contingencies, especially religion.

The first step to skip both the abysses is in the "Undeniability of the Legal Standard", which takes up the quarrel concerning retro-substantiation of the Legal Norm (Kelsen, 2003, p. 29). Under the basis that: i) the strict logic does not necessarily is consistent to a strict rationality; ii) it is impossible to prove any fact or knowledge of something by pure rationality, i.e., analytic sense *a priori*. Consequently, one must recourse to *Petitio Principii*[91], based on skepticism[92], leading to a temporary suspension of reason, in the order to pursue knowledge - particularly in this case, reasons for the rule itself, which allows the interpreter and legal operator to avoid inaction in the face of something that seems incognoscible. Then we must, paradoxically, absolutize relativism as the foundation of any Legal Theory in pace with the promotion of social dynamogeny. Thus, he only allowed justification for ideals like justice and democracy is a relativistic philosophy, i.e., a mere functional justification. Such reason leaves the decision concerning social value in charge of active individuals

[90] In theory, religion itself can be viewed as linguistic device by which man denotes his last and irreconcilable concerns against 'Pure Reason' (Tillich, 1958, p. 77).

[91] For the impossibility of proving any fact or knowledge of something by pure rationality, the only appeal shall be the fallacious arguments, like the story of the hero (and folkloric mendacious) Baron Münchhausen who escaped the quicksand by pulling on his own hair. The expression was coined by the philosopher Hans Albert, but the argument itself is presented in the works of classical skeptics, as Agrippa and Diogenes Laërtius (Albert, 1991, p.15).

in the political reality (Kelsen, 1993, p.161).

In conclusion the immanence of legal norm should tangent religious transcendentalism, not to legitimize it, but to understand it. However, in such an effort, the jurist as hermeneutist should neither forget the Legal Doctrine, founded on a Critical rationality, nor the uniqueness of the human existential absurdity. In theory, as in Hermeneutic Circle (Gadamer 1975, p. 307), there must be a systematic process of understanding and interpretation, being the legal text read from its parts and those from the whole, whose meaning is transcends the immanence of the text itself.

References

Albert, Hans. (1991). *Traktat über Kritische Vernunft*. Tübingen: Mohr Verlag.

Amselek, Paul. (2011). "*L'interprétation dans la Théorie pure du droit de Hans Kelsen*". *In. Interpretatio non cessat. Mélanges en l'honneur de Pierre-André Côté*. Beaulac, Stéphane; Devinat, Mathieu (Eds.). Québec: Editions Yvon Blais.

Bendix, Reinhard; Roth, Guenther. (1971). *Scholarship and Partisanship: Essays on Max Weber*. Berkeley: University of California Press.

Berger, Peter L., Luckmann, Thomas. (1991). T*he Social Construction of Reality: A Treatise in the Sociology of Knowledge*. London: Penguin Books.

Bergson, Henri. (1932). *Les Deux Sources de la morale et de la religion* PUF: Paris.

Bevir, Mark: (1999) *The Logic of the History of Ideas*. Cambridge: Cambridge University Press.

Camus, Albert. (2005). *The Myth of Sisyphus*. London: Penguin Books.

Cappelletti, Mauro. (1993). *Juízes legisladores?* Porto Alegre: Sergio A. Fabris Editor.

Eliade, Mircea. (2010).*O Sagrado e o Profano - A Essência das Religiões*. São Paulo: Martins Fontes.

Foucault, Michel (1966) *Les mots et les choses : une archéologie des sciences humaines*, Paris: Gallimard.

Gadamer, Hans-Georg. (1975) "*Hermeneutics and Social Science*". *In: Cultural Hermeneutics. n. 2*. Dordrecht: Reidel Publishing.

Gerth, Hans Heinrich. Mills, Charles Wright (Eds). (1958). *From Max Weber: Essays in Sociology*. New York: Oxford University Press.

Green, Michael Steven, (2003)."*Hans Kelsen and the Logic of Legal Systems*". In. *Alabama Law Review. N. 2 Vol. 54*. Montgomery: University of Alabama.

Hume, David. (2005). *Obras Sobre Religião*. Lisboa: Fundação Calouste Gulbekian.

Hume, David. (2011). *A Treatise of Human Nature*. London: John Noon Publisher.

Husserl, Edmund. (2008). *La Crise des Sciences Européenes et la Phénoménologie Transcendentale*. Paris: Éditions Gallimard.

James, William (1916). *Some problems of philosophy: a beginning of an introduction to philosophy*. New York: Longmans, Green and Co.

Jaspers, Karl. (1994) "*Philosophical Faith and Revelation*". *In. German Essays on Religion*. OAKES, Edward T. (Ed.). New York: The Continuum Publishing Company.

Kant, Immanuel. (1958). *The Critique of Pure Reason*. New York: Modern Library.

KELSEN, Hans. (1993). *A Democracia*. São Paulo: Editora Martins Fontes.

Kelsen, Hans. (2003). "Teoria Pura do Direito". São Paulo: Martins Fontes.

Koch, Andrew M. (1994). "*The Ontological Assumption of Max Weber's Methodology*" *In. Texas Journal of Political Studies, N.17, Vol.1*. Austin: Texas University. [Academic Journal discontinued in 1999].

Kosik, Karel. (1976). *Dialética do Concreto*. Rio de Janeiro: Paz e Terra.

Lukács, György. (2012). *Para uma ontologia do ser social I*. São Paulo: Boitempo Editorial.

Marx, Karl. (1978). "*Thesen über Feuerbach*" *In. Karl Marx und Friedrich Engels Werke III*. Berlin: Dietz-Verlag.

Merleau-Ponty, Maurice. (2006). *As Aventuras da Dialética*. São Paulo: Editora Martins Fontes.

Oizerman, Teodor (1988). *The Main Trends in Philosophy. A Theoretical Analysis of the History of Philosophy*. Moscow: Progress Publishers.

Perelman, Chaim. (2004). *Lógica Jurídica*. São Paulo: Martins Fontes.

Posner, Richard. (2001). "*Kelsen, Hayek and the Economic Analysis of Law*". Avaiable In: http://users.ugent.be/~bdpoorte/EALE/posner-lecture.pdf. Access in 19.06.2015.

Quine, Willard Van Onnan (1981). "*Russell's Ontological Development*". In. *Theories and Things*. Quine, Willard Van Onnan [Ed.]. Cambridge: Harvard Press.

Simmel, Georg. (1997). *Essays on Religion*. Yale: Yale University Press.

Slotedijk, Peter. (2009). *A Loucura de Deus – Do Combate dos Tês Monoteísmos*. Lisboa: Relógio D'Água.

Taylor, Charles. (2007). *A Secular Age*. London: The Belknap Press of Harvard University Press.

Tillich, Paul. (1958) .*Dynamics Of Faith*. New York. Harper & Row Publishers.

Weber, Max. (1949). *The Methodology of the Social Sciences*. New York: Free Press.

Weber, Max. (1958a) *"Science as Vocation". In. From Max Weber: Essays in Sociology*. GERTH, Hans Heinrich, Mills Charles Wright (eds.). New York: Oxford University Press.

Weber, Max. (1958b) "The Social Psicology of the World Religions". *In. From Max Weber: Essays in Sociology*. Gerth, Hans Heinrich; Mills, Charles Wright (eds.). New York: Oxford University Press.

Weber, Max. (1978). *Economy and Society*. Berkeley, California: University of California Press.

Weber, Max. (2004). *Economia e sociedade, vol. I e II*. Brasília: Editora Universidade de Brasília.

Wittgenstein, Ludwig. (1958). *Philosophical Investigations*. Hoboken: Blackwell.

Wittgenstein, Ludwig. (2010). *Tractatus Logico-Philosophicus*. São Paulo: EdUSP.

Wittgenstein, Ludwig. (2012). *Luz e Sombras*. São Paulo: Martins Fontes.

Žižek, Slavoj. (2001). *On Belief*. London: Routledge.

Can serious Human Rights Violations justify a Breach of State Immunity?:

The current legal provisions of international law on why serious human rights violations cannot be brought to domestic courts.

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Abstract

Being created to establish a system protecting the individual for a peaceful and safe international environment, human rights often break into smithereens when it comes to individual claims. The lack of a global human rights court and defects in regional systems force many people to bring their claims to domestic courts. But after the ICJ's judgment on Germany vs. Italy of 2012 it is definitely not possible anymore to take a state to a foreign court due to a human rights violation. Still, this decision has a huge insularity towards the circumstances of the case: The ICJ had to deal with claims of victims of World War II, and in the end the court ruled that no individual human rights violation at all can be enforced before a court of another state. This is not satisfying, because instead of creating a generalized group of forbidden individual claims, it would have been more effective to establish two different case groups: One of forbidden claims of violations during systematical conflicts, and one of possible claims of victims during peaceful times. The paper presented in this abstract deals with the statement given last. It primarily explains the current provisions of international law on how human rights could be claimed before foreign courts and sums up why it would have been more human rights friendly to establish two case groups. It also depicts the case and circumstances of Germany vs. Italy and distinguishes this case from current human rights violations.

Keywords

Human Rights, International Court of Justice, International Law, Law Enforcement, State Immunity, Violation of Human Rights

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Introduction

In early times of international public law states were granted full immunity for all of their sovereign acts,[93] and their powers of sovereign international legal personalities[94] only found their limits just in front of other international legal personalities.[95] The individual person actually had no real power and could only make an appearance as an object of public international law.[96]

But since the establishment of a constantly developing multinational human rights protection system after World War II this situation has drastically changed. The individual gained more and more importance in matters of international law,[97] so that we are currently even referring to individuals as *partial international legal personalities*,[98] which is a revolutionary development of international legal relationships.[99] Because of the ongoing approximation of individuals to actors of international law – in truth, without their equalization[100] - the meaning of state immunity is shrinking[101] and its history slightly became a story of numbers, kinds and extents of possible exceptions.[102]

Nevertheless, the banner of state immunity and its nearly axiomatic claim of validity are still upheld. Even in 2012, the International Court of Justice (ICJ) ruled in *Germany vs. Italy*[103] that the principle of state immunity is applicable in cases of serious human rights violations.[104] This actually leads to a very alarming asymmetry between the securely established thought of better human rights protection[105] and the international community's real respect for enforcing it.

This is why voices of different jurisdictions and international scholars are rising in the past years, trying to turn away from nowadays' state practice and trying to justify a breach of state immunity in cases of serious human rights violations.[106] The ideas behind these attempts, their compatibility with legal doctrines and their future are going to be examined in the following pages to understand why human rights still turn into smithereens when they are faced with state immunity.

Preface

At the beginning, it is very important to shortly examine the two central terms of "state immunity" and "serious human rights violations".

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93 *Henkin/Pugh/Schachter/Smit/* p. 1126 f.; *Hobe*, Völkerrecht, p. 296; *Vitzthum/Proelß*, section 3, m.n. 90.
94 Isensee/Kirchhof/*Randelzhofer*, §15, m.n. 25, 35.
95 *Arnauld*, Völkerrecht, p. 25; *Hobe*, Völkerrecht, p. 40 f.; *Kindt*, p. 30.
96 ICC, D. f. 30.08.1924, series A nr. 2, p. 12; *Doehring*, Völkerrecht, m.n. 967; *Hobe*, Völkerrecht, p. 166.
97 *Arnauld*, Völkerrecht, m.n. 317; *Kälin/Künzli*, m.n. 36 f.
98 *Ipsen*, §1, m.n. 11 f.; *Ress*, Supranationaler Menschenrechtsschutz, p. 625; *Stein/Buttlar*, m.n. 493.
99 *Doehring*, Völkerrecht, m.n. 967.
100 *Doehring*, Diplomatischr Schutz, p. 14 f.; *Hobe*, p. 169; *Ress*, Supranationaler Menschenrechtsschutz, p. 625.
101 *Dahm*, p. 153.
102 BVerfG, D. f. 30.04.1963 – 2 BvM 1/62, m.n. 26; *Strupp/Schlochauer*, p. 662.
103 ICJ, *Jurisdictional Immunities of the State* (Germany v. Italy: Greece intervening), ICJ Reports 2012, 99.
104 *Ibid.*, 145.
105 *Bautze*, p. 29; *Bröhmer*, p. 1; *Cremer*, p. 137 f.; *Henkin/Pugh/Schachter/Smit*, p. 596 f.; *Kälin/Künzli*, m.n. 2 f.
106 Amongst others: Decision of the Greek *Areios Pagos* in the *Distomo* case, decided on 04.05.2000; decision of the Italian *Corte di Cassazione* in the *Ferrini* case, decided on 11.03.2004; differing opinion of judge *Wald* in the *Princz* case, ILM, 1994; *Bröhmer*, p. 223; *Ipsen*, Völkerrecht, §5 m.n. 173; *Kokott*, p. 148 f.; *Pepper*, p. 313.

I. The concept of state immunity

The term "immunity" is frequently used in international law, as it may refer to diplomatic immunity, immunity of heads of states and other governmental functionaries or state immunity.[107] In general, this term always has the same meaning: to protect the actions of various actors against prosecution and jurisdiction of third parties,[108] before both, civil and criminal courts.[109] The following remarks and analyses will mainly focus on state immunity before (foreign) civil courts.

II. The concept of serious human rights violations

Besides, it is very important to clarify what exactly is meant when talking about a "serious human rights violation", a term which is also used in context with humanitarian responsibilities to protect.[110]

1. Provisions of current human rights treaties

To start with, contract law is the most important part of the global human rights protection system.[111] By now, this system has developed on two different levels. Under the ongoing influence of the United Nations a broad range of internationally binding treaties has been adopted, amongst others the UDHR, the ICCPR,[112] the ICESCR or the CAT.[113] On the other hand, a lot of regional human rights system have been created in the past decades, which are the ECHR, the ACHR, the African Banjul Charter and the Arab Charter on Human Rights.[114]

On the first place, all these charters are quite similar to each other,[115] especially when considering protection against torture,[116] slavery and forced labour.[117] But when having a closer look at them it is observable that there are substantial differences on those different universal and regional levels.[118] In addition to this, rights, whose wording has been accepted by the overwhelming majority of the international community, are being interpreted differently,[119] as the concept of the margin of appreciation[120] of the European Court of Human Rights (ECHR) or the very controversial discussion about freedom of speech and religion and gender equality,[121] especially in

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[107] *Karl*, p. 23 f.; *Stein/Buttlar*, m.n. 713, 723.
[108] *Doehring*, m.n. 656; *Dörr*, p. 202; *Stoll*, m.n. 13.
[109] ICJ*, Case Concerning the Arrest Warrant of 11 April 2000* (Democratic Republic of the Congo v. Belgium), ICJ Reports 2002, 3 (20f.); *Cremer*, p. 138.
[110] *Arnauld*, Responsibility to protect, p. 27; *Kreuter-Kirchhof*, p. 351 f.; *Rudolf*, p. 22.
[111] *Kälin/Künzli*, m.n. 99; *Shelton*, p. 74 f.
[112] *Donnelly*, p. 26; *Schilling*, m.n. 5 f.
[113] *Kälin/Künzli*, m.n. 115, 118; *Vitzthum/Proelß*, section 3, m.n. 234, 236, 243.
[114] *Arnauld*, Völkerrecht, m.n. 602; *Cavallaro/Brewer*, p. 768 f.; *Kälin/Künzli*, m.n. 128; *Schilling*, m.n. 21, 24, 27, 29; *Steiner/Alston/Goodman*, p. 925; *Hobe*, Völkerrecht, p. 438; *Rishmawi*, p. 169 f.
[115] Isensee/Kirchhof/*Kirste*, §204, m.n. 30 f.; *Kälin/Künzli*, m.n. 129, 138, 141, 145; *Trindade*, p. 629 f.
[116] Art. 5 UDHR; art. 3 ECHR; art. 5 Banjul Charta; art. 8 ACHR.
[117] Art. 4 UDHR; art. 4 ECHR; art. 5 Banjul Charta; art. 10 ACHR.
[118] *Di Fabio*, p. 82; *Herdegen*, §4, m.n. 15; on the ECHR: *Buergenthal/Thürer*, p. 233 ff.; on the ACHR: *Steiner/Alston/Goodman*, p. 1022 ff.; on the Bajul Charter: *Eze*, p. 259 f.; on the Arab Charter on Human Rights: *Rishmawi*, MPEPIL, m.n. 10 ff.
[119] *Doehring*, m.n. 980; Isensee/Kirchhof/*Kirste*, §204, m.n. 30 f.; *Stahl*, p. 197 f.
[120] Karpenstein/Mayer/*Mayer*, introduction, m.n. 60 f.; *Yourow*, p. 13 f.
[121] *Chinkin*, MPEPIL, m.n. 35; *Henkin/Pugh/Schachter/Smit*, p. 616; *Ipsen*, Völkerrecht, §37, m.n. 23; *Rishmawi*, p. 171 f.

Arab and African regions, show. Now and then, even social and economic rights are being included into the range of suable human rights.[122]

2. Limiting the proper elements of "serious human rights violations"

So there is a very broad range of human rights, which makes it difficult to clarify which human rights have to be violated to which extend to assume a serious violation. To limit the sphere of possible rights, some scholars refer to the Rome Statute of the International Criminal Court (ICC) and recognize violations of the crimes recorded there as serious human rights violations.[123] This approach is convincing, as the Rome Statute basically refers to human rights belonging to the category of *ius cogens*, amongst which are genocide,[124] crimes against humanity (and therefore torture, too[125]) and a number of war crimes.[126] These crimes are the very core elements of human rights protection, which negate, simply by their existence, the universal meaning of the principles of law which contain the elements of peace under law on a global scale.[127] As a result, in the following the crimes listed in articles 6 to 8 of the Rome Statute are being referred to when talking about serious human rights violations.

The Connection between State Immunity and Human Rights Protection

Next, the question has to be risen in how far we can connect the principle of state immunity with ideas of human rights. As already stated, state immunity is used to protect one state from prosecution and punishment of other states – so how can this fit into a scheme of international human rights protection?

The answer to this question actually is not that simple. To get the proper essence of what this paper will deal with we have to examine the current possibilities of protecting and enforcing human rights on the following pages to understand why it is necessary to talk about state immunity in the end.

First of all, we can observe that human rights protection takes place on three different levels. The first is on a national scale, where both provisions of constitutions and national customary law can easily be enforced with national enforcement mechanisms. This protection can be granted beginning on the lowest court level up to highest courts or even constitutional courts (if established in a country). Secondly, if people find themselves in a situation where these national mechanisms do not help them protect their human rights, it is partially possible for people to initiate proceedings on a regional level. For this we nowadays have some international conventions that have been created in different regions on the world: The European Convention on Human Rights, the African Banjul Charta, the Arab Charter on Human Rights and the Inter-American Charter on Human Rights. Until now, we do not have any system for the Asian continent. Dependent on the convention and the courts allocated to it, these regional bodies grant more or less efficient human

[122] *Karimova*, p. 6.
[123] *Cremer*, p. 142; *Karl*, p. 71.
[124] ICJ, *Case concerning the Application of the Convention on the Prevention and Punishment of the Crime of Genocide* (Bosnia-Herzegowina s. Serbia and Montenegro), ICJ Reports 2012, 43 (110 f.); *Kälin/Künzli*, m.n. 192; *Charlesworth/Chinkin*, p. 68.
[125] Art. 7 lit. f of the Rome Statute; *Ambos*, p. 354; *Manske*, p. 169 f.
[126] *Werle*, p. 828.
[127] *Gierhake*, p. 286.

rights protection. And thirdly, we have a row of international conventions, basically initiated by the United Nations.

And this sequence of protection mechanisms is where we observe the collision between human rights and state immunity. If you try to get compensation from states which maliciously and purposefully violate human rights, for example to stabilize the government, suppress journalists or following the track of repressing policies, you will for sure fail if you try to activate national mechanisms, as repressing states will not punish their own national policies. Next, the regional bodies in existence are very ineffective in means of good protection – the only court which has enough resources, expertise and legal backing is the European Court of Human Rights. And for the international scale this is even worse, because most of the conventions do not contain enforcement possibilities – starting with the Universal Convention on Human Rights. On an international scale, only the International Covenant on Civil and Political Rights and its Second Optional Protocol have established a system that allows more or less efficient individual claims. For the rest of the treaties, no legal enforcement instruments have been created so far, which means that global human rights protection is very limited.

So many people who suffered from violations try to make use of the last resort to hopefully get justice for what occurred, and in their situation many people try to sue violating states in front of foreign courts. Here, state immunity usually blocks the possibility to really initiate proceedings, but we will look at this in more detail in the following sections.

Development of the concept of State Immunity

The rule of state immunity is based on the idea of sovereign equality of all states,[128] which actually exists since the Peace of Westphalia[129] and has been enshrined in article 2 nr.1 of the Charter of the United Nations.[130] One aspect of this equality amongst states is the prohibition to exercise sovereign power over another state,[131] which also includes not to bring another state before a domestic court.[132] *Bartolus*, one of the most important law professors of Medieval Roman law, illustrated this point in 1354 with his sentence *par in parem non habet imperium*.[133] This protection against foreign jurisdiction finally is called state immunity,[134] and it has been a rule of customary international law until this very day.[135]

I. Absolute Immunity

Until quite recently ago, the concept of state immunity was considered essential to such an extent, that every sovereign act could be excluded from foreign jurisdiction;[136] this approach was called

[128] *Arnauld*, Völkerrecht, m.n. 319; *Doehring*, Völkerrecht, m.n. 658.
[129] *Hobe*, Völkerrecht, p. 39 f.
[130] *Vitzthum/Proelß*, section 3, m.n. 87.
[131] *Henkin/Pugh/Schachter/Smit*, p. 1126 f.; *Uerpmann-Wittzack*, p. 34.
[132] *Doehring*, Völkerrecht, m.n. 658; *Hobe*, Völkerrecht, p. 296; *Ipsen*, Völkerrecht, §5, m.n. 264; *Karl*, p. 23.
[133] *Arnauld*, Völkerrecht, m.n. 319.
[134] *Herdegen*, Völkerrecht, §37, m.n. 1; *Hobe*, Völkerrecht, p. 296.
[135] *Bautze*, p. 45; *Kokott/Doehring/Buergenthal*, m.n. 467.
[136] *Ahrens/Lipp/Varga*, p. 235; *Henkin/Pugh/Schachter/Smit*, p. 1126; *Hobe*, Völkerrecht, p. 296; *Stein/Buttlar*, m.n. 716.

the theory of *absolute state immunity*,[137] which was formulated for the first time in the US Supreme Court's decision on *The Schooner Exchange v. McFaddon*.[138]

II. Relative Immunity

But during the age of industrialisation, states became more and more active and important in the private economic sector.[139] So, very early the question was risen if absolute immunity would disadvantage contracting private parties,[140] so that a change of the concept of state immunity was necessary. This shift was firstly boosted by Belgian and Italian courts,[141] and later by the so called *Tate Letter* of US State Department law counsel Jack B. Tate, which limited the US policy concerning absolute state immunity.[142] Afterwards, this tendency was caught up by many national jurisdictions and legislations,[143] so that it is nowadays a rule of customary international law.[144] The central statement of the restrictive immunity theory simply is that government actions can be categorized into sovereign (*acta iure imperii*) and non-sovereign (*acta iure gestionis*) actions.[145] According to this approach, only sovereign actions can be protected by immunity, while other acts can be taken to domestic courts.[146] But due to the very difficult distinction between these two categories[147] and the lack of usable criteria, the classification of the act in question is up to the courts.[148]

III. Summary

As it has been shown above, the rule of state immunity is not absolute anymore. Since the distinction between *acta iure imperii* and *acta iure gestionis* a boarder has been crossed, domestic courts are allowed to initiate proceeding against foreign states.

Exceptions to the Rule of State Immunity in Cases of serious Human Rights Violations

So it becomes clear that a state basically acting in the frameworks of laws, as it is the case during economic activity, may not be protected by immunity. So the question is to raise whether, *ipso facto*, human rights violations, which take place in a clearly extrajudicial frame, can also be excluded from state immunity.[149] To answer this question a number of jurisdictions and scholars of international law have tried to develop approaches to justify a breach of state immunity in such cases. These approaches are now presented and examined.

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137 *Cremer*, p. 140; *Herdegen*, §37, m.n. 1.
138 US Supreme Court, *The Schooner Exchange v. McFaddon*, D. f. 24.02.1812, US 116, 122.
139 *Brownlie*, p. 329 f.
140 *Arnauld*, Völkerrecht, p. 322; *McCaffrey*, p. 191; *Suy*, p. 673.
141 *Bishop*, p. 94; *Karl*, p. 29 f.
142 Department of State Bulletin, Vol. 26, June 23 1952, p. 984; *Bishop*, p. 94; *Niehuss*, p. 1142.
143 *Appelbaum*, p. 49; *Henkin/Pugh/Schachter/Smit*, p. 1127 f.; *Herdegen*, §37, m.n. 2 f.; *Karl*, p. 30.
144 *Carty*, p. 402; *Kokott/Doehring/Buergenthal*, m.n. 467 f.; *Paech*, p. 49; *Stein/Buttlar*, m.n. 714, 716, 718.
145 *Brownlie*, p. 330; *Doehring*, m.n. 661 f.; *Henkin/Pugh/Schachter/Smit*, p. 1127 f.; *Herdegen*, §37, m.n. 5; *Ipsen*, Völkerrecht, §5, m.n. 265; *Karagiannakis*, p. 11 f.
146 *Arnauld*, Völkerrecht, p. 322; *Herdegen*, §37, m.n. 5; *McCaffrey*, p. 192; *O'Brien*, p. 265; *Wirth*, p. 433.
147 *Doehring*, Völkerrecht, m.n. 663 f.; *Higgins*, p. 267; *Hobe*, Völkerrecht, p. 296; *Ipsen*, Völkerrecht, §5, m.n. 266; *Kokott/Doehring/Buergenthal*, m.n. 467.
148 *Boguslavsky*, p. 168 f.; *Kokott/Doehring/Buergenthal*, m.n. 468; *Vitzthum/Proelß*, section 3, m.n. 90.
149 *Hatfield-Lyon*, p. 335.

I. Classification of Human Rights Violations

To begin with, it is considered to adapt the rules of the restrictive state immunity to human rights violations.[150]

In this context, a few criteria have been developed to make a distinction between *acta iure imperii* and *acta iure gestionis*. At first, the purpose of the action cannot be applied,[151] so that a recourse to the objective nature of the act comes into consideration.[152] Subject of this approach is to find out whether the act examined is characterized as an act of private law, which could be made by anybody,[153] or an act of sovereign nature.[154] Some scholars assume an exception of state immunity. On the one hand, acts of torture or slavery can also be carried out by private persons, so that a state appears as private offender and should not be granted immunity.[155] On the other hand, some other scholars try to classify an act as typical manifestation of state functions,[156] because political assassinations for example are no typical state functions and can therefore not being protected by state immunity.[157]

But at the same time, there are many judgements of different origins that apply the rule of state immunity in cases of human rights violations. In its *Arrest-Warrant* judgement, the ICJ granted immunity to state representatives in cases of human rights violations.[158] The US Supreme Court also ruled in *Nelson v. Saudi-Arabia* that the use of violence against Nelson was a sovereign act and therefore worth being protected.[159] Moreover, in *Bouzari v. Islamic Republic of Iran*, the Ontario Superior Court of Justice approved *acta iure imperii*, if the act in question, despite all possible purposes, is carried out by a state official.[160]

Another argument against human rights violations being *acta iure gestionis* is the fact, that war crimes[161] and, like in *Al-Adsani*, tortures[162] can be mandated by the government and still count as *acta iure imperii*.[163] So recurring to the theory of restrictive state immunity does not justify an exception to state immunity.

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[150] BVerfG, D. f. 30.04.1963, Zeitschrift für ausländisches öffentliches Recht und Völkerrecht, 1964, p. 293 f.; *Bröhmer*, p. 83 f.; *Caplan*, p. 744, 759; *Stein/Buttlar*, m.n. 721.
[151] Schweizerisches Bundesgericht, D. f. 22.05.1984, 110 II 255, p. 260; *Kren Kostkiewicz*, p. 293; *Stein/Buttlar*, m.n. 719.
[152] BVerfG, D. f. 30.04.1963, Zeitschrift für ausländisches öffentliches Recht und Völkerrecht, 1964, p. 293 f.; High Court, *I° Congreso del Partido*, D. f. 28.01.1977, All England Law Reports 1978, volume 1, 1193 f.; *Ipsen*, Völkerrecht, §5, m.n. 266.
[153] *Bröhmer*, p. 197; *Dörr*, p. 206; *Dahm/Delbrück/Wolfrum*, §72, p. 458; *Doehring*, Völkerrecht, m.n. 662; *Stein/Buttlar*, m.n. 71.
[154] High Court, *I° Congreso del Partido*, ruling of 28.01.1977, All England Law Reports 1978, volume 1, 1193 f.
[155] *Heidbrink*, p. 88; *Lauterpacht*, p. 220, 225.
[156] *Malina*, p. 239; *Schaumann/Habscheid*, p. 1, 289.
[157] *Crawford*, AYBIL, p. 89.
[158] ICJ, *Case Concerning the Arrest Warrant of 11 April 2000* (Democratic Republic of the Congo v. Belgium), ICJ Reports 2002, 3 (29).
[159] US Supreme Court, *Saudi-Arabia and others v. Nelson*, D. f. 23.03.1993, 507 U.S. 349, 361.
[160] Ontario Superior Court of Justice, *Bouzari and others v. Islamic Reublic of Iran*, D. f. 01.05.2002, 124 ILR 427, 435.
[161] *Cremer*, p. 157.
[162] ECHR, *Al-Adsani v. The United Kingdom*, D. f. 21.11.2001, m.n. 11 f.
[163] Lord Lloyd of Berwick, House of Lords, *Regina v. Bow Street Metropolitan Stipendiary Magistrate and others, Ex parte Pinochet Ugarte*, D. f. 25.11.1998, Weekly Law Review, volume 3, p. 1488.

II. Implied Waiver of Immunity

Next, in *The Schooner Exchange v. McFaddon,* the US Supreme Court also recognized that a state could freely waive its immunity.[164] This possibility is nowadays universally accepted,[165] but for such a waiver a clear declaration of will is absolutely needed,[166] because au fond a consensus is established between parties to submit oneself to a foreign jurisdiction.[167] As immunity may refer to both, main and enforcement proceedings, the waiver has to be announced in both proceedings if necessary.[168] If a state does not evade jurisdiction through conclusive behaviour, an implied waiver of immunity can be assumed.[169] So this constellation can be expanded by assuming that a violation of human rights, which belong to *ius cogens,* can be interpreted as implied waiver of immunity, too.[170] Similar thoughts have been expressed by judge Wald in her dissenting opinion on the *Princz* case when assuming that a state who violates human rights loses its right to claim immunity.[171]

This approach is not convincing, as a waiver always needs some kind bilateral agreement; but here, such a consensus is established without further indications, and the violations of human rights cannot be used to create a consent, as this is, unlike trading activities, not settled as customary international law.[172] On the contrary: A state violating human rights will always try to avoid responsibility and explicitly refer to state immunity,[173] so that it is very difficult to talk about an implicit waiver in such cases.

III. Forfeiture of State Immunity

Another possibility is the forfeiture of immunity, which has been expressed by *Kokott* in a very detailed way.[174] According to her, forfeiture is a legal principle of international law[175] and can be applied to questions of immunity due to many reason. First of all, immunity is, as waivers on one's own accord imply, a dispositive law, so that it can be forfeited respectively.[176] Secondly, violations of *ius cogens* lead to the invalidity of international treaties, so that unilateral offenses lead to an exclusion of rights.[177] Finally, even reprisals that violate international law are allowed under certain circumstances, so that a state should be able, at minus, to exercise jurisdiction over another state through the breach of state immunity.[178]

As a result, this opinion is very interesting, because the problem of a "forced" waiver is circumvented. Nevertheless, critique has been expressed on this topic. In reality, a legal principle

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[164] US Supreme Court, *The Schooner Exchange v. McFaddon*, D. f. 24.02.1812, US 116, 136.
[165] *Bosch*, p. 90 f.; *Brownlie*, p. 343; *Kren Kostkiewicz*, p. 380; *Paech*, p. 53.
[166] *Ress*, State Immunity and Human Rights, p. 175, 193.
[167] *Bröhmer*, p. 191; *Finke*, p. 864.
[168] *Doehring*, Völkerrecht, m.n. 665.
[169] *Brownlie*, p. 343; *Paech*, p. 53; *Stein/Buttlar*, m.n. 717.
[170] *Bergen*, p. 186; *Pepper*, p. 369.
[171] Dissenting Opinion Patricia Wald, US Court of Appeals, District of Columbia, *Princz v. Federal Republic of Germany*, International Legal Materials, volume 33, 1994, 1497 ff.
[172] *Appelbaum*, p. 276.
[173] *Ibid.*; *Bröhmer*, p. 191; *Schaarschmidt*, p. 29.
[174] *Kokott*, p. 135 ff.
[175] *Ibid.*, p. 140.
[176] *Ibid.*, p. 148.
[177] *Ibid.*; *Reimann*, p. 423.
[178] *Bröhmer*, p. 194; *Kokott*, p. 149.

of international law that brings a loss of state immunity in cases of human rights violations cannot be observed as intensely as *Kokott* tries to show.[179] Additionally, state immunity does not only satisfy or protect interests of single states, it is also needed as instrument for intergovernmental issues, especially to maintain proper international relations.[180] And according to current opinions there can be no collision between the procedural content of state immunity and the substantive guarantees of human rights.[181] Thus. the concept of forfeiture is not applicable in cases of serious human rights violations.[182]

IV. Human Rights and their Obligations erga omnes

Besides, it is also considered that human rights constitute obligations *erga omnes*, and for this reason every single member of the international community is allowed to react on violations.[183] As obligations *erga omnes* have been removed from the *domain reserve* of states and are now under surveillance of the international community, state immunity should not stand in the way in such cases.[184]

1. Legally protected Goods, Circle of Beneficiaries and legitimate Means

As a cluster of too many legally protected goods would hold international conflict potential[185] it is obvious to recognize only all those human rights as legally protected goods which can clearly be classified as *ius cogens*.[186] Besides, the circle of actors qualified to react on violations is controversial, but in general it can be said that obligations *erga omnes* allow every state to take actions as there is no international human rights protective body, so that the enforcement of commitments owed to the international community should be up to every single member of this community,[187] which has already been implied in the ICJ's decision on *Barcelona Traction*.[188]

In the *East-Timor* case it was also pointed out that even the ICJ itself is not allowed to judge on the behaviour of a state which is not part of a lawsuit.[189] Additionally, the ILC's *Draft Articles on Responsibility of States for Internationally Wrongful Acts* only contains limited possibilities for action in art. 48 para. 2.[190] In the end, greatest restraint is necessary when considering actions against violations of obligations *erga omnes*.

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[179] *Appelbaum*, p. 282.
[180] *Appelbaum*, p. 282; *Tams*, p. 338; in the case foreign ministers: *Zeichen/Hebenstreit*, p. 190.
[181] ICJ, *Jurisdictional Immunities of the State* (Germany v Italy: Greece Intervening), ICJ Reports 2012, 99 (140); *Fox/Webb*, p. 5; *Kreicker*, p. 113; *Schaarschmidt*, p. 22.
[182] Likewise: *Bröhmer*, p. 194; *Moll*, p. 581; *Schaarschmidt*, p. 30.
[183] *Bröhmer*, p. 157; *Karagiannakis*, p. 16.
[184] *Reimann*, p. 422.
[185] *Appelbaum*, p. 241; *Doehring*, Undifferenzierte Berufung auf Menschenrechte, p. 355, 361.
[186] *Doehring*, Undifferenzierte Berufung auf Menschenrechte, p. 361.
[187] Fiedler/Klein/Schnyder/*Klein*, p. 50 f.; *Frowein*, p. 262; Coester-Waltjen/Kronke/Kokott/*Kokott*, p. 86 f.
[188] ICJ, *Case Concerning the Barcelona Traction, Light and Power Company, Limited* (Belgium v. Spain), ICJ Reports 1970, 3 (32).
[189] ICJ, *Case Concerning East Timor* (Portugal v. Australia), ICJ Reports 1995, 90 (102).
[190] Article 48 para. 2: *Any State entitled to invoke responsibility under paragraph 1 may claim from the responsible State: (a) cessation of the internationally wrongful act, and assurances and guarantees of non-repetition in accordance with article 30; and (b) performance of the obligation of reparation in accordance with the preceding articles, in the interest of the injured State or of the beneficiaries of the obligation breached.*

2. Reprisals

In this context it is important to ask if reprisals are a legitimate mean to react on human rights violations.[191] A reprisal usually is an action illegal under international law which is meant to force another state breaking international law to act according to international law again.[192] According to this, a state may be allowed to exercise jurisdiction over another state in cases of the latter one breaking an obligation *erga omnes*.[193]

But this idea fails when taking into consideration some other arguments. When a state exercises jurisdiction over another state, proceedings are initiated which shall examine the violation in question. If the result of such proceedings is that a state did not act against international law, the state exercising jurisdiction broke international law[194] and cannot justify its misfeasance.[195] Besides this, it is still not clear which connection has to be drawn between the violation and the exercise of jurisdiction (for instance the violation of citizens[196]), to justify a breach of state immunity when carrying out reprisals. In fact, reprisals therefore are no adequate mean to react on human rights violations.

3. Conclusion

As there are many insecurities in this area, obligations *erga omnes* in cases of human rights violations can only justify a breach of state immunity if there is a more detailed international specification on the relevant elements, which is currently not the case.

V. Qualification of Exceptions of State Immunity in Cases of serious Human Rights Violations as Customary International Law

As *Hailer* convincingly shows, there is no provision in international contract law which codifies an exception of state immunity in cases of human rights violations.[197] Therefore, such an exception could be derived from international customary law. *Paech* for example refers to the *Distomo*-judgement and assumes that the current development of state-based and international regulations is enough to accept customary international law in cases of an exemption of immunity.[198] The same thoughts have been expressed in the *Ferrini*-case[199] and examined by the ICJ.[200] How the current tendency is orientated will now be illustrated.

Especially in the United States of America, which have developed a very vivid human rights claim system, some national immunity laws play an important law. Since the *Alien Tort Claims Act* was established in 1789, two more laws have been passed, namely the *Foreign Sovereign Immunities Act* (1976) and the *Torture Victim Protection Act* (1992).[201] In the 2nd half of the 20th century, many other

[191] *Karl*, p. 134; *Malanczuk*, p. 58 f.
[192] *Herdegen*, Völkerrecht, §59, m.n. 6; *Hobe*, Völkerrecht, p. 308.
[193] *Cassese*, p. 262; *Ipsen*, Völkerrecht, §55, m.n. 3; *Zemanek*, p. 37, 39.
[194] *Appelbaum*, p. 286; *Bröhmer*, p. 193.
[195] *Hailer*, p. 195 f.
[196] *Ipsen*, Völkerrecht, §7, m.n. 3.
[197] *Hailer*, p. 170 ff.
[198] *Paech*, p. 70 f.; same tendencies: *Bröhmer*, p. 188; *Hobe*, IPRax, p. 371; *Hobe*, Völkerrecht, p. 404; *Zimmermann*, p. 433.
[199] Corte di Cassazione, Sezioni Unite*, Ferrini v. Reppublica Federale di Germania*, D. f. 11.03.2004, n.5044, 87 Rivista di diritto internazionale 539 (2004).
[200] ICJ, *Jurisdictional Immunities of the State* (Germany v. Italy: Greece intervening), ICJ Reports 2012, 99 (140 ff.).
[201] *Bosch*, p. 185, 187; *Hailer*, p. 29.

states passed laws and regulations concerning state immunity. These are: the *UK State Immunity Act* (1978), the *Singapore State Immunity Act* (1979), the *South African Foreign States Immunities Act* (1981), the *Pakistani State Immunity Ordinance* (1981), the *Act to provide for State Immunity in Canadian Courts* (1982), the *Australian Foreign States Immunities Act* (1986) and the *Argentinian Immunidad Jurisdictional de los Estados Extranjeros ante los Tribunales Argentinos* (1995).[202]

These different laws and the *United Nations Convention on Jurisdictional Immunities of States and their Property* indicate that there could be a rule of customary international law. This is partially convincing. On the one hand, the fast establishment of many national laws concerning questions of immunity show how important this topic is becoming on the international level. The ongoing restrictions since the creation of the restrictive immunity theory are underlined and the very lively *Human Rights Litigation* in the USA has given birth to many interesting cases (for instance *Liu v. China*, *Letelier v. China* or *Princz v. Germany*). Additionally, the US-jurisdiction and the jurisdictions of Italy and Belgium[203] are tending to restrict state immunity since many years now.

But nevertheless these tendencies cannot withstand any criticism. Firstly, the tendency of restricting state immunity in cases of human rights violations has not enough support in the international community as whole.[204] Furthermore, the European and the United Nations conventions on state immunity do not have any indications for such an exception;[205] and Canadian, Polish, Slovenian, French and New Zealand courts tend to grant immunity.[206] The ECHR also holds on the principle of state immunity in its decision on *McElhinney*.[207] Apart from that, the cases of *Al-Adsani*,[208] *Germany v. Italy*,[209] *Jones v. The United Kingdom*[210] as well as *Kazemi Estate v. Islamic Republic of Iran*[211] clearly show that there currently is no rule of customary international law restricting state immunity in cases of serious human rights violations.

VI. Human Rights Violations and national Tort Legislations

As previously mentioned, some states have passed laws which regulate state immunity, and each of these provisions contains one or more articles that prohibit protection under state immunity in cases where a state's action leads to injuries, death or the loss of property of a person.[212] In such circumstances the conflict between national legislation and principles of international law becomes very obvious: The decision whether a state's sovereign action can be put under state immunity is up to the national courts. But when making their decisions, they are not allowed to act beyond the basic frame of international law, so that it is forbidden to refuse state immunity in cases when international law would grant such protection.[213]

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[202] *Appelbaum*, p. 46 f.; *Paech*, p. 66, 69.
[203] *Fensterwald*, p. 623; *Kren Kostkiewicz*, p. 121, 184.
[204] *Dörr*, p. 218; Heintze/Ipsen/*Hofmann*, p. 151; *Kreicker*, p. 113; *Schmalenbach*, p. 423 f.; *Tams*, p. 346 f.
[205] *Appelbaum*, p. 77.
[206] ICJ, *Jurisdictional Immunities of the State* (Germany v. Italy: Greece intervening), ICJ Reports 2012, 99 (141); *Kren Kostkiewicz*, p. 121 ff.
[207] ECHR, *Case of McElhinney v. Ireland*, D. f. 21.11.2001, m.n. 38, 40.
[208] ECHR, *Al-Adsani v. The United Kingdom*, D. f. 21.11.2001, m.n. 67.
[209] ICJ, *Jurisdictional Immunities of the State* (Germany v. Italy: Greece intervening), ICJ Reports 2012, 99 (154 f.).
[210] ECHR, *Jones and Others v. The United Kingdom*, D. f. 14.01.2014, m.n. 215.
[211] Supreme Court of Canada, *Kazemi Estate v. Islamic Republic of Iran*, 2014 SCC 62.
[212] *Paech*, p. 69.
[213] *Ipsen*, Völkerrecht, §5, m.n. 266; *Kokott/Doehring/Buergenthal*, m.n. 468; *Stein/Buttlar*, m.n. 720.

When talking about *ius cogens* before it already became clear that there currently is no sufficient international practice to assume an international customary law concerning exceptions to state immunity, and even higher US courts doubt that the FSIA is applicable to human rights violations.[214] In total, an exception to state immunity cannot be based on articles of immunity laws.

VII. Foreign Tort Exceptions

Another possibility to justify an exception to state immunity is the so-called *foreign tort exception*. This approach can be found amongst some scholars[215] and is based on the idea that a state that commits illegal actions on the territory of another state is less worth protecting[216] and should not enjoy the benefits of immunity.

Initially this question was posed in *Letelier v. Republic of Chile*, where immunity was denied to the Chilean government after it assassinated the Chilean ambassador to the US.[217] Later, the Court of Appeals refused to accept immunity in the *Olsen* case, where Mexico showed negligence during the landing approach of an airplane carrying US passengers.[218] In *Liu v. China* again immunity was not granted to the Chinese government after it assassinated the US-American journalist Liu.[219] Besides, the Greek *Areios Pagos* came to the conclusion that war crimes carried out by the German Wehrmacht during World War II on Greek territory should not be protected by state immunity.[220]

However, this decision was rejected by the Greek Supreme Special Court, the ECHR, the German Federal Court and the German Constitutional Court.[221] The ICJ, too, dealt with the foreign tort exception in *Germany v. Italy*, but denied it,[222] and combined with the examination given in section *V*. it becomes clear that the foreign tort exception cannot justify a breach of state immunity in cases of serious human rights violations.

VIII. Human Rights in the international Hierarchy of Norms

This special approach is based on the idea of an international hierarchy of norms. Ius cogens, being binding and non-optional legal principles,[223] to which some human rights commitments belong, too, [224] stand above every other regulations of international law.[225] State immunity on the other hand is subjected to the states' disposition and consensus,[226] so that if these two principles were about to collide, state immunity would be derogated due to its inferior position.[227] Through this approach the important position of human rights on the international level is crucially highlighted,

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214 US Supreme Court, *Saudi-Arabia and others v. Nelson*, D. f. 23.03.1993, 507 U.S. 349, 361.; US Court of Appeals, District of Columbia, *Hugo Princz v. Federal Republic of Germany*, 26 F.3d 1166, 1175 f.
215 *Bosch*, p. 95; *Karagiannakis*, p. 18.
216 *Appelbaum*, p. 114.
217 US Court of Appeals, Second Circuit, *De Letelier v. Republic of Chile*, 748 F.2d 790, 799 (2d Cir. 1984).
218 US Court of Appeals, Ninth Circuit, *Olsen v. Government of Mexico, Sanchez v. The Republic of Mexico*, 729 F.2d 641 (651).
219 US Court of Appeals, Ninth Circuit, *Liu v. Republic of China*, 892 F.2d 1419, 1432 (9th Cir. 1989).
220 *Areios Pagos*, D. f. 04.05.2000 (Az. 11/2000) – not published, see: *Gavouneli/Bantekas*, p. 200.
221 *Ipsen*, Völkerrecht, §5, m.n. 276; *Schaarschmidt*., p. 8 f.
222 ICJ, *Jurisdictional Immunities of the State* (Germany v. Italy: Greece intervening), ICJ Reports 2012, 99 (127).
223 *Schöbener/Funke*, p. 249.
224 *Ipsen*, Völkerrecht, §16, m.n. 59; *Kälin/Künzli*, m.n. 191 f.
225 *Bosch*, p. 107.
226 *Crawford*, BYIL, p. 87; *Karagiannakis*, p. 20.
227 *Dörr*, p. 214 f.; *Karagiannakis*, p. 20; *Orakhelashvili*, p. 264.

as they basically are the conceptual and ideational framework of international law, the *ordre public*, and it is not allowed to deviate from them.[228]

An appropriate discussion on the very nature of ius cogens also helps to lever out a very frequent counterargument. It is argued that there cannot be a collision between the violation of ius cogens and state immunity, as the latter one is a procedural matter while human rights and ius cogens are a question of substantial law.[229] The same was argued in *Al-Adsani*[230] and with a lot of rigour in *Germany v. Italy*.[231] Nevertheless, it is important to acknowledge that if ius cogens is fully understood as the incredibly central function it plays for international law,[232] it must also have a procedural impact and collide with state immunity.[233] As McGregor says:

"Sovereignty cannot be asserted to avoid state responsibility."[234]

Still, this approach is deficient. Article 53 of the Vienna Convention on the Law of Treaties for example lists the consequences for violations of ius cogens, and thus it is very difficult to extract more legal consequences as the ones listed; this article is going to be overstretched if used to justify a hierarchy of norms in international law.[235] In addition to this, ius cogens is based, as international law in general, on the consensus of states. As it consists of state practice and an *opinio iuris,* both factors that can be object of changes over time, it would be inappropriate to give them a constitutional-like character.[236] Furthermore the ICJ denied a collision between state immunity and human rights,[237] so that there is no space to manoeuvre right now. This approach is not adequate to justify a breach of state immunity.

IX. Conclusion

After intense examinations the conclusion has to be drawn that all the approaches created to justify a breach of state immunity in cases of human rights violations are not entirely convincing. There are too many decisions of different supreme courts and also a lot of dogmatic hindrances. But notwithstanding the possible development of a rule of customary international law and the partial acceptance of a hierarchy of norms indicate a positive tendency of state practices. However, the next section will show why such a development of state practices will be difficult to achieve in the short term.

Evaluation of the current Situation

The result presented above is very alarming when keeping in mind a better enforcement of human rights on the international level. Although they are a well-established ideal and principle of

[228] *Appelbaum*, p. 260.
[229] ICJ, *Jurisdictional Immunities of the State* (Germany v. Italy: Greece intervening), ICJ Reports 2012, 99 (140); *Hobe*, Völkerrecht, p. 632; *Kreicker*, p. 111 f.; *Zimmermann*, p. 437 f.; against this approach: *McGregor*, p. 12.
[230] ECHR, *Al-Adsani v. The United Kingdom*, D. f. 21.11.2001, m. n. 66 f.
[231] ICJ, *Jurisdictional Immunities of the State* (Germany v. Italy: Greece intervening), ICJ Reports 2012, 99 (140 f.)
[232] *Paech*, p. 65.
[233] *Ibid.*
[234] *McGregor*, p. 912.
[235] *Appelbaum*, p. 258; *Evans/Shelton*, p. 169.
[236] *Appelbaum*, p. 272.
[237] ICJ, *Jurisdictional Immunities of the State* (Germany v. Italy: Greece intervening), ICJ Reports 2012, 99 (140 f.)

international law, human rights are still fighting for better recognition and enforcement, and often they fail on the argument of state immunity.

I. Tendencies until 2012

But until 2012, this situation seemed to improve: The US-American human rights litigation indicated a clear tendency, and the third *Pinochet* judgement provided further impulses. Although state immunity was upheld in *Al-Adsani*, this was only possible with the least possible majority of 9:8 judges.[238] The Greek *Areios Pagos* and the Italian *Corte di Cassazione* followed. International state practice took not an extensive, but clear direction.

But a saving of this situation became obsolete in 2012 when the ICJ passed its sentence on *Germany v. Italy*, which acted like a handbrake for an exception of state immunity in cases of human rights violations.

II. The Case of Germany v. Italy

The happenings leading to the ICJ's case of *Germany v. Italy* date back to World War II, when German troops committed a massacre in the Greek village of Distomo. Relatives and survivors tried to get compensation for the violations suffered and initiated claims before Greek courts in the 1990's. The case went up to the Greek supreme court, the *Areios Pagos*, which ruled that state immunity could not be granted to Germany and that compensation should be paid. The Greek *Supreme Special Court* had to deal with similar issues and on behalf of the *Areios Pagos* it ruled the opposite. As the Greek government refused to initiate foreclosure, the claimants went to the *ECHR* (2002), the *German Federal Court* (2003) and the *German Constitutional Court* (2006). In the end, since the decision of the *Supreme Special Court* the result always was the same and the German government successfully referred to state immunity.

But the Greek claimants stayed restless: After it became known that Italian courts repeatedly accepted claims of Italian war victims and sued the German government to pay compensation for war crimes committed during World War II in Italy, like it was the case in the *Ferrini* decision, the Greek claimants initiated proceeding in Italy. Then, in 2008 the Italian *Corto di Cassazione* passed its judgement on Germany to pay compensation to Greek victims.

As the German government wanted to react against this it called the ICJ in 2009 and the case *Germany v. Italy* was initiated. The court put a lot of effort in its decision and examined the current legal situation of state immunity and exceptions due to human rights situations on a broad international level. Amongst many other results it drew the following very substantial conclusion: that it is not possible to justify a breach of state immunity in cases of serious human rights violations.

III. Developments after Germany v. Italy

The subsequent developments were very disillusioning. Until 2014, only two other sentences of higher courts have been passed: In January 2014 the ECHR denied an exception to immunity in cases of serious human rights violations in *Jones and Others v. The United Kingdom,* and afterwards the Supreme Court of Canada also arrived to the conclusion that immunity could not be granted. Both

[238] ECHR, *Al-Adsani v. The United Kingdom*, judgement of 21.11.2001, m.n. 67; *Cremer*, p. 139; *Tams*, p. 332.

judgements simply refer to the decision on *Germany v. Italy* so that it seems that everything important concerning immunity has already been illustrated. The tendencies before the ICJ's judgement are not picked up again, the ICJ is simply accepted and the *status quo* has not been changed since then.

Conclusion: Better Human Rights Protection through different Case Groups

Bröhmer already pointed out in 1997 that human rights violations appear in two different constellations.[239]

On the one hand there are violations of human rights during systematic conflicts, like in war times, where it would not be helpful to allow every single person infringed to initiate proceedings against violating states. After wars, individual infringements are usually mediatized and covered by reparations, peace treaties or multilateral support mechanisms.[240] Legal actions of thousands or millions of people at the same time would be an unsuitable burden both for domestic courts and bilateral relations of states.[241] So it is right to follow the ICJ and prohibit compensation of war crimes through individual claims; if this would be allowed, *Pandora's box* would literally be opened up.

Then again, there are individual infringements during peaceful times where a state only violates an individual or a limited circle of persons, so that possible claims or procedures could clearly be isolated from other law suits and initiated on behalf of an individual's motivation; this is the case group the ICJ should have paid more attention to. Actually, most of today's violations are to be put into this case group. As freedom of expression, freedom of religion, protection against torture and other basic human rights are often violated by repressive states, we can see that for many countries it is daily business and a part of national policies to restrict individual freedoms.

In this context it is clearly difficult to draw the exact line between systematical conflicts and peaceful times. As the ICJ had to deal with a case that happened nearly 70 years ago it was completely blind for all the individual violations that take nowadays place on a daily basis. Formally, the ICJ cannot be criticized, but every argument that had been developed to justify a breach of state immunity in cases of serious human rights violations has been rejected in a way that a general reference was created which will block every further approaches. Individual violations, which are completely different from violations during war times, are not accessible anymore. It would have been more tactful and human rights friendly to create two different case groups and close the debate for violations during war times while leaving the debate for nowadays' human rights infringements open.

Keeping this in mind, *Payandeh's* observation of just narrowed possibilities of national courts can be agreed to.[242] Actually, the development of immunity exceptions now lays in the hand of national courts. Their importance for developing state immunity may have been weakened, but interestingly the ECHR found a more moderate approach to this very basic problem of human rights enforcement than the ICJ did:

[239] *Bröhmer*, p. 207.
[240] *Schmahl*, p. 716.
[241] *Bröhmer*, p. 223.
[242] *Payandeh*, p. 958.

> "However, in light of the developments currently underway in this area of public international law, this is a matter which needs to be kept under review by Contracting States."[243]

So the chains of the ICJ have slightly been loosened and the future will show in how far state practice will jump over the outdated understanding of sovereignty and immunity of states in times of growing value orientation.

[243] ECHR, *Jones and Others v. The United Kingdom*, D. f. 14.01.2014, m.n. 215.

References

Ahrens, Martin/ Lipp, Volker/ Vargy, István (2011): Europäisches Zivilprozessrecht – Einfluss auf Deutschland und Ungarn, Göttinger Juristische Schriften Band XI, Göttingen: Universitätsverlag Göttingen (cited: Ahrens/Lipp/Vargy, p. …)

Ambos, Kai (1999): Völkerrechtliche Bestrafungspflichten bei schweren Menschen-rechtsverletzungen, Archiv des Völkerrechts, volume 37, pp. 318 – 356 (cited: Ambos, p. …)

Appelbaum, Christian (2007): Einschränkungen der Staatenimmunität in Fällen schwerer Menschenrechtsverletzungen: Klagen von Bürgern gegen einen fremden Staat oder ausländische Funktionsträger vor nationalen Gerichten, Schriften zum Völkerrecht, volume 171, Berlin (cited: Appelbaum, p. …)

Arnauld, Andreas von (2009): Souveränität und responsibility to protect, Die Friedenswarte, volume 84, pp. 11 – 52 (cited: Arnauld, Responsibility to Protect, p. …)

Ibid. (2012): Völkerrecht, Heidelberg: C. F. Müller (cited: Arnauld, Völkerrecht, m.n. …)

Bautze, Kristina (2012): Völkerrecht: Ein Lehrbuch, Berlin: Berliner Wissenschafts-Verlag (cited: Bautze, p. …)

Bergen, Joseph G. (1999): Princz v. The Federal Republic of Germany: Why the Courts should find that violating Jus Cogens constitutes an implied waiver of Sovereign Immunity, Conneticut Journal of International Law, volume 14, pp. 169 – 201 (cited: Bergen, p. …)

Bishop, William W. Jr. (1953): New United States Policy Limiting Sovereign Immunity, The American Journal of International Law, pp. 93 – 106 (cited: Bishop, p. …)

Boguslavsky, Mark Moisevich (1979): Foreign State Immunity: Soviet Doctrine and Practice, Netherlands Yearbook of International Law, volume 10, p. 167 – 177 (cited: Boguslawsky, p. …)

Bosch, Julia (2004): Immunität und internationale Verbrechen, Baden-Baden: Nomos Verlagsgesellschaft (cited: Bosch, p. …)

Bröhmer, Jürgen (1997): State Immunity and the Violation of Human Rights, The Hague: Artinus Nijhoff Publishers (cited: Bröhmer, p. …)

Brownlie, Ian (1998): Principles of Public International Law, 5th edition, Oxford: Oxford University Press (cited: Brownlie, p. …)

Buergenthal, Thomas/ Thürer, Daniel (2010): Menschenrechte: Ideale, Instrumente, Institutionen, Zurich/St Gallen: Nomos Verlagsgesellschaft (cited: Bürgenthal/Thürer, p. …)

Cançado Trindade, Antônio Augusto (2010): Die Entwicklung des interamerikanischen Systems zum Schutz der Menschenrechte, Zeitschrift für ausländisches öffentliches Recht und Völkerrecht, pp. 629 – 699 (cited: Trindade, p. …)

Caplan, Lee M. (2003): State Immunity, Human Rights, and Jus Cogens: A Critique of the Normative Hierarchy Theory, The American Journal of International Law, volume 97, pp. 741 – 781 (cited: Caplan, p. …)

Carty, Tony (2011): Why are Hong Kong judges keeping a distance from international law, and with what consequences? Reflections on the CFA in DRC v FG Hemishpere, Hong Kong Law Journal, volume 41, pp. 401 – 410 (cited: Carty, p. …)

Cassese, Antonio (2005): International Law, Oxford: Oxford University Press (cit.: Cassese, p. …)

Cavallaro, James L./ Brewer, Stephanie Erin (2008): Reevaluationg Regional Human Rights Litigation in the Twenty-First Century: The Case of the Inter-American Court, The American Journal of International Law, volume 102, pp. 768 – 827 (cited: Cavallaro/Brewer, p. …)

Charlesworth, Hilary/ Chinkin, Christine (1993): The Gender of Jus Cogens, Human Rights Quarterly, volume 15, pp. 63 – 76 (cited: Charlesworth/Chinkin, p. …)

Chinkin, Christine (2009): Women, Rights of, International Protection, in Rüdiger Wolfrum (ed.), Max Planck Encyclopedia of Public International Law, online edition (www.mpepil.com) (cited: Chinkin, m.n. …)

Coester-Waltjen, Dagmar/ Kronke, Herbert/ Kokott, Juliane (1998): Berichte der Deutschen Gesellschaft für Völkerrecht, volume 38 (cited: Coester-Waltjen/Kronke/ Kokott/author, p. …)

Crawford, James R. (1982): A Foreign State Immunities Act for Australia?, Australian

Year Book of International Law, volume 8, pp. 71 – 107 (cited: Crawford, AYBIL p. …)

Ibid. (1983): International Law and Foreign Sovereigns: Distinguishing Immune Transactions, British Yearbook of International Law, volume 54, pp. 75 – 118 (cited: Crawford, BYIL, p. …)

Cremer, Wolfgang (2003): Entschädigungsklauseln wegen schwerer Menschenrechts-verletzungen und Staatenimmunität vor nationaler Zivilgerichtsbarkeit, Archiv des Völkerrechts, volume 41, pp. 137 – 168 (cited: Cremer, p. …)

Dahm, Georg/ Delbrück, Jost/ Wolfrum, Rüdiger (1989): Völkerrecht: Band I/1: Die Grundlagen. Die Völkerrechtssubjekte, 2nd edition, Berlin: Walter de Gruyter (cited: Dahm/Delbrück/Wolfrum, §…, p. …)

Dahm, Georg (1958): Völkerrechtliche Grenzen der inländischen Gerichtsbarkeit gegenüber ausländischen Staaten, in Festschrift für Arthur Nikisch, Tübingen: J.C.B Mohr, pp. 153 – 183 (cited: Dahm, p. …)

Di Fabio, Udo (2011): Menschenrechte in unterschiedlichen Kulturräumen, in Jacques Poulain, Hans Jörg Sandkühler and Fathi Triki (eds.), Recht und Kultur: Menschenrechte und Rechtskulturen in transkultureller Perspektive, Frankfurt am Main: Peter Lang Internatio-naler Verlag der Wissenschaften (cited: Di Fabio, p. …)

Doehring, Karl (1995): Die undifferenzierte Berufung auf Menschenrechte, in Ulrich Beyerlin, Michael Bothe, Rainer Hofmann and Ernst-Ulrich Petersmann (eds.), Recht zwischen Umbruch und Bewahrung: Festschrift für Rudolf Bernhardt, Heidelberg: Springer, pp. 355 - 364 (cited: Doehring, Undifferenzierte Berufung auf Menschenrechte, p. …)

Ibid. (1996): Handelt es sich bei einem Recht, das durch diplomatischen Schutz eingefordert wird, um ein solches, das dem die Protektion ausübenden Staat zusteht, oder geht es um die Erzwingung von Rechten des betroffenen Individuums?, in Georg Ress and Thorsten Stein (eds.), Der diplomatische Schutz im Völker- und Europarecht, Baden-Baden: Nomos Verlagsgesellschaft (cited: Doehring, diplomatischer Schutz, p. …)

Ibid. (2004): Völkerrecht: Ein Lehrbuch, 2nd edition, Heidelberg: C.F. Müller (cited: Doehring, Völkerrecht, m.n. …)

Donnelly, Jack (2003): Human Rights in Theory and Practice, 3rd edition, Cornell: Cornell University Press (cited: Donnelly, p. …)

Dörr, Oliver (2003): Staatliche Immunität auf dem Rückzug?, Archiv des Völkerrechts, volume 41, pp. 201 – 218 (cited: Dörr, p. …)

Evans, Malcolm (ed.) (2010): International Law, 3rd edition, Oxford: Oxford University Press (cited: Evans/author, p. …)

Eze, Osita C. (2009): The African Charter on Rights and Duties and Enforcement

Mechanisms, Erkelenz: Altius Verlag (cited: Eze, p. …)

Fensterwald Jr., Bernard (1950): Sovereign Immunity and Soviet State Trading, Harvard Law Review, volume 63, pp. 614 – 642 (cited: Fensterwald, p. …)

Fiedler, Wilfried/ Klein, Eckart/ Schnyder, Anton K. (1997): Gegenmaßnahmen (CounterMeasures), Berichte der Deutschen Gesellschaft für Völkerrecht, volume 37 (cited: Fiedler/Klein/Schnyder/author, p. …)

Finke, Jasper (2011): Sovereign Immunity: Rule, Comity or Something Else?, European Journal of International Law, volume 21, pp. 853 – 881 (cited: Finke, p. …)

Fox, Hazel/ Webb, Philippa (2013): The Law of State Immunity, 3rd edition, Oxford: Oxford University Press (cited: Fox/Webb, p. …)

Frowein, Jochen Abr. (1983): Die Verpflichtungen erga omnes im Völkerrecht und ihre Durchsetzung, in Rudolf Bernhardt, Wilhelm Karl Geck, Günther Jaenicke and Helmut Steinberger (eds.), Völkerrecht als Rechtsordnung, Internationale Gerichtsbarkeit, Menschen-rechte, Festschrift für Hermann Mosler, Heidelberg: Springer, pp. 242 – 262 (cited: Frowein, p. …)

Gavouneli, Maria/ Bantekas, Ilias (2001): Prefecture of Voiotia v. Federal Republic of Germany. Case No. 11/2000, The American Journal of International Law, volume 95, pp. 198 – 204 (cited: Gavouneli/Bantekas, p. …)

Gierhake, Katrin (2005): Begründung des Völkerstrafrechts auf der Grundlage der Kantischen Rechtslehre, Schriften zum Strafrecht, issue 167, Berlin: Duncker & Humblot (cited: Gierhake, p. …)

Hailer, Claudia (2006): Menschenrechte vor Zivilgerichten – Die Human Rights Litigation in den USA, Schriften zum Internationalen Recht, volume 161, Berlin: Duncker & Humblot (cited: Hailer, p. …)

Hatfield-Lyon, Jennie (1992): Nelson v. Saudi Arabia: An Opportunity for Judicial

Enforcement of International Human Rights Standards, Proceedings of the Annual Meeting of the American Society of International Law, volume 86, pp. 331 – 337 (cited: Hatfield-Lyon, p. …)

Heidbrink, Alfried (1989): Der Alien Tort Claims Act (18 U.S.C. §1350), Schadens-ersatzklagen vor US-Amerikanischen Gerichten wegen Verletzungen des Völkerrechts, München: VVF (cited: Heidbrink, p. …)

Heintze, Hans-Joachim/ Ipsen, Knut (eds.) (2011): Heutige bewaffnete Konflikte als Herausforderungen an das humanitäre Völkerrecht: 20 Jahre Institut für Friedenssiche-rungsrecht und Humanitäres Völkerrecht – 60 Jahre Genfer Abkommen, Heidelberg: Springer (cited: Heintze/Ipsen/author, p. …)

Henkin, Louis/ Pugh, Richard Crawford/ Schachter, Oscar/ Smit, Hans (1993): International Law: Cases and Materials, 3rd edition, St. Paul: West Publishing (cited: Henkin/Pugh/Schachter/ Smit, p. …)

Herdegen, Matthias (2014): Völkerrecht, 13th edition, Munich: C.H. Beck (cited: Herdegen, § …, m.n. …)

Higgins, Rosalyn (1982): Asser Institute of International Law: Certain Unresolved Aspects of the Law of State Immunity, Netherlands International Law Review, volume 29, pp. 265 – 276 (cited: Higgins, p. …)

Hobe, Stefan (2001): Durchbrechung der Staatenimmunität bei schweren Menschen-rechtsverletzungen – NS-Delikte vor dem Areopag, Praxis des Internationalen Privat- und Verfahrens-rechts, pp. 368 – 372 (cited: Hobe, IPRax, p. …)

Ibid. (2014): Einführung in das Völkerrecht, 10th edition, Tübingen: UTB (cited: Hobe, Völkerrecht, p. …)

Ipsen, Knut (2014): Völkerrecht: Ein Studienbuch, 6th edition, Munich: C.H. Beck (cited: Ipsen, Völkerrecht, § …, m.n. …)

Isensee, Josef/ Kirchhof, Paul (eds.) (1995): Handbuch des Staatsrechts, Band I, Heidelberg: C.F. Müller (cit.: Isensee/Kirchhof/author, § …, m.n. …)

Ibid. (2012): Handbuch des Staatsrechts, Band X, 3rd edition, Heidelberg: C.F. Müller (cited: Isensee/Kirchhof/author, § …, m.n. …)

Kälin, Walter/ Künzli, Jörg (2013): Universeller Menschenrechtsschutz: Der Schutz des Individuums auf globaler und regionaler Ebene, 3rd edition, Basel: Nomos Verlagsgesellschaft (cited: Kälin/Künzli, m.n. …)

Karagiannakis, Magdalini (1998): State Immunity and Fundamental Human Rights, Leiden Journal of International Law, volume 11, pp. 9 – 43 (cited: Karagiannakis, p. …)

Karimova, Takhima (2014): What amounts to a serious violation of international human rights law'?: An analysis of practice and expert opinion for the purpose of the 2013 Arms Trade Treaty, Geneva: Geneva Academy of International Humanitarian Law and Human Rights (cited: Karimova, p. …)

Karl, Georg (2002): Völkerrechtliche Immunitäten im Bereich der Strafverfolgung schwerster Menschenrechtsverletzungen, Baden-Baden: Nomos Verlagsgesellschaft (cited: Karl, p. …)

Karpenstein, Ulrich/ Mayer, Franz C. (2012): EMRK – Konvention zum Schutz der Menschenrechte und Grundfreiheiten, Munich: C.H. Beck (cited: Karpenstein/Mayer/ author, chap …, m.n. …)

Kindt, Anne (2009): Menschenrechte und Souveränität: Diskutiert anhand der internationalen Strafrechtspflege, Berlin: Duncker & Humblot (cited: Kindt, p. …)

Kokott, Juliane (1995): Mißbrauch und Verwirkung von Souveränitätsrechten bei gravierenden Völkerrechtsverstößen, in Ulrich Beyerlin, Michael Bothe, Rainer Hofmann, Ernst-Ulrich Petersmann (eds.), Recht zwischen Umbruch und Bewahrung: Festschrift für Rudolf Bernhardt, Heidelberg: Springer, pp. 135 - 151 (cited: Kokott, p. …)

Kokott, Juliane/ Doehring, Karl/ Buergenthal, Thomas (2003): Grundzüge des Völkerrechts, 3rd edition, Heidelberg: UTB (cited: Kokott/Doehring/Buergenthal, m.n. …)

Kreicker, Helmut (2012): Die Entscheidung des Internationalen Gerichtshofs zur Staatenimmunität – Auswirkungen auf das (Völker-)Strafrecht? – Anmerkungen zum Urteil des IGH vom 3.2.2012 aus strafrechtlicher Sicht, Zeitschrift für internationale Strafrechtsdogmatik, pp. 107 – 123 (cited: Kreicker, p. …)

Kren Kostkiewicz, Jolanta (1998): Staatenimmunität im Erkenntnis- und Vollstreckungs-verfahren nach schweizerischem Recht, Bern: Stämpfli (cited: Kren Kostkiewicz, p. …)

Kreuter-Kirchhof, Charlotte (2010): Völkerrechtliche Schutzverantwortung bei elementaren Menschenrechtsverletzungen: Die Responsibility to Protect als Verant-wortungsstruktur, Archiv des Völkerrechts, volume 48, pp. 338 – 382 (cited: Kreuter-Kirchhof, p. …)

Lauterpacht, Hersh (1951): The Problem of Jurisdictional Immunities of Foreign States, Britisch Yearbook of International Law, volume 28, pp. 220 – 272 (cited: Lauterpacht, p. …)

Malanczuk, Peter (1997): Akehurst's Modern Introduction to International Law, 7th edition, New York: Routledge (cited: Malanczuk, p. …)

Manske, Gisela (2003): Verbrechen gegen die Menschlichkeit als Verbrechen an der Menschheit: Zu einem zentralen Begriff der internationalen Strafgerichtsbarkeit, Hamburger Studien zum Europäischen und Internationalen Recht, Berlin: Duncker & Humblot (cited: Manske, p. …)

Malina, Manfred (1978): Die völkerrechtliche Immunität ausländischer Staaten im zivilrechtlichen Erkenntnisverfahren, Marburg (cited: Malina, p. …)

McCaffrey, Stephen C. (2010): Understanding International Law, Newark: LexisNexis (cited: McCaffrey, p. …)

McGregor, Lorna (2008): Torture and State Immunity: Deflecting Impunity, Distorting Sovereignty, European Journal of Human Rights, volume 18, pp. 903 – 919 (cited: McGregor, p. …)

Niehuss, John M. (1962): International Law: Sovereign Immunity: The First Decade of the Tate Letter Policy, Michigan Law Review, volume 60, pp. 1142 – 1153 (cited: Niehuss, p. …)

O'Brien, John (2002): International Law, London: Cavendish (cited: O'Brien, p. …)

Oliveira Moll, Leandro de (2003): Case Note: Al-Adsani v United Kingdom – State Immunity and Denial of Justice with Respect to Violations of Fundamental Humang Rights, Melbourne Journal of International Law, volume 4, pp. 561 – 591 (cited: Moll, p. …)

Orakhelashvili, Alexander (2008): State Immunity and Hierarchy of Norms: Why the House of Lords Got It Wrong, The European Journal of International Law, volume 18, pp. 955 – 970 (cited: Orakhelashvili, p. …)

Paech, Norman (2009): Staatenimmunität und Kriegsverbrechen, Archiv des Völkerrechts, volume 47, pp. 36 – 92 (cited: Paech, p. …)

Payandeh, Mehrdad (2012): Staatenimmunität und Menschenrechte, Juristen-Zeitung, pp. 949 – 958 (cited: Payandeh, p. …)

Pepper, William F. (1992): Iraq's Crimes of State against Individuals, and Sovereign Immunity, A Comparative Analysis and a Way Forward, Brooklyn Journal of International Law, volume 18, pp. 313 – 384 (cited: Pepper, p. …)

Reimann, Matthias (1995): A Human Rights Exception to Sovereign Immunity: Some Thoughts on Princz v. Federal Republic of Germany, Michigan Journal of International Law, volume 16, pp. 403 – 432 (cited: Reimann, p. …)

Ress, Georg (1998): The Changing Relationship between State Immunity and Human Rights, in de Salvia, Michele de Salvia and Mark E. Villinger (eds.), The Birth of European Human Rights Law, Liber Amicorum Carl Aage Nørgaard, Baden-Baden: Nomos, pp. 175 – 200 (cited: Ress, State Immunity and Human Rights, p. …)

Ibid. (2004): Supranationaler Menschenrechtsschutz und Wandel der Staatlichkeit, Zeitschrift für ausländisches öffentliches Recht und Völkerrecht, pp. 631 – 638 (cited: Ress, Supranationaler Menschenrechtsschutz p. …)

Rishmawi, Mervat, (2009): Arab Charter on Human Rights (2004), in Rüdiger Wolfrum (ed.), Max Planck Encyclopedia of Public International Law, online edition (www.mpepil.com) (cited: Rishmawi, MPEPIL, m.n. …)

Ibid. (2010): The Arab Charter on Human Rights and the League of Arab States: An Update, Human Rights Law Review 10, pp. 169 - 178 (cited: Rishmawi, p. …)

Rudolf, Peter (2012): Schutzverantwortung und humanitäre Intervention – Eine ethische Bewertung der „Responsibility to Protect" im Lichte des Libyen-Einsatzes, Berlin: Stiftung Wissenschaft und Politik (cited: Rudolf, p. …)

Schaarschmidt, Julia (2010): Die Reichweite des völkerrechtlichen Immunitätsschutzes – Deutschland v. Italien vor dem IGH, Beiträge zum Völker- und Europarecht, issue 5, (cited: Schaarschmidt, p. …)

Schaumann, Wilfried/ Habscheid, Walther Jakob (1968): Die Immunität ausländischer Staaten nach Völkerrecht und deutschem Zivilprozessrecht, Berichte der Deutschen Gesellschaft für Völkerrecht, issue 8, (cited: Schaumann/Habscheid, p. …)

Schilling, Theodor (2010): Internationaler Menschenrechtsschutz, 2nd edition, Tübingen: Mohr Siebeck (cited: Schilling, m.n. …)

Schmahl, Stefanie (2006): Amtshaftung für Kriegsschäden, Zeitschrift für ausländisches öffentliches Recht und Völkerrecht, pp. 699 – 718 (cited: Schmahl, p. …)

Schmalenbach, Kirsten (2006): Immunität von Staatsoberhäuptern und anderen Staatsorganen, Zeitschrift für öffentliches Recht, pp. 397 – 432 (cited: Schmalenbach, p. …)

Schöbener, Burkhard (eds.) (2014): Völkerrecht, Lexikon zentraler Begriffe und Themen, Heidelberg: C.F. Müller (cited: Schöbener/author, p. …)

Shelton, Dinah L. (2014): Advanced Introduction to International Human Rights Law, Cheltenham: Edward Elgar Publishing (cited: Shelton, p. …)

Stahl, Sandra (2012): Schutzpflichten im Völkerrecht – Ansatz einer Dogmatik, Beiträge zum ausländischen öffentlichen Recht und Völkerrecht 232, Heidelberg: Springer (cited: Stahl, p. …)

Stein, Torsten/ Buttlar, Christian von (2012): Völkerrecht, 13th edition, Munich: Vahlen (cited: Stein/Buttlar, m.n. …)

Steiner, Henry J./ Alston, Philip/ Goodman, Ryan (2007): International Human Rights in Context: Law, Politics, Morals, 3rd edition, Oxford: Oxford University Press (cited: Steiner/ Alston/Goodman, p. …)

Stoll, Peter-Tobias (2009): State Immunity, in Rüdiger Wolfrum (eds.), Max Planck Encyclopedia of Public International Law, online edition (www.mpepil.com) (cited: Stoll, MPEPIL, m.n. …)

Strupp, Karl/ Schlochauer, Hans-Jürgen (1960): Wörterbuch des Völkerrechts, Erster Band, 2nd edition, Berlin: Walter de Gruyer (cited: Strupp/Schlochauer, p. …)

Suy, Erik (1967): Immunity of States before Belgian Courts and Tribunals, Zeit-schrift für ausländisches öffentliches Recht und Völkerrecht, pp. 660 – 692 (cited: Suy, p. …)

Tams, Christian J. (2002): Schwierigkeiten mit dem Ius Cogens. Anmerkungen zum Urteil des Europäischen Gerichtshofes für Menschenrechte im Fall Al-Adsani gegen Vereinigtes Königreich vom 21. November 2001, Archiv des Völkerrechts, volume 40, pp. 331 – 349 (cited: Tams, p. …)

Uerpmann-Wittzack, Robert (2006): Immunität vor internationalen Strafgerichten, Archiv des Völkerrechts, volume 44, pp. 33 – 56 (cited: Uerpmann-Wittzack, p. …)

Verdier, Pierre-Hugues/ Voeten, Erik (2014): How does Customary International Law Change? The Case of State Immunity, International Studies Quarterly, pp. 1 – 14 (cited: Verdier/Voeten, p. …)

Vitzthum, Wolfgang Graf/ Proelß, Alexander (2013): Völkerrecht, 6th edition, Berlin/Boston: Walter de Gruyter (cited: Vitzthum/Proelß, section …, m.n. …)

Werle, Gerhardt (1997): Menschenrechtsschutz durch Völkerstrafrecht, Zeitschrift für die gesamte Strafrechtswissenschaft, pp. 808 – 829 (cited: Werle, p. …)

Wirth, Steffen (2001): Immunities, Related Problems, and Article 98 of the Rome Statute, Criminal Law Forum, volume 12, pp. 429 – 458 (cited: Wirth, p. …)

Yourow, Howard Charles (1996): The Margin of Appreciation Doctrine in the Dynamics of European Human Rights Jurisprudence, International Studies in Human Rights, Dodrecht: Martinus Nijhoff Publishers (cited: Yourow, p. …)

Zeichen, Sigrid/ Hebenstreit, Johannes (2993): Sind Außenminister vor Strafverfolgung wegen völkerstrafrechtlicher Verbrechen immun? Zur Entscheidung des IGH im Fall „Arrest Warrant of 11 April 2000 (Democratic Republic oft he Congo v. Belgium)", Archiv des Völkerrechts, volume 41, pp. 182 – 200 (cited: Zeichen/Hebenstreit, p. …)

Zemanek, Karl (1987): The Unilateral Enforcement of International Obligations, Zeitschrift für ausländisches öffentliches Recht und Völkerrecht, pp. 32 – 43 (cited: Zemanek, p. …)

Zimmermann, Andreas (1995): Sovereign Immunity and Violations of International Jus Cogens – Some Critical Remarks, Michigan Journal of International Law, volume 16, pp. 433 – 440 (cited: Zimmermann, p. …)

Development and Disease: A Study of Cancer Villages in China

Sharma Shagun

Abstract

The cancer-village phenomenon provides a focal point to examine worsening environmental health problems in China and raises critical questions for sustainability research and policy. This paper seeks to address various concerns relating to health and environment keeping in view the development trajectory of the state. The geopolitics of cancer and the geographical accountability are the main concerns of the research. The reasons for mushrooming of the 'cancer villages' and the approach of the government towards tackling it have been discussed. There are implications of the disease for the vulnerable sections of the society and recently there has been rise of civil society and NGOs advocating for better environmental measures and health benefits. Though government has started acknowledging the Cancer Villages, the problem is unlikely to lessen in the near future.

Keywords

Cancer Village, Development, Disease, Environment, Health, Pollution.

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Introduction

A decade ago, researchers stated that cancer deaths 'have doubled since the 1970s, and are now the leading causes of mortality in rural China'. The observers have noted that a large and growing number (now estimated at more than 500) of villages have unusually high rates of mortalities, and the causes of death are different forms of cancer. More recently, a World Bank report assessing the cost of pollution in China again identified cancer as the main cause of death, showing also that mortality rates for cancers associated with water pollution, such as liver and stomach cancer, are well above the world average.[244] Reports about 'cancer villages' in China have appeared with increasing frequency in Chinese and Western media. All these accounts outline a strong connection between economic growth, pollution and cancer. As the effects of economic reforms rippled through the 1980s, local governments eagerly built new factories but had little experience of environmental controls. The development trajectory of the state has done irrevocable damage to its environment. Economic development got predominance over environment and raised the question of human security. The rural areas of China are the worst victim of neo-liberal globalization as they are subjected to unbalanced economic growth and environmental injustice. For the rural population development is marked with Displacement, Dislocation and Disability. Cancer Village phenomenon in China is the intriguing example of negative impact of economic development of the country.

The cancer-village phenomenon provides a focal point to examine worsening environmental health problems in China and raises critical questions for sustainability research and policy. What is the factor that led to the geographical concentration of cancer villages? Are the government statistics on cancer reliable source of information? Does the geography of accountability play a determining role in the cancer village phenomenon? What effect does the cancer have on the vulnerable section of these villages? How is China responding to the issue of cancer in these regions? What is the role of civil society in cancer villages? How real is the cancer-village phenomenon? What geographic areas tend to have cancer villages? How do nongovernmental organization (NGO) activities and local protests affect the situation? Why does the cancer-village phenomenon appear in China? What is likely to happen in the future? Based on various media reports, this paper seek to address some of these questions.

What are Cancer Villages?

Cancer village is a nomenclature used for those villages that have unprecedented cancer rates. Average cancer rate in these villages are far above the national cancer rate. In some cases cancer rate supersede the birth rate as in Huangmengying Village of Henan Province. Cancer, like any chronic disease is not just a medical issue but has socio-economic implications that evoke the politics of cancer. In brief, a cancer village is a community where rates of cancer are considerably in excess of China's normal death rate of 6 per 1,000/year. The number of such villages is in dispute. A recent estimate suggests, based on accounts in Chinese media, academics and NGOs, that China is home to 459 cancer villages, reaching into every province except for Qinghai and Tibet. Apparently, the first Chinese report linking cancer to environmental pollution was in 1987.

[244] World Bank (2007): The Cost of Pollution in China. Accessible at: http://siteresources.worldbank.org/INTEAPREGTOPENVIRONMENT/Resources/China_Cost_of_Pollution.pdf (accessed 2 August 2013).

Then, investigators in Liaoning province reported that mortality rates for all cancer, stomach cancer and lung cancer in 1970 to 1978 were higher in villages with hexavalent chromium-contaminated drinking water than in the general population.

Reports began to appear early this century of abnormally high rates of cancer, attributable to environmental pollution of land, water and air. Most of the incidents reported concern water pollution. An early example was Liukuaizhuang village in Tianjin municipality about 75 miles from Beijing. Scores of chemical factories moved into the village bringing economic success, but also increased incidences of diseases such as bone, lung, liver and breast cancer, and an increasing number of children suffer from leukemia. The broader Yangtze River has been the recipient of highly increased loads of pollutants, adversely affecting the health of water users. (Anna Lora-Wainwright 2010: 80)

There is not much literature on the cancer village phenomenon in the academia. More than the Chinese authors, western writers have discussed the issue openly. Anna Lora-Wainwright examines how villagers in rural Sichuan understand the development of cancer, how they attempt to make sense of why it seems widespread and of why it affects particular individuals. Etiologies of cancer such as negative emotions, smoking, consuming alcohol and preserved vegetables are addressed in order to contextualise environmentally related factors, and explain why they may or not be resorted to. With reference to ethnographic examples, she argues that awareness of pollution's effects on health can only gain strength when it is consonant with locals' experience and moral parameters and when it is perceived to be productive in attracting media attention and obtaining redress from various levels of state bureaucracy. (Wainwright 2010: 79)

A comprehensive account of cancer villages by Liu Mengqin and Fu Chen explains their existence as a 'trade-off between development and poverty'. Liu and Fu identify the main underlying causes of cancer villages in the growing rural–urban gap and continuing rural poverty, which entails the transfer of polluting factories to poor areas. Secondly, as is common, they attribute the problem to an emphasis on economic development without adequate attention to environmental protection, and thirdly to local protectionism. They suggest as a solution first the need to tackle rural poverty and achieve more equal growth in both rural and urban areas. Second, they highlight the need for better law enforcement and the establishment of a control system for environmental law enforcement. Third, they argue for an independent evaluation structure to tackle the challenge of establishing evidence for the connection between cancer and pollution, and to clarify issues of unclear responsibility. Fourth, they highlight the need for basic welfare insurance to counter poverty, which is often closely related to both health and environmental factors. Finally, they stress the need for public participation by strengthening community governance and participation in environmental protection, providing relevant training to villagers and supporting NGOs.

An interdisciplinary study by William Alford et al. of 'the human dimensions of pollution policy implementation', which focused on air quality in rural Anhui province, assessed how 'policy measures have been communicated to, understood by, and acted upon by the citizenry' and concluded that 'the central government's message has yet to be absorbed' (Alford et al. 2002). They stress that campaigns for environmental awareness have little effect and that awareness is rather the result of personal experience, wealth, education and media. Their research is

commendable for pointing out that successful law enforcement requires creating awareness, providing incentives for action, and making national regulations feasible locally.

Jun Jing's work on environmental causes of protest turns a keener anthropological eye on the processes by which villagers realise the harmfulness of pollution. He concludes that awareness of the causal connection between pollution and illness and the decision to take action can only take place when they resonate 'with a society's value system and its symbolic manifestation' (Perry & Selden 2003).

Geographical Concentration of Cancer Villages

Cancer Villages popularly called *'Aizheng Cun'* in China are the villages with unprecedented high cancer rates, much above the national average cancer rates. In some cases the cancer rates and cancer death rate is above the birth rate. Cancer villages are the product of environmental pollution mainly – water and air. In China cancer village phenomenon came into limelight for the first time in 1998. There is no consensus on the extent of cancer villages in China due to lack of availability of official records and censorship. Health in China is a National Secret. According to Sun Yuefei, there are more than 247 *"Aizheng Cun"* in 27 provinces of mainland China that tend to cluster in Eastern China (Liu 2010). However, Lee Liu (ibid) identifies 459 *Aizheng Cun* in 29 of 31 provinces of China. In the eastern provinces the cancer villages are situated in the poor counties near major cities and at the deltas of Yellow, Yangzi and Pearl Rivers, Huai River Valley. The cancer villages are more prevalent in poor farming villages in close vicinity of industrial sites.

Cancer villages tend to concentrate near wealthy cities in China's East, where international business has invested in joint ventures and manufacturing plants to take advantage of cheap labour and lax environmental laws. Such villages may increasingly be emerging in less developed West where jobs are scarce and information about pollution is difficult to obtain (Judith Shapiro 2008). Cancer Villages have mushroomed around the downstream of River Yantaze, Huai River, Yellow river, which are getting polluted by paper units, chemical and fertilizer units etc. Hebei and Henan have the largest number of officially reported cancer villages. Guangdong and Jiangsu, China's richest provinces, have the largest number of counties with officially reported cancer villages. Hunan has the largest number of unofficially reported cancer villages, followed by Hebei. Shandong and Hunan have more unofficially reported cancer counties. The provinces are ranked by an average score of two items: number of cancer villages and percent of total cancer counties (the total number of villages is not available for the provinces). Because the sizes of the provinces are so different, using the number of cancer villages alone is not a fair way to rank the provinces. For examples, Hainan and Chongqing are small. Although they have less than 10 cancer villages in only a few counties, they have a high percentage of counties with cancer villages. The top-12 provinces include six coastal provinces with their six neighboring inland provinces. These provinces form a cancer-village belt in eastern China, starting with Hebei in the north and ending with Hainan in the south. The belt includes 396 cancer villages – 86.3 percent of the country's total – and 203 officially reported cancer villages – 84 percent of the country's total. Those provinces also have the largest number of cancer counties, adding up to 174 (78 percent of all cancer counties in China). The belt contains over 55 percent of China's population and over 59.3 percent of China's gross domestic product (GDP). It contains all China's most developed areas as well, except for Shanghai, Beijing, and Tianjin. However, there is a large income gap within the belt between the wealthy

coastal provinces and their poor inland neighbors. For instance, Zhejiang and Jiangsu's per capita GDP is about three times that of their inland neighbor Anhui.

Geographical Politics of Data & Geography of Accountability

The emergence of modern nation- state also saw the dependency of state on data and statistics to understand any socio-economic problems. The view that quantification of socio-economic phenomenon offers a better understanding to the policy-makers and mentors them to implement policies conducive to a given situation gained prominence in policymaking circles. However, quantification does not always give true picture of the success or failure of any policies especially when such quantification deals with complex physical- social phenomenon like Cancer Villages. The question of reliability of the statics is much more complicated in case of China. Lack of democracy and the concept of 'national secret' prevent the health institutes and local officials from sharing any data with regard to cancer patients (Watts 2008). Even the local people are prohibited from talking about the health issue with any outsider. The people of China cannot easily challenge the hegemony of the Communist Party and have to comply with the instructions given by the party. Any non-compliance on the part of people can lead to police action against them. Under such scenario, even the WHO statistics with regard to cancer prevalence in China are rather limited in scope.

Geography of accountability is yet another face of politics of cancer. The human need to have someone to blame for their damage and this blame game runs through local level to the worldwide community. In the Chinese province of Henan, the farming community blames the pollution of water caused due to industrialization as main cause of cancer. This is to some extent a true claim, however, cancer has other risk factors associated with it. The farming community forgot their own role in polluting the environment. The cancer villages are also popular for indiscriminate and reckless usage of agro-chemicals. Industrial units in these places put the blame on the pollution and environment control board for the wide spread cancer case. The claim of industrial units that the failure on the parts of the local governments to provide appropriate dumping place put the question of accountability on the state authorities. The industrial units blame the farming community responsible for air pollution in the region as the farming community contravene with the state instructions that prohibits the burning off the stalks in the cornfield post-harvesting (Watts 2008). When we come to government level, the various ministries are involved in blame game – the health department blaming the agricultural department and vice-a-versa.

Why Is It in China that Cancer Villages Are So Widespread?

In most cases, the continuing misery is attributed to official corruption that poses an obstacle to implementing environmental regulations. For instance, an article examining three cancer villages (in Shandong, Jiangsu and Zhejiang) published in Nanfang Wang as part of a report on water pollution, documents how villagers' attempts at seeking redress failed due to insufficient evidence or through uncooperative officials bribed by polluting industries. (Dushi Nanfang 5 November 2007, accessible at http://www.nddaily.com/A/html/ 2007-11/05/content_299441.htm (13-09-2014)

Development and Environmental Policies

China has followed the "grow first and clean up later" approach to development, which led to an acceleration of environmental pollution and serious environmental health problems. China's encouragement of the development of township and village industries in the 1980s has also caused severe pollution in rural areas. Furthermore, both China's development and environmental policies favor urban areas. Environmental programs have been urban-centered. These efforts focus on environmental "bright" spots and neglect "dark" spots, creating a divide in environmental protection. Environmental agencies lack administrative power and financial support because they are part of the government that puts economic growth first. (Lee Liu 2010)

Economic, Social, and Political Disparities

China's urban–rural disparity is one of the worst in the world and has been increasing. Many rural areas are extremely poor. Due to economic, social, and political disparities, the poor rural people continue their tradition of drinking water directly from natural sources. Compared to their urban counterparts, the villagers are more likely to be excluded in the decision-making process when a potentially polluting factory is put in their areas; they are powerless against the alliance of corporation and government. (*Ibid.)*

Lack of Freedom and Democracy

China is well-known for its lack of freedom and democracy. This is even more so for the vulnerable groups (people at the bottom of the society). Due to strong central governmental control over the media, legal systems, and NGO activities, the voices of the victims are not heard early enough to control pollution at an earlier stage, resulting in greater damages to the environment and human health.

Corruption and Lack of Laws and Law Enforcement

China has depended on administrative measures instead of legal means to deal with environmental violations. Polluting factories often bribe governmental officials so that they will ignore or help to disguise the pollution problem. When pollution is really out of control, factories are usually required to pay a fine, which costs a fraction of the money it would have to spend on pollution control. China has established many environmental laws, but they are seldom enforced. Cancer victims have filed many lawsuits against the polluters, but few have been successful. There are no government reports that establish a direct link between a factory's pollution and villagers' cancers. As a result, it is impossible for the victims to obtain compensation. Many newly established plants are well equipped with pollution-control facilities; however, they rarely use them because of corruption and lack of environmental law enforcement.

Initial State Responses

Denial. Not only did the regime deny that large cases of environmental degradation led to adverse health effects, but also governments at all levels worked to ensure that information about cancer villages did not spread. Local governments prevented outsiders from learning more about village environmental risks, and they banned foreign reporters from visiting. Local government officials pressured doctors to remain silent on the link between pollution and high cancer rates. They also harassed local residents who complained. (McBeath & McBeath 2014: 5)

Blaming the Victims. A common response to industrial pollution incidents is to blame those who suffer. Some villagers blamed those who 27 were afflicted—because of their bad temper, preference for strong alcohol and cigarettes. (*Ibid : 6*)

Ignoring the Problems. An explanation of the lack in response of government officials at all levels is that the solution might lead to shutting down manufacturing facilities providing jobs and tax revenues.

Interjurisdictional Problems. Another factor explaining the lack of state environmental response, particularly at the provincial level and below, is one province's lacking jurisdiction to engage in environmental cleanup in another province. This was mentioned by Anhui officials who sought to clean up the Kui river, when they realized that the primary source of river mentioned above, Yunnan's environmental authorities failed to inform downstream provinces of Guangxi and Guangdong, arguing that when water left the province it was of good quality. Related to this, polluting factories may move to poorer western regions where their potential to spur local growth clouds knowledge of their adverse environmental impact. (Meng 2014)

Changes in China's Handling of Environmental Disasters

Problem Recognition; Moving the Issue to the Government's Agenda.

In 2013, the government of China acknowledged that indeed environmental degradation had serious health effects. In a report issued by the Chinese Center for Disease Control and Prevention, Yang Gonghuan who directed the study said there were "cancer villages" along the Huai river. The report mentioned that water surveillance data along the river since the 1980s indicated that cancer incidence in affected areas was 50 percent higher than the national average. (Shan & An 2013).

Adoption of New Approaches.

The significant new approach was to embed response to environmental degradation in the latest Five-year plan. It stated:

In recent years, toxic and hazardous chemical pollution has caused many environmental disasters, cutting off drinking water supplies, and even leading to severe health and social problems such as cancer villages. The plan outlined a crackdown on the use and production of 58 types of toxic chemicals; it criticized enterprises for inadequate pollution risk control. Ma Jun, author of *China' s Water Crises* and probably China's most authoritative critic of national water policies, said the acknowledgement reflected greater environmental transparency.

Lower-governments.

The most serious test of implementation, however, will be the capacity of the national state to integrate policy and programs with the local states, often following different missions and goals. Since devolution of power to provinces and cities/townships after China's marketizing reforms, conflicts between national and provincial/county authorities have increased. However, environmental protests have focused on local factories, plants and local government officials who seem powerless to constrain private actions that clearly violate the law. (Aiyer 2007) Local authorities and institutions clearly are the major wild cards in the implementation of new national policy on environmental protection.

The present 5year plan of China focuses on increasing investment in infrastructure and health care insurance and environmental reforms from corporation and individuals. Geographical and socio-economic inequalities, together with lack of equitable national social support system account for the high variations of health outcomes in different parts of china. Under its National Cancer control Program of China, the state initiated the cancer early detection and treatment demonstration program in 2005. The government also sponsored cervical and breast cancer screening program which benefitted 2 million rural women (You-Lin Qiao et al. 2009). Under China national plan for NCD prevention and treatment (2012-2015), cancer was acknowledged as one of the major NCD that affects the people health in china (Chinese Centre for Disease Control and Prevention 2012). Ecological environment is seen as one of the risk factor (ibid). The state acknowledge that cancer leads to costly health care expenditure as well as high disability that can improvise people leading to serious socio-economic problems if they are not timely and effectively controlled (ibid). The Chinese government adopted various modern and scientific strategies for the prevention of NCDS including cancer (ibid). However, lack of awareness with regard to NCD including cancer, institutional and structural impediments, inappropriate allocations of health recourses are some of the challenges, which prevent the success of these policies (ibid). One of the core objectives of the 12 five-year plan is to consolidate and implement successfully the strategies for prevention and treatment of NCD including cancer. It advocated for the institutional and structural cooperation to create a social environment for the prevention and treatment of NCD.

In Henan, the local and state government started taking initiative to improve the quality of water as a first step towards cancer village phenomenon. Shenqiu Authorities took action in 2005 by connecting village water supplies to 47 newly dug well. 20 villages of the county that reported to have highest cancer rates were among those benefitting. Such step to provide clean drinking water may be seen as a local government initiative to curb cancer case. However in reality, the project was a " part of March 2005 decision by the State Council, China's Cabinet to promote projects that can guarantee safe drinking water in rural areas nationwide." (ibid). By 2006, there has been number of initiatives taken by the government to improve the situation in Henan. The Henan government agreed to spend 240 million yuan to improve public water system in 800 villages along The Huai River. The central government invested 60 billion Yuan on fighting against the pollution in Huai River.

Implications for the Vulnerable Section

Any form of disease has a negative impact on the vulnerable sections of society, especially women and children. Unlike the Global North where the approach towards health is individualistic, in Global South it is not an individualistic issue. Due to the absence of effective and efficient health insurance policies both in urban and rural China, even a minor disease could lead to disproportionate burden especially on women and children. In the patriarchal and traditional societies like rural China, the diagnosis of cancer among the male members of family draws the family into vicious circle of debt and poverty. Consequently, women and children of these families have to endure the long lasting burden of the disease. Women occupy a secondary position by and large in the Global South and their situation becomes all the more deplorable when they themselves suffer from burden of cancer. In order to meet the daily expenses of her family a

woman forces herself to work under exploitative conditions and in some cases even drags herself into prostitution. In the entire process, she is subjected to prejudice and stigma. The burden of cancer has negative implication on the children of these families. The financial implications of the disease compel the parents to send their children to work rather than to schools. Young boys start working in the farmland of rich farmers. The situation is no better for girls as they are supposed to either take care of the household activities or work as domestic help in cities. School dropout rates are high especially among girls.

Cancer has profound psychological effects on the cancer victims especially on vulnerable communities. The rural and poor communities of the cancer villages consider cancer apart from poverty as another torment that they are enduring. Insecurity and fatalistic attitude develops among the cancer patients and family. Apart from this, the stigma associated with the disease greatly influences the psychology of the patients as well as the family and the village as a whole. Higher cancer rates in these villages have assigned them the nomenclature of "Cancer Village" which has negative impact on the villagers. The rural society of Global South is still traditional and the identity of the individual is attached to their villages. Under such circumstance, any negative image of the village also creates a negative identity of the person.

Geopolitics of Disease

The cancer question is highly political. The root cause of the spread of cancer relates to power and access to resource and information both at local as well as national levels. The geopolitics of health plays a crucial role in the cancer phenomenon existing in Global South. Global South lacks resources necessary for the early diagnosis and treatment of cancer. The provision of intellectual property rights prevents the domestic companies of China from producing the generic version of cancer treatment medicine. Consequently, it becomes difficult for the marginalized sections of these countries to get affordable treatment for cancer.

Research too plays a vital role in understanding any phenomenon. Countries like China lack sufficient resources to carry out research on prevention and cure of a chronic disease like cancer and AIDS. They heavily relay on the international funding for the same. Global North controls the funding agencies that provide financial and other form of research assistances to India and China for the said purpose. In the geo-politic of disease, communicable diseases that are threatening to lives of individual are getting more support than non-communicable disease like Cancer and Diabetes. Due to over growing transnational flow of humans and goods, transmission of these viruses become more obvious and certain. AIDS and Hepatitis B act as potential threat for the internal and more prominently human security of Global North. Subsequently, Global North gives overdue importance to initiatives with regard to prevention and cure of various communicable diseases. China is getting assistance from WHO under Global Action Plan Against Cancer. Bills and Melinda Gates Foundations of USA is the founder of the said project. Again, assistance is being provided to cancer caused due to AIDS. However, the drive is imbalanced since the focus is on the China's western provinces. As such, there is not much for the eastern province of china where most of the cancer villages are located.

Medicinal trail on the cancer patients are not new phenomenon. The pharmaceuticals firms of Global North often conduct medicinal trail on the people of Global South. In the mainland china,

the pharmaceutical see China as potential market, however, actual drug trails do not take place in China (Cheng 2013). Intellectual property right theft in china is very rampant and the company worry that the drugs being trailed may be copied and made available on the market in myriad forms, long before the trail is over (ibid). In his article, Cheng argues that clinical trials are difficult because the patient follow up in rural china is difficult. This is primarily due to shift to neo-liberal policies in health reforms.

Role of Civil Society

In the Henan province NGO's and organisations like Green Peace, Huai River Guardian and local activists are trying to provide clean drinking water in the affected villages. The efforts of Huo Daishan , a journalist turned activist is worth mentioning. Huo has tried to provide assistance to people residing in areas with worst pollution. He has raised funds since 2004 for providing water purifiers in these villages. He has also encouraged media outlet to publicize the problem. In 2004, using his media connections and influence, Huo managed to convince the state-run CCTV television reporters to conduct a week-long investigation into Huangmengying's Water Supply. Water Samples were tested and most samples were found to contain elevated levels of nitrate nitrogen and manganese which health experts say may cause cancer or brain damage.

However lack of democracy is one of the major threat that is curtailing the efforts to combat cancer in China. The state security officers and the police intimate villagers when they speak to media with regard to cancer and health scenario. An official from the Shenqiu county environmental protection bureau in Henan province dismissed media reports of local cancer village as 'media hype'. Again, media is accused on creating a negative image with regard to cancer villages in both these states. It creates stigma and isolation when the media use terms "cancer villages".

What Is Likely to Happen in the Future?

China's cancer-village phenomenon is likely to worsen in the future, partly because the health impact of environmental pollution tends to be long-lasting. In addition to cancer villages, the media has also reported electronic-waste villages, weird-disease villages, and lead-poisoned villages in China, which may lead to more cancer villages. Furthermore, most of the hypothesized causes of cancer villages will continue to exist. China is likely to continue its urban growth–centered policies. Zhou Zunsheng, China's Minister of Environmental Protection, states that environmental protection in China is still like a person climbing a steep hill while carrying a heavy load.[245] Chinese officials tend to argue that China is still in the middle stage of industrialization, and economic growth is the priority. The implication is that environmental protection is still not a priority of the government. Consequently, environmental pollution will get worse—and so will the related health problems. Economic, social, and political disparities are likely to persist. It is unlikely that we will see major improvement in terms of freedom and democracy in China. Corruption is unlikely to be controlled. Polluting industries will keep moving inland as inland regions continue to follow the "grow first" approach to development. It is also likely that we may hear less about the phenomenon if the government bans the reporting of cancer villages and silences the protesters.

[245] Ministry of Environmental Protection 23 August 2009: 'Environmental Problems Hinder China's Modernization', *Xinjing Daily*, http://news.163.com/09/0823/02/5HCA4RJF0001124J.html (accessed 26 Feb 2013).

In that case, the phenomenon may actually become even more widespread.

On the other hand, the central government is paying more attention to pollution. Some local governments are taking actions to deal with cancer villages and other environmental problems. Guangdong's government invested RMB40 million *yuan* to manage the trash mound that was blamed for causing the cancer village Yuanfeng. Governmental actions have not resulted in any improvement in the cancer villages, but it seems the matter at least did not get worse in some places. It appears that the government has been more aggressive in dealing with lead-poisoned villages than cancer villages. Reports say that the government has started relocating the 15,000 residents in the 10 lead-poisoned villages in Jiyuan, Hebei Province, while keeping lead smelters going. The battery factory that was blamed for causing lead poisoning in Longyan, Fujian, has been ordered to stop production.

Souvid Datta[246] argues that since the acknowledgement of cancer villages, the government has mapped out ambitious environmental initiatives in five-year plans, although experts say few have been realised. The first nationwide blueprint for climate change was issued in December 2013. Since January, the government has required 15,000 factories to publicly report real time figures on their air emissions and water discharges. It pledged $275 billion to clean up the air and amended the country's environmental protection law to allow for stricter punishments. With all that said, in China, what the central leadership wants is often not what local governments delivers. A crucial part of the environmental overhaul will be public oversight and awareness, otherwise, promises could end up being empty words. This is something which needs to be addressed that whether victims continue being treated as collateral damage, whether government politics and funds trickle down to genuine effect, and of course, whether coming developments can empower China's population to face up to the consequences of its growth.

The politics of cancer reflects the state response to the problems of cancer patients and families. In this whole politics of cancer, state shows little concern to the social problems associated with cancer. Rehabilitation of cancer patient is an important aspect and the state cannot overlook its functional and moral responsibility in this regard. Geography of accountability and blame game need to be resolved and the state must take responsibilities of its action as the lives of the people are very precious. A half- hearted attempt to reconsolidate the communist party power in China is harmful in long run.

[246] Excerpts from an interview with Souvid Datta, an environmental photographer, by Pauline Eiferman for 'Roads and Kingdoms' magazine.

References

Beaumont, James et al. (2008): 'Cancer mortality in a Chinese population exposed to Hexavalent Chromium in drinking water', Epidemiology, Vol. 18 (1): pp.12-23.

Cheng , Harris Margaret (2007): 'Cancer Research Funding in Asia', Molecular Oncology: pp. 1135–137.

Chinese Centre for Disease Control and Prevention (2014): 'China National Plan for NCD Prevention and Treatment', accessible at WWW: http://www.chinacdc.cn:89/ne/201207/t20120725_64430.html. (8-8-2014)

E. C. Economy (2004) The River Runs Black: The Environmental Challenge to China's Future. Ithaca, NY: Cornell University Press.

Haltao, Xie and Hongqiao Liu (2013): 'Sip of Death Plagues Cancerous River', accessible at www.english.caixin.com/2013-10-09/100589447.html. (8-8-2014)

Holdaway, Jennifer (2010): 'Environment and Health in China: An introduction to an emerging research field,' Journal of Contemporary China, Vol. 19 (63): pp. 3.

Kaiman, Jonathan (4 June 2013) 'Inside China's 'cancer villages', The Guardian.

Liu, Lee (2010): 'Made in China', accessible at http://www.enviornmentmagazine.org/Archieve/Back%20Issues/March-April%202010/made-in-china-full.html (10-8-2014)

Lu, C and X. Zhong (2009): 'Spatial and temporal patterns of cancer villages in China,' Modern Agricultural Sciences 16: pp.243–244.

McBeath, Jenifer Huang & McBeath, Jerry (2014) 'Environmental Pollution, Cancer Villages and State Response', accessible at http://aacs.ccny.cuny.edu/2014conference/Papers/Jenifer%20McBeath.pdf (15-08-2015)

Shan, Juan and Baijie An (Aug 8, 2013): Study affirms cancer villages, China Daily.

Tilt, Bryan (2006): 'Perceptions of risk from industrial pollution in China: A comparison of occupational groups,' Human Organization, vol. 65: pp,115-27

Wainwright, Anna Lori (2010): 'An anthropology of 'cancer villages': Villagers' perspectoives and the politics of responsibility,' Journal of Contemporary China, vol. 19.

Watts, Jonathan (2008): 'China's Environmental Health Challenges', The Lancet 372: pp. 1451-1452.

WWF, China, Threat of pollution in the Yangtze," Accessible at http://wwf.panda.org/about_out_earth/about_freshwater/freshwater_ 21-6-2014.

You- Lin Qiao et al. (2013): 'Recent Activities about Cancer Control Program in China',http://www.senkyo.co.jp/apcc20th_abstract/pdf/apcc0008_Dr.Qiao_CancerControl_Ab~pdf. (09-09-2014)

Securitization as a nation-building instrument

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Abstract

Processes of national identity construction have often been neglected by the International Relations field, dwelling on an artificial dichotomization between majority and minority groups, which tend to mask other kinds of social polarization and fragmentation. Through the application of the concept of weak states, as proposed by Buzan and Holsti, and of the securitization theory, we aim to establish a link between two phenomena: the existence of spaces where the idea of the state (national consciousness) is persistently weak among the different collectivities inhabiting the same territory, and the transformation of minority groups into internal threats, in order to encourage a positive (albeit unstable) identification towards the state within the perceived majority. In other words, it will allow us to understand how collective identities, namely state identities, are forged and reinforced through securitization. By acknowledging this link and the lack of national cohesion as a source of insecurity, we allow for a desecuritization of minorities and their rights and we are able to focus on the marginalization and exclusion of other groups, often hidden behind an emergency discourse towards minorities.

Keywords

Weak states; nation-building; securitization; minorities

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Securitization as a nation-building instrument

Since its emergence, the theory of securitization has been presented as a rupture with the traditional understandings of security, and has been subjected to a series of critiques and developments, such as the growing concern with the dessecuritization of minority rights or the normative and political content of the process. The theoretical development of securitization has been focusing on *how* the process can be initiated (either through mere *speech acts*, as defended by the CS, or through images, symbols and other resources, as proposed by the School of Paris), on *which* actors are able to securitize, the role played by the audience and contexts, and on *how* to dessecuritize.

Compared to these matters, the question on *why* actors chose to securitize some issues remains underdeveloped, partly due to what has been denounced as a reluctance of the Copenhagen School to present securitization as an inherently political process.

This paper aims to expose one of the functions fulfilled by securitization, by proposing that there is a causal mechanism between fragile national identities and the transformation of national minorities into threats. In order to establish the link between the two phenomena – states where national consciousness is lacking or damaged and the continuous transformation of minority into internal threats – we will apply the concept of weak states, as introduced by Barry Buzan.

By establishing this link, and identifying the non-correspondence between state and nation as a source of insecurity, often neglected by international relations, we aim to question the artificial separation between majority and minority groups and identify the exclusion felt by other groups, often masked by an emergency discourse.

On the dangers of invoking 'national security'

The Copenhagen School represents the most intense attempt of building a constructivist approach applied to security (Cf. McDonald 2008: 59; Huysmans 1998a: 480), by suggesting that "the sense of threat, vulnerability and (in)security are socially constructed rather than objectively present or absent" (Buzan *et al.*, 1998: 50-51). The approach starts with the idea that danger is not an objective condition, as it is subjected to process of interpretation, which helps explain why not all risks are taken as dangers (cf. Campbell, 1992).

The securitization theory produced by this group of authors aims to understand the way threats are discursively constructed, as well as to explore the intersubjective processes which underlie what is projected – and collectively responded – as a threat.

Contrary to what McSweeney (1996) argued, the CS does not support an expansion of the concept of security, but instead aims to offer a lens that allows to explain the already ongoing expansion of the concepte, initiated during the 1980s. As Waever (1995: 46-47) explained, the approach was driven by a discontentment with the traditional management of the concept and of the security agenda: that is, the idea that security is a reality that precedes language, that threats can be objectively measured, and that an increase of security is always desirable.

In this sense, the unrestrained development of *security*, as a way of providing a response to what was thought to be a restriction of the concept to the state level and to the political and military sectors, allowed that even more dynamics could be considered security objects.

The use of the term *national security* should not, therefore, be seen as inevitable or politically innocent: political leaderships often make use of an ambiguous concept, such as *nation*, to turn into threats matters close to people (e.g.: their physical integrity or the capacity of reproduction and expression of their identity) and, that way, to smooth the public acceptance of extreme measures. In other words, the conceptual ambiguity serves the purposes of those who practice state security policies and has become convenient to implement policies that, otherwise, would have to be profoundly debated, contested and justified (Buzan, 1983: 9).

Feeling the need to understand this unruly use of *security*, Buzan, Waver and Wilde, back in 1998, brought back the security sectors previously identified by Buzan (military, political, economic, societal and environmental), while setting themselves to identify other referent objects of security other than the state (Buzan *et al.*, 1998: 8).

The authors identified a *continuum* in the way issues can be managed, from their non-politicization (when issues are not publically debated or solved), through politicization and ending with securitization, a situation during which issues are framed as a security problem, demanding emergency measures, justifying actions beyond the normal boundaries of political procedures, and often escaping the public debate (cf. Williams, 2003: 213). As Weaver recalls, to produce security is also a political process, and "politics is inherently about closing off options, about forcing the stream of history in particular directions" (Waever, 1995: 76).

The securitization process begins with a speech act, because to invoke security is the same as to *practice* security:

> "[…] we can regard 'security' as a *speech act*. In this usage, security is not of interest as a sign that refers to something more real; the utterance *itself* is the act. By saying it, something is done (as in betting, giving a promise, naming a ship). By uttering 'security', a state-representative moves a particular development into a specific area, and thereby claims a special right to use whatever means are necessary to block it" (Waever 1995:55).

The use of the term 'security' may help the prioritization of some issues in relation to others, but the process is enhanced if these are presented as existential threats (even if what constitutes an existential threat can change according to the different sectors and their referent objects):

> "If one can argue that something overflows the normal political logic of weighing issues against each other, this must be the cases because it can upset the entire process of weighing as such: 'If we do not tackle this problem, everything else will be irrelevant (because we will not be here or will not be free to deal with it in our own way).' Thereby, the actor has claimed a right to handle the issue through extraordinary means, to break the normal political rules of the game (e.g., in the form of secrecy, levying taxes of conscription, placing limitations on otherwise inviolable rights, or focusing society's energy and resources on a specific task). 'Security' is thus a self-referential practice, because it is in this practice that the issue becomes a security issues – not necessarily because a real existential threat exists but because the issue is presented as such a threat" (Buzan *et al.,* 1998: 24)

However, the securitization process will only be completed when or if the audience to whom the speech act is addressed accepts it as valid. The security act is then negotiated between the securitizing actor and the audience, in the course of three steps: the construction of an existential threat by the securitizing agent (securitizing move), its reception by the audience, and the effects produced in the relations among the units, in accordance to the suspension of the rules and the

adoption of an emergency action (Buzan *et al.*, 1998: 25-26). Considering that the fulfillment of a few conditions, such as the authority of the securitizing actor or the record of relations with the threatening object, may facilitate the reception of the securitizing move, a successful speech act is, in fact, a combination of linguistic and social elements, of intrinsic features of the speech and of the group that recognizes it as valid.

The securitization theory was not uncritically accepted, and was particularly attacked by the introduction of a societal sector which, according to McSweeney (1996: 82), encourages the reification of collective identities, by focusing excessively in the speech act, and lacks normative concerns. In a way, the concepts introduced by Buzan, Waever and Wilde have been evolving inside the Copenhagen School. On the other hand, post-Copenhagen School authors have been successfully trying to overcome issues that, despite being present in the original proposal, were deeply neglected.

The societal sector was created following the frequent construction of collective identities as referent objects of security through, for example, the abusive use of the *national security* discourse, whilst providing no reflection on the *nation* as a security unit. Referent objects identified in the societal sector can be "whatever larger groups carry the loyalties and devotion of subjects in a form and to a degree that can create a socially powerful argument that this 'we' is threatened" (Buzan *et al.*, 1998: 119). The CS recognizes the difficulty in establishing solid boundaries between existential threats and less urgent threats, because collective identities evolve according to internal and external developments, which may be seen as natural or invasive (Buzan *et al.*, 1998: 22-23). Likewise, the CS recognizes that national identities, while deeply tied to the state, can be referenced by actors who occupy positions of power (Buzan *et al.,* 1998: 123).

Whilst trying to explain the separation between societal and political security, Waever (1995: 66-68) argues that, while in the former the referent objects are the ideas and practices that identify individuals as members of the same societal group, political security relates to the organizational stability of the states, the governance systems and their ideologies. However, he concedes that state-society dualism is not clear: later, the CS would argue that, even though the *nation* can be used as a referent object, it cannot be reified as a securitizing actor, for there are groups, movements, parties or state elites that act and speak on its behalf (Buzan *et al.*, 1998: 41-42).

According to Huysmans (1998a: 489), matters of societal security take precedence over others because the CS has moved the relation between state and society to the center of its research agenda: therefore, the concept of societal security does not presuppose the identification of a sector according to certain threats or vulnerabilities, but instead the interpretation of the relation between the construction of these threats and the constitution of society and its identity as a threatened object.

In response to McSweeney's review of their work, Buzan and Waever rejected the idea that they were objectifying identity, and argued that their goal was to understand the way it was labeled and securitized:

> "Security discourse always uses a symbol or a concept –as all other discourse, it is unable to grasp the thing or people as such. A label surely can be securitized. (…)If we want to understand the peculiarities of the branch of security policy that is conducted on behalf of identity, it is indeed helpful to investigate the inherent paradoxes of acting in defence of an identity which is never simply constant in itself, but

> always contains a longing for a desired self. Collective identities of this sort can never be more than a series of partially or temporarily successful, but ultimately impossible, closures" (Buzan and Waever, 1997: 244).

Some actors have chosen to overcome the mere production of a speech act, focusing instead on the audience and on the social context, while others question the public capability to think over the credibility of the threats and the legitimacy underlying the use of exceptional measures, when faced with and emergency discourse.

For Balzacq (2005), for instance, the securitization process, as formulated by the CS suggests that this is a mechanical process, causing the speech act to be seen as an attempt to convince the audience to accept a discourse merely based on what it already knows about the world. Alternatively, the author proposes an analysis of securitization as a strategic practice, through the recognition of persuasion methods (metaphors, emotions, stereotypes, gestures, etc.) and by paying closer attention to the facilitating conditions (contexts, psychological and cultural disposition of the audience, power relations between securitizing actor and audience), which he argues have not been sufficiently problematised by the CS.

Balzacq (2005: 176) argues that with this shift it is possible to contemplate the inequalities that mark security interaction and to consider the influence of power relations in securitization dynamics. Methodologically, his proposal demands the establishment of a link between discourse and real world:

> "Since the audience is not fully informed, for instance, on the temporal proximity of threats, it usually relies on state officials' discourses because it thinks that the latter, who are the site of constitutional legitimacy, must have 'good reasons' to assert, in this case, that 'X' represents a threat to a state's survival. Of course, by virtue of 'good reasons' (i.e. the claim that they know more than they can say or the argument of secrecy) public officials would find it easier, compared to any other securitizing actor, to securitize an issue, primarily, because they hold influential positions in the security field based on their political capital, and have privileged access to mass media" (Balzacq, 2005: 190-191).

Despite the relevance of Balzacq's proposal, in the sense that there is an overwhelming focus on the speech act, the CS recognizes that the relation between actors is not symmetrical, and that some actors become security voices generally accepted, by virtue of the positions of power they occupy. Thus, "to study securitization is to study the power politics of a concept." (Buzan *et al.*, 1998:31-32).

According to Huysmans (1998a: 489), the greatest loophole on the original securitization theory is the fact that the Copenhagen School takes some identities and structures to be deeply sedimented, a problem also pointed out by McSweeney (1996: 85), and that is also ingrained in the debate over social constructivism's links either to traditional theories, either with critical theory. By doing it, the Copenhagen School depreciates the constitutive relation between securitization processes and the identity of referent objects.

However, the Copenhagen School's position has suffered some modifications, so that it is possible to identify a normative orientation in the securitization theory. First and foremost because its authors view securitization as usually a negative development which silences the public debate over the securitized issues, advocate the opposite process – dessecuritization -, and warn for the

dangers of invocation and idealization of national security that, according to them, is used to silence opposition and toserve internal political purposes (Buzan *et al*., 1998:29).

According to Waever (1995: 54-57), in practice, to securitize means that, by constructing an issue as a security problem, one claims a special right to act that, ultimately, is defined by the state and its elites. Thus, the goal must be a minimization of security. The same happens when trying to determine who speaks on behalf of the society:

> "In practical terms, it is not a society itself that speaks but, rather, institutions or actors in society. Normally and traditionally, according to liberal contract ideology, it is the state that has spoken about security in the name of a presumed homogeneous, amorphous society that it allegedly represents, with what is assumed to be a clear focus and voice. The notion of 'societal security' might strongly imply that this homogenous, amorphous society now speaks on its behalf. But societies are, of course, highly differentiated, full of hierarchies and institutions, with some better placed that others to speak on behalf of 'their' societies. But 'society' never speaks, it is only there to be spoken for" (Waever 1995:69-70).

Against this background, maybe the most pressing question towards the securitization theory is not the identification of its normative potential, which exists, albeit still underdeveloped, but its development as a political theory of security as proposed by Guzzini (2011: 331-332). In other words, what is needed is to stimulate the interest, not only in what security *does*, nor in the context in which security problems emerge, but also on the role security plays in the political order, a project previously advanced by Huysmans, when he called for a reflection over 'security' as a way to establish relations, as a 'thick signifier':

> "While conceptual analyses of security in IR assume and external reality to which security refers – an (in)security condition – in a thick signifier approach 'security' becomes self-referential. It does not refer to an external, objective reality but establishes a security situation by itself. It is the enunciation of the signifier which constitutes an (in)security condition. Thus, the signifier has a performative rather than a descriptive force. Rather than describing or picturing a condition, it organizes social relations into security relations" (Huysmans, 1998b: 231-232).

Although his proposal is by no means recent, the exploration of the motivations and functions of securitization have been forgotten, ignoring, for instance, the possibility that the political leaderships of a state chose to institutionalize exclusion, depriving certain groups from full political participation or equal access to resources, as a strategy of national consolidation. And yet, outside International Relations and Security Studies, diverse contributions suggest that this link exists.

What are strong states made of? A take on states legitimacy and accountability

In 1983, Barry Buzan introduced a new categorization of states, which included an evaluation of the levels of social and political cohesion. In his opinion, a state is composed by physical elements (population, territory, wealth and resources), institutional elements (government, regime, rules and norms), and by the idea of the state, particularly important for Buzan, as it grants popular legitimacy to the state.

The idea of the state can be translated as a feeling of belonging (or 'we-feeling', as proposed by Linz *et al*.), a notion of common purpose and a consensus on *what* the state should do and *how* it

should be doing it (cf. Buzan, 1983: 44; Neumann, 2006: 7). It is this notion of common purpose that distinguishes the social component of the state from its physical and institutional basis.

When the idea of the state is absent from its population, the state does not have a secure base and becomes weak, for "it is in the realm of ideas and sentiment that the fate of the states is primarily determined" (Holsti, 1996: 84). In other words, a weak state does not have political and social cohesion and has failed to create a common national identity, permanently weakened by the continuous encouragement of a group or identity and by the adoption of exclusionary policies and practices.

According to this formula, the strength of a state is more than the mere sum of its physical and institutional components, because although its population and territory offer a physical base, both would still survive if the state no longer existed. On the other hand "without a widespread and quite deeply-rooted idea of the state among the population, the state institutions by themselves would have great difficulty functioning and surviving" (Buzan, 1983: 38-39).

The strength of the state, as proposed by Buzan, does not depend nor is related to power, for states frequently pointed as world powers, can present internal weaknesses that turn them into weak states:

> "In a real sense it is about the degree of stateness that a state possesses. All states can be placed along this spectrum. Those towards the stronger end, being more internally cohesive, will tend to find most of their threats coming from outside their borders. Those towards the weaker end lack much in the way of empirical sovereignty, and so in one sense have less claim to stateness" (Buzan and Waever, 2004: 22).

In (potentially) weak states, the identification of threats in the national security discourse often reveals a greater concern with internal threats. In deeply divided countries, the state may treat large segments of its population as security problems, while establishing different patterns in resource allocation to different groups (Buzan, 1983: 32). In extreme cases, "weak states do not have, or have failed to create a domestic political and social consensus of sufficient strength to eliminate the large-scale use of force as a major and continuing element in the domestic political life of the nation" (Buzan, 1983: 67). The weaker a state is, the more dubious is the use of *national security*, and there might be an intentional confusion between the security of the state and the interests of specific groups, meaning that "we need to be much more suspicious of the assumption that national security is what the government deems it to be" (Buzan, 1983: 68)

Buzan's formula represents a three-way breakthrough to the institutionalist approaches to the state. First of all, by deconstructing the idea that all states are identical objects, to be distinguished only by power analysis. Although states share a certain number of physical, functional, institutional and legal attributes, the differences among them are significant (Buzan, 1983: 42, 68)

Secondly, because it focuses on the ideational component, breaking with the approaches inspired by Max Weber's (1994: 310-311) definition of a state, "a human community that (successfully) lays claim to the *monopoly of the legitimate use of physical violence* within a given territory".

According to Weber's definition, the strength of a state can be determined by its capacity to ensure security and its institutions' capacity to impose authority over society. Therefore, a state is as strong as its institutional and coercive capacity to dominate over society, as only then the state can carry

out its main function: the maintenance of order and security. Thus, a fragile state is the political entity whiche does not have the capacity to implement or impose policies or to offer security, basic services and the protection of basic civil liberties.

Weberian approaches to the state have allowed the emergence of concepts such as *failed* or *collapsed* states which, in turn, have legitimized the use of international mechanisms of intervention, especially in post-colonial contexts.

According to Connor (1972: 353), these approaches show a depreciation of the power of attraction of ethnic identities, by ignoring that the main cause of political instability is not in the institutional collapse of these states, but the absence of a common identity and common purposes among their populations. To Lemay-Hébert, the restricted use of the concept of 'collapsed state' and others, to a matter of means instead of ends (cf. Jackson and Rosberg, 1982), has led to the idea that we are facing a new phenomenon in the process of state building. A new approach, focused on the legitimacy and sociopolitical cohesion, is needed because "as a state represents more than the mere expression of its institutions, state collapse encompasses more than the failure of governmental institutions" (Lemay-Hébert, 2009: 22).

And lastly, because it makes the state accountable for the way its weaknesses are managed: state weakness is not determined by the heterogeneity of society, but by the way the state manages those differences. By proposing state accountability in these matters, Buzan also rejects cultural determinism and breaks with the vast majority of literature on nationalism.

Neither Buzan nor Holsti admit the existence of a pure strong state, and argue that states tend to move, throughout time, along a continuum of strength, so that nation-building processes are neither unidirectional nor irreversible. According to Doty (1996) some old states, generally considered to be solid and stable, from time to time are still confronted with identity crisis. To Wimmer (2006: 341-342), states situate themselves along a continuum of inclusiveness as and all states present some level of exclusion.

Mandelbaum (2013: 521) argues that this separation between strong and weak states reinforces the production of a model-state and glorifies the non-existent convergence between nation and state. The same author insists that the measurement of a state's strength encourages its scientification of the states as well as the establishment of strong and weak regions, through a discourse that presents weak states as an abnormality to be corrected or assisted, especially in post-colonial spaces. However, what Buzan's proposes is precisely the opposite: if there are no absolute strong states, and if we recognize that all nation-building processes make use of exclusionary practices, weak states are no longer the exception, but the rule in the international system.

While not using Buzan's concepts, Michael Hechter (1975: 22) made an effort to describe how a perfectly integrated national society would work. In his opinion, this would be a society where, although political disputes among different ethnocultural groups still prevailed, there would be no permanent constellation of distinct cultural groups, no distinction between 'insiders' and 'outsiders', and where all groups would recognize central power as legitimate, for all would have access to the definition of national symbols. As Buzan, Hechter suggests that this state does not exist; however, he sees this absence as an encouragement to our questioning, since case studies situated at the extremes of this continuum are not particularly insightful:

> "The critical case studies are those where an *intermediate* level of national development has occurred: either economically integrated societies composed of distinct cultural groups, or-if this is not a null set-culturally integrated societies composed of groups at different levels of economic and social development. By and large such examples may be found among contemporary industrial societies" (Hechter 1975:22).

Although Buzan's criteria are dimensional and contextual, for the state guarantee of equal rights and liberties to all individuals and groups may not cease non-official forms of exclusion and discrimination, the greatest responsibility for the management of internal divisions remains in the hands of the state (Holsti, 1996: 96; cf. Nieguth 1999: 156).

According to Brown, we need to explore not only the way political elites construct their nationalist goals, insecurities, threats or enemies, but also the population's receptivity of this discourse:

> "Political elites who wish to close off their society against external influences or employ scapegoat strategies against minorities might, as previously noted, find it useful to depict the threats in racial terms, and to popularise their own myths of common history in racial terms. The influence of such depictions upon national consciousness partly depends, no doubt, both on the culture of the society, and on the actual situational challenges, and thence the types of insecurities facing the society; but political elites do have flexibility in the portrayal of enemies, and this gives a fluidity to the character of nationalism, and in particular to the liberalism or illiberalism of nationalist politics" (Brown, 1999: 298-299).

If the term 'national security' suggests a strong relation between nation and state, maybe the purpose of the state is the protection and expression of an independent cultural identity. If, as theories on nationalism argue, the nation is an imagined community forged by the state elites, Buzan (1983: 45-46) recognizes that the attempt of converging nation with state, in terms of centralizing power, facilitated communication and definition of a common purpose, might seem a powerful, albeit unfeasible idea, in most situations.

Bringing it all together: securitization as nation-building strategy in the weak state

A strong state is built from the inside, but IR's predisposition to relate *strength* with *power*, as well as the habit to evaluate states from an external angle are so deeply ingrained that it is sometimes difficult to acknowledge that states, which are internationally recognized as legitimate, may not have internal legitimacy (Holsti, 1996: 107-108).

Therefore, what is needed is an analysis of the mutually constitutive relation between state and society, where societal cohesion is seen as an element of state strength, and not a mere byproduct of the institutional strength of the state (Lemay-Hébert, 2009: 28). But why would a state exclude or transform a group or minority into a threat?

There is some consensus about the relational nature of identities or, in other words, about the *we-them* nexus that underlies identity construction. Some of the works in the social psychology field show how the construction of the *other* encourages the construction of our own identity (Eriksen, 1995; Petersson and Tyler, 2008: 226), and some of this literature has been gradually incorporated into the IR field, especially in the works of Neumann (1995), Campbell (1992), and Rae (2002). In a sense, this introduction is also a recognition of Edward Said's work, where he shows how the

image of a mysterious, exotic and wild Orient "has helped to define Europe (or the West) as its contrasting image, idea, personality, experience" (Said, 1979: 2).

According to Madriaga (2010), this is one of the reasons why there are no post-national states, for national identity, as any other collective identity, is created and reproduced through a continuous process of differentiation. The same is argued by Campbell, to whom the idea of the state as a final product should be reconsidered:

> "[…] states are never finished as entities; the tension between the demands of identity and the practices that constitute it can never be fully resolved, because the performative nature of identity can never be fully revealed. This paradox inherent to their being renders states in permanent need of reproduction: with no ontological status apart from the many and varied practices that constitute their reality, states are (and have to be) always in a process of becoming. For a state to end its practices of representation would be to expose its lack of prediscursive foundations; stasis would be death" (Campbell, 1992: 11).

According to Petersson (2003) it is important to acknowledge that negative images about the *other* are not inevitabilities, but social constructions, and their rigidity and durability are a result of the nature and regularity of interactions and transmission mechanisms. For Neumann (2006; 8-10) cultural differences are only relevant if they are presented as such: the real danger is not on the existence of differences among groups, but in the discourses that present them as constitutive of what we are as well as instrumental to our social and political lives.

The construction of the *other* is therefore inevitable in our efforts to build our own identity, but that does not mean that those images are necessarily negative or hostile. To see the *other* as just different might be an extremely difficult task, for the processes of *othering* often include a hierarchical, derogatory and stigmatizing view of those who are considered different from *us*. These formal and informal processes can be found in all kinds of established relations, but also in international relations, when other states are constructed as enemies, pariahs, or as model-states, or when policies are developed according to visions of inferiority and superiority, claiming a different treatment for different individuals and groups.

The reasons underlying the exclusion of a community may vary, but are often related to the production of a discourse which turns them into a threat to the interests and/or the identity of the majority group. For Neumann (1995: 4), although the debate over the *other* suggests a flux of ideas, the state plays a decisive role, by establishing the limits within which that debate can occur. For that reason, it is crucial to think over situations where, despite recognizing the political costs, states chose to adopt exclusionary practices. It is also relevant to consider how the transformation of a minority group into a threat can enhance the identity of the dominant group.

As it has been previously argued, the weak state is not an inevitable, innocent or irreparable condition, and its symptoms can be addressed with inclusive politics and the creation of a complementary political identity. Otherwise "so long as such states fail to solve their nationality problem, they remain vulnerable to dismemberment, intervention, instability and internal conflict in ways not normally experienced by states in harmony with their nations" (Buzan, 1983: 47). Thus, it becomes crucial to question the political use of *national security*, in order to understand the transformation of national identity into a referent object of security.

The definition of our identity always demands a rejection of the *other*'s identity, for it is easier for a group to agree over those that *do not belong*, than over access criteria between its members. The securitization of identities, however, elevates this construction to a whole new level, turning the *other*, not only into a differential, but also into a security problem. This process is nourished by stereotypes, for the (perception of) the presence of an enemy becomes no longer compatible with the security of the majority (Petersson, 2008: 156).

Although social psychology has already shown that the loyalties of individuals towards a group can be reinforced with the creation of an enemy, which becomes a common focal point, the application of these theories to national identities is still far from achieving its potential.

According to Eriksen (1995: 427), despite its volatility, the construction of the *other* as a threat may serve temporary purposes of internal cohesion. For Marx (2003: 21-23) this strategy was used, for example, in the earlier stages of Spanish state-building, when over 80 000 Jews were expelled from the country. Petersson (2008: 160-161) offers the example of the "Chechen question", that framed and used during the Russian presidential campaign, ended up masking several popular concerns, such as the debate over secession, the economic crisis, organized crime, and the discontentment over Putin's political program. By the time the Chechen minority was turned into a source of insecurity, the debate over these issues was closed off. For Lipschutz (1995: 8), if it is true that the collapse of identities encourages the weakening of the state, then states often considered as solid and unproblematic are also prone to these problems: "For more than forty years, the United States knew it was *not* the Soviet Union, the FRG knew it was *not* the GDR, Israel knew it was *not* Palestine. Who or what, now, are these places? What defines then when the knowing enemy is gone?" (Lipschutz, 1995: 8).

The most complex work on the construction of internal enemies was done by Douglas (1995), who argues that scapegoats, those individuals or groups unfairly blamed for certain events, are needed to ensure that groups keeps functioning. In other cases, and especially during crisis, scapegoats play a role of a carefully planned distraction from reality.

The chosen victims are usually seen as weak and incapable of retaliation, and their vulnerability increases when there is a record of distrust and hostility:

> "[…] while people may be tolerated in a society even though their behaviour and personal characteristics are significantly different and thus somewhat threatening, they do not necessarily become scapegoats until and unless the society becomes frustrated by its inability to cope with some major crisis—that is, until the level of aggression becomes intolerable and has to be discharged. Then those who were disliked but tolerated become the victims of that aggression and are usually blamed for the crisis" (Douglas 1995:130).

According to Holsti, "the idea is to build a stronger foundation for the 'right to rule' by excluding some over whom that rule is to be exercised", and "any state/regime, and the community over which rule is exercised, that bases legitimacy on exclusionary principles contains an inherent weakness. 'Others' will always constitute an actual or potential threat (as perceived by the rulers) to the integrity of the state and/or to the solidarity of its underlying community" (Holsti, 1996: 89).

In these situations, where the states feel threatened from the insider, culture becomes a security policy, by which the most tempting response is to use cultural means "to reinforce social cohesion

and distinctiveness and to ensure that society reproduces itself effectively" (Waever *apud* Roe, 2004: 289).

Conclusion

Weak states formula provides for the accountability of the state in the management of cultural heterogeneity within its territory. Therefore, it is crucial to recognize that hostility is a variable, not an objective condition, that multiple identities and loyalties can and do coexist in most societies, and that some states' vulnerabilities are linked to the mechanisms of social, economic and political domination and injustice that they themselves have established, reproduced and naturalized.

The greatest difficulty faced by weak states is that they often fall into a dilemma, by being incapable of breaking off with the processes of social fragmentation they created:

> "Everything it does to become a strong state actually perpetuates its weakness […] Their 'right to rule' is undermined by their actions, which are often discriminatory, short-range, and self-serving. The exclusion of important groups by denial of access to power or to resources helps destroy horizontal legitimacy and exacerbates social tensions" (Holsti, 1996: 117).

Moreover, scapegoating becomes a precondition for the solidarity within the majority group, but without offering neither a true foundation for unity, nor valid responses for future crisis: in the end, all it does is to mask other non-recognized (and, thus, non-managed) divisive lines. In these cases, the identification and sacrifice of the next victim becomes the priority, over the identification of the true roots of the problem:

> "If the time gained by the expedient is used to deal with the actual causes then it may well turn out to have been beneficial. If, on the other hand, it becomes a long-term effort and self-sustaining, then the original causes will tend to remain—apart, that is, from any large unforeseen consequences that may occur" (Douglas, 1995: 122-123).

On the other hand, a second side-effect of securitization in these contexts must be considered: the continuous demand for the prioritization of issues (Waever, 1995: 74). By demanding a concentration of efforts over the community constructed as a threat, the state loses the capability to deal with other issues or to address other problems: faced with permanent negligence, new hotbeds of tension might emerge in the national project, gradually eroding the state's legitimacy (Williams, 2011: 457; Douglas, 1995: 132).

References

Balzacq, Thierry (2005) "The Three Faces of Securitization: Political Agency, Audience and Context" *European Journal of International Relations*. 11(2): 171-201.

Brown, David (1999). "Are There Good and Bad Nationalisms?". *Nations and Nationalism* 5(2): 281-302

Buzan, Barry (1983) *People, States and Fear: an Agenda for International Security Studies in the Post-Cold War Era*. Brighton: Wheatsbeef Books.

Buzan, Barry; Waever, Ole (1997) "Slippery? Contradictory? Sociologically Untenable? The Copenhagen School Replies". *Review of International Studies* 23(2): 241-250

Buzan, Barry; Waever, Ole (2003) *Regions and Powers: The Structure of International Security*. Cambridge: Cambridge University Press.

Buzan, Barry; Wæver, Ole; Jaap de Wilde, Jaap (1998) *Security: A New Framework for Analysis*. Boulder: Lynne Reinner Publishers.

Campbell, David (1992) *Writing Security: United States Foreign Policy and the Politics of Identity*. Minneapolis: University of Minnesota Press

Connor, Walker (1972) "Nation-building or Nation-Destroying". *World Politics* 24(3): 319-355

Doty, Roxanne Lynn (1996). "Sovereignty and the nation: constructing the boundaries of national identity" in Biersteker e Weber (ed.) *State Sovereignty as Social Construction*, Cambridge: Cambridge University Press, 121-147

Douglas, Tom (1995) *Scapegoats: Transferring Blame*. London: Routledge.

Eriksen, Thomas H. (1995) "We and Us: Two Modes of Group Identification" *Journal of Peace Research*. 32(4), 427-436.

Guzzini, Stefano (2011) "Securitization as a Causal Mechanism" *Security Dialogue*. 42(4-5), 329-341.

Hechter, Michael (1975) *Internal Colonialism: The Celtic Fringe in British National Development 1536-1966*. Berkeley: University of California Press.

Holsti, Kalevi (1996) *The State, War, and the State of War*. Cambridge: Cambridge University Press.

Huysmans, Jef (1998a) "Revisiting Copenhagen: Or, on the Creative Development of a Security Studies Agenda in Europe". *European Journal of International Relations* 4(4): 479-505

Huysmans, Jef (1998b) "Security! What do you mean? From Concept to Thick Signifier". *European Journal of International Relations* 4(2): 226-255

Lemay-Hébert, Nicolas (2009) "Statebuilding without Nation-building? Legitimacy, State Failure and the Limits of the Institutionalist Approach". *Journal of Intervention and Statebuilding* 3(1): 21-45

Linz, Juan; Stepan, Alfred; Yadav, Yogendra (2004) "'Nation-State' or 'State-Nation'? Conceptual Reflections and some Spanish, Belgian and Indian Data". Human Development Report Office: United Nations Development Programme.

Lipschutz, Ronnie (1995) "On Security" *in* Lipschutz, Ronnie (ed.) *On Security*. New York: California University Press, 1-23

Madriaga M. (2010). "Why American Nationalism Should Never be Considered Postnationalist". *National Identities* 12(1): 81-94

Mandelbaum, M. (2013). "One state-one nation: the naturalization of nation-state congruency in IR theory." *Journal of International Relations and Development* 16: 514-538

Marx, Anthony (2003) *Faith in Nation: Exclusionary Origins of National.* Oxford: Oxford University Press

McDonald, Matt (2008) "Constructivism" *in* Williams, Paul D. (ed.) *Security Studies: An Introduction*. New York: Routledge, 59-72

McSweeney, Bill (1996) "Identity and Security: Buzan and the Copenhagen School". *Review of International Studies* 22(1): 81-93

Neumann, Iver B. (1995) *Russia and the Idea of Europe: A Study in Identity and International Relations*. London: Routledge.

Neumann, Iver B. (2006) "European Identity and Its Changing Others" *Norwegian Institute of International Affairs: Paper 710*. Oslo: NUPI.

Nieguth, Tim (1999) "Beyond Dichotomy: concepts of the nation and the distribution of membership". *Nations and Nationalism* 5(2): 155-173

Petersson, Bo (2003) "Combating Uncertainty, Combating the Global: Scapegoating, Xenophobia and the National-Local Nexus*" The International Journal of Peace Studies.* 8(1), available at http://www.gmu.edu/programs/icar/ijps/vol8_1/Petersson.htm (accessed at 8-5-2014).

Petersson, Bo; Tyler, Katharine (2008) "The Making and Breaking of Difference: Concluding Thoughts" *in* Petersson, Bo e Tyler, Katharine (eds.) *Majority Cultures and the Everyday Politics of Ethnic Difference: Whose House is This?*. New York: Palgrave Macmillan, 226-238.

Rae, Heather (2002) *State Identities and the Homogenisation of Peoples*. Cambridge: Cambridge University Press

Roe, Paul (2004) "Securitization and Minority Rights: Conditions of Desecuritization*" Security Dialogue.* 35(3), 279-294.

Said, Edward (1979) *Orientalism*. New York: Vintage Books

Waever, Ole (1995) "Securitization and Desecuritization" *in* Lipschutz, Ronnie (ed.) *On Security*. New York: California University Press.

Weber, Max (1994) *Political Writings*. Cambridge: Cambridge University Press.

Williams, Michael C. (2003) "Words, Images, Enemies: Securitization and International Politics" *International Studies Quarterly.* 47 (4), 511-533.

Williams, Michael C. (2011) "Securitization and the Liberalism of Fear" *Security Dialogue*. 42(4), 453-463.

Wimmer, Andreas (2006) "Ethnic Exclusion in Nationalising States" *in* Delanty, Gerard; Kumar, Krishan (eds.) *Handbook of Nations and Nationalism*. London: SAGE Publications, 334-344

Power of Words: When Terrorism Goes Viral

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Abstract

In recent years, the actors of terrorism quickly learned how to adapt to the new communication and media environment. From face-to-face communication, localized propaganda, and direct recruitments methods, terrorist cells and organizations started moving their activities to online forums, social networks, and social media. The impact is huge and widespread: not only has their primary reach extended, but also, thanks to the overall globalization of communication methods, they are being given secondary "advertisement" through exposure in world media. This is becoming more than evident in the case of ISIS, whose reach and communication methods are unprecedented. This paper concentrates not only on ISIS, however, as it introduces when and how terrorism started turning viral and what particular forms this communication, propaganda as well as recruitment shift takes, together with what primary and what secondary threats it poses. Moreover, emphasis is put on both the technical aspects of the aforementioned changes as well as on the analysis of the new means of communication as such, namely on its linguistic, psychological, imagery, and security content. The outcome of the paper is the identification of the methods and analysis of the current state of affairs in terrorist communication, together with overall evaluation of their contemporary recruitment and propaganda practices.

Key words

Al Qaeda; Communication; Cyberjihad; Cyberspace; ISIS; Media; Propaganda; Social Media; Terrorism.

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Introduction

Terrorism is not a new threat the society is facing. This threat, however, has been evolving and its ever-changing forms create new issues the society needs to face and address. Assessing terrorism from the communication and media point of view, it can be understood as a message. A message that further spreads messages by its sole existence and its actions. Terrorists and their organizations are well aware of the power the media have, the more in this globalized age, and they quickly adapted to the treats the media in general and virtual world in particular have to offer. Although their battlefield and training camps may not always be first-class, their knowledge of modern communication methods and possible effects of these methods is. Not only they know how to operate modern media themselves, they also know how to make media listen to them. In 2005, Al Qaeda's (AQ) then second in command Ayman al Zawahiri wrote to AQI[247]'s emir Abu Musab Zarqawi: "[…] We are in a battle, and more than half of this battle is taking place in the battlefield of the media" (Stern and Berger 2015: 105[248]). The message could not be clearer.

The reasons for the new media deployment vary: the jihadists use it for their internal communication; it provides possibilities for new, cheaper, and faster forms of recruitment; it is a platform for propaganda and boasting; and importantly, it helps with spreading fear to those who are supposed to be afraid. To put it simply, it enables to pass on desired messages in a cheap, visible, and unprecedently fast manner. Though, not always do the messages come from the terrorists themselves. World media, social media users, and virtually anybody who is to any extent engaged in the world affairs, are providing terrorists with secondary "advertisement" for their actions by paying attention to them and talking about them. Ultimately, "if it bleeds it leads" and terrorism sells well, so in fact, terrorism can be also perceived as a profitable source of news for the media companies, often accompanied by simplified black and white narratives which are dangerous by themselves, regardless of the actual content. This all seems to be a vicious circle of a complex supply and even more complex demand. The aim of this paper is not to resolve how to break the circle, but to analyze what is in this circle, how this circle works, and how it changed with the Internet age, hoping to produce a critical analysis and an overview of the matter in question, stressing the crucial moments of this transformation and their effects in respective contexts, which can serve as an outline for the policymakers and counterterrorist strategists, or as a base for further research.

To begin with, it is necessary to identify how the terms *terrorism* and *terrorist* are understood in this paper. There are at least two main factors to be considered: firstly, there is no official, globally accepted, and internationally binding definition of terrorism. Alex P. Schmidt (2012) wrote that terrorism is a contested concept where many variables play important roles and therefore a definition of *terrorism* is necessarily going to differ based on the subject's specific stand on and understanding of these variables. It has been repeated many times that "One man's terrorist is another man's freedom fighter," yet there is some common ground to be found in the Western[249] understanding who is perceived as a *terrorist* and what is understood as *terrorism*, with "violence

[247] Al-Qaeda in Iraq
[248] Further on abbreviated as "S&B 2015: xx".
[249] "Western" is not used primarily as a geographical denomination – Western is understood as one coming from a free source, usually, but not restrictively from Europe, North America, and Australia.

committed by groups with political goals, targeted against civilians, and intended to create fear among a larger population being the recurrent themes" (Knoke 2012: 232).

Secondly, David C. Rapoport in his 2002 article "The Four Waves of Rebel Terror and September 11" stated that the labels *terrorism* and *terrorist* themselves kept evolving and who might get labelled as a terrorist nowadays might have not necessarily be given that label some 100 years ago: our perception of a terrorist threat keeps changing, too. He further claims that there have been so far four individual waves of terrorism in modern history and each of these waves differed in its tactics, actors, targets, and goals. The last stage which he called "Religious Wave" started, according to him in 1979[250], with religion, predominantly but not solely Islam[251], "supplying justifications and organizing principles for the New World to be established" (Rapoport 2002). Cockburn (2015: 100) further on states that 1979 was "the key date for the development of the jihadist movement as political players".

Therefore, based on the above mentioned, this paper shall deal with jihadi terrorism as it is understood by Western scholars and Western media and shall attempt to analyze the adaptation of jihadi terrorists to the new media and online communication environment, while emphasizing what primary and secondary threats it causes and how and where they are being projected. Since ISIS has proven to have mastered the transformation best so far, emphasis shall be laid on their activities. Secondarily, the paper points out that the threats stemming from this turn are not confined to communication only and definitely not only to the communication taking place in the cyberspace. It has influenced world media in general and it challenges, among others, our social values, notion of freedom of speech, and last but not least private businesses.

Lastly, it is important to highlight that this paper deals with ongoing processes and at the time of its publication, there might already be new information available. Moreover, there is not yet enough distance from which it would be possible to examine everything that has been happening; there might be both unintentional as well as intentional bias in the news coverage which I had to at certain points rely on, and some data is not yet available for security reasons or they are simply classified. These challenges, although having been taken into account, might have projected into the final analysis.

The Media Cradle

Taking 1979 as a milestone in the birth of jihadi terrorist movements, it is obviously hardly possible to talk about mass communication and especially not yet on a social media (SocMed) level. The communication channels were different – communication was offline at first, gradually turning online as soon as the possibility arose – and so were the targets of the jihadi media production. Formerly, it was mostly potential recruits who were the primary target of the external communication; making it to the headlines and breaking news had not yet been the priority (S&B 2015: 101). Additionally, internal communication within the group and also between the affiliated groups and factions was another reason for the early media usage. Some of the former offline methods kept on being used and are still used nowadays, such as planting dead drops, night letters

[250] Triggers that he quotes are the Iranian Revolution, Russian invasion of Afghanistan, and beginning of a new century according to the Muslim calendar (Rapoport 2002).

[251] It is necessary to bear in mind that Islam itself is not unified and is divided among various factions out of which only a certain part of worshippers turned into extremists and terrorists respectively.

and leaflets aimed at that part of population that still has no Internet access (Archetti 2015), using couriers by hands – especially favorite by late Bin Laden for its security benefits (S&B 2015: 58, Gardner 2013), or some more modern methods such as using disposable SIM cards and USB sticks (Gardner 2013). Generally, though, the communication environment has changed significantly since 1979.

It is fair to say that the jihadist groups have been skillful in adapting any innovation in the field of communication production ever since its rise in early 1980s. At first they produced propaganda films on videotapes, recorded audio lectures on cassettes, and they also published four-color magazines – those were part of localized propaganda that had been successfully escaping the Western media radar (S&B 2015:101). The magazines and newsletters could have been sent out via mail, handed out near and in mosques, or those who were interested in getting more information could go to the dedicated centers located world-wide; tapes and its content were discussed in person after communal screenings, usually accompanied by a cleric's speech (S&B 2015: 127-128); home gatherings, meetings with veterans, and lectures were commonplace, too (Hegghammer 2013: 8, 11).

However, the true birth of the new generation of violent jihad that would later "set the stage for a global Muslim revolution" dates back to 1988 when the elitist and tightly cohesive organization called "the base" appeared – in Arabic *al qaeda* (S&B 2015: 54-55). In the retrospective and in the light of 9/11, it might be surprising to see that for the first decade of its existence AQ was publicity-shy and only very few people in the US government actually knew its name (S&B 2015: 244). That was, though, part of a calculated security strategy and in general, the awareness of existence of these jihadist groups was low-scale, localized, dependent on local networks, and aimed at those who already knew of the existence of the group or had adequate affiliations to find out.

Though, printing the materials out and sending them via mail was costly and limiting, therefore, shifting to e-mails when the possibility arose was a next logical step. For comparison, a printed version of *Al Hussan* newsletter[252] cost monthly about $1,000, while sending out *Islam Report* via e-mail cost nothing; the same fate awaited video tapes and DVDs with the arrival of digitalized downloadable files and online file storages (S&B 2015: 128). However, DVDs persisted as an especially common medium for bragging about the jihadi deeds for a very long time: AQI[253] still used them at its early beginnings. They were actually so common that the US soldiers were trained to expect an attack if they noticed civilians with a video camera shooting on streets, as these shots would be later found on DVDs near the place of an attack (Sekulow 2014: 2). Nonetheless, as the 1990s came, the Internet and also the new communication methods started being used, both by the general public and the terrorist groups, which brought along not only a shift in their operation scope, but also new threats.

Transition Stage and the Early Internet Adoption

The early 1990s were still at least partially marked by more conventional communication and propaganda – the jihadists continued using print media, fax, TV, radio, face-to-face propaganda, press conferences, and journalist interviews (Bockstette 2008: 12, 17), along with private

[252] Published in Boston.
[253] Founded not long after the 2003 US Invasion to Iraq, later turned into ISIS.

gatherings, lectures, and religious sessions; AQ was running training camps for the indoctrination purposes, too (S&B 2015: 65). At the same time, though, the Internet started gaining popularity: dial-up bulletin boards and chat rooms on Yahoo! and AOL became more and more common, and so were communication softwares like vBulletin (S&B 2015: 128). However, as the communication scope changed, the target audience, the internal group arrangement, as well as the applied techniques started changing, too. Thanks to the Internet, it was fast, cheap, and easy to achieve a world-wide reach and it did not take long for the jihadists to embrace this opportunity. The goals of the groups became bolder, with bigger recruitment and awareness-spread ambitions to begin with. Yet, it is important to bear in mind that "optimal recruitment tactics vary in space and time" (Hegghammer 2013: 4) and what works for one group does not necessarily have to work for another, the example being a great difference between AQ's rather modest tactics compared to ISIS's media exhibitionism. Therefore it is always necessary to distinguish between individual groups and their tactics, though, there is an evidence of fairly common line of development across the jihadist groups.

Throughout the 1990s, Bin Laden often passed his messages to the Western world through giving interviews to Western journalists (Gendron 2007: 14). The boost in broadening the audience came by the end of 1998 with "shift in the primary strategic communication means due to technological advances and the rise of Al-Jazeera" (Wojcieszak 2007 in Bockstette 2008: 12): the Al-Jazeera network became not only a channel for jihadi message broadcasting, but also a source for other Western networks, should they meet desired criteria for the tape acquisition (Bockstette 2008: 12, Gendron 2007: 14). This is the defining point when the Western media "mutated from its role as a critical observer and reporter to a more and more active role as a conflict participant" (Golan 2006 in Bockstette 2008: 13), which slowly initiated the already mentioned infamous circle of demand and supply. This development was a part of AQ's calculated media strategy:

> "[…] Sheikh Usama knows that the media war is not less important than the military war against America. That's why al-Qaeda has many media wars. The Sheikh has made al-Qaeda's media strategy something that all TV stations look for. […]" (AQ's then spokesman in Gendron 2007: 14).

Even though the Internet usage was increasingly rising, its all-level tactical deployment was not yet the case with all of the jihadist groups.

9/11 and the Online Migration

It did not take long for the game changer to come: when 9/11 happened, it triggered all sorts of shifts, some of which were rather unexpected even for AQ itself. Firstly, it was the fact that AQ – the pioneer in the jihadist field – needed to leave the shadows of its own secrecy. It was shortly before 9/11 when they finally came out of its media closet: after bombing of the USS *Cole* and embassy bombings in 2000, they released a feature-length propaganda video which at last disclosed its key leaders and basic messages to the public – the spark arrived, though, it took some time for the fire to start (S&B 2015: 56). However, 9/11 was not only a turning point in the Western perception of jihadi terrorism, it was also a turning point for AQ itself as they were unprepared for being catapulted to the top spot of the news worldwide (S&B 2015: 56). They had to adopt to this new environment both in terms of their internal politics as well as in terms of their external behavior, but they were slow in doing so – it "took years for al Qaeda to begin fully exploiting the media-ready elements of September 11, although the response from Western news helped fill the

void" (S&B 2015: 57). The results of this "failure" are still visible if one compares today's AQ's tedious video lectures of variable quality to ISIS and their usage of often most up-to-date cinema and PR techniques.

Quoting Stern and Berger (2015: 64-65), "in the years since September 11, Al Qaeda had taken to the Internet, in part to offset its lagging communications from senior leadership, but mostly because everyone else was using the Internet". After the loss of Afghanistan as a physical base and with the spread of the network of affiliated groups under the AQ trademark in the early 2000s, there was no other way to survive than to decentralize and communicate over long-distances, with Internet easily surpassing treats of other traditional mass media (Bockstette 2008: 14). Nonetheless, the original AQ was still slower than some of the other groups to embrace SocMed – AQ preferred password-protected message boards and moderated discussion forums with rigid structure and clear hierarchy, which on the one hand stood for the crucial control mechanism (S&B 2015: 65), but on the other it created a notion of elitism and impenetrability.

As mentioned earlier, 9/11 was an important catalyst after which "jihadist terrorists [considerably] expanded their communication infrastructure and methods of communication"– Al Shabab[254] (AS) set up Islamic Media Publication Company in 2001 which was "essentially the main entity of the media production division of al-Qaeda", heavily relying on the Internet (both in Bockstette 2008: 13). The quality of material they were producing was increasing and after June 2006, all known speeches by the original AQ leaders carried *al-Shabab* logo (Bockstette 2008: 13). The visual communication was on its rise, with the media rhetoric being increasingly "built around the visual component"; usage of Skype, Email, and other VOIP programs became commonplace (Bockstette 2008: 13).

Very important step was adopting English, either spoken or in subtitles, which became a language of choice of the Internet. The first terrorist online magazine – *Sawt al-Dschihad* – saw the light in 2003 and many imitators were to follow, example being AQ's *Inspire,* published in English since 2010 (Bockstette 2008: 18). Dedicated websites started emerging, too. Though, they were often changing their online addresses, disappearing and reappearing, in order to protect their existence (Weimann 2004: 2). Online forums and blogs were more secure and less prone to be shut down in their beginnings. Besides being a communication platform, they also offered an access to file storages where films and other propaganda material was to be found and "since this material spread over numerous web servers located in different countries, blocking access to all copies of the files became virtually impossible" (Europol 2007: 25). Forums were also very convenient when the group wanted to watch over the content of the communication as they provided possibility to ban and block users who were spreading or engaging in undesirable activities. The huge disadvantage of forums was that the jihadists had to wait for people to find them. Nonetheless, after 9/11, "many terrorist sites [and forums] were targeted by intelligence and law enforcement [and thus] turn to social media followed" (Weimann 2014: 2). Forum usage, though, never disappeared fully.

[254] Somalian AQ affiliate.

Social Media Haven and Postmodern Terrorism

In 2010, Department of Homeland Security (DHS) reported following:

> "While social networking sites have recently become popular with radicals, forums have long been used by terrorists to exchange ideas, and spread ideological, tactical and operational information among a sympathetic audience."

Since then, SocMed kept rising in popularity as they provided a two-way communication and they also differed from the traditional media in their "interactivity, reach, frequency, usability, immediacy, and permanence"; their user-friendly, free, reliable, and hierarchy-less environment helped in creation of online communities where the terrorists can "virtually knock on the doors" of their recruitees (Weimann 2014: 2-3). Being increasingly aware of the security risks and having taken a lesson from the post 9/11 forum shut-downs, the jihadists learned to access the SocMed via proxy and with fake accounts and fake e-mail addresses (Weimann 2014: 4). Last but not least – the Al-Battar Media Battalion – a group devoted to online dissemination of jihadist propaganda, was established in July 2013 (Weimann 2014: 4). Terrorism finally fully started turning viral and entered its postmodern communication phase.

Looking at the SocMeds specifically, as of August 2015, Facebook (FB)[255] is the largest online social network with 900,000,000 estimated unique monthly visitors (Anonymous 2015d) and almost 1,500 million users as of 2nd quarter of 2015 (Anonymous 2015b). Twitter (TW)[256] follows with 310,000,000 estimated unique monthly visitors (Anonymous 2015d) and almost 304 million monthly active users as of 2nd quarter of 2015 (Anonymous 2015c). Other favorite jihadist sites – LinkedIn (3rd), Pinterest (4th), Tumblr (6th), Instagram (7th), and Flickr (9th) – all follow in the top 10 of the social networks (Anonymous 2015d). YouTube[257] has over one billion users and the number of hours people spend on watching YT material is 50% higher each month year on year (YouTube Statistics 2015). These numbers clearly show how lucrative the SocMed are for the jihadist users: they are "a global town square for the digital age" (Kjuka 2013).

It was FB that started the large-scale terrorist SocMed avalanche: it became the first SocMed gateway to cyberjihad and with the "Facebook Invasion," it initiated a pattern later on repeated with TW or YT (DHS 2010). DHS (2010) defines the various terrorist uses of FB which created a template for other SocMed sites later on:

" • As a **way to share** operational and tactical information, such as bomb recipes, AK-47 maintenance and use, tactical shooting, etc.

• As **a gateway to extremist sites and other online radical content** by linking on

Facebook group pages and in discussion forums.

• **As a media outlet** for terrorist propaganda and extremist ideological messaging.

• As a **wealth of information** for remote reconnaissance for targeting purposes."

FB could thus target and connect less experienced jihadists and link them to the secret forums that "primarily attract already hard-core jihad sympathizers" (Weimann 2014: 6-7). More recently, TW

[255] Launched in 2004.
[256] Launched in 2006.
[257] Established in 2005.

has immerged as jihadists' Internet service of choice[258]: the jihadi use of TW "takes advantage of a recent trend in news coverage that often sacrifices validation and in-depth analysis for the sake of almost real-time coverage"; they also used it as the first SocMed to publicly claim a responsibility for a terrorist operation on[259](Weimann 2014: 8). Twitter has become very popular due to its rigorous resistance to get under external control and maintaining a strict free speech approach, having had very little policy related to terrorism for a longer time compared to other SocMed (Kjuka 2013). Their "who to follow" recommendation also made it much easier to find affiliated jihadist pages (S&B 2015: 134). Further on, YT is said to have been becoming an alternative to jihadi TV (Weimann 2014: 11), providing possibilities to globally share jihadi visuals which are psychologically strong and therefore amplifying political impact and attracting broader audience (Cockburn 2015: 128). Similarly as with jihadi versions of TW (Twishort, TwitMail), versions of YT emerged too – AqsaTube, PaluTube, TubeZik (all run by Hamas) (Weiman 2014: 9, 12). Nonetheless, SocMed are not always the final destination, as the Internet provides several other possibilities for the message spread: online gaming is yet another encrypted and password protected haven and increasingly popular GIFs can carry encoded messages, too (Gerdner 2013).

Though, SocMed also have their disadvantages: they helped to point to the internal struggles in some of the jihadi groups, as the dissatisfied members were provided with arena where they could freely share their grievances in, with no forum moderator to silence them. Example being Omar Hamami, Syrian-Irish-American from Alabama, who started unprecedented Twitter war in March 2012 over his dispute with AS – although the internal fights were nothing new across the jihadist spectrum, fighting in public with the whole world watching was and Hamami became an important catalyst in this transition, starting a new paradigm of a SocMed feedback loop that got even more significant with the rise of ISIS (S&B 2015: 64, 67). However, it did not take long and governments and other law enforcement agencies started targeting jihadists on SocMed, initiating the "whac-a-mole[260]" game, winner of which is yet to be seen.

ISIS, the Master Game-Changer

Not only is ISIS probably the most heard-of jihadi group nowadays, it also became a master of the digital and SocMed environment adaptation. Due to its emergence when SocMed usage had already been a commonplace, they knew how important role they play; however, it was not until 2/2014 when their massive SocMed "campaign for hearts and minds" fully started (S&B 2015: 69). Even before the group became ISIS as it is known today, they "experimented with the idea of trying to launch viral content from the forums" (S&B 2015: 65). Afterwards, they properly virtually documented their military progress and they also launched several hashtag campaigns to support their cause, example being #caliphate of 3/2014, with the actual caliphate proclamation becoming a reality only weeks later (S&B 2015: 70, Cockburn 2015: 60). SocMed are ISIS's daily bread, with official announcements, messages by the members as well as individual fighters and sympathizers, and various audio-visual and textual material being disseminated there constantly. ISIS still uses traditional or at least semi-traditional methods, too, such as running training camps or publishing

[258] One of the first to set up a TW account was Taliban in 1/2011 (S&B 2015: 135)
[259] 2013 AS attack on Westgate Mall in Kenya.
[260] Game "where one takes a mallet to a seemingly unending set of furry rodents that pop up at random from holes in a big board. When one mole gets hit, another one quickly jumps out elsewhere on the board to take its place" (Peritz 2015).

an online magazine *Dabiq*. Additionally, they have been intensively applying advanced PR methods such as the feedback loop model, polling, narrowcasting, or focus-group testing, and their social media team has also been skillfully abusing the digital environment by using TW "bots"[261] to artificially boost their posts and messages. They launched their very own Twitter app *Dawn of Glad Tidings*[262] to share ISIS content more easily, they coordinated re-tweeting, or hacked trending hashtags such as during the 2014 World Cup, with everything being composed in articulate English to reach as wide audience as possible (S&B 2015: 70-72, 149-150, 155). By mid-2014, the ISIS propaganda machine was alive, sharply distinguishing itself from the falling-behind AQ Central (S&B 2015: 72).

ISIS is new not only because of its approach to PR and SocMed, technical skills (Cockburn 2015: 127), and unprecedentedly open use of ultraviolence; it also came up with rhetorics offering civil society with everything it stands for which is to be available to *all* its "citizens". The civil society – something AQ never managed to accomplish – was to be achieved through holly battle which started a popular revolution (S&B 2015: 73-74). The propaganda machine – ever since 5/2014 translated also into many other languages thanks to Al Hayat Media Center – aims at recruiting foreign fighters who could and *should* fight for the newly-established caliphate. These come in abundant numbers from almost all over the world, creating a new security challenge upon their return to their homelands. Their SocMed usage is creating a never-ending stream of advertisement for ISIS, further on supported thanks to the "celebrity" fighters like Jihadi John (S&B 2015: 77, 84). Recruitment and ISIS-related information is to be found all over the web, even on niche SocMed like Ask.fm where users can openly ask for example how to become an ISIS fighter (S&B 2015: 84) – no more hiding, ISIS is becoming blatantly open.

It is important to understand, though, that what ISIS is doing cannot be interpreted and understood solely within the context of the media. SocMed, PR, and communication indeed are an integral part of the propaganda pursuit, but it is also understanding of psychology, language, and theater that makes ISIS so effective. They know they need to contextualize and geography-base the messages to be able to recruit as broad spectrum of people as possible and that the messages need to cover different needs of and appeals for males, females, and children. Women's engagement in extremist movements has been overlooked over a long time period (Koppell 2015) and ISIS took its chance: jihadi brides are a popular SocMed as well as real-life phenomenon, there are female recruiters working online (S&B 2015: 89); moreover women generally have significant impact in their communities which can potentially be used for recruiting.

Theatrical aspects play huge role too – starting with the spectacular four-part series *The Clanging of the Swords* (6/2012-5/2014) with every episode becoming more and more Hollywood-like and brutal (S&B: 106-111), the cinematic methods, although still fluctuating in quality, became unprecedented. The gruesome ISIS video trademark – the beheadings – are a symbolic meta-messages, where the actual killing becomes a secondary matter and "without the possibility of videotaping the event, there would be no motive in the first place to execute someone in such a manner" (Kaplan 2014). That having been said, it appears that these overly-theatrical beheading docu-dramas are staged for the camera: they are then uploaded online for us to watch as the

[261] "Scraps of computer code … usually designed to perform a repetitive task" (S&B 2015: 150).
[262] It got suspended shortly before the caliphate proclamation (S&B 2015: 150).

terrorists know people cannot resist watching them (Humphreys 2014). The audio-visual effect is what matters, hence the carefully selected music, setting, angles, and victims – ironically enough, the first victims were journalists. All in all, in their usage of the Internet and modern communication methods, ISIS is "well ahead of most political movements in the world" (Cockburn 2015: 127).

Whac-a-Mole: Troubles in the Online Paradise

Increasing popularity of SocMed among the jihadists could not pass unnoticed by governments and the intelligence community. Limiting jihadi online existence has already been an issue during the "forums age", however, SocMed, once again, drove the entire matter to a whole new level and public pressure started mounting. There has been an increasing pressure on FB, TW, and YT to filter content of their sites which is, however, in contradiction with the general idea of Internet being an uncensored zone. Any governmental limitation of privately held companies additionally introduces a clash between security and invasion of privacy. Though, FB started actively monitoring and terminating violent jihadists in 2009 (S&B 2015: 136), YT introduced flagging a terrorist content, meaning that any video would be removed if the company were to find a video depicting "gratuitous violence, advocated violence, or used hate speech"; TW has been resisting for much longer based on the argument of free speech and has been facing transparency issues since (S&B 2015: 130, 143, 164, Weimann 2014: 13). Nonetheless, getting rid of jihadists on SocMed is far from an easy task and two similes have been often quoted in this context: "whac-a-mole" game and the legend of Hydra – "cut one head off and two more grow to take its place" (CIA 1985 in S&B 2015: 138), meaning that taking down one account will not stop it from re-emerging elsewhere and it will even less likely stop the whole organization from existing online.

It is not possible to perceive this matter as a one-sided story though: private companies like YT or FB need to protect their business interest and integrity through observing privacy protection. By succumbing to the governmental pressure to limit or provide information for intelligence purposes, they not only threaten their direct profit and market standing, but they also allow terrorists to interfere in yet another sphere (S&B 2015: 139). Even though it was not exactly in their primary interest, the SocMed companies started somewhat reluctantly applying the requested measures, such as blocking and taking down the accounts, often repeatedly, costing the terrorists time, effort, losing the "archived" information, number of followers, and the carefully-built network, as the sites and accounts could not fully rejuvenate so flexibly; after some time and many take-downs, some of the pages stopped appearing at last (S&B 2015: 144-145). The mole stayed put until ISIS emerged.

Though, closing the accounts down is not always a priority either, as effective infiltration or surveillance can produce a great amount of intelligence useful for counter-terrorist measures. However, the West suffered a great setback after the Snowden NSA leaks which exposed the extent and targets of their surveillance, result of which being that "members of virtually every terrorist group, including core Al Qaeda, are attempting to change how they communicate […]" (Anonymous 2013). They once again started turning to the "old-school" methods like the password-protected forums where they shared what pages to avoid and how to survive on SocMed, setting up fake e-mail accounts, using multiple and disposable SIM cards, using encryption, code words, veil speech, writing in Arabic or less common languages, rotating computers, using internet

cafés in order to avoid IP tracking, or using "dead letter boxes"[263] (Bogart 2013 and Anonymous 2013). Turning to the Dark Web (Osborne 2015) and usage of privacy-protection systems like TOR became a commonplace, throwing the intelligence workers often back at the beginning. Last but not least, messaging services like WhatsApp and iMessage are posing a threat, too, as communication through them is automatically cyphered and thus intelligence agencies cannot read them without the owners releasing the code which is once again opening the question of security vs. privacy (Václavíková 2015). All in all, terrorists became aware that leaving an electronic footprint might incriminate them and so the mole started using other holes.

Advent of the New Threat(s)

Terrorism in the 21st century is openly brutal, however, the number of people who die yearly in terrorist attacks is still smaller than for example a risk of dying in a car accident (Harari 2015). It is the effect of the media that blows public fear to extremes. One part of this are the original jihadi messages that are as accessible and as uncensored as never before, the second is the Western reporting that often values a "good atrocity story" that shocks hard, spreads fast, and sells well (Cockburn 2015: 120). Manipulated symbolism that is embedded in the original messages, the often oversimplified black and white narratives, and melodramatic visual attractiveness of instant war reporting which is, however, frequently missing context and requires interpretation, are dangerous (Cockburn 2015: 114-115). So is the fast reporting due to immediate accessibility of news but little time to properly verify it as other media might be faster in their reporting and thus steal the thunder. This all is playing into terrorists' hands.

This connects well with the psychological threats stemming from the jihadi tactics: instillation of fear in Western society, self-radicalization and subsequent emergence of lone wolfs in the West (Weimann 2014: 1, 14), radicalized foreign fighters going to fight for ISIS, and also reduction of the recruitees' capacity to feel and empathize based on an ongoing exposure to horrors resulting in production of even more brutal extremists. However, it would be simplistic to broadly accuse SocMed for causing this – technology is a tool for spreading, but it always "depends on an individual's unique position within a configuration of relationships at any given time" (Archetti 2015) whether they will succumb to the recruiters' pressure and join or if it produces the exact opposite. After all, "four decades of psychological research on who becomes a terrorist and why hasn't yet produced any profile" (Horgan in S&B 2015: 81).

Linguistically speaking, the jihadists quickly understood the global impact of English and started using it broadly. With the rise of ISIS, the linguistic base was taken one step further and the messages started being translated into other languages, too. Further on, the official ISIS announcements are very often using the inclusive "we" when speaking about goals and achievements of ISIS, which makes the viewers, should they be sympathetic with the conveyed message, feel as being an integral part of what is happening. This is especially important for understanding the recruitment impact on psychologically weaker, vulnerable, or otherwise socially excluded individuals, as the sense of belonging may make them sympathize or make them join the group. The narrative of ISIS is inherently victorious, greatly overusing words such as "victory",

[263] One of AQ's favorite techniques: using shared e-mail account where messages would be saved as drafts and read by multiple people after logging in – the message would never get sent and will thus pass as unregistered (Bogart 2013).

"triumph", and "power" (S&B 2015: 107, 117), creating a notion of strong and victorious state through "propaganda of the winner" (Winter in Anonymous 2015a).

Conclusion

It is evident that a significant shift has been made in the way the jihadists reach out to their audience. The shift has also been made in the way the audience responds to the messages as well as in the way how the Western media treat the whole shift. The terrorist groups have also proven great adaptability to changes in communication methods, however, they never abandoned the old-school methods altogether. With changes in communication came also a change of reach which further on triggered changes in the target selection, internal changes within the groups themselves, and changes in propaganda tactics. It appears that democracies are more "susceptible to provocation than nondemocracies" (Kydd and Walter 2006: 71) due to their protection of free speech. The relationship between terrorists and media appears to be symbiotic: "the perpetrators would have far less impact without media publicity and the media can hardly be expected to resist reporting" (Kartz & Liebes 2007 in Bockstette 2008: 16). Social media opened an arena of unprecented scope and possibilities, but cannot be blamed in full for all what is happening. ISIS currently represents a master of the media adaptation and adoption. This whole shift and system of changes subsequently caused threats in other spheres that need to be addressed, too.

References

Anonymous (2013): 'Al Qaeda, terrorists changing communication methods after NSA leaks, US officials say', Fox News (June 26, 2013). Accessible at WWW: http://www.foxnews.com/us/2013/06/26/al-qaida-other-militants-said-to-be-changing-procedures-to-avoid-surveillance/ (Aug 12, 2015).

Anonymous (2015a): 'Islamic State The Propaganda War', The Economist (Aug 15, 2015). Accessible at WWW: www.economist.com/node/21660989/print (Aug 16, 2015).

Anonymous (2015b): Number of monthly active Facebook users worldwide as of 2nd quarter 2015 (in millions). The Statistics Portal Statista. Accessible at WWW: http://www.statista.com/statistics/264810/number-of-monthly-active-facebook-users-worldwide/ (Aug 27, 2015).

Anonymous (2015c): Number of monthly active Twitter users worldwide from 1st quarter 2010 to 2nd quarter 2015 (in millions). The Statistics Portal Statista. Accessible at WWW: http://www.statista.com/statistics/282087/number-of-monthly-active-twitter-users/ (Aug 27, 2015).

Anonymous (2015d): Top 15 Most Popular Social Networking Sites. The eBusiness Guide. Accessible at WWW: http://www.ebizmba.com/articles/social-networking-websites (Aug 27, 2015).

Archetti, Cristina (2015): 'Terrorism, Communication and New Media: Explaining Radicalization in the Digital Age', Perspectives on Terrorism Vol. IX (1): pp: np. Accessible at WWW: http://www.terrorismanalysts.com/pt/index.php/pot/article/view/401/html (Aug 12, 2015).

Bockstette, Carsten (2008): 'Jihadi Terrorist Use of Strategic Communication Management Techniques', George C. Marshall European Center for Security Studies (No. 20, Dec 2008).

Bogart, Nicole (2013): 'Terrorist organizations use variety of techniques to communicate with overseas cohorts', Global News (Apr 23, 2013). Accessible at WWW: http://globalnews.ca/news/504972/terrorist-organizations-use-variety-of-techniques-to-communicate-with-overseas-cohorts/ (Aug 12, 2015).

Cockburn, Patrick (2015): The Rise of Islamic State. London and New York: Verso.

Department of Homeland Security (2010): Terrorist Us of Social Networking Facebook Case Study. Public Intelligence (Dec 5, 2010). Accessible at WWW: https://publicintelligence.net/ufouoles-dhs-terrorist-use-of-social-networking-facebook-case-study/ (Aug 27, 2015).

Europol (2007). TE-SAT 2007. EU Terrorism Situation and Trend Report. Accessible at WWW: https://www.europol.europa.eu/content/publication/te-sat-2007-eu-terrorism-situation-trend-report-1467 (Aug 26, 2015).

Gardner, Frank (2013): 'How do terrorists communicate?', BBC (Nov 2, 2013). Accessible at WWW: http://www.bbc.com/news/world-24784756 (Aug 12, 2015).

Gendron, Angela (2007): 'Trends in Terrorism Series: Al-Qaeda: Propaganda and Media Strategy', ITAC Presents Vol 2007-2. Accessible at WWW: http://www.itac.gc.ca/pblctns/pdf/2007-2-eng.pdf (Aug 26, 2015).

Harari, Yuval Noah (2015): 'Yuval Noah Harari: the theatre of terror', The Guardian (Jan 31, 2015). Accessible at WWW: http://www.theguardian.com/books/2015/jan/31/terrorism-spectacle-how-states-respond-yuval-noah-harari-sapiens (Aug 13, 2015).

Hegghammer, Thomas (2013): 'The recruiter's dilemma: Signalling and rebel recruitment tactics', Journal of Peace Research 50 (1): 3-16.

Humphreys, Adrian (2014): 'Terrorism as theatre: ISIS beheading videos aimed at capturing attention of 'obsessed' Western audience', National Post (Sept 2, 2014). Accessible at WWW: http://news.nationalpost.com/news/terrorism-as-theatre-isis-beheading-videos-aimed-at-capturing-attention-of-obsessed-western-audience (Aug 13, 2015).

Kaplan, Robert D. (2014): 'Terrorism as Theater', Stratfor Global Intelligence (Aug 27, 2014). Accessible at WWW: https://www.stratfor.com/weekly/terrorism-theater (Aug 13, 2015).

Kjuka, Deana (2013): 'When Terrorists Take to Social Media', The Atlantic (Feb 20, 2013). Accessible at WWW: http://www.theatlantic.com/international/archive/2013/02/when-terrorists-take-to-social-media/273321/ (Aug 13, 2015).

Knoke, David (2012): 'Social Networks and Terrorism', in Maytham Safar and Khaled Mahdi (eds.) Social Networking and Community Behavior Modeling: Qualitative and Quantitative Measures. Np: IGI Global. pp 232-248.

Koppell, Carla (2015): 'To Fight Extremism, the World Needs to Learn How to Talk to Women', Foreign Policy (Aug 12, 2015). Accessible at WWW: http://foreignpolicy.com/2015/08/12/to-fight-extremism-the-world-needs-to-learn-how-to-talk-to-women-boko-haram-isis/ (Aug 16, 2015).

Kydd, Andrew H. and Barbara F. Walter (2006): 'The Strategies of Terrorism', International Security Vol. 31 (1): 49-80. Accessible at WWW: www.jstor.org/stable/4137539 (Dec 19, 2012).

Osborne, Charlie (2015): 'Encrypted communication 'biggest problem' in tackling terrorism, Europol warns', ZD Net (March 30, 2015). Accessible at WWW: http://www.zdnet.com/article/encrypted-communication-biggest-problem-in-tackling-terrorism-europol-warns/#! (Aug 12, 2015).

Peritz, Aki (2015): 'Whac-A-Mole Can Teach Us About How to Fight Terrorism', Foreign Policy (Aug 12, 2015). Accessible at WWW: http://foreignpolicy.com/2015/08/12/what-whac-a-mole-can-teach-us-about-how-to-fight-terrorism/ (Aug 16, 2015).

Rapoport, David C. (2002): 'The Four Waves of Rebel Terror and September 11', Anthropoetics Vol. 8 (1): pp. np. Accessible at WWW: http://www.anthropoetics.ucla.edu/ap0801/terror.htm (Aug 23, 2015).

Schmidt, Alex P. (2012): 'The Revised Academic Consensus Definition of Terrorism', Perspectives on Terrorism Vol. 6 (2): pp. np. Accessible at WWW: http://www.terrorismanalysts.com/pt/index.php/pot/article/view/schmid-terrorism-definition (Aug 23, 2015).

Sekulow, Jay (2014): Rise of ISIS. New York: Howard Books.

Stern, Jessica and J.M. Berger (2015): ISIS The State of Terror. London: William Collins.

Václavíková, Sára (2015). 'Šifrovací nástroje teroristických skupin', Cybercon Brno 2015 conference paper, Brno, May 26 2015.

Weimann, Gabriel (2004): 'www.terror.net - How Modern Terrorism Uses the Internet', Special Report 116, United States Institute for Peace. (March 2004). Accessible at WWW: http://www.usip.org/sites/default/files/sr116.pdf (Aug 25, 2015).

Weimann, Gabriel (2014): 'New Terrorism and New Media', Commons Lab of the Woodrow Wilson International Center for Scholars (Vol 2): pp. 1-17. Accessible at WWW: https://www.wilsoncenter.org/sites/default/files/STIP_140501_new_terrorism_F.pdf (Aug 10, 2015).

YouTube (2015): Statistics. YouTube (nd). Accessible at WWW: https://www.youtube.com/yt/press/en-GB/statistics.html (Aug 27, 2015).

Borders to Borderless:
An Analysis of the Social Construction of the US Securitization Agenda (2006-2010)

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Abstract

This study explores the relative contributions of state rhetoric, the public sphere and corporate elite interests towards the construction of the 2010 US National Security Strategy (NSS). Interpreted thusly, the evolution in the US securitisation agenda illustrates the social construction of US securitisation strategy as a national artefact seemingly informed by local interests but framed within international uncertainty. Exploring the relative contributions of state rhetoric, the public sphere and corporate elite interests thusly, indicates that different threat matrixes emerge from the social forces that propel the 2010 NSS into being. The research, in accordance with its approach, finds that the focus of securing the threat of risk to national interests and assets within international uncertainty, results in the form of US securitisation strategy not fully realising its function of securitisation. Through deliberating on how and why particular threats are prioritised above others to the nation-state, this article seeks to motivate further research into the social construction of policy priorities to better understand how and why threat matrixes shift in the 21st Century.

Keywords

Security studies, National Security Strategy, US securitisation, 9/11 attacks, Iraq invasion, Cybersecurity, Social constructivism, Technological determinism

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FRAMING US SECURITISATION

Since the 9/11 attacks, US securitization strategy has evolved from prioritizing the territorial security of its borders, to more recently, prioritizing the securitization of risk and vulnerabilities toward US interests and assets within ungovernable constructs, such as cyberspace. Needing to evolve to adapt to new environments and threat matrixes, can be seen to have pushed US securitization strategy into an ambiguous space with several security dilemmas. One such dilemma is that, while evolutionary national security frameworks provide security, they also create insecurity because the threats they seek to secure are not necessarily identifiable or tangible. In order to avoid a continuation of such insecurity, this article attempts to unpack the social processes that inform national security frameworks in hope of informing how processes of securitization risk creating more insecurity.

Within security studies, securitization refers to the politicization of an identified issue into an existential threat deserving of extraordinary measures typically not within the realm of everyday political procedure (Liotta 2005: 51). The NSSs of 2002, 2006 and 2010 are representative of particular phases of securitization that are pushed into action through shifting threat matrixes. The 2002 NSS placed priority on a retaliatory security agenda against existential threats. The dominant discourses that contributed to the emergence of the 2002 NSS, established the necessary foundation for the emergence of the 2006 NSS. The continuities between the 2002 and 2006 NSSs are evident in the 2006 NSS's evaluation of the successes and failures of meeting the 2002 NSS objectives (The White House 2006). Notwithstanding the similarities between the 2002 and 2006 NSSs, there is a fundamental shift in the form of US securitization following the March 2003 invasion of Iraq (The White House 2006). The Iraq invasion was framed as a necessary measure to circumvent the existential threat posed by rogue states and terrorist networks beyond US national borders (Taylor 2006: 392). The Iraq invasion marks a pinnacle moment in 21st century US securitization, where the securitization strategy set by the 2002 NSS is transformed from a retaliatory to a pre-emptive stance; opening up the agenda for securitization within national borders and abroad simultaneously (Klippstein 2003: 273).

The NSSs of 2006 and 2010 are underpinned by similar concerns as per the securitization of US borders and national interests from transnational terrorist 'attacks' (The White House 2006; 2010). The possibility of terrorist attacks is used to rationalize the US's evolving securitization strategy across the NSSs, beginning with the securitization of national borders and moving most recently into the securing of US interests within ungovernable constructs, such as cyberspace (The White House 2010: 8). The representation of cyberspace within the 2010 NSS is indicative of the incorporation of risk as threat in the form of the vulnerabilities posed by asymmetrical attacks against US interests and assets (The White House). The 2006 and 2010 NSSs, point to the possibility that contemporary dynamics require states to secure spaces beyond their borders in addition to securing their borders, so as best to secure the territory and interests of the states concerned. In the 2006 NSS, for instance, President Bush refers to the increasing emergence of unfamiliar security concerns beyond US borders as by-products of the global age; concerns that do not necessarily fall into the realm of traditional security concerns (The White House 2006: 47).

Without understanding both why and how securitization strategy is pushed into action, national security frameworks are exposed to the vulnerability of the form of securitization not meeting its

function (Waever 1995). Embedded in a qualitative design within a social constructivist paradigm, the social processes that have allowed for particular threat matrixes to emerge between 2006 and 2010 in US securitization are investigated, in order to allow for better suited national security frameworks to be designed vis-à-vis the global age.

In order to comprehensively examine the social forces that propel the NSS into action, it is of particular importance to define the sources of such forces. In this respect, three major stakeholder groups are identified; the state, the public sphere and the corporate elite. The selection of these groups is premised on their significant role in policy formation (Schneider 1991, 27-30). The state refers to government bodies whose rhetoric constitutes disclosures to the public, such as Presidential speeches and state agency reports (Howlett 1992: 275). The public sphere constitutes a culmination of US-based media and polling organizations. The media cuts across a wide political spectrum from more conservative bias and liberal bias. Public sphere discourse is considered to be representative of opinions held by actors who are neither members of significant economic actors nor representatives of government (Holborn 2004: 575). Corporate elites refer to private economic actors who are members of, or act in the interest of influential corporate actors (Holborn 2004: 573). Their interests are most commonly illustrated via lobby group position papers and state-private sector partnerships. These understandings of state rhetoric, public sphere discourse and corporate elite interests inform the exploration into the narratives that inform the emergence of the 2010 NSS as a means of demonstrating the shifting nature of US securitization in the 21st century.

To examine the broader evolutionary nature of how US securitization strategy has been propelled into action, the theory of technological determinism is applied directly to understanding the emergence of the 2010 NSS. In accordance to Marshall McLuhan's Tetrad of Media Effects, a set of specific questions can be posed to illuminate the form and function of technological and institutional innovations within complex societies (Stamps 2001: 147). McLuhan's Thesis on Media Effects argues that the culture of a society is directly, yet imperceptibly affected by the technologies and their advancements that permeate that society (Ibid).

The questions posed as per the 2010 NSS content in order to unpack, and understand the narratives that pushed risk as a threat forward as a priority in contemporary US securitization agenda are:

i) **ENHANCES**: What does the NSS enhance?

ii) **OBSOLESCES**: What does the NSS position as less urgent in securitization strategy?

iii) **RETRIEVES**: What does the NSS retrieve that was dismissed in the preceding securitization strategy?

iv) **REVERSES**: What does the NSS turn into when pushed to extremes?

Responding to questions about the form and function of US securitization allows for an analysis and exploration of the construction of US security strategies and the forces that propel them into action, so as to better inform future policy. The space constraints affiliated with this article prevents a thorough historical discussion of the shifting US securitization threat matrixes. Through

expanding particularly on the social construction of the 2010 NSS, this article hopes to offer a new perspective to analyzing security policy agenda.

CONTEMPORARY US SECURITISATION: THE RISK IS THE THREAT

Following the 2006 NSS, US securitization emerged increasingly focused on the securitization of risk. Risk, as depicted by the 2010 NSS, constitutes possible asymmetric attacks with transnational reach against US national interests and assets. The risks that are identified as existential threats to US national security are framed within US securitization to be affiliated with ungovernable constructs such as biological threats, stagnation of global economic flows, the lack of adherence to universal values and unregulated information and communications technologies (ICTs) (The White House 2010: 2).

The space constraints affiliated with this article prevents a comprehensive discussion of all the ungovernable constructs identified in the 2010 NSS and the risks they pose to US national security. This article, in hope of opening up a space for more debate on the insecurity that may be created by securitization measures, will focus its deliberations particularly on the construct of cybersecurity as a representation of the securitization of risk as a top national security priority. Elaborating on how and why cybersecurity has emerged as a top national security priority will also illustrate the broader shift that has taken place in US securitization from prioritization of pre-emptive securitization - as illustrated by the 2006 NSS - to prioritizing the securitization of risk. The chapter will elaborate on the precedence the 2010 NSS places on cybersecurity, followed by deliberating on the social construction of risk as central to the threat matrix. Such deliberation will allow for the development of a better understanding of the broader securitization of risk that features across US securitization.

The Discourse of ' Risk is the Threat' in the 2010 NSS

The securitization of risk within national security discourse is evidenced by continual references made in the 2010 NSS, that national security strategies must accommodate risks posed by globalization through improving its comparative position of American leadership in world affairs. The 2010 NSS instructs that the best manner in which the comparative position of America can be ensured in a globalized world is through the management and mitigation of risk as a by-product of the global age:

> [I]n a world of greater interconnection – a world in which our prosperity is inextricably linked to global prosperity, our security can be directly challenged by developments across an ocean, and our actions are scrutinized as never before (The White House 2010: 2).

The call for the securitization of risk by the 2010 NSS, illustrates a shift in security discourse from prioritizing pre-emptive securitization– as advanced by the 2006 NSS - to prioritizing the securitization of risk. Rather than focusing on securing physical borders, the 2010 NSS advocates the securitization of US assets directly influenced by transnational constructs such as intellectual property rights, which are safeguarded or exploited in cyberspace.

The 2010 NSS notes that, central to risk management and mitigation is the securitization of asymmetric attacks with transnational reach, stating: 'we have wrestled with how to advance

American interests in a world that has changed – a world in which the international architecture of the 20th century is buckling under the weight of new threats' (The White House 2010: 1) The extensive discussion that is dedicated to putting forward ' [c]onstructive national steps on issues ranging from nuclear security to climate change' in the 2010 NSS, reinforces the notion that the global age has welcomed territorially unbound constructs that influence national security (The White House 2010: 27-30).

Cybersecurity is framed within the 2010 NSS as a territorially unbound sphere wherein risk must be secured in order to mitigate existential threats to US critical infrastructure and key resources (CIKR) (The White House 2010). As the 2010 NSS notes: '[c]ybersecurity threats represent one of the most serious national security, public safety and economic challenges we face as a nation…Our daily lives and public safety depend on power and electric grids, but potential adversaries could use cyber vulnerabilities to disrupt them on a massive scale' (The White House 2010: 27). Should the risks affiliated to cyberspace not be managed and mitigated by cybersecurity frameworks, the 2010 NSS (The White House: 1-8) warns that such risks pose threats to national infrastructure, diplomatic efficiency and overall economic competitiveness. Figure 1.1 illustrates the main social processes that underpin the content of the 2010 NSS.

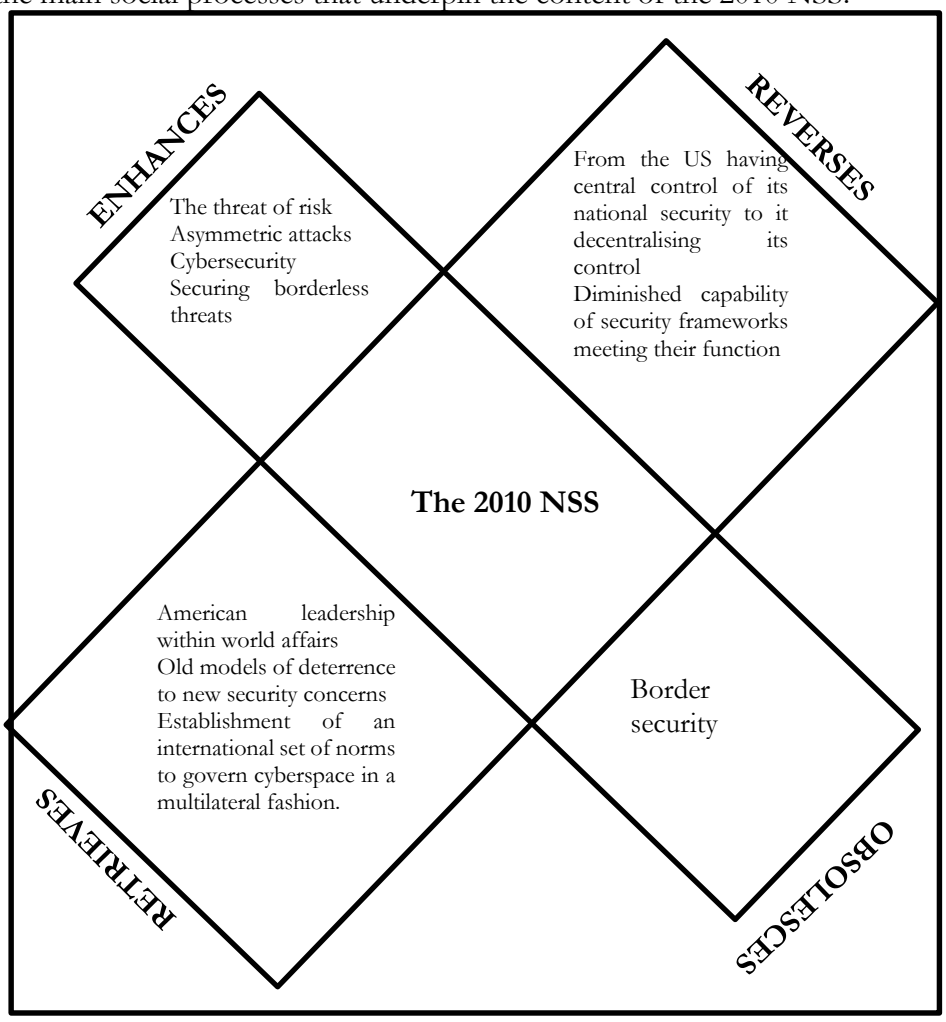


Figure 1.1 - The social processes underlying the 2010 NSS - Adapted from McLuhan's Tetrad of Media Effects (Stamps 2001)

The Social Construction of the 2010 NSS

The improved capacity of foreign nation states to challenge the national security of other nation states through asymmetric means such as cyberspace, provides further justification for national governments to propagate the prioritization of risk within securitization discourse. The gradual preoccupation of risk within US securitization discourse has led to the development of much contestation within security studies. Kessler (2010: 17-18) voices the theoretical constraints that accompany the notion of 'risk' in new security studies. Kessler (2010: 19-21) argues that conceptualizing risk in security studies leads to confused conceptualizations over threats that are not in actual fact threats, but rather natural uncertainties that do not need to be secured. Unlike Kessler (2010), Weber and Lacy (2010: 240-242) do not denounce the very real threats that vulnerabilities of the global age pose. Instead, Weber and Lacy (2010: 242) discuss the need to establish a fresh approach to designing conceptual frameworks for securitization. Without a new manner of thinking being adopted over security designs, Weber and Lacy (2010) argue that vital elements to new age securitization are being overlooked. Without denouncing any of these existing debates, an analysis of the dominant discourses from 2006-2010 opens up to an understanding of the forces that have propelled risk into action as a priority within securitization discourse.

Dominant State Rhetoric

Existential threats affiliated with cyberspace have been persistently acknowledged in US state rhetoric (2002-2010). In 2003, the United States Computer Emergency Readiness Team (US-CERT) was established by the DHS to work toward reducing cyber threats and vulnerabilities (Wagner 2012). Also in 2003, the Bush administration launched the National Strategy to Secure Cyberspace, to instill a greater sense of urgency for the securitization of cyberspace among policy makers and the public sphere (The White House 2003). Despite acknowledging the security concerns that accompany cyberspace, the securitization of cyberspace had not emerged as a priority within the NSSs up until after several cyber-attacks backed by foreign states were launched against the US.[264] In June 2007, a series of cyber-attacks, starting with the hacking of the US Secretary of Defense's unclassified email account, were being carried out on the Pentagon in attempt to access and exploit networks (NATO 2013). The gradual increase in cyber threats by foreign intruders pushed cybersecurity and the threat of risk to the forefront in national security agenda setting. In attempt to secure risk within cyberspace, dominant state rhetoric adopted a strong military stance as a functional approach toward cybersecurity, with particular focus on safeguarding the US's CIKR's and economic assets.

The militarization discourse that accompanies dominant state rhetoric on cybersecurity is evident in the emergence of US CYBERCOM in June 2009 (Wagner 2012: 18). US CYBERCOM was established in order to further the US's offensive and defensive military capabilities in cyberspace. Coupling militarization discourse and cybersecurity as such, set in motion training programmes to mobilize what are referred to as 'cyber warriors'. Such coupling indicates the use of pre-established

[264] In 2007 Estonia's parliamentary, banking, ministerial and media-linked websites were brought down by hackers allegedly supported by the Russian government. Similarly, in 2008 cyber attacks were launched against Georgia's government. Moreover, in 2009, the social networking site Twitter is said to have enabled a revolution in Iran over election unrest. Furthermore, 2009 reports indicate that the data of a multibillion-dollar fighter jet, the F-35 Joint Strike Fighter, was downloaded by hackers.

techniques of deterrence that had been designed to deter identifiable enemies and threat. This approach, however, fails to account for the borderless and ungovernable nature of cyberspace, thereby failing to secure cyberspace to the desired function that dominant state rhetoric propagates.

The push by state rhetoric for stronger functional securitization of cyberspace to manage and mitigate the threat of risk to CIKR's and economic assets is highlighted by the June 2006 National Infrastructure Protection Plan (NIPP). Designed to fulfil the requirements of the Homeland Security Presidential Directive 7 (HSPD-7), the NIPP aims to prevent, deter, neutralize, or mitigate threats to US CIKR (US Department of Homeland Security 2009a). To ensure functional success of CIKR protection, the NIPP lays out 18 supporting sector-specific plans (SSPs) to guide the activities of key regulatory agencies within an integrated structure aimed toward CIKR safeguarding, with special consideration of the dimension of cyberspace. In Section 1.5 of the NIPP, it is noted that '[t]he US economy and national security depend greatly and increasingly on the global cyber infrastructure. Cyber infrastructure enables all sectors' functions and services, resulting in a highly interconnected and interdependent global network of CIKR' (US Department of Homeland Security 2009b). Extending on the central position of cybersecurity to US national security, the NIPP identifies the need for better partnerships between the private and public constituents of US society to be established, calling for the formation of an international framework to govern norms and regulations in cyberspace. Such emphasis on these aspects in a key government document reinforces the broader shift in US securitization from prioritizing physical border security to prioritizing the safeguarding of US assets with transnational reach. Figure 1.2 illustrates the dominant dimensions that underpin state rhetoric on matters of securitization prior to the 2010 NSS.

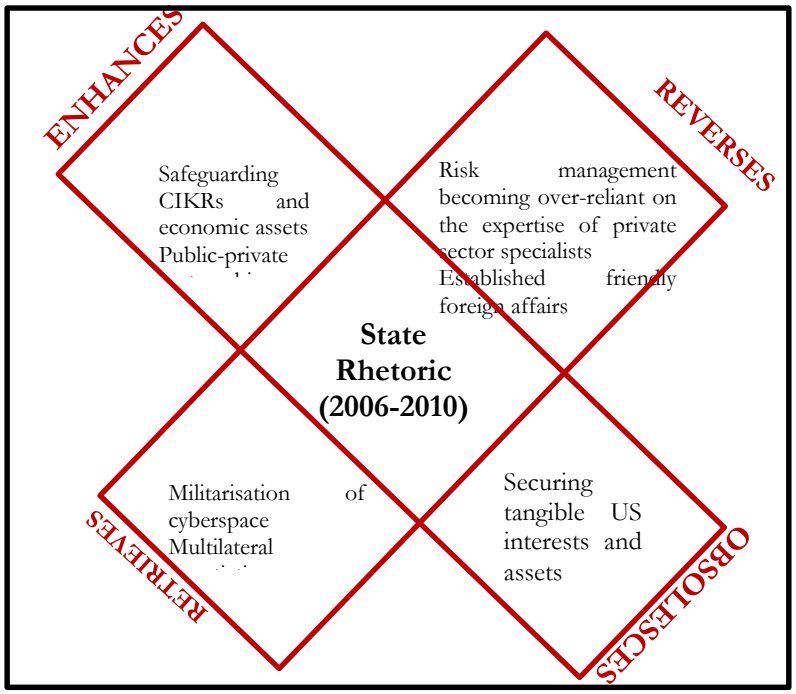


Figure 1.2 - The relative contribution of state rhetoric (2006-2010) – Adapted from McLuhan's Tetrad of Media Effects (Stamps 2001)

Although the dominant state rhetoric advocates the need for more effective national security frameworks toward securing cyberspace, by the passing of the 2010 NSS, the functional successes of national security initiatives on cyberspace fall short prior to the 2010 NSS. Williams (2010: 11) argues that such lack in success stems from there being no established lexicon in relation to cybersecurity. No established lexicon introduces drawbacks to the development of national strategic direction and goal setting. Gray (2013: 13-18) extends on this argument and notes that the little established agreement on lexicon and policy perspectives - as represented by the dominant state rhetoric on the securitization of cybersecurity - leads to misunderstood and subsequently exaggerated national security discourse on cybersecurity. The exaggerated national security threats affiliated with cyberspace, as propagated by state rhetoric, are reiterated in the dominant public sphere discourse.

Dominant Public Sphere Discourse

The function of cybersecurity advocated in public sphere discourse aligns with that advocated by state rhetoric. Public sphere discourse acknowledges that existential threats stem from cyberspace and thus, cybersecurity must be better developed in order to manage and mitigate the likelihood of cyber threats to national security. Notwithstanding the inclination toward the securitization of risk in cyberspace, tensions emerge between the public sphere and state rhetoric on the abolition of online liberties with the form of cybersecurity advocated by state rhetoric. The public sphere discourse posits that the rigid surveillance-based securitization advocated by state rhetoric for national cybersecurity, undermines the social rights of democratic communication on which the public sphere is built.

The gradual rise in activity by the international online network of activists and hacktivists that act under the name of *Anonymous* reinforces the public sphere denouncement of cybersecurity initiatives advanced by state rhetoric. Established in 2004, *Anonymous*'s initial purposes were to establish an online entertainment community (Kelly 2012: 1663-1665). By 2009, however, *Anonymous* had developed into an organized hacktivist community making use of cyber protest to instigate political and social statements against cyber-surveillance and cyber-censorship. In 2010, *Anonymous* launched cyber protests against the anti-online piracy rhetoric of Aiplex Software, the Recording Industry Association of America and the Motion Picture Association of America in the form of distributed denial of service attacks (DDoS). DDoS attacks involve the saturation of a network or machine with external communication to make them dysfunctional (Wagner 2012: 19). Following these attacks *Anonymous* released a press release stating that:

> Anonymous is tired of corporate interests controlling the internet and silencing the people's rights to spread information, but more importantly, the right to SHARE with one another. The RIAA and the MPAA feign to aid the artists and their cause; yet they do no such thing. In their eyes is not hope, only dollar signs (Tsotsis 2010: paragraph 2).

The cyber protests launched by *Anonymous* highlights the appeal within public sphere discourse for cybersecurity to adopt a form that will not repress the free flow of information which characterizes cyberspace as democratic. Figure 1.3 highlights the dominant dimensions that underpin the public sphere discourse prior to the 2010 NSS.

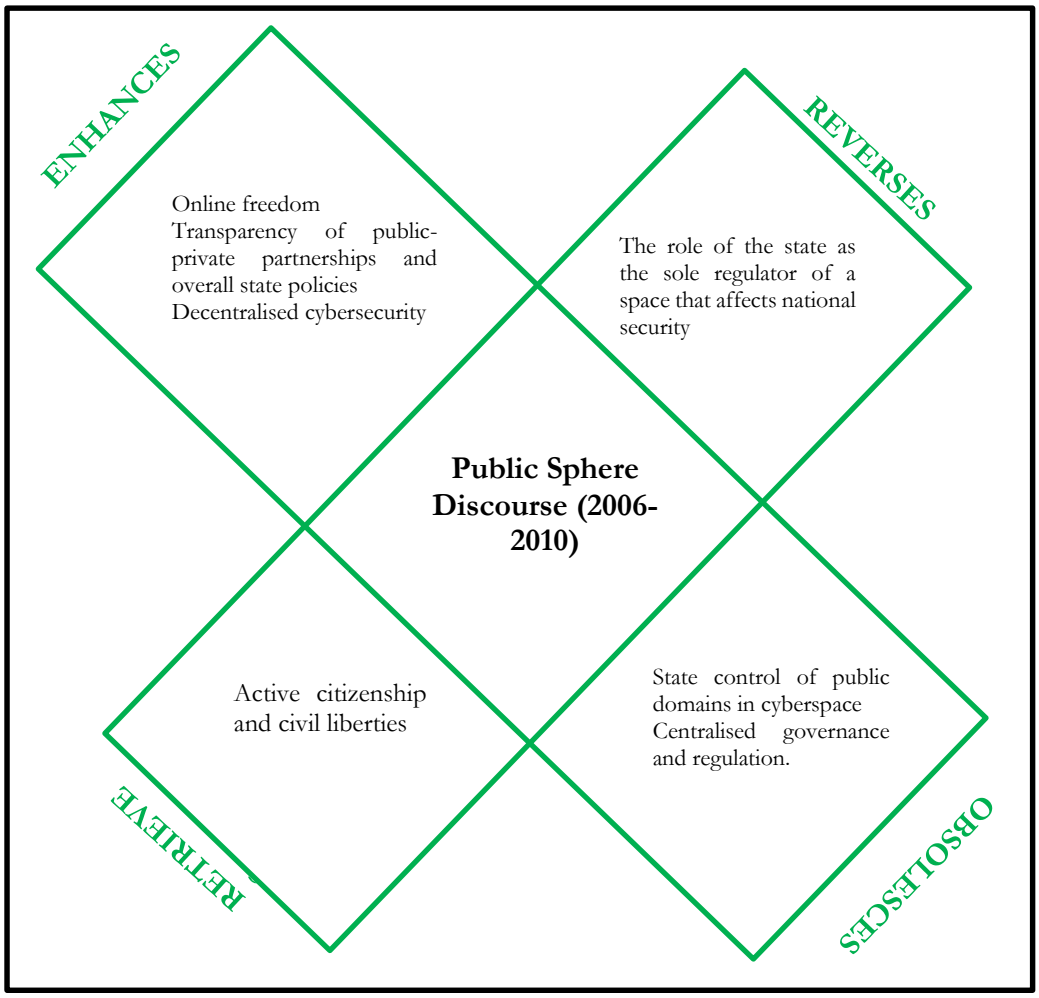


Figure 1.3 - The relative contribution of the public sphere discourse (2006-2010) – Adapted from McLuhan's Tetrad of Media Effects (Stamps 2001)

The strongly supported activism and hacktivism of *Anonymous* emerges as a direct representation of the public sphere discourse held toward cybersecurity and the securitization of risk within cyberspace. The public sphere discourse evidently aligns with state rhetoric in that it also advocates the need for US securitization to adopt the function of securing risk within cyberspace. It disapproves, however, of the form that state rhetoric advocates for cybersecurity.

Dominant Corporate Elite Interests

The cyber domain has emerged as central to the activities of corporate networks; allowing corporations ease in operations and increase business transactions vis-à-vis the elimination of time and space constraints.

The primary concerns that are advanced in corporate elite interest discourse are corporate espionage and disruptions to business operations through cyber-attacks. The TJX Financial Data Thefts that took place periodically between July 2005 and January 2006, illustrates why cybersecurity is framed as a top priority for risk securitization within corporate elite interests (Armerding 2012). Through exploiting vulnerabilities within the systems of the corporate network of TJX Companies Inc. and stole the data of 94 million credit card records (Armerding 2012). Similarly, in 2009, an employee of Valspar Corporation downloaded confidential proprietary paint

formulas worth $20 million, to provide to a Chinese corporation (Office of the National Counterintelligence 2011: 47). Such economic espionage via cyber-attacks results in costs to major corporations, in the form of unique intellectual property to outlays for remediation. Symantec, an American security software company, places the cost of intellectual property theft at $250 billion a year to the US economy. Meanwhile, McAfee provides an estimate encompassing global remediation costs to total a staggering $1 trillion per annum. Moreover, the Valspar Corporation case highlights the need for risk securitization in cyberspace for national security purposes. Cyber espionage is not merely carried out within the physical borders of the US where such cyber-attacks can be legally rectified. Instead, cyberspace has emerged central to the interactions between nation states, therefore holding the potential of emerging as an economic battleground between nation states competing in power projection. Operation Aurora, reported by Google in January 2010, involved the exfiltration of intellectual property rights by Chinese hackers from Google China (Branigan 2010). Operation Aurora, is a key illustration of this, thereby posing a threat to national security.

Provided that most of US critical infrastructure is owned and regulated by the private sector, corporate elite interests hold a strong influence on the form that US cybersecurity policy initiatives adopt (Michael Losavio 2013: 19). The corporate elite interest discourse argues that, should the US private sector not be safeguarded from risks of foreign cyber-attacks, the likelihood of national security threats in the form of economic costs and damage to CIKR's increases. In order to better secure the accelerated exploitation of vulnerabilities in cyberspace, and manage the risks to the US private sector, strong partnerships have emerged between the state and the private sector as a means of granting the private sector with greater regulatory rights in cybersecurity initiatives. The Federal Information Security Management Act (FISMA), and its numerous reforms, illustrates the movement within cybersecurity to improve public-private partnerships; the very kind of partnerships that the 2010 NSS emphasizes. FISMA has established standards and regulations that must be adhered to by the cyber activities of state agencies and private corporations under the auspices of the Office of Management and Budget (OMB) (Michael Losavio 2013). The FISMA standards and regulations force the establishment of minimum systems security protocols, annual reports of cyber threat incidents, government procurement of business regulations and transparency of corporate business activity. Figure 1.4 illustrates the dominant dimensions that underpin the corporate elite interest discourse (2006-2010).

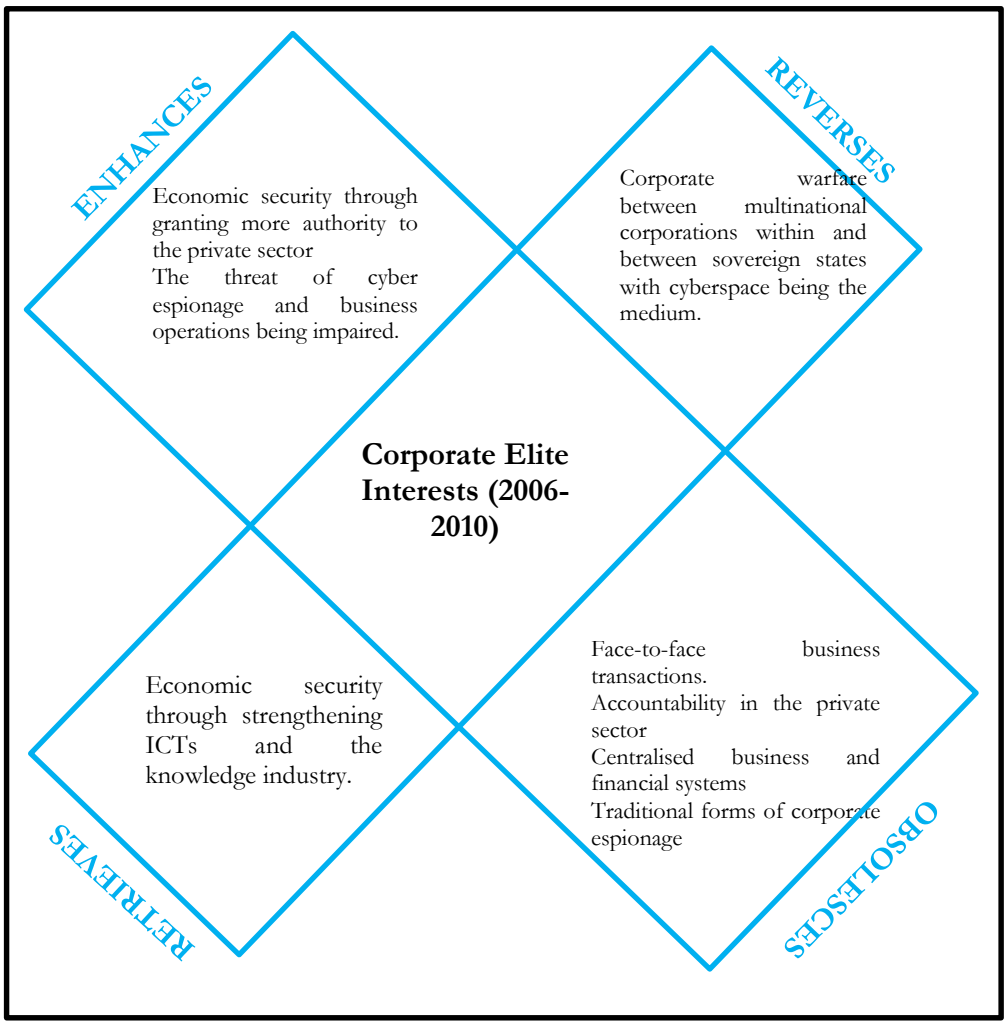


Figure 1.4 - The relative contribution of corporate elite interests (2006-2010) – Adapted from McLuhan's Tetrad of Media Effects (Stamps 2001)

The central authority that corporate elite interests have over cyberspace places the dominant discourse at the forefront of deciding how risk ought to be managed and mitigated within cybersecurity frameworks. The corporate elite interest discourse, therefore, emerges as a predominant contributor to the emergence of the 2010 NSS securitization framework on risk within cyberspace.

The Outcome of Dominant Discourses on the 2010 NSS

Having deliberated upon the respective dominant discourses of on cybersecurity, it is seen that across these variables, consensus is reached on the necessity of cybersecurity to ensure the management and mitigation of existential risks posed by the exploitation of cyberspace vulnerabilities to US national security. Much contestation, however, surfaces between the dominant discourses over how cybersecurity should be ensured.

The dominant discourses held by state rhetoric and the public sphere discourse on the securitization of risk within cyberspace, are respectively fueled by the notion that existential risk may materialize at any point in time. Using the element of uncertainty that accompanies ungovernable constructs and notions of risk, state rhetoric forecasted potential scenarios of 'cyber

Pearl Harbor's', thereby, providing a stronger sense of legitimacy to national security policies advanced by state rhetoric on cybersecurity. In October, 2012, Defense Secretary Leon Panetta warned that the US was facing the possibility of a 'cyber Pearl Harbor' in light of accelerated foreign attacks on US cyber networks (Shanker 2012). Drawing on the historical analogy of Pearl Harbor, associates an identifiable national memory to what are framed as probable, but not certain threats emanating from cyberspace.

Notwithstanding the consensus on the need to secure risks within cyberspace to ensure national security, between state rhetoric and public sphere discourse, these two variables enter into tense debate over the form that cybersecurity ought to take so that privacy and civil liberties are ensured alongside the securitization of existential threats within cyberspace. The contention that emerges between these two variables speaks to the incongruences that exist within the legal, political and social spheres on intangible constructs such as cybersecurity. Such incongruences further impair advances toward bridging the form and function of securing risk within cyberspace. This is further highlighted by the emergence of cyberspace as an economic and military battlefield between nation-states. Due to the cross-border interactions that cyberspace facilitates, the issue of jurisdiction has become a major obstacle to cybersecurity within national security frameworks. Should a cyber-attack be conducted on the US by an individual in a different nation state, the lack of a comprehensive legal framework that can be used to penalize such attacks has emerged highly problematic within discussions of cyber threats to national security. The lack of jurisdictional frameworks that enable proportional penalties to cyber threats on national security has pushed forward the discourse that an international regulatory framework needs to be developed in order to ensure that the lack of appropriate securitization of risk within cyberspace does not lead to the outbreak of cyberwar between nation states.

The discourse of existential crises that is mirrored across the dominant discourses, is not impossible, but it is improbable. Despite the technically low probability of existential cyber-attacks, the permeation of the notion of such attacks across the discourses is enough to propel forward the socially constructed idea that the securitization of risk within cyberspace is necessary to ensure US national security. Basing the form and function of securitization discourse on predicted likelihoods of cyber-attacks instead of on certain identifiable threats, has sparked criticism from scholars in new age security studies, claiming that basing securitization on intangible threats impairs adequate policy formation. Farwell (2012: 13) posits that focusing securitization on risk leads to competing policy perspectives on how best to manage territorially unbound constructs such as cybersecurity between government bodies. Dunlap extends from the argument that the securitization of unbound constructs generates competing policy perspectives, and raises the consequent issue of proportionality (Dunlap 2008: 718-720). Dunlap claims that proper policy implementation for securing risks within cyberspace is prevented by such differing policy perspectives. Farwell (2012) and Dunlap's (2008) respective studies speak to the dominant discourses at play within US cybersecurity and the problem the incongruences between dominant discourses pose to effective national security formulation.

The dynamics between state rhetoric, public sphere discourse and elite interests indicate that the securitization of risk within cyberspace is predominantly informed by a security-economic nexus. The dominant state rhetoric and elite interest discourses both advocate that the form and function

of securing risk within cyberspace must place precedence on securing US CIKRs and US economic assets, most notably intellectual property rights.

Furthermore, when contrasting the advocated securitization in the 2010 NSS with those of pre-emptive security and retaliatory security before it, a noteworthy shift in international US engagement is highlighted. Unlike the 2002 and 2006 NSS's, where US intervention was justified by the threat of rogue states discourse, the 2010 NSS justifies international US engagement and foreign intervention on the need to secure 'at-risk- states' (The White House 2010). This shift in discourse for justifying acts of US foreign intervention speaks to a broader shift in the priorities that inform US securitization in the 21st century. Furthermore, it reinforces the shift in US securitization from prioritizing physical security to prioritizing the securitization of risk-based threats to US interests and assets.

The security-economic nexus that emerges from the dominant discourses in state rhetoric and elite interests propelling forward the shift from a pre-emptive stance toward the securitization of risk, leads to the framing of ungovernable spaces as possible existential threats rather than actual identified existential threats. Such risk-based discourse, therefore, is reliant on the interaction between state rhetoric, public sphere discourse and elite interests to guarantee legitimacy for introducing new regulatory frameworks in the name of national security.

Conclusion

Using cyberspace as an illustration of a territorially unbound construct with direct influence to national security, the emergence of risk securitization as a national security priority in the 2010 NSS has been identified.

The urgency for securing cyberspace across the constituents of state rhetoric, public sphere discourse and elite interests following 2006 saw a greater integration of form and function in cybersecurity initiatives between the private and public sectors. The strong presence of state rhetoric and elite interest discourse within the realm of cybersecurity, however, illustrates that public sphere discourse does not exist autonomously from state and economic power, and is therefore the least relative contribution to the form and function of risk securitization in cybersecurity frameworks. Figure 1.5 captures the relative contribution of state rhetoric, the public sphere and corporate elite interests to the 2010 NSS content.

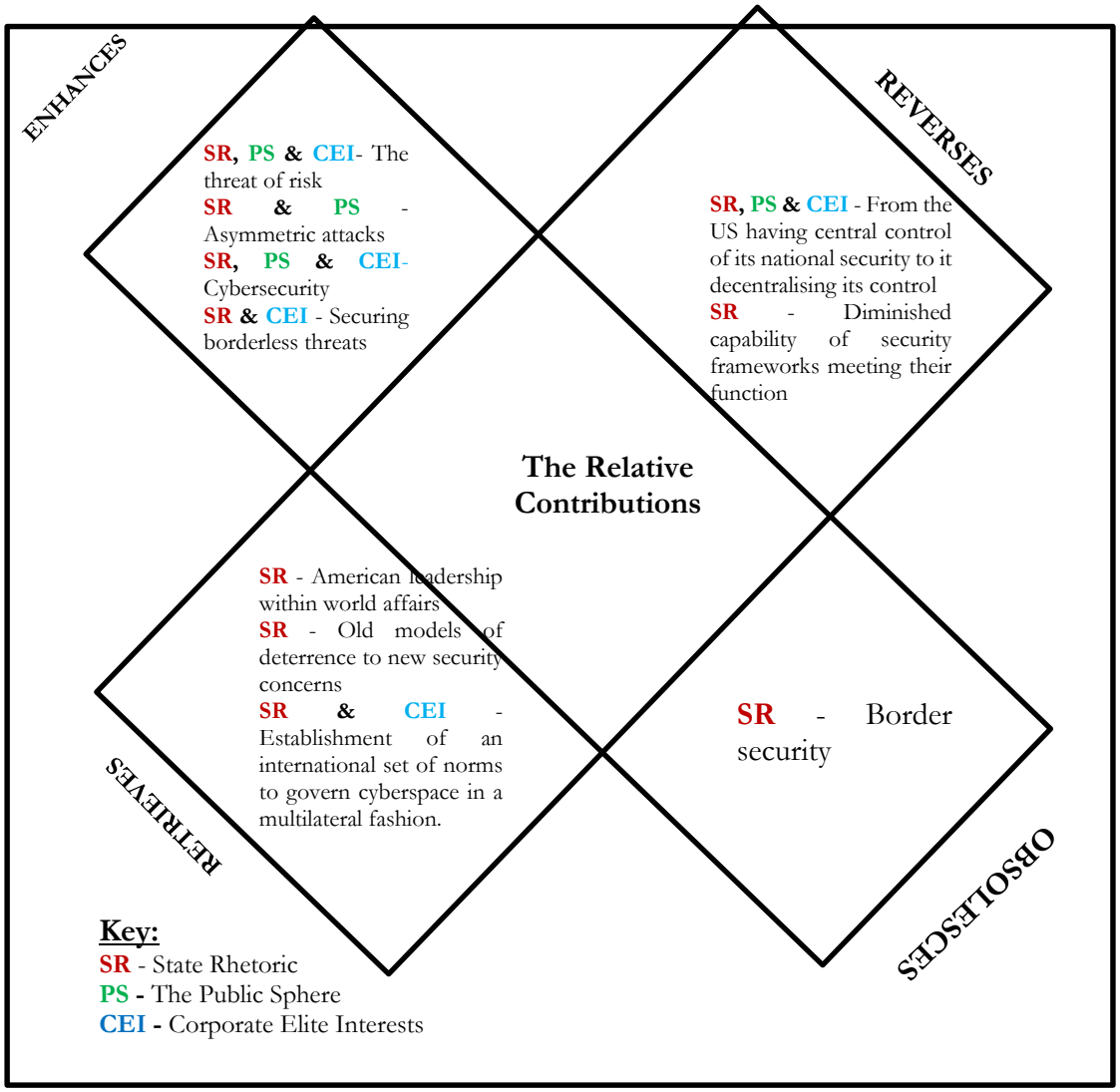


Figure 1.5 - The relative contribution of the dominant discourses to the 2010 NSS - Adapted from McLuhan's Tetrad of Media Effects (Stamps 2001)

The prioritization of risk securitization within US cybersecurity frameworks emerges as a prime example to the shifting nature of US securitization in the 21st century. The dominant state rhetoric, public sphere discourse and corporate elite interests that have contributed to the emergence of cybersecurity as a priority in US securitization discourse highlights the gradual movement and dynamics behind the securitization of risk and protection of intangible US assets, rather than tangible US borders.

RECOMMENDATIONS FOR FUTURE ANALYSIS

The evolution of US securitization in the 21st Century has shifted from placing precedence on reactionary securitization of identifiable threats, toward placing precedence on securing the potential threats. The notion that national security approaches are shaped by, and subsequently inform the dominant discourses of social constituents such as state rhetoric, public sphere discourse and corporate elite interests, has been maintained from having deliberated upon evolutions within US securitization. An examination of the dominant discourses and their respective contribution to the emergence of guiding NSSs, sustains the notion that certain

discourses have a greater contribution over others on the emergence of dominant securitization discourse.

The shift in securitization from the 2006 NSS to the 2010 NSS illustrates a broader shift in securitization, from securing US physicality from identifiable threats both within and outside national borders, to prioritizing the security of US interests and assets from intangible and territorially unbound threats. This broader shift in securitization is informed by social forces such as state rhetoric, the public sphere and corporate elite interests and propelled into being. The interaction between the three dominant discourses of state rhetoric, elite interests and public sphere discourse makes it clear that state rhetoric holds the most influential position in determining the form and function of securitization strategy adopted. Public sphere discourse and corporate elite interests act to either support or challenge the form and function of securitization strategy advanced by state rhetoric. Understanding the relationship between the social forces that inform the emergence of an NSS is essential to designing effective securitization strategies that encompass all the elements needed to manage the dominant threat matrixes of a particular historical context.

Having examined the social construction of US securitization strategy as a national artefact seemingly informed by local interests but framed within international uncertainty, it becomes clear that the function and form of securitization strategies have been, and continue to be incongruent. Such incongruences emerge as problematic for managing national security threats, in the process of both policy formulation and policy implementation. The gradual shift within US securitization toward risk securitization enhances existing concerns with regard to the successful management of national security threats. The prioritization of risk as a threat within national security approaches makes any issue open to securitization. Any issue framed as 'risk' and politicized into securitization within national security approaches, enhances the incongruences between the form and function of securitization. In order to minimize problems that arise from incongruences between the form and function of securitization discourse, a better understanding needs to be developed on why and how securitization discourses enter into action and evolve alongside the changing contours of social constituents of a given civilization. This article offers a preliminary approach for developing a more holistic understanding of how and why securitization discourses come into existence. It does not, however, deliberate enough upon the evolution of risk securitization into its current existence.

This article utilizes cybersecurity as an illustration of the precedence of risk securitization within US national security approaches. The securitization of risk within US national security approaches, however, has taken precedence across numerous dimensions of US civilization; dimensions which fall outside the scope of what will be elaborated on here. Further research needs to be directed toward understanding the evolution of securitization discourse so that such discourse can either be altered to prioritize more governable constructs, unlike risk within national security approaches, or to design new policy frameworks that minimize incongruences between the form and function of securitization.

In addition to recommending that further research be conducted on the social construction of dominant securitization discourses, so that better informed security policies can be design and implemented, it is also recommended that the subject of securitization is better defined. From the analysis conducted on one focal point to the evolution of US securitization strategy, it can be seen

that the incongruences between the form and function of a particular securitization discourse are enhanced if the subject to be secured is not simple to identify. In effect, subjects of securitization such as 'risk' need to either be altered into more specific and tangible subjects, or a collective understanding must be met across all social constituent discourses over what risks consists of. The use of constructs that have no established contextual definition to the security context prevents the appropriate establishment of the social order needed to maintain that construct within a dominant discourse of securitization.

Moreover, the numerous incongruences that emerge between the form and function of securitization within the phase of securitization (2006-2010) analyzed herein, indicates that securitization discourse is not necessarily effective in meeting its function of securing an identified subject. Drawing on the basic assumptions made by Balzacq (2005), I advocate that the following assumptions must be reflected within securitization discourse to ensure that it is effective:

a. The securitization must be audience-centered

b. It must be context-dependent

c. It must be power-laden

Through ensuring that the aforementioned assumptions are reflected within a securitization discourse, the incongruences between the function and form of securitization are less, thus, allowing for better alignment between security policy design and implementation.

Lastly, when regarding the form of securitization advanced across the respective discourses within the securitization of risk, it is seen that traditional security methods, such as deterrence, are being used within new and unfamiliar securitization frameworks such as cybersecurity. Traditional security methods, however, do not adequately manage the threats that accompany territorially unbound constructs such as cyberspace. In effect, new security methods must be developed in response to the new and unfamiliar constructs that have emerged as dominant within US securitization discourse.

References

Armerding, T. (2012). The 15 worst data security breaches of the 21st Century. *Security practitioners weigh in on the 15 worst data security breaches in recent memory*. http://www.csoonline.com/article/700263/the-15-worst-data-security-breaches-of-the- 21st-century

Balzacq, T. (2005). The Three Faces of Securitization: Political Agency, Audience and Context. *European Journal of International Relations, 11*(2), 171-203.

Bennett, C. J., & Howlett, M. (1992). The lessons of learning: Reconciling theories of policy learning and policy change. *Policy Sciences, 25*, 275-294.

Branigan, T. (2010, 13 January). Google to end censorship in China over cyber attacks. *The Guardian* Retrieved from http://www.theguardian.com/technology/2010/jan/12/google-china-ends-censorship

Bumiller, E., & Shanker, T. (2012, 11 October, 2012). Panetta Warns of Dire Threat of Cyberattack on U.S. . *The New York Times*.

Counterintelligence, E. O. o. t. N. (2011). *Foreign Spies Stealing US Economic Secrets in Cyberspace: Report to Congress on Foreign Economic Collection and Industrial Espionage, 2009-2011*. Washington.

Dunlap, C. (2008). Toward a Cyberspace Legal Regime in the Twenty-First Century: Considerations for American Cyber-Warriors. *Nebraska Law Review, 87*(3), 712-724.

Farwell, J. P. (2012). Industry's Vital Role in National Cyber Security. *Strategic Studies Quarterly*, 10-42.

Gray, C. S. (2013). Making Strategic Sense of Cyber Power: Why the Sky is Not Falling (pp. 83). Pennsylvania: Strategic Studies Institute.

Holborn, M. H. M. (2004). *Sociology. Themes and Perspectives*. Hammersmith, London: HarperCollins.

House, T. W. (2010). *The National Security Strategy* Washington DC: The White House.

House, T. W. (2006). *The National Security Strategy of the United States of America.*

Kelly, B. B. (2012). Investing in a Centralized Cybersecurity Infrastructure: Why "Hacktivism" can and Should Influence Cybersecurity Reform. *Boston University Law Review, 92*, 49.

Kessler, O. (2010). Risk. In P. J. Burgess (Ed.), *The Routledge Handbook of New Security Studies* (pp. 10). New York: Routledge.

Kenis, P., & Schneider, V. (1991). Policy Networks and Policy Analysis: Scrutinising a New Analytical Toolbox. In B. M. a. R. Mayntz (Ed.), *Policy Networks. Empirical Evidence and Theoretical Considerations* (pp. 38). Frankfurt: CO: Campus Westview.

Klippstein, L. C. D. M. (2003). Homeland Security: The Department of Defense, The Department of Homeland Security, and Critical Vulnerabilities. In W. Murray (Ed.), *National Security Challenges for the 21st Century* Pennsylvania: Strategic Studies Institute.

Liotta, P. H. (2005). Through the Looking Glass: Creeping Vulnerabilities and the Reordering of Security *Security Dialogue, 36*(1), 149-172.

Losavio, M., Shutt, J. E., & Keeling, D. W. (2013). Changing the Game: Social and Justice Models for Enhancing Cyber Security In L. H. J. J. Tarek Saadawi, Vincent Boudreau (Ed.), Cyber Instrastructure Protection (Vol. II). Pennsylvania Strategic Studies Institute.

NATO (Producer). (2013, 8 October). The history of cyber attacks - a timeline *NATO Review Magazine*. Retrieved from http://www.nato.int/docu/review/2013/Cyber/timeline/EN/index.htm

Security, U. D. o. H. (2009). *National Infrastructure Protection Plan: Partnering to enhance protection and resiliency* Washington DC: The White House.

Security, U. D. o. H. (2003). *The National Strategy to Secure Cyberspace* Washington DC: The White House.

Snow, N., & Taylor, P. M. (2006). The Revival of the Propaganda State: US Propaganda at Home and Abroad since 9/11. *International Communication Gazette, 68*(5-6), 389-407.

Stamps, J. (2001). *Unthinking Modernity: Innis, McLuhan, and the Frankfurt School* Quebec City: McGill University Press.

Tsotsis, A. (2010). RIAA Goes Offline, Joins MPAA As Latest Victim of Successful DDoS Attacks http://techcrunch.com/2010/09/19/riaa-attack/

Waever, O. (1995). Securitization-Desecuritization In R. Lipschutz (Ed.), *On Security* New York: Columbia University Press.

Wagner, A. R. (2012). Cybersecurity: from experiment to infrastructure. *Defence Dossier,* (4), 29. http://www.afpc.org/files/august2012.pdf

Weber, C., & Lacy, M. (2010). Designing Security In J. P. Burgess (Ed.), *The Routledge Handbook of New Security Studies* New York: Routledge.

Williams, P. A. H. (2010). *Information Warfare: Time for a redefinition.* Paper presented at the Australian Information Warfare and Security Conference Perth.

How Does an "Envisioned" European Identity Correspond to a "Realized" European Identity?
A Critical Analysis of the Efficacy, Effectiveness, and Outcomes of European Union Policy-Based Construction of a European Identity

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Abstract

As European integration progresses, scholars have become increasingly interested in the definition and development of a collective European identity. Based upon analysis of European Union (EU) policies and viewed through the lenses of constructivism and collective identity theory, this paper examines construction of an emergent European identity and why it differs from that initially envisioned by the EU. Due to the intersubjective and context-dependent nature of collective identity, policies not explicitly intended for identity construction have had a profound impact on the ultimate constructed identity. While somewhat subtle, the difference and, perhaps, contradiction between the initially envisioned and emergent European identities can change the effectiveness of EU domestic and international policies. This impacts not only relations among those living in the EU, but also interactions between the EU and the international community as a whole.

Key words

citizenship, collective identity theory, constructivism, EU enlargement, European Union, international relations.

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Introduction

Collective identity is a complex, multifaceted social construction, which has moved to the forefront of European studies since the 1993 Treaty of Maastricht. Creation of the European Union (EU) through this Treaty effectively broadened the initial economic and regulatory focus of the European Community to include political and social characteristics. This new manifestation of the EU demands a certain amount of democratic legitimacy, which can potentially be fostered through the construction of a European identity (Bee, 2008; Garcia, 1993). An open question is the ability of the EU as a political institution to create such a collective identity. This paper examines EU-driven construction of a European identity through policies based on an "envisioned" identity, how it differs from a "realized" identity, and implications of the differences for policy effectiveness.

A broad academic literature currently examines construction of a collective European identity and the role of EU institutions in its construction. Using constructivist ontology, scholars view European identity construction as originating in two key places: at the elite level and in mass public opinion (Miles and Thränhardt, 1995; Ozkirimli, 2010). This identity is based on populist sentiments and is often constructed to engender public support and cohesion. However, the role of the public in such identity construction is generally seen as secondary, especially in a socially constructed community such as the EU. Because the primary impetus for collective identity construction comes from elite policy decisions (Herrmann, et al., 2004), the majority of current European identity literature has focused on the role of the EU in constructing a European identity.

In general, literature on the role of elites in European identity construction focuses on two broad research questions: (1) What steps has the EU taken to construct a European identity; and (2) What kind of domestic and international European identity is constructed through existing policies. Some scholars normatively describe the type of European identity that should be constructed and how elites might be able to create it (Eder and Spohn, 2005; Delanty, 2005). In general, these studies treat policy and identity as independent or dependent variables, ignoring the dialectic relationship between the two. Studies that recognize the existence of this dialectic relationship (e.g., Green, 2007) fail to consider implications of this relationship for both the identity construction process and policy effectiveness. These analyses therefore lack the connections necessary to address the broader, more salient, question of EU efficacy and effectiveness in European identity construction.

This paper develops a theoretical framework for understanding supranational collective identity construction through purposeful, elite-driven policy design. The analysis focuses on EU-driven, policy-based identity construction, and how that process is affected by confounding policies and social construction mechanisms. Section 1 develops the theoretical framework and provides the analytical approach. Section 2 describes the EU "envisioned" European identity through analysis of EU Treaties and communications. Section 3 examines a major "explicit" policy (Union citizenship) used by the EU to construct the *de jure* and *de facto* identities that result. Section 4 describes EU "spillover" policies, specifically EU Enlargement Policy, that were put in place for other purposes, but nevertheless have a profound impact on European identity construction. Section 5 describes the "realized" European identity that is created in light of EU "explicit" and "spillover" policies, compares it to the "envisioned" identity, and discusses implications for the

effectiveness of EU policy associated with the gap between "envisioned" and "realized" European identities.[265]

Theoretical Framework

Understanding the relationship between "envisioned" and "realized" European identity, requires understanding the central assumptions within a collective identity. In the context of constructivism, the European Community, with the EU at its head, can be seen as a socially constructed "imagined community," made up of strangers (Anderson, 2006). At its core, these strangers are held together with social cement composed of common beliefs, values and norms; which in turn constitute the foundation of all collective identities. According to primordialist nationalism scholars, common myths, cultures, and memories are also vitally important to the construction of a collective identity (Deutsch, 1966). Rooted in a shared history, these myths and memories create a deep sense of community, thereby amplifying a sense of loyalty necessary for legitimizing identity (Holmes and Murray, 1999). A shared culture also offers common customs and actions, thereby creating a common discourse space, and foster a sense of history. These common values, myths, and memories are therefore understood to compose the ultimate foundations of all collective identities (Worchel, 1998), and thus are also at the core of a European identity.

According to collective identity and social categorization theories, three main methods of identity construction help to transform these core common beliefs, values and norms into a collective identity: othering, intersubjective understanding, and performative reiteration (Durkheim, 1976; Tajfel, 1982; Worchel, 1998). "Othering," the process of identifying membership through delineation between members and non-members of a given community, is vital to collective identity construction (Hogg, 2003; Hegel, 1977; Wendt, 1994; Neumann, 1996; Marcussen et al., 2001; Eder, 2009). Sharing of common values, symbols and memories helps to define the "self," or the subjective definition of an identity from within the community. The boundary between this "self" and non-members is then drawn through identification of an "other," or non-member. Collective identity construction, therefore, occurs through identification of what constitutes the community ("self") and what characteristics do not describe the community ("other").

Collective identities are constructed intersubjectively, or through a process of unconscious mutual understanding, created internally through interactions between members and externally between members and non-members (Risse, 2001). In essence, interactions with "others" can change both the "self" and the" other," as both attempt to act and react in a rational manner (Malici, 2006). Since such interactions happen constantly, identities are continuously renegotiated and become very context-dependent (Rosamond, 2001).

Constructed collective identities are also made and reinforced through performative reiteration. Through ceremonies, shared histories/memories, common symbols, institutionalized policies, as well as everyday actions by community members, core values are reinforced and clarified. This facilitates greater internal cohesion and consistency when interacting with non-members (Butler, 1995; Peters, 2003; Hermann and Brewer, 2004; Eisenstadt, 1998).

[265] For definitions of *de jure* and *de facto* identity, policy designations, as well as an outline of the theoretical framework, see Figure 1.

As described above, collective identity theory and social categorization theory describe many of the necessary *a priori* elements of a collective identity, such as common culture, values, and memories, and highlight various mechanisms used to construct a collective identity. These tools and mechanisms build two main collective identity components: *demos* (members of a political community) and *ethos* (shared values, norms, and memories). According to traditional social identity theory, collective identities need both *demos* and *ethos* in order to the support the legitimacy of a political community and its leadership structure (Delanty, 2005). Therefore, in order to build legitimacy, it is in the best interest of the EU as a fledgling political and social entity to foster both a *demos* and *ethos* through the use of these collective identity construction mechanisms. Based upon these theories, the next section explores how the EU has used formal mechanisms to identify and build upon these core elements to derive a collective European identity.

Declaration on European Identity

The 1973 Copenhagen Summit adoption of the "Declaration on European Identity" is arguably the first attempt by the EU to construct a European identity and explicitly state a vision of what should constitute such an identity (Kostakopoulou, 2001). Although the Declaration was explicitly intended to state the EU's "envisioned" European identity on the international stage, the core values expressed are the same for internal and overall identities. Based on the idea of common interests and experiences stemming from the wars of the 20th century and the Judeo-Christian and humanist traditions, the Declaration identifies the fundamental elements of a European identity as unity, cooperation, democracy, rule of law, social justice, respect for human rights, and individual rights (European Commission, 1973).

Treaties and Charter of Fundamental Rights

The most powerful and clearly-defined sources of "envisioned" European identity are the EU Treaties and the Charter of Fundamental Rights. Due to the legally binding nature of these documents, the values and characteristics described in them can be considered the agreed-upon building blocks of a European identity. These values are also consistent with the Treaty of Rome (Kostakopoulou, 2001). This stability over time points to their strength and importance as identity constructors.

The preamble to the Treaty of Lisbon constitutes the most overt declaration of core principles to underpin an "envisioned" European identity. This Treaty is the current legally binding EU treaty and thus constitutes the foundation of current European identity construction efforts. According to the Treaty, principles that lie at the heart of a European identity are those of "liberty, democracy, and respect for human rights and fundamental freedoms and of the rule of law" (European Union, 2007, preamble). Of these core values, "rights of the human person, freedom, democracy, equality and the rule of law" are further emphasized as universal and inalienable (European Union, 2007: preamble). In general, the EU sees itself as creating an internal space characterized by "freedom, security, and justice," while externally, the EU presents an identity based on "peace, security, and progress" (European Union, 2007: preamble) All of these characteristics are seen as developing from the "cultural, religious, and humanist inheritance of Europe" (European Union, 2007: preamble), thereby alluding to a common history and common cultural base.

The 2010 Charter of Fundamental Rights, codified in conjunction with the Treaty of Lisbon, extols characteristics of European identity similar to those described in the preamble to the Treaty. Although the Charter can be seen as a policy manifestation of "envisioned" European identity, its influence is indirect, since secondary legislation is needed to legalize ideas expressed in the Charter. It thus serves as a mirror of "envisioned" identity, reflecting EU-driven "envisioned" European identity construction rather than providing an "explicit" policy.

In general, the Charter states that "the Union is founded on the indivisible, universal values of human dignity, freedom, equality and solidarity; it is based on the principles of democracy and the rule of law" (European Commission, 2010: preamble). By providing rights for all people in the EU, not just citizens, the Charter helps to emphasize the importance of universal fundamental rights in an "envisioned" European identity (Guild, 2010). The Charter is a step towards an "ever closer union" in its guarantee to bring the core values of the Treaty of Lisbon to the people, thereby helping to construct a European identity based within the people. The Charter views such guarantees of rights as "creating an area of freedom, security, and justice" within the EU (European Commission, 2010: preamble).

Although both the Treaty of Lisbon and the Charter sound like a simple list of modern idealistic democratic characteristics, it is possible to uncover the core values of an "envisioned" European identity from their text. Of the listed characteristics, the most frequently cited and longest standing set of characteristics (since the Treaty of Rome) consist of "rights of the human person, freedom, democracy, equality and the rule of law" (preamble to the Treaty of Lisbon). As many of these characteristics are reiterated in the Charter, they arguably comprise the most important values in an "envisioned" European identity. These characteristics, coupled with the universal human rights inherent in the Charter, constitute the core of an "envisioned" European identity.

Explicit Policies: Union Citizenship

In order to assess the connection and conflict between "envisioned" and "realized" European identities, we must examine EU policies used to explicitly construct the EU's "envisioned" European identity. While the exact wording of EU policies may not state that they are meant specifically for identity construction, subsequent programs and communications directly link policies with identity construction. EU policies thus constitute legal manifestation of the EU's "envisioned" European identity and are an active attempt to push that identity on its members. Although many policies can be counted as "explicit," such as Community symbols, [266] Union Citizenship constitutes the most visible and powerful of these "explicit" EU policies. Union citizenship itself can be seen as an institutionalization and codification of membership within a community. The EU has subsequently used Union citizenship to define a "European people" (or *demos*) with a common European identity by acting as a legal manifestation of the "self" that actively excludes non-members and provides positive freedoms and rights for members (Delanty, 2005). This combination of explicit identity border definition, rights, and symbolic community membership gives Union citizenship power in identity construction.

[266] For an in-depth analysis of Community symbols as European identity constructing policies, see Armstrong (2001), Laffan (2004), and Elgenius (2011).

Article 8 of the Treaty of Maastricht (1993), entitled "Citizenship of the Union," constructs identity by explicitly indicating the borders of Union citizenship. Article 8(1) states "every person holding the nationality of a Member State shall be a citizen of the Union." By restricting Union citizenship to those who are already citizens of a Member State, the EU clearly delineates membership and explicitly defines who it sees as the "self" (members) versus "others" (non-members) By placing the ultimate power of deciding who should hold Union citizenship in the hands of the Member States, the EU is also reiterating its "envisioned" core values of diversity, unity and recognition of state sovereignty.

Union citizenship detailed in Article 8 is later used explicitly by the EU as a direct tool for European identity construction. After 1993, in an attempt to decrease the democratic deficit and increase political participation, efforts to connect the EU with the masses shifted from the "people of Europe" to the "citizens of Europe." This represents a consolidation of self-identification from all "people" in Europe to just "citizens," and places an emphasis on citizen-based democracy as being especially important in EU-driven identity construction. This new focus on the "citizen" rather than the "people" of Europe as a vital part of European identity construction became especially apparent with the creation of the Europe for Citizens Program (2007-2014). According to the "Objectives of the Europe for Citizen's Program" (2013), the main purpose of the program is "developing a sense of European identity, based on common values, history and culture," and to bring citizens and the EU closer together. The creation of this multi-year, multi-million Euro program illustrates how strongly the EU believes in the power of Union citizenship as a European identity construction mechanism.

The EU furthered its use of Union citizenship as an identity constructing tool when it declared 2013 as the European Year of Citizens, as part of the Europe for Citizens Program. The purpose of the European Year of Citizens is to "stimulate debate, increase knowledge of Union citizenship rights, and increase participation" (European Commission, 2013a: 1) in the belief that these actions will reinforce "a sense of a common European identity among Union citizens based on the core values of the Union as enshrined in the Treaty of European Union and the Treaty on the Functioning of the European Union and in the Charter of Fundamental Rights of the European Union" (Decision No. 1093/2012/EU, Article 2(c)).This statement is especially important because it directly connects the EU "envisioned" identity described in the Treaties and the Charter with Union citizenship and identity construction. In this sense, the EU views Union citizenship as a performative reiteration tool used to promote the core values of an "envisioned" European identity.

Finally, the 1992 "The Citizens' Europe" report states that Union citizenship constitutes "a trans-national display of the Community's firm attachments to basic civic and democratic rights" (16). Implicitly, this passage links Union citizenship to the EU's "envisioned" identity characteristics of democracy, universal human rights, and solidarity across all Member States. Supplementary Commission communications, such as the 1993 "Report from the Commission on the Citizenship of the Union," similarly describe Union citizenship as an important tool for linking the public with the EU and "with the aim of fostering a sense of identity with the Union" (European Commission, 1992: 2). In essence, even though Article 8 of the Maastricht Treaty does not explicitly state that constructing a European identity is one of the purposes of creating Union citizenship, "othering"

and performative reiteration effects coupled with the basic human and democratic rights elements indicate that Union citizenship is an important European identity building policy.

De jure European Identity in the Context of Union Citizenship

Traditionally, citizenship provides rights and dictates obligations for members of a particular political community (Bruter, 2005; Marshall, 1950). However, Union citizenship differs. Many of the rights described by Article 8 were already available to EU members through past legislation, and secondary legislation is needed for newly added rights to become fully realized (Vraken, 1999; Kostakopoulou, 2001). For example, the 1989 Social Policy Agreement, and European Court of Justice decisions in the 1989 *Cowan v Le Tresor Public* and 1985 *Gravier v City of Liege* cases, laid the foundation for protection from discrimination, thereby providing a sense of universal rights before Union citizenship came into effect (Kostakopoulou, 2001; Bellamy, et al., 2006). Additionally, rights to petition European Parliament and the Ombudsman are provided by Articles 138(d) and 138(e) in the Treaty of Maastricht independent of Union citizenship (Dobson, 2006). Supplementary articles were also added in the Treaty of Nice which gave residents of the Union freedom from discrimination based on nationality (Article 12) and non-discrimination measures in other areas (Article 13) (Dobson, 2006). Work rights also have been built into the Treaties since the founding of the European Economic Community. For example, Articles 48 and 51 for the Treaty of Rome provided freedom of movement for workers, and Council Regulation 1612/68 provided freedom of movement for members of the Union (Bellamy et al., 2006; Huysmans, 2001). Given the existence of many Union citizenship rights outside of Article 8 of the Maastricht Treaty, scholars have interpreted this generally "empty" nature of Union citizenship as proof that Union citizenship itself is, in fact, designed to be symbolic rather than provide specific rights (d'Oliveira, 1995).

However, Union citizenship is more than symbolic. The exclusionary nature of Union citizenship plays a vital role in constructing a European identity by legally defining the border between "self" and "other." Moreover, Union citizenship reinforces Member State citizenship by providing an extra layer of rights for Member State citizens, especially in relation to the four fundamental freedoms of the EU (Dobson, 2006; Weiner 1998). Given its symbolic and exclusionary nature, the EU added Union citizenship to the Treaties for reasons beyond simply providing rights for its members.

Union citizenship creation can also help construct a European *demos*. Given its symbolic and exclusionary nature, Union citizenship can help the EU to construct a *demos* that will support its fledgling political and civic identity (Giesen and Eder, 2001). According to the "no-*demos*" thesis, such a pan-European *demos* does not yet exist (Dobson, 2006; Delanty, 2005). Instead, Europe consists of multiple *demoi* based in the nation-state. If the EU views its legitimacy as originating in European citizens, then it is important for the EU to build a European *demos* even in the face of pre-existing, state-based *demoi*. Indeed, construction of a European *demos* alongside Member State *demoi* reinforces diversity, solidarity, and adds individual rights alongside a focus on state rights as core characteristics of a European identity.

Similarly, Union citizenship can increase member participation by creating a place in the bureaucratic structure for political participation and discussion (Chryssochoou, 1996). Similar to individual rights, avenues for political participation predate Union citizenship (Kostakopoulou,

2001; European Commission, 1989). While addition of voting rights to Union citizenship did not actually increase the rights available to Union citizens, Union citizenship created official channels for member participation, providing a discussion space that facilitates sharing of ideas across the heterogeneous transnational community. According to Dobson (2006) and Smith (2010), increased participation and potential for discussion play vital roles in strengthening internal social cohesion and Europeanization. These objectives are a key feature of the Europe for Citizens Program. For example, town twinnings and locally-based discussion groups constitute a large part of the funding for the Program (European Commission, 2013b). EU is thus using Union citizenship as a means by which to increase public participation by opening additional, institutionalized, and "members only" means of communication.

Finally, Union citizenship provides a symbol of membership that forms the emotional basis for a deeper sense of solidarity, loyalty and belonging within Europe. In its traditional sense, citizenship, denotes membership in an exclusive community (Smith, 2010; Eder and Giesen, 2001). The emotional connection that comes with legally recognized membership has the potential to lay the foundation for increased legitimacy for the EU.

De facto European Identity in the Context of Union Citizenship

Although the EU uses Union citizenship to construct a European *demos*, increase participation, symbolically/legally delineate the "self" from the "other," and reinforce the core values of solidarity, diversity, individual and state rights in a European identity, structural and conceptual characteristics of Union citizenship construct a European identity that differs from that envisioned by the EU.

While the attempted construction of a European *demos* has the potential to support the core EU values of diversity and solidarity, a sense of "Europeanness" remains subordinate to Member State *demoi* structures. This is especially true since the Member States hold the ultimate power in determining who is allowed to be a citizen. Therefore, the EU does more to support Member State sovereignty than promote a sense of diversity and solidarity (Kostakopoulou, 2001).

In addition, the creation of a Union citizenship has not, as of yet, achieved an increase in participation. While participation in the sense of voting in European Parliamentary elections has been steadily decreasing, there has been an increase in the number of EU citizens who enjoy their freedom of movement and residence (European Commission, 2012). These increases suggest that a European identity stemming from Union citizenship does not manifest in the same way as in traditional statist citizenship regimes. Instead, a European identity becomes more subtle in that more people are making use of their rights, thereby reinforcing a European identity through performative reiteration. The more they use their rights, the more these rights, the underlying values, and European identity, are reiterated and perceived as the status quo. According to Robyn (1995), an identity becomes truly accepted when it is internalized by the population to the point of being considered normal. The fact that Union citizenship has helped to internalize a European identity (in terms of values and rights), thereby causing the rights to become the status quo, illustrates the power of Union citizenship as an identity constructor. Union citizenship has not helped to promote the EU value of democracy in the traditional sense through political participation, but rather has created a subtle, subconscious European identity rooted more in the European core values of the rule of law.

Furthermore, the universality inherent in an EU "envisioned" European identity is undermined by the *de facto* identity constructed through implementation of Union citizenship policy. According to Eder and Giesen (2001), one of the objectives of Union citizenship is to facilitate the universalisation of EU rights for its members. However, secondary legislation and persistent xenophobia have hindered such universalisation. Hall (1999) argues that this secondary legislation turns denizens into second-class citizens. For example, while freedom of movement, residence, and rights to political participation are provided by the Maastricht Treaty, states retain the ability to limit denizen movement based on public policy, security and health (Directives 90/366, 90/356, 90/364) (Dunkerley et al., 2002). Additionally, denizens only have the right to vote in local and European Parliamentary elections, but not in national elections. Voting rights provided to citizens also have the potential to be restricted by Member States based on residency requirements (Directive 94/80/EC, Article 12; Kostakopoulou, 2001). Restrictions on voting, movement, and residence succeed in maintaining Member State sovereignty, but undermine the universality and non-discrimination aspects of an "envisioned" European identity.

"Explicit Policy" Summary

Union citizenship indeed fails to construct the overt, statist-style *de jure* European identity that the EU envisions; however, it does create a European identity that is a more subtle, europeanizing force. It provides a common discussion forum, participation potential, and a common language through which members can communicate. Additionally, Union citizenship helps to construct a European identity by highlighting the boundary between "self" and "other," and reinforcing the status of the EU as part of the status quo through performative reiteration. Therefore, the EU appears to have successfully constructed a loosely linked *demos*, but still lacks a strong and consistent underpinning *ethos*. This *demos* without overt *ethos* creates a more subtle European identity based more in adherence to the rule of law than any common cultural identity or history. Such a post-national character, coupled with subtly and underpinned by loyalty to the core value of the rule of law results in an identity more similar to Habermas' (1998) "constitutional patriotism," Toennies' (2001) "Gesellschaft," and Risse's (2004) "civic identity."

EU Enlargement as "Spillover" Policy

While the EU explicitly designs and uses policies, such as Union citizenship, to externalize and construct an "envisioned" European identity, additional factors and policies can affect the creation of a European identity. EU policies that were never overtly intended for European identity construction can have a profound impact on the character of the final "realized" identity. The influence of these "spillover" policies is especially vivid in frontiers of political interaction, or border policies such as EU Enlargement Policy, in which the EU is forced to define who constitutes "self" versus "other" (Campbell, 1992).[267]

EU Enlargement Policy constitutes a declaration of who can apply for and gain membership in the EU. Even though EU enlargement is not an explicit European identity constructor, the fact that it profoundly influences who constitutes the "self" and who is "othered" illustrates the power

[267] Other examples of spillover policies include the Common European Asylum System or Member State-based citizenship through investment schemes (Gowlland-Debbas, 2001). These types of policies create areas of contradiction that can undermine traditional EU values.

of enlargement policy to shape the construction of a "realized" European identity (Schimmelfennig, 2001b; Eder and Spohn, 2005). One of the primary criteria for applying for membership in the EU is that a country is "European" (Neumann, 2001; European Council, 1993). Therefore, simply allowing a state to become a candidate country, or even progress through the ascension process, impacts the make-up of the "self," subsequently affecting European identity as a whole.

As Sedelmeier (2003) argues, EU enlargement policy is informed by European identity core values of democracy and respect for human rights. In fact, frequent European Council declarations have proclaimed that promotion of democracy and human rights is a characteristic goal for EU enlargement, especially eastern enlargement (Sedelmeier, 2003; Eder and Spohn, 2005; Miles, 2004; European Commission, 1996). Manners (2002) argues that promotion of such core values can be seen in other enlargements, such as the Mediterranean enlargement, as the addition of countries such as Greece and Italy was for political integration rather than economic reasons.

The Copenhagen Criteria codifies these core values and transform them into compulsory criteria for membership in the EU (European Council, 1993). According to Sedelmeier (2003), "by defining and spelling out the criteria for membership, the EU explicitly articulated the fundamental characteristics that it ascribed to itself" (7). Through this codification of the EU vision of "self," European identity becomes extended to countries that wish to gain membership in the EU.

However, the very nature of including previously defined "others" into the imagined community and membership in the collective identity inherently changes the characteristics of the "self" and "others." New members bring new histories, memories, and customs that can alter the composition of the "self." Similarly, the EU is expected to recognize new Member States' past relationships with third countries, thereby causing EU international relationships with "others" to evolve (Miles, 2004). Most importantly, countries that previously were considered "others" have come to be part of the "self." For example, the Eastern Enlargement of 2004 heralded the transition of 12 eastern European countries from Cold War era "others" to constituting part of the EU "self" (Schimmelfennig, 2001a). In essence, each enlargement, coupled with the normative influence on candidate countries, profoundly changes the physical and cultural composition of the EU, thereby subsequently influencing the construction of a European identity.

Constructed "Realized" European Identity

Given the complex, subjective, context-based, and fluid nature of collective identity construction, it is impossible to paint an exact picture of the current experienced European identity. However, by assessing the *de facto* identities created by EU "explicit" policies, such as Union citizenship, and "spillover" policies, such as EU Enlargement Policy, we can begin to understand the European identity that is experienced in reality. The "realized" European identity has evolved into a subtle, influential identity similar to Billig's "banal nationalism" or Habermas' "constitutional patriotism." It is more of a civic identity that lacks sufficient grounding in culture. This civic identity manifests itself not in Billig's "hot" nationalistic gestures, but rather in everyday acceptance of the EU and its laws and rights as being the status quo. Union citizens may not be willing to lay down their lives for the EU (a test of true nationalistic identity, according to Deutsch (1966)); however, Union citizens do reiterate and reinforce their European identity by partaking in the rights, responsibilities

and privileges afforded to them. The subtle nature of the identity allows it to be simultaneously nesting and cross-cutting, similar to Risse's (2005) "marble cake model" or Bauman's (2001) "liquid identities," thereby allowing it to be flexible and facilitate the EU's "unified in diversity" ideal. The ubiquitous nature of such a subtle European identity also facilitates "Europeanization," or the filtering of EU values into the national level (Featherstone and Radaelli, 2003). If anything, a European identity created through EU "explicit" policies and influenced by other "spillover" policies can be described as a "banal" constitutional patriotism based in cosmopolitan values, framed in a communitarian light.

Green's 2007 survey-based analysis of European identity provides evidence of this "banal," civic European identity. Green concludes that a European identity does, indeed, exist, but varies across Member States and is "generally a minority sentiment" (127). While respondents cite peace as a fundamental European value, democracy, human rights, and socioeconomic solidarity also constitute important values. Additionally, subjects consistently reference a common history, heritage, and commitment to diversity, multiculturalism and tolerance as underpinning European identity. Green (2007) concludes that while all of these values and characteristics are important, a European identity is much more cognitively than emotionally driven. Similarly, results in Robyn (1995) support the notion of European identity as primarily based in a political identity. A European identity thus lacks emotional connection, but still exists as an important part of the current socio-political status quo in Europe.

Recent Eurobarometer surveys results show a larger proportion of respondents view themselves as Europeans in addition to their own nationality rather than solely their own nationality (Eurobarometer, 2013). When asked what the European Union meant to them, survey respondents most frequently listed freedom to travel, study and work anywhere in the EU (Eurobarometer, 2012). Taken together, these results support the notion of a European identity that reflects more of an allegiance to rights and law, as is suggested by constitutional patriotism, rather than a sense of common culture, values, or history. However, while a European identity does appears to exist, Eurobarometer data indicates that the majority of respondents describe their identity as more national than European (Eurobarometer, 2013). Thus, the dominant outlook for Europeans is "country first, but Europe too" (Citrin and Sides, 2004: 183; Hooghe and Marks, 2001).

How "Envisioned" and "Realized" European Identities Compare

In light of the observed, experienced European identity evident in recent studies and Eurobarometer survey data, coupled with the "realized" European identity constructed through EU "explicit" and "spillover" policies, we can conclude that European identity is, indeed, a subtle, "banal" identity, that exists subordinate to Member State national identities. Such identity is also characterized by the core values of "rights of the human person, freedom, democracy, equality, and the rule of law" (European Union, 2007: preamble). Peace is at the ultimate core of its value pantheon, with democracy and solidarity as other important values. European identity appears to be experienced as an influential factor based more in a civic, constitutional patriotism identity structure.

The most visible gap between the "envisioned" and "realized" European identities concerns the cultural and civic aspects of a collective identity. "Envisioned" European identity emphasizes a common European culture and history. However, given the lack of a unifying European history, pan-European culture, or pan-European *ethos*, a "realized" European identity does not have this cultural aspect. Therefore, the "realized" identity is much more civic, and manifests as more subtle than the identity initially envisioned by the EU.

Another visible gap lies in the core values described in the "envisioned" European identity that do not appear to manifest in a "realized" European identity. The ability of the EU to incorporate a sense of equality and universalism into Union citizenship is severely hindered by a persistent adherence to Member State sovereignty. However, on the whole, core values such as peace and democracy have successfully become heavily associated with the EU and a European identity (Green, 2007).

A third visible gap occurs in relation to member participation. The EU envisions a European identity in a more traditional sense, where members are expected to participate. By creating Union citizenship, the EU is implicitly attaching membership to a set of obligations – namely participation in the EU political process and European society. The EU sees citizen participation as reflecting the nation-state model through voting, communicating with the bureaucratic structure through petitions, and engaging with other members of the European community. However, member participation in a "realized" identity is based more in personal interactions with EU law than through direct, conscious participation. Members may not be turning up in droves at the polling booths, but they are actively engaging with their rights as citizens, especially the rights to freedom of movement, residence, study and work.

The fact that a European identity is heavily influenced by external interpretations of EU actions and values, "spillover" policies, and a dogmatic adherence to the maintenance of Member State cultural and political sovereignty severely inhibit the effectiveness of EU "explicit" identity building policies (Pinder, 1995; Martiniello, 1995). This issue is compounded by the fact that the EU insists on creating "explicit" policies following the 19th century nationalism model. The fact that the EU is not a nation-state, but continues to attempt collective identity construction as a nation-state severely inhibits its identity constructing potential. The EU may be able to initiate the creation of an "envisioned" European identity, but because "realized" European identity is so heavily influenced by other factors (such as "spillover" policies), it is experienced by both members and non-members of the European community as something different. This gap can then be understood as evidence of a lack of EU elite-level efficacy in European identity construction leading to a potential decrease in all policy effectiveness.

Implications and Conclusions

As has been demonstrated by the above examination of EU-driven European identity construction, a substantial gap exists between the EU "envisioned" and "realized" European identities. If we assume that core values and understanding of "self" inform policy decisions, then it stands to reason that the EU would base its policy decisions, both internal and external, on its "envisioned" European identity. However, if the EU is basing its policy designs on an identity that differs from reality, it is possible that these policies will not be as effective.

This identity gap has the potential to impact not only EU policy implementation, but also European society as a whole. It has implications both within the EU and in the role that the EU plays on the world stage. This gap causes the EU to send mixed signals to both its citizens and the international community, thereby decreasing the effectiveness of EU policies generally. Domestically, it creates a separation in the sense of "self" between the trans-national EU and the masses. This difference in the sense of "self" enhances the democratic deficit, which over time threatens to widen the separation. Internationally, the result of policy outcomes failing to reflect an "envisioned" European identity is a decrease in legitimacy, appearance of discontinuity, and ultimately a weakening of the EU's power in negotiations with countries outside of the EU. To remedy this reduction in policy effectiveness, the EU must gain a better understanding of "realized," European identity and use it as its basis for policy decision-making rather than its "envisioned" identity.

References

Secondary Source References

Anderson, B. (2006): Imagined Communities: Reflections on the Origin and Spread of Nationalism. Revised Ed. London: Verso.

Armstrong, J. (2001): 'Myth and Symbolism Theory of Nationalism', in A. Leoussi (ed.) and A. Smith (consultant advisor) Encyclopaedia of Nationalism. London: Transaction Publishers.

Bauman, Z. (2001): Liquid Modernity. Cambridge: Polity Press.

Bee, C. (2008): 'The "Institutionally Constructed" European Identity: Citizenship and Public Sphere Narrated by the Commission', Perspectives on European Politics and Society 9(4): pp. 431-450.

Bellamy, R., Castiglione, D., and Shaw, J. (2006): Making European Citizens: Civic Inclusion in a Transnational Context. New York: Palgrave MacMillan.

Billig, M. (1995): Banal Nationalism. London: Sage.

Bruter, M. (2005): Citizens of Europe? The Emergence of a Mass European Identity. New York: Palgrave Macmillan.

Butler, J. (1995): Excitable Speech: A Politics of the Performative. New York: Routledge.

Campbell, D. (1992): Writing Security. United States Foreign Policy and the Politics of Identity. Minneapolis: Minnesota University Press.

Chryssochoou, D. (1996): 'Europe's Could-Be Demos: Recasting the Debate', West European Politics 19: pp. 787-801.

Citrin, J. and Sides, J. (2004): 'More than Nationals: How Identity Choice Matters in the New Europe', in R. Herrmann, T. Risse, and M. Brewer (eds.) Transnational Identities: Becoming European in the EU. Oxford: Rowman & Littlefield Publishers.

Delanty, G. (2005): 'The Quest for European Identity', in E. Eriksen (ed.) Making the European Polity: Reflexive Integration in the EU. New York: Routledge.

Deutsch, K. (1966): Nation-building. New York: Atherton Press.

Dobson, L. (2006): Supranational Citizenship. Manchester: Manchester University Press.

D'Oliveira, J. (1995): 'Union Citizenship: Pie in the Sky?' in A. Rosas and E. Antola (eds.) A Citizens' Europe: In Search of a New Order. London: Sage.

Dunkerley, D., Hodgson, L., Konopacki, S., Spybey, T., and Thompson, A. (eds.) (2002): Changing Europe: Identities, Nations and Citizens. London: Routledge.

Durkheim, E. (1976): The Elementary Forms of the Religious Life. 2nd ed. London: George Allen & Unwin.

Eder, K. and Giesen, B. (2001): 'Conclusion: Citizenship and the Making of a European Society', in Eder K. and Giesen, B. (eds.) European Citizenship between National Legacies and Postnational Projects. Oxford: Oxford University Press.

Eder, K. and Spohn, W. (eds.) (2005): Collective Memory and European Identity: The Effects of Integration and Enlargement. Burlington: Ashgate Publishing.

Eder, K. (2009): 'A Theory of Collective Identity: Making Sense of the Debate on a "European Identity"', European Journal of Social Theory 12(4): pp. 427-447.

Eisenstadt, S. (1998): 'The Construction of Collective Identity: Some Analytical and Comparative Indications', European Journal of Social Theory 1(2): pp. 229-254.

Elgenius, G. (2011): Symbols of Nations and Nationalism: Celebrating Nationhood. New York: Palgrave Macmillan.

Featherstone, K. and Radaelli, C. (eds.) (2003): The Politics of Europeanization. Oxford: Oxford University Press.

Garcia, S. (ed.). (1993): European Identity and the Search for Legitimacy. London: Pinter Publishers.

Giesen, B. and Eder, K. (2001): 'Introduction: European Citizenship', in Eder, K. and Giesen, B. (eds.) European Citizenship between National Legacies and Postnational Projects. Oxford: Oxford University Press.

Guild, E. (2010): 'Fundamental Rights and EU Citizenship after the Treaty of Lisbon', Justice and Home Affairs, Liberty and Security in Europe Papers 1: pp. 1-9.

Gowlland-Debbas, V. (2001): 'European Asylum Policies and the Search for a European Identity', in Cederman, L-E. (ed.). Constructing Europe's Identity: The External Dimension. London: Lynne Reinner Publishers.

Green, D. (2007): The Europeans: Political Identity in an Emerging Polity. London: Lynne Rienner Publishers.

Haas, E. (1964): Beyond the Nation-State: Functionalism and International Organization. Stanford: Stanford University Press.

Habermas. J. (1998): The Inclusion of the Other: Studies in Political Theory. Edited by C. Cronin. and P. De Greiff. Cambridge: Polity Press.

Hall, S. (1999): 'European Citizenship – Unfinished Business', in L. Holmes and P. Murray (eds.). Citizenship and Identity in Europe. Aldershot: Ashgate Publishing.

Hegel, G. (1977): Phenomenology of Spirit. Oxford: Oxford University Press.

Herrmann, R., Risse, T., and Brewer, M. (eds.) (2004): Transnational Identities: Becoming European in the EU. Oxford: Rowman & Littlefield Publishers.

Hogg, M. (2003): 'Social Categorization, Depersonalization, and Group Behaviour', in M. Hogg and R. Scott Tindale (eds.) Blackwell Handbook of Social Psychology: Group Processes. Oxford: Blackwell Publishing.

Holmes, L. and Murray, P. (1999): 'Introduction: Citizenship and Identity in Europe', in L. Holmes and P. Murray (eds.) Citizenship and Identity in Europe. Aldershot: Ashgate Publishing.

Hooghe, L. and Marks, G. (2001): Multi-Level Governance and European Integration. Oxford: Rowman & Littlefield.

Huysmans, J. (2001): 'European Identity and Migration Policies', in L-E. Cederman (ed.) Constructing Europe's Identity: The External Dimension. London: Lynne Reinner Publishers.

Kostakopoulou, T. (2001): Citizenship, Identity, and Immigration in the European Union. Manchester: Manchester University Press.

Laffan, B. (2004): 'The European Union and Its Institutions as "Identity Builders"', in R. Herrmann, T. Risse, and M. Brewer (eds.) Transnational Identities: Becoming European in the EU. Oxford: Rowman & Littlefield Publishers.

Malici, A. (2006): 'Reagan and Gorbachev: Altercasting at the End of the Cold War', in M. Schafer and S. Walker (eds.) Beliefs and Leadership in World Politics: Methods and Applications of Operational Code Analysis. New York: Palgrave Macmillan.

Manners, I. (2002): 'Normative Power Europe: A Contradiction in Terms?' Journal of Common Market Studies 40(2): pp. 235-58.

Marcussen, M., Risse, T., Engelmann-Martin, D., Knopf, H-J. and Roscher, K. (2001): 'Constructing Europe? The Evolution of Nation-State Identities', in T. Christiansen, K. Jorgensen and A. Wiener (eds.) The Social Construction of Europe. London: Sage Publications.

Marshall, T.H. (1950): Citizenship and Social Class: and Other Essays. Cambridge: Cambridge University Press.

Martiniello, M. (1995): 'European Citizenship, European Identity and Migrants: Towards the Post-National State?' in R. Miles and D. Thränhardt (eds.) Migration and European Integration: The Dynamics of Inclusion and Exclusion. London: Pinter Publishers.

Miles, R. and Thränhardt, D. (eds.) (1995): Migration and European Integration: The Dynamics of Inclusion and Exclusion. London: Pinter Publishers.

Miles, L. (2004): 'Theoretical Considerations', in N. Nugent (ed.) European Union Enlargement. New York: Palgrave Macmillan.

Neumann, I. (1996): 'Self and Other in International Relations', European Journal of International Relations 2(2): pp. 139-174.

Neumann, I. (2001): 'European Identity, EU Expansion, and the Integration/Exclusion Nexus', in L-E. Cederman (ed.) Constructing Europe's Identity. London: Lynne Rienner Publishers.

Ozkirimli, U. (2010): Theories of Nationalism: A Critical Introduction. 2nd Edition. New York: Palgrave Macmillan.

Peters, B. (2003): 'Collective Identity, Cultural Difference and the Development Trajectories of Immigrant Groups', in R. Sackmann, B. Peters and T. Faist (eds.) Identity and Integration: Migrants in Western Europe. Burlington: Ashgate Publishing.

Pinder, J. (1995): European Community: The Building of a Union. Oxford: Oxford University Press.

Risse, T. (2001): 'A European Identity? Europeanization and the Evolution of Nation-State Identities', in M. Cowles, J. Caporaso and T. Risse (eds.) Transforming Europe. Ithaca: Cornell University Press.

Risse, T. (2004): 'Social Constructivism and European Integration', in A. Wiener and T. Diez (eds.) European Integration Theory. Oxford: Oxford University Press.

Risse, T. (2005): 'Neofunctionalism, European Identity, and the Puzzles of European Integration', Journal of European Public Policy 12(2): pp. 291-309.

Robyn, R. (ed.) (1995): The Changing Face of European Identity. New York: Routledge.

Rosamond, B. (2001): 'Discourses of Globalization and European Identities', in T. Christiansen, K. Jorgensen and A. Wiener (eds.) The Social Construction of Europe. London: Sage Publications.

Schimmelfennig, F. (2001a): 'Liberal Identity and Postnational Inclusion: The Eastern Enlargement of the European Union', in L-E. Cederman (ed.) Constructing Europe's Identity: The External Dimension. London: Lynne Reinner Publishers.

Schimmelfennig, F. (2001b): 'The Community Trap: Liberal Norms, Rhetorical Action, and the Eastern Enlargement of the European Union', International Organization 55(1): pp. 47-80.

Sedelmeier, U. (2003): 'EU Enlargement, Identity and the Analysis of European Foreign Policy: Identity Formation Through Policy Practice', EUI Working Paper, RSC No. 2003/13.

Smith, A. (2010): Nationalism. 2nd edition. Cambridge: Polity Press.

Tajfel, H. (1982): 'Social Psychology of Intergroup Relations', Annual Review of Psychology 33: pp. 1-39.

Toennies, F. (2001): Community and Civil Society. Edited by J. Harris. Trans. by J. Harris and M. Hollis. Cambridge: Cambridge University Press.

Weiner, A. (1998): "European" Citizenship Practice: Building Institutions of a Non-State. Oxford: Westview Press.

Wendt, A. (1994): 'Collective Identity Formation and the International State', American Political Science Review 88(2): pp. 384-396.

Worchel, S. (1998): 'A Developmental View of the Search for Group Identity', in S. Worchel, J. Morales, D. Paez, and J. Deschamps (eds.) Social Identity: International Perspective. London: Sage.

Primary Source References

European Documents Referenced

Economic and Social Consultative Assembly (1992): "The Citizens' Europe" Report. ESC-92-011-EN.

European Commission (1973): "Declaration on European Identity." Bull. EC No.12. Luxembourg.

European Commission (1984): "A People's Europe: Implementing the Conclusions of the Fontainbleau European Council." COM(84) 446 Final.

European Commission (1985): "Communication from the Commission to the Council on a People's Europe." COM(85) 640 Final.

European Commission (1989): "Amended Proposal for a Council Directive on voting Rights for Community Nationals in local elections in their Member State of Residence." COM(89) 524 Final.

European Commission (1993): "Report from the Commission on the Citizenship of the Union." COM(93) 702 Final.

European Commission (1995): "Report on the Operation of the Treaty on European Union." SEC(95) 731 Final.

European Commission (1996): "Reinforcing Political Union and Preparing for Enlargement." COM(96) 90 Final.

European Commission (2010): "The Charter of Fundamental Rights of the European Union." OJ C83/389.

European Commission (2012): "Standard Eurobarometer 78: European Citizenship Report." Directorate-General for Communication.

European Commission (2013a): "European Year of Citizens 2013." http://europa.eu/citizens-2013/en/about. Accessed: 20 May, 2013.

European Commission (2013b): "Objectives of the Europe for Citizens' Programme, 2007-2014." http://eacea.ec.europa.eu/citizenship/programmeme/objectives_en.php. Accessed: 17 May, 2013.

European Council (1968): Regulation (EEC) No 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community. OJ L257/2.

European Council (1989): Community Charter of the Fundamental Social Rights of Workers. Bull. EC 12-1989, Presidency Conclusions.

European Council (1990): Directive 90/364 on the right of residence, OJ L180/26.

European Council (1990): Directive 90/365 on the Right of Residence for Employees and Self-Employed Persons who have Ceased their Occupational Activity, OJ L180/28.

European Council (1990): Directive 90/366 on the Right of Residence for Students, OJ L180/28.

European Council (1993): Copenhagen European Council, Presidency Conclusions, 12 June 1993. http://europa.eu/rapid/press-release_DOC-93-3_en.htm?locale=en. Accessed: 12 July 2013.

European Council (1994): Directive 94/80 on the Right to Vote and Stand as a Candidate in Municipal Elections, OJ L 368/38.

European Council (1999): Helsinki European Council, Presidency Conclusions, 12 Nov 1999. http://www.europarl.europa.eu/enlargement/ec/pdf/hel_en.pdf. Accessed: 7 July 2013.

European Parliament and European Council (2012): "European Year of Citizens." Decision No. 1093/2012/EU. 12 Nov 2012. OJ L325/1.

European Union (1957): "Treaty Establishing the European Community (Consolidated Version)." http://www.refworld.org/docid/3ae6b39c0.html. Accessed: 24 May 2013.

European Union (1993): "Treaty of the European Union (Consolidated Version)," Treaty of Maastricht. OJ C325/5.

European Union (2000): "Treaty of Nice, Amending the Treaty on European Union, the Treaties Establishing the European Communities and Certain Related Acts." OJ C80/01.

European Union (2007): "Treaty of Lisbon Amending the Treaty on European Union and the Treaty Establishing the European Community." OJ C306/01.

European Court of Justice Cases Referenced

Cowan v Le Tresor Public (Case 186/87) [1986] ECR 195; [1990] 2 CMLR 613.

Gravier Francoise Gravier v City of Liege (Case 293/83) [1985] ECR 593; [1985] 3 CMLR1.

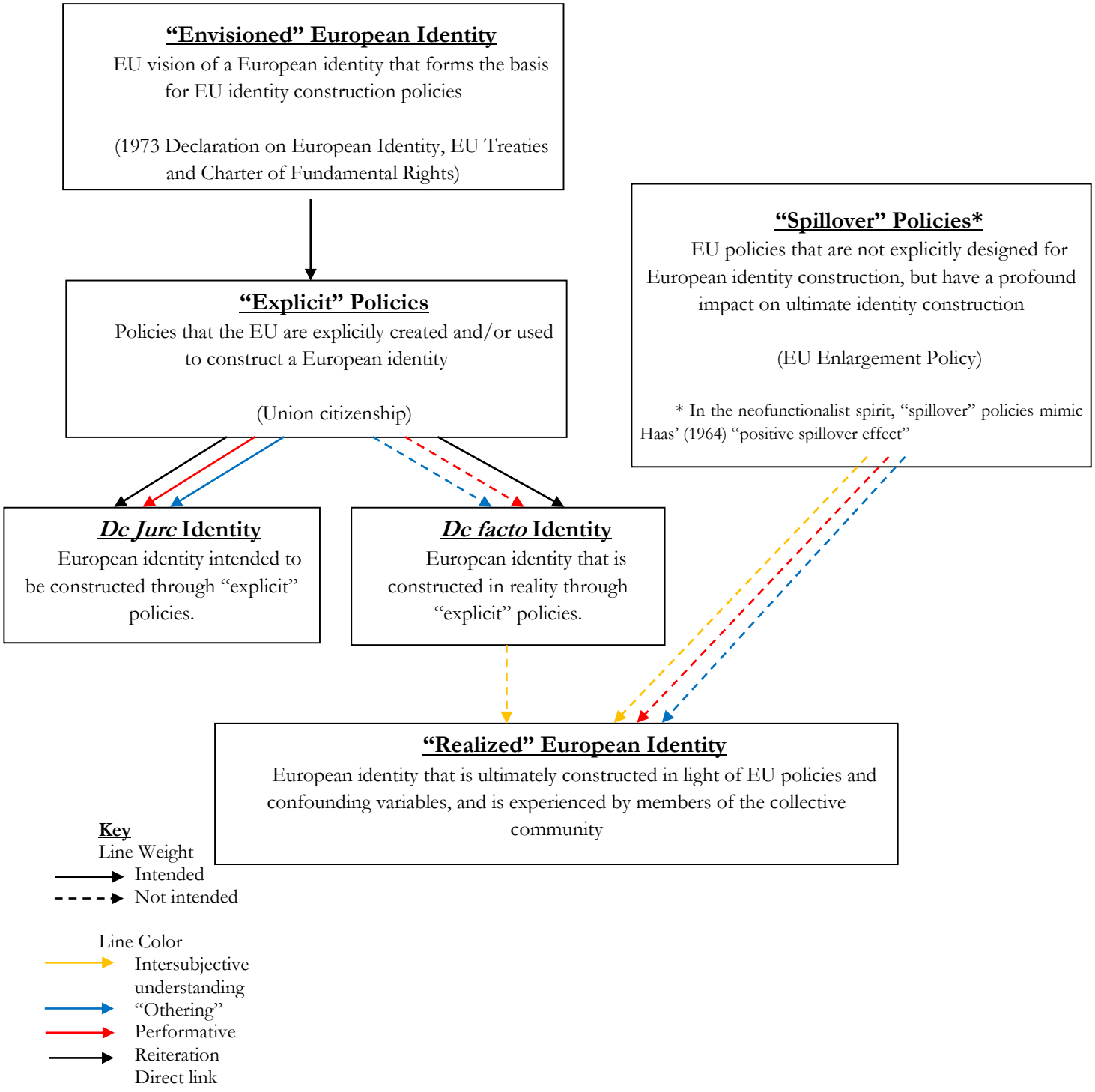
Eurobarometer Surveys Referenced

Eurobarometer (2012): "Standard Eurobarometer 78: Public Opinion in the EU – Autumn 2012." European Commission. http://ec.europa.eu/public_opinion/cf/index_en.cfm. Accessed 25 July 2013.

Eurobarometer (2013): "Standard Eurobarometer 79: Public Opinion in the European Union – Spring 2013." European Commission. http://ec.europa.eu/public_opinion/cf/index_en.cfm. Accessed 25 July 2013.

Appendix

Figure 1: Paper outline flowchart: "envisioned" European identity to "realized" European identity and policy designation definitions. Source: Author.



The Council of Europe and Democratic Security: Reconciling the Irreconcilable?

Max Steuer

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Abstract

The concept of security has remained in the shadows of the 'three pillars' of the Council of Europe (CoE) until 2015 when the annual report of its Secretary General presented the term 'democratic security'. This paper provides two alternative conceptualizations of the term and, through making a parallel with the two main approaches towards extreme speech, it looks at how the CoE could reconcile democracy and security in policies vis-à-vis extreme speech. The findings obtained via organizational analysis of the CoE's structure and review of approaches towards extreme speech point to the two models of dealing with extreme speech in relation to democracy and security. One is 'democratic security' where restrictions of rights such as freedom of speech pose more substantial threats to security than the harm that might be caused by their abuse. The other is 'militant democracy' where such restrictions are often viewed as a safeguard of security.

Key words

Council of Europe, Democratic Security, Extreme Speech, Militant Democracy, Freedom of Speech, 'Hate Speech', Organizational Analysis

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Introduction

In the 21st century, the challenges of both security and human rights have so far been multiple. Movements which—with various actions—try to undermine the foundations of democratic societies and attack them from outside or within seem to be almost countless. Democratic governments try to enact protective measures designed to prevent these movements from gaining overwhelming influence and planting fear into the hearts of the citizens. However, through these measures they gradually 'militarize' democratic regimes with all the risks of side-lining individual rights that it entails (Thiel, 2009; Tyulkina, 2015; Walker, 2011).

Given the complexity of contemporary governance, the question arises what is the role of international organizations (IOs) in this 'militarization process.' Can they have any impact on the security and/or human rights regimes in the states that are their members? Do they have a say on whether there is an effort to 'search for reconciliation between security and human rights […] within the existing climate of exceptionalism' (Lazarus & Goold, 2007, p. 4)? Can and does their effort counter the dominant trends in post-9/11 world characterized by a 'normalization of extraordinary means' in order to achieve alleged justice,[268] an 'us and them' rhetoric in daily politics (Masferrer, 2012) and a general belief in the zero-sum game between security and individual rights?

This paper looks at these questions through a general lens and an example of the Council of Europe (CoE), a key regional organization in promotion and protection of human rights, democracy, and the rule of law. The CoE with its 47 members at the time is an international organization often forgotten by contemporary scholarship focusing predominantly on the EU, although it played an important role in bringing European states together after the fall of communist regimes in 1989. By no means can it be declared unimportant, as there is a demonstrable impact it had (at least) on Central and Eastern Europe in the process of transition towards democracy (Fawn, 2013).

Looking at the relationship between security and human rights within the CoE, it is clear that security is not one of the 'three core pillars' of the CoE (democracy, human rights and the rule of law). This alone, however, does not have to mean that the CoE is not concerned with security. An introduction to the organization's functioning asserts that the CoE '[operates] in the field of soft security' (Bond, 2012, p. 5), and the 2015 annual report of the Secretary-General of the CoE is subtitled 'A shared responsibility for *democratic security*' in Europe (Jagland, 2015 emphasis added). This raises the general question what approach to security has the CoE set up to develop via its actions.

Although it is not possible to assess the CoE's approach in all security-related fields here, this paper looks at one of the most pressing areas where there seems to be a clash between security and democracy: the field of extreme speech and its regulation. For this purpose, Section 1 contextualizes the concept of democratic security and its two understandings, and explains the

[268] An example of this trend is the UK's anti-extremism strategy announced by David Cameron in July 2015 that allows the prosecution of 'nonviolent extremism' and therefore infringes harshly upon individual rights—not only freedom of speech but also the freedom to protest and some academic freedoms (Kazmi, 2015).

relevance of the debate on the approaches to extreme speech for the development of a model of security in the CoE's functioning.

Section 2 comprises a brief organizational analysis in order to identify which bodies and institutions of the CoE are key in forming the CoE's approach to extreme speech. Section 3 then uncovers the alternative models that can be pursued by the CoE in the field of extreme speech and finds out how those models are linked to the notion of democratic security. The results identify the 'militant democracy' as a contrasting position to democratic security. Finally, the likely consequences of the two models for the 'state of democracy and human rights in Europe' (cf. Jagland, 2015) are discussed.

Democratic Security and the Council of Europe

What is democratic security in the CoE's view, why is it important and how can it be squared with the 'three pillars' of the organization? This question becomes puzzling when taking into account that the CoE has so far been seemingly focusing on those 'pillars' and not on security.

Existing research on various aspects of the CoE's functioning (Brummer, 2012, 2014; Greer, 2006; Jordan, 2003; Madsen, 2007) reveals an interplay between the CoE and domestic politics in member states from the outset but this seems to be focused on the 'traditional triad' of human rights, democracy and rule of law, not on security. Therefore, the notion of security does not seem to be at the top of CoE's considerations. This has been different in 2015, though, when a particular concept of security has made it into the 'headlines' of the CoE's reports.

The Concept of Democratic Security

As early as in 1996 there was an understanding that the CoE had been paying some attention to 'the concept of "democratic security", in the firm belief that Europe can remain a peaceful and socially stable continent only if its member states espouse democratic values and practices while forging a spirit of tolerance and mutual co-operation' (Pinto, 1996, p. 41). However, the term 'democratic security' has not appeared often in relation to the CoE and in scholarship in general. In 1999, one report titled 'the quest for democratic security' described the challenges of the CoE with its new member states which did not have consolidated democracies but devoted very little attention to the term itself; it only mentioned that the 'bases' of democratic security are 'rule of law and parliamentary procedure' (Klebes, 1999).

It was not before 2015, after the Ukraine crisis marked a real, relatively long-lasting war between CoE members, that the concept 'celebrated a comeback' in the 2015 report of the CoE's Secretary-General. Here, democratic security has been considered as a 'shared responsibility' of European states which are 'only ever as secure as the states which surround [them]' (Jagland, 2015, p. 6). Instead of concretizing this relationship of security as responsibility of democracies, though, the report went on to what was claimed to be an 'assessment of democratic security' in five pillars, oddly resembling the three 'classic' pillars of the CoE.[269] With respect to the Ukraine crisis, that seems to have been very much in perspective of the drafters of the report, this security-focused

[269] These are 'efficient and independent judiciary, free media, vibrant, influential civil society, legitimate democratic institutions, and inclusive societies' (Jagland, 2015, p. 6). The legitimacy of democratic institutions component coincides with the need for stronger parliamentary control of security measures, especially of surveillance systems, i.e. the 'democratizing security' approach (Kinzelbach & Cole, 2006).

claim goes, in essence, as follows: 'we are more secure if we are democratic.' This is nothing more and less than a variation to one of the most discussed theories in International Relations: the theory of democratic peace (see e.g. Russett, Layne, Spiro, & Doyle, 1995). Consequently, the CoE believes that democracies bring peace understood as security. Thus, *through* supporting democracy, the CoE defends security.

So far this seems as a straightforward finding; however, it becomes peculiar when it comes to the particular approach or theory of democracy that is being promoted by the organization. This can be explained by the list of three criteria for 'democratic security' provided by Johansen (1991). Democratic security requires not only democratic decision-making in security policies and prioritizing the individual rather than the state (human security instead of state security) but also 'resistance to any and all encroachments upon human dignity and widely agreed-upon human rights' (Johansen, 1991, pp. 210–211).

In this understanding, approaches to democracy that allow for substantial limits on individual rights, even if the application of such rights could trigger security threats, do not comply with the notion of democratic security. The reason for the non-compliance of such measures is that they *alone* would pose a greater danger to democratic security than the abuse of the human rights they limit. A trade-off element remains present here between democracy and security but in contrast to equating democratic security with democratic peace, it poses more substantial requirements for achieving the condition of democratic security than the approach represented by democratic peace. Essentially, democratic security means viewing certain limits on human rights as more substantial threats to security than threats that could arise in case those rights are not limited and abused in the state. It is this 'thicker' understanding of democratic security that makes the analysis of approaches to extreme speech of an actor (such as the CoE) an important test case for the commitment to democratic security by that very actor.

Extreme Speech as a Test Case for Democratic Security

Extreme speech challenges the foundations of a democratic regime by questioning or trying to undermine the premises of freedom, equality, the rule of law and respect for individual rights. Therefore it has a potential to cause harm, create social instability, unrest and, in its most aggressive force, violence. These conditions run contrary to security in democracies but, in accordance with the aforementioned concept of democratic security, restrictions on extreme speech may cause greater danger to security than that speech itself. This is the reason why identifying the approach to extreme speech allows to hypothesize on whether an actor pursues or does not pursue a model of 'democratic security' via its actions.

The next section details which institutions of the CoE are relevant for dealing with extreme speech but before that, a brief terminological distinction is desirable. This distinction concerns the difference between extreme speech and 'hate speech'. Linguistically, while 'extreme' implies an element outside of normalcy or traditionally accepted range of views, 'hate' entails clearly negative connotations of an extreme that is 'wrong' as it is something 'outrageous [not] respectful'; in other words, hate represents 'extreme abhorrence that is likely to cause harmful effects' (Post, 2009, pp. 131–135). Fundamentally, if an expression is labelled as 'hate speech', it can justifiably be restricted by law in a democratic regime to protect (even democratic) security. In contrast, if it is 'only' an

instance of extreme speech, that standing alone does not justify restriction while upholding the commitment to democratic security.

Hence, in the subsequent analysis, the location of boundaries of the distinction between extreme speech and 'hate speech' becomes the crucial criterion of identifying whether an approach is a 'democratic security' or a 'militant democracy' one.[270]

'Hate speech' itself can be approached in two main ways, one content- and one context-based (see the contributions in Herz & Molnar, 2012), with the former allowing to restrict (including with criminal law) expressions that do not pose 'imminent danger' to life and security in a way that would make it possible to classify them as (violent) action in themselves. It is precisely this distinction (or the lack thereof) that has been called upon by a number of scholars researching security, in particular anti-terrorism legislation in the post-9/11 period at both national and international level (Cram, 2009; Galli, 2013; Lazarus & Goold, 2007; Moss, 2011).[271] The following section establishes the way how the CoE's approach can be researched and thus identified, whether the CoE as an organization joins the concerns of these scholars by criticizing and trying to minimize approaches that do not support the 'thicker' understanding of democratic security.

CoE Institutions Relevant for the Approach to Extreme Speech

It has been established that whether the CoE pursues a model of democratic security via its actions can be inferred from what kind of restrictions of extreme speech it supports; in other words, which particular instances of extreme speech it labels as 'hate speech'. It needs to be clarified, though, which institutions of the CoE play a role in building up such a model. Moreover, the degree of their discretion needs to be identified because depending on it, it can be assumed that the positions of the CoE will be more or less a result of internal unity between its components.

Figure 1 below introduces a classification of the CoE institutions that puts each of them relevant for an issue area (in this case extreme speech) into one dimension. The political dimension is the one where leaders of the member states meet on a regular basis and discuss the overall strategies and positions of the organization. Hence, in the case of the CoE, the Council of Ministers (CoM), the Parliamentary Assembly (PACE) and the Secretary-General (S-G) belong into this category, as they represent the intergovernmental nature of the organization (see also Bond, 2012).

However, it is not these institutions that are most usually referred to with regard to the CoE. The ECtHR, as the guardian of the perhaps most important legal document under the roof of the CoE,

[270] Militant democracy refers to the principle that democratic states need to defend their values with from undemocratic movements and initiatives. As Thiel (2009, p. 2) argues, 'only in a democracy the balancing of freedom and security, and the question of whether enemies of the democracy are allowed to use democratic structures and rights to destroy it (the 'weak flank' of every liberal democracy) culminate in the dilemma and debate around the idea of a "militant democracy".' Thus, militant democracy is clearly one way of dealing with the challenge posed by extreme speech, although a degree of care is necessary hear because of the distinction between 'extreme speech' and 'hate speech'.

[271] In particular, Galli highlights the pitfalls of regulating 'inchoate offences,' i.e. activities that usually (but not always) signal the support for some terrorist activities, such as the glorification of terrorism. The problem here is, in her view, that because the intent for such activities is not examined as they are banned at a general level, and because no investigation on whether the activity actually results in some kind of violent action is conducted either, 'glorification offences go too far in creating undue constraints on freedom of expression' (Galli, 2013, p. 107). In this vein, if the CoE supports or upholds glorification offences in its member states, it would be an indicator of turning away from 'democratic security'.

the European Convention on Human Rights, issues judgments that are binding upon the member states. It is understandable, therefore, that it has its role in determining the approach of the CoE towards particular rights and their limits, including freedom of speech. This right is enshrined in Article 10 of the Convention and through the decades, extensive jurisprudence of the Court has been produced on the proportionality of restrictions of speech in the name of other interests (e.g. Arai, 2014).

The monitoring mechanisms of the CoE (see Beco, 2012) are a specific set of institutions which follow the situation in a particular human-rights-related area in the member states and mainly publish regular reports about them. For extreme speech, the European Commission against Racism and Intolerance (ECRI) is most relevant (Hollo, 2012), as it devotes significant attention to, among others, analysing the status quo and providing recommendations for both legal and societal responses to speech in which the element of hatred could be identified.

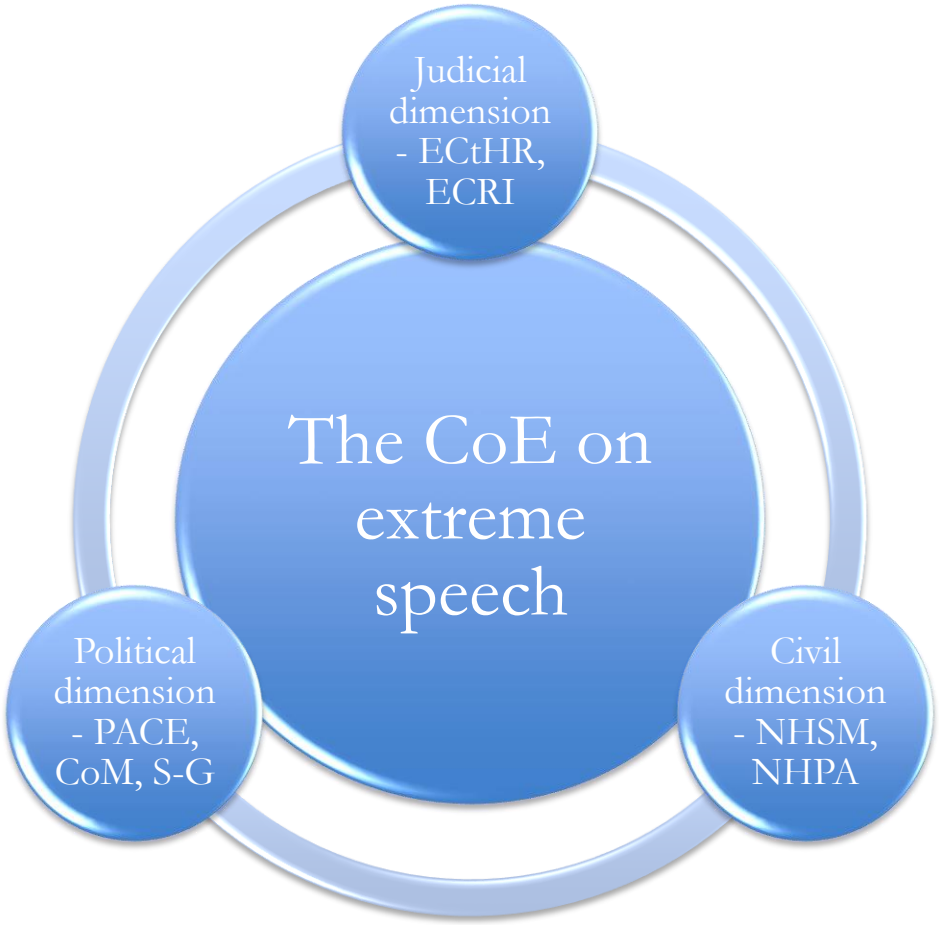


Figure 1. The three dimensions of activities of the CoE's institutions with regard to extreme speech. Source: author.

The CoE also maintains regular direct links to civil societies in the member states, and that applies also to issues linked to extreme speech. In particular, there is the No Hate Speech Movement (NHSM), focused on youth which consists of a series of national campaigns coordinated by the Youth Department of the CoE (Council of Europe, 2015). The movement is altogether successful,

which resulted in the launch of one with similar principles but at the level of PACE: the No Hate Parliamentary Assembly (NHPA). Because the tools available for these campaigns are neither legal, nor political, they need to be categorized into a third – civil – dimension that frames the CoE's position on extreme speech.

The three dimensions need to be viewed in their complexity without the effort to create a hierarchy among them. The following section focuses instead on combining the dichotomous approaches towards extreme speech presented in Section 1 with the three dimensions which shows the two models to the relationship between democracy and security via the case of extreme speech applied to the formulation of the positions in each of the dimensions.

Approach to Extreme Speech and Security Concerns: The Example of the CoE

What does it mean to adopt a 'democratic security' approach vis-à-vis extreme speech as opposed to the 'militant democracy' one? Applying the distinction on the CoE points to two possible hypotheses conceptualizing the implications of its approach to extreme speech on its model of security.

The CoE either considers restrictions on extreme speech, except those where the particular instance of speech leads to 'imminent danger' of physical violence as unacceptable in a democratic society, or it considers such restrictions as *necessary* in the same society. In the former case, the model of security it constructs is democratic security as defined by Johansen's criteria (see above). In the latter case, it does not construct a model of democratic security but of 'militant democracy' that, while it might on coincide with security concerns of the majority of citizens, does not have primarily the individual citizen in its focus (cf. the notion of "smart" militant democracy' in Walker, 2011; and the conditions of popular sovereignty and individual rights to political participation as cornerstone of a democratic debate in Weinstein, 2009)

Democratic Security v. Militant Democracy in Approaches to Extreme Speech

There are two approaches to extreme speech and two approaches to restrictions of rights in the name of security but in fact, they overlap because the context-based approach to extreme speech emphasizes that only those instances of speech can form a danger to security which can trigger direct violent actions as a result of their dissemination. It also sees a threat in content-based legal restrictions (Heinze, 2014) as the same speech may have different meaning in different contexts. On the other hand, the content-based approach which works widely with the 'harm' entailed in 'hate speech' (Parekh, 2012; Waldron, 2014) believes that certain content of speech can be a sufficient threat to be banned in a democracy regardless of the given context.

Similarly to the content-based approach, militant democracy allows to use the tools which are at the disposal of the state for the purpose of protection of democratic principles from being undermined by (also) expressions that create a hierarchy among citizens on the basis of race, religion, gender, political or sexual orientation or other characteristic and attacks some of the groups built on the basis of such distinctions. Democratic security, in contrast, reflects the content-based approach as it sees the restrictions of rights in the name of security, unless the threat is clearly present (via incitement to violence in this case) as illegitimate.

A democratic security approach to extreme speech is present, for example, in the argument of the 'assassin's veto' (Ash, 2015) according to which a threat to democracy is limiting freedom of speech when in case of the absence of such limitation, there is a potential that individuals or groups with tendencies to use violent actions against the authors of speech they dislike (a direct reference to the Charlie Hebdo case). The reason is that while one can hardly make sure that some forms of exaggeration, satire or artistic expressions will not go against the beliefs of at least some individuals, it is certain that speech restrictions of such kind, once they are introduced, can grow swiftly and soon have the ability to limit critical political speech which is at the heart of democracy (see Barendt, 2005; Mill, 2009).

Democratic Security v. Militant Democracy in Three Dimensions of the CoE

After laying the foundation of the distinction between democratic security and militant democracy, how can the dichotomy be captured in the three dimensions of the CoE's organization? Figure 2 depicts the proposed conceptualization, based on the activities in the three dimensions. While in the political and judicial dimension, the focus is on definition of 'hate speech' as that category of extreme speech which can be limited by the means of law, in particular criminal law, the civil dimension, where the definitions are applied from the two others, the general approach of the campaigns and cooperation with the civil society with regard to extreme speech is emphasized.

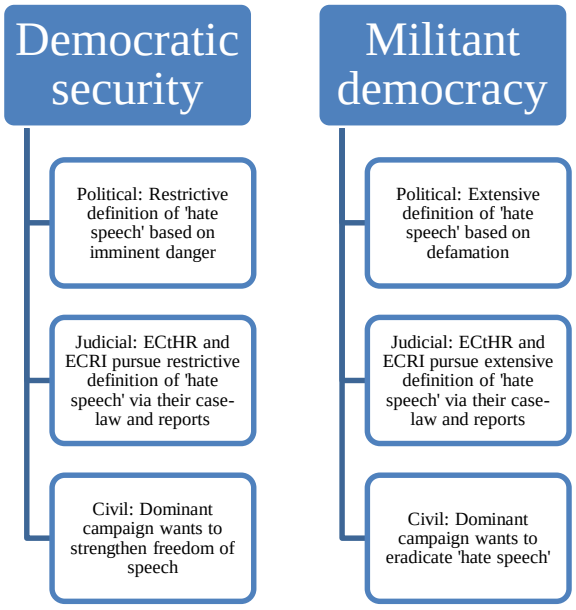


Figure 2. Two alternatives of CoE's approach to the relationship between democracy and security, and their indicators in the three dimensions. Source: Author.

While the empirical analysis of the CoE's approach to extreme speech and its impact on selected member states is done elsewhere (Steuer, 2015), some conclusions can be drawn already at this point. In the *political dimension,* there is a number of relevant documents issued by PACE, the CoM and the S-G that try to define 'hate speech' (Committee of Ministers, 1997, 2004, 2011; Jagland, 2015; Parliamentary Assembly, 2007; see also Weber, 2009) and all signs point to the predominantly content-based approach that matches with the view of extreme speech labelled as 'hate speech' as a threat to security as well as life in democratic societies in general.

Indirectly, this approach is confirmed by some provisions of the CoE Convention on Prevention of Terrorism, which in Article 5 requires the signatories to adopt

> such measures as may be necessary to establish provocation to commit a terrorist offence [which is defined as] the distribution, or otherwise making available, of a message to the public, with the message to incite the commission of a terrorist offence, where such conduct, whether or not directly advocating terrorist offences, causes a danger that one or more such offences may be committed (Council of Europe, 2005).

It was this provision that stimulated the introduction of more restrictive laws on glorification and support of terrorism (such as the UK, see Walker, 2011, pp. 1411–1412) even in cases where the intent of the speaker (i.e. whether he/she wants to stimulate an actual violent action) was not unambiguous. Overall, the institutions operating in the political dimension of the CoE have an approach towards extreme speech labelled as 'hate speech' that is generally favourable to criminal regulation.

In the *judicial dimension,* ECRI (2002) issued 'General Policy Recommendation No. 7 on National Legislation to Combat Racism and Racial Discrimination' where it supports criminal law restrictions on various forms of expressions which may threaten individuals or (especially minority) groups. In contrast, the approach of the ECtHR that manifests via its case-law[272] is much more blurred although both summaries of jurisprudence issued by the Court itself (e.g. European Court of Human Rights, 2014) and recent legal analyses (Belavusau, 2014; Kiska & Coleman, 2012; Sottiaux, 2011; Stavros, 2015), some with a more positive, others with a rather critical standpoint point to the increasing similarity of the Court's approach towards extreme speech with ECRI, PACE and the CoM. In other words, militant democracy seems to be the approach which captures better the judicial dimension of the CoE's organization vis-à-vis extreme speech according to the distinction presented in Figure 2.

The *civil dimension,* the NHSM and recently the NHPA do not focus on restrictions themselves but on making young people aware of the dangers entailed in 'hate speech' (cf. Council of Europe, 2015). At the same time, their focus is not on strengthening freedom of speech and they do accept the definitions provided by the political and judicial institutions of the CoE (which is also necessary to preserve a degree of unity of the organization itself). Hence, it can be assumed that democratic security, as defined in this paper, is not the core focus for the campaigns, although because of the very positive attitude the movements have (focus on initiatives that support education and other progressive measures that could gradually lower the presence of instances of 'hate speech' in the public discourse), the dichotomy presented in Figure 2 might be somewhat limited to capture the essence of what they do.

In all three dimensions, the CoE's position vis-à-vis extreme speech seems to go as follows: 'dangerous' instances of extreme speech that defame minorities, glorify or support violence or deny part crimes pose a threat to stability, well-being and security of the organization's 'democratic' members. However, would this finding justify an assertion that if the CoE removed 'democracy' from its three pillars and replaced it with 'security', nothing would have changed with regard to

[272] For extreme speech, some of the best analyses are provided in Belavusau (2013) and McGonagle (2012).

the status quo? Such a claim would be unjustified as it reduces the dynamic between democracy and security into a linear opposition.

Bearing on mind Walker's (2011) idea of a 'smart' militant democracy, it can be concluded that the model the CoE pursues is, at least in the case of extreme speech not the one of democratic security, where restrictions of speech can potentially threaten security more than the speech itself, but one of a (smart?) militant democracy. Whereas this finding falsifies the hypothesis maintaining that democratic security (in its 'thicker' understanding) is of core concern for the Council of Europe and can be traced in its approaches towards all pressing security-related issues, the model of militant democracy remains a legitimately democratic one.

Conclusion

The dynamic relationship between security and democracy is deeply entrenched in the actions of the CoE, even though security, in contrast to democracy, is not one of the three pillars of this organization. Hidden for a long time and 'coming out' only in the 2015 report of the CoE Secretary-General, an understanding of security as democratic security seems to encompass the essence of the CoE's approach to security today. However, as has been demonstrated, democratic security has multiple meanings, ranging from a synonym for democratic peace theory to a 'thicker' concept according to which restrictions on core elements of democratic participation and public debate, that are embedded in the right to freedom of speech, are more dangerous for security than the threats that might emerge from some instances of extreme speech trying to undermine democratic values.

This paper has, using the example of the CoE and the case of extreme speech contrasted the 'democratic security' approach with the 'militant democracy' one. Militant democracy is an increasingly popular (e.g. Scotto, 2015) way to cope with potential threats to security, which, however, is at odds with the cornerstone of democratic security—proceeding towards security via fewer restrictions on individual rights and democratic participation. A detailed empirical analysis of the CoE's position broken down into three dimensions with the help of organizational analysis (political, judicial, civil) has not been presented here. However, the basic evidence gathered from the primary sources and scholarly analyses of the CoE's various institutions indicates that the CoE tries to see the link between security and democracy and integrates the pursuit for both. At the same time, it considers more restrictions on potential security threats caused by extreme speech as the appropriate mechanism to protect democracy.

References[273]

Arai, Y. (2014). Article 10: Freedom of Expression. In D. Harris, M. O'Boyle, E. Bates, & C. Buckley (Eds.), *Law of the European Convention on Human Rights* (3 edition, pp. 613–709). Oxford: OUP.

Ash, T. G. (2015, February 19). Defying the Assassin's Veto. *The New York Review of Books*. Retrieved from http://www.nybooks.com/articles/archives/2015/feb/19/defying-assassins-veto/

Barendt, E. (2005). *Freedom of speech*. New York: Oxford University Press.

Beco, G. de. (2012). Introduction: The role of European human rights monitoring mechanisms. In G. de Beco (Ed.), *Human Rights Monitoring Mechanisms of the Council of Europe* (pp. 1–16). Routledge.

Belavusau, U. (2013). *Freedom of speech: importing European and US constitutional models in transitional democracies*. London: Routledge.

Belavusau, U. (2014). Experts in Hate Speech Cases: Towards a Higher Standard of Proof in Strasbourg? In L. Gruszczynski & W. Werner (Eds.), *Deference in International Courts and Tribunals: Standard of Review and Margin of Appreciation* (pp. 254–271). Oxford: OUP.

Bond, M. (2012). *The Council of Europe: Structure, History and Issues in European Politics*. Routledge.

Brummer, K. (2012). Uniting Europe: The Council of Europe's Unfinished Mission. *European Review*, *20*(03), 403–418.

Brummer, K. (2014). The Council of Europe as an exporter of democracy, human rights and the rule of law. *International Politics*, *51*(1), 67–86.

Committee of Ministers. (1997). Recommendation No. R (97) 20 to Member States on "Hate Speech." Retrieved from http://www.coe.int/t/dghl/standardsetting/hrpolicy/other_committees/dh-lgbt_docs/CM_Rec%2897%2920_en.pdf

Committee of Ministers. (2004). Declaration on freedom of political debate in the media. Retrieved from https://wcd.coe.int/ViewDoc.jsp?id=118995&Site=CM

Committee of Ministers. (2011). Recommendation CM/Rec(2011)7 to member states on a new notion of media. Retrieved from

https://wcd.coe.int/ViewDoc.jsp?id=1835645&Site=CM&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383

Council of Europe. (2005). Convention on the Prevention of Terrorism (CETS No. 196). Retrieved from http://conventions.coe.int/Treaty/EN/Treaties/Html/196.htm

Council of Europe. (2015). No Hate Speech Movement. Retrieved from http://www.nohatespeechmovement.org/

Cram, I. (2009). *Terror and the War on Dissent: Freedom of Expression in the Age of Al-Qaeda*. Dordrecht: Springer.

ECRI. (2002). General Policy Recommendation No. 7 on National Legislation to Combat Racism and Racial Discrimination. Retrieved from

http://www.coe.int/t/dghl/monitoring/ecri/activities/gpr/en/recommendation_n7/ecri03-8%20recommendation%20nr%207.pdf

[273] All online sources cited as to 1 September 2015.

European Court of Human Rights. (2014). *Factsheet – Hate speech*. Strasbourg: European Court of Human Rights.

Fawn, R. (2013). *International organizations and internal conditionality: making norms matter*. Basingstoke: Palgrave Macmillan.

Galli, F. (2013). Freedom of thought or "thought-crimes"? Counter-terrorism and freedom of expression. In A. Masferrer & C. Walker (Eds.), *Counter-Terrorism, Human Rights and the Rule of Law: Crossing Legal Boundaries in Defence of the State* (pp. 106–127). Cheltham: Edward Elgar.

Greer, S. (2006). *The European Convention on Human Rights: Achievements, Problems and Prospects*. Cambridge University Press.

Heinze, E. (2014). Nineteen arguments for hate speech bans – and against them. Retrieved from http://freespeechdebate.com/en/discuss/nineteen-arguments-for-hate-speech-bans-and-against-them/

Herz, M., & Molnar, P. (Eds.). (2012). *The Content and Context of Hate Speech: Rethinking Regulation and Responses*. Cambridge; New York: Cambridge University Press.

Hollo, L. Y. (2012). The European Commission against Racism and Intolerance (ECRI). In G. de Beco (Ed.), *Human Rights Monitoring Mechanisms of the Council of Europe* (pp. 127–149). Routledge.

Jagland, T. (2015). *State of Democracy, Human Rights and the Rule of Law in Europe: A Shared Responsibility for Democratic Security in Europe*. Strasbourg: Council of Europe. Retrieved from https://wcd.coe.int/ViewDoc.jsp?Ref=SG%282015%291&Language=lanEnglish&Ver=original&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383

Johansen, R. C. (1991). Real Security Is Democratic Security. *Alternatives: Global, Local, Political*, *16*(2), 209–241.

Jordan, P. A. (2003). Does Membership Have Its Privileges?: Entrance into the Council of Europe and Compliance with Human Rights Norms. *Human Rights Quarterly*, *25*(3), 660–688.

Kazmi, Z. (2015). The United Kingdom's Extreme Anti-Extremism Policy. *Foreign Affairs*. Retrieved from https://www.foreignaffairs.com/articles/united-kingdom/2015-08-05/united-kingdoms-extreme-anti-extremism-policy

Kinzelbach, K., & Cole, E. (Eds.). (2006). *Democratising Security in Transition States*. Bratislava: DCAF / UNDP. Retrieved from http://www.dcaf.ch/Publications/Democratising-Security-in-Transition-States

Kiska, R., & Coleman, P. (2012). Freedom of speech and "hate speech" - unravelling the jurisprudence of the European Court of Human Rights. *International Journal for Religious Freedom*, *5*(1), 129–142.

Klebes, H. (1999). The Quest for Democratic Security: The Role of the Council of Europe and U.S. Foreign Policy. Retrieved from http://www.usip.org/publications/the-quest-democratic-security-the-role-the-council-europe-and-us-foreign-policy

Lazarus, L., & Goold, B. (2007). Introduction: Security and Human Rights: The Search for a Language of Reconciliation. In B. Goold & L. Lazarus (Eds.), *Security and Human Rights* (pp. 1–24). Oxford: Bloomsbury Publishing.

Madsen, M. R. (2007). From Cold War Instrument to Supreme European Court: The European Court of Human Rights at the Crossroads of International and National Law and Politics. *Law & Social Inquiry*, *32*(1), 137–159.

Masferrer, A. (2012). Introduction: Security, Criminal Justice and Human Rights in Countering Terrorism in the Post 9/11 Era. In A. Masferrer (Ed.), *Post 9/11 and the State of Permanent Legal Emergency: Security and Human Rights in Countering Terrorism* (pp. 1–11). Dordrecht: Springer.

McGonagle, T. (2012). A Survey and Critical Analysis of Council of Europe Strategies for Countering "Hate Speech." In M. Herz & P. Molnar (Eds.), *The Content and Context of Hate Speech: Rethinking Regulation and Responses* (pp. 456–498). Cambridge: Cambridge University Press.

Mill, J. S. (2009). *On liberty*. The Floating Press.

Moss, K. (2011). *Balancing Liberty and Security: Human Rights, Human Wrongs*. New York: Palgrave Macmillan.

Parekh, B. (2012). Is There a Case for Banning Hate Speech? In M. Herz & P. Molnar (Eds.), *The Content and Context of Hate Speech: Rethinking Regulation and Responses* (pp. 37–56). Cambridge: Cambridge University Press.

Parliamentary Assembly. (2007). Recommendation 1805. Blasphemy, religious insults and hate speech against persons on grounds of their religion. Retrieved from http://assembly.coe.int/Mainf.asp?link=/Documents/AdoptedText/ta07/EREC1805.htm

Pinto, D. (1996). The three pillars of democratic security. In Council of Europe (Ed.), *The Challenges of a Greater Europe: The Council of Europe and Democratic Security* (pp. 39–48). Strasbourg: Council of Europe.

Post, R. (2009). Hate Speech. In I. Hare & J. Weinstein (Eds.), *Extreme Speech and Democracy* (pp. 123–138). Oxford: Oxford University Press.

Russett, B., Layne, C., Spiro, D. E., & Doyle, M. W. (1995). The Democratic Peace. *International Security*, *19*(4), 164–184. http://doi.org/10.2307/2539124

Scotto, T. (2015, July 21). Extremism plan pushes the UK down a dangerously illiberal road. *NSNBC International*. Retrieved from http://nsnbc.me/2015/07/21/extremism-plan-pushes-the-uk-down-a-dangerously-illiberal-road/

Sottiaux, S. (2011). "Bad Tendencies" in the ECtHR's "Hate Speech" Jurisprudence. *European Constitutional Law Review (EuConst)*, *7*(01), 40–63.

Stavros, S. (2015, April 9). A Duty to Prosecute Hate Speech under the European Convention on Human Rights? Retrieved from http://ohrh.law.ox.ac.uk/a-duty-to-prosecute-hate-speech-under-the-european-convention-on-human-rights/

Steuer, M. (2015). The Council of Europe as Gentle Power: The Case of "Hate Speech" in the Czech Republic, Slovakia and Hungary. CEU.

Thiel, M. (2009). *The "Militant Democracy" Principle in Modern Democracies*. Farnham: Ashgate.

Tyulkina, S. (2015). *Militant Democracy: Undemocratic Political Parties and Beyond*. London: Routledge.

Waldron, J. (2014). *The Harm in Hate Speech*. Cambridge: Harvard University Press.

Walker, C. (2011). Militant Speech About Terrorism in a Smart Militant Democracy. *Mississippi Law Journal*, *80*(4), 1395–1453.

Weber, A. (2009). *Manual on Hate Speech*. Council of Europe.

Weinstein, J. (2009). Extreme Speech, Public Order, and Democracy: Lessons from The Masses. In I. Hare & J. Weinstein (Eds.), *Extreme Speech and Democracy* (pp. 23–61). Oxford: Oxford University Press.

De Facto Sovereignty and Population Displacement as Tools of Conflict

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Abstract

Two largely debated questions in the realm of international relations are the roles of post-Cold War Russia and China within the current global context. However, the debates in the literature fails to take into account the fact that both superpowers employ the same tactic: the asymmetrical conquest of new territory as promoted by historical claims, retroactively justified through population displacement. Subsequently, debates on the topic mistakenly focus on elite motivations rather than what can be controlled: the responses of the international community to the abovementioned tactics. I will document why mainly Russia but also China have opted to use the tactic of territorial conquest and demonstrate how the international community has tacitly promoted the use of this tactic. I will ultimately argue that there is a need to create international standards for sovereignty and that a move from inactive conflict avoidance to active conflict resolution is necessary.

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Introduction: A Recurrence of the Cold War?

George Santayana, a Spanish philosopher of the modern era, quite efficiently captured a truth of our world, "Those who cannot remember the past are condemned to repeat it." Therefore, as the field of international relations considers the emerging threats to global security and order, it must also consider threats from recent history and attempt to prevent their recurrence. In contemporary history, the state of *Cold War* between the Western Block – spearheaded by the USA – and the Eastern Block – spearheaded in turn by Union of Soviet Socialist Republics (USSR) – which lasted from 1947 until 1991, was clearly the time when threats to security were most sharply felt throughout the world. In fact, the possibility of nuclear annihilation appeared more probable than not, and theories abound on *mutually assured destruction* (M.A.D.) and how it would hopefully serve as a deterrent for all rational elites from directly and militarily engaging in and 'heating up' the war.

Nevertheless, Cold War kids grew up feeling 'the Red Terror' or the 'Imperialist Pigs' breathing down their necks and that nuclear bombs were about to rain down from the sky, are still scarred with the traumas of this period. Even cities bear witness to the extent of the perceived threats of the Cold War, and many major cities around to world still host nuclear bomb shelters. Considering the facts that many proxy wars were waged during this period thus claiming many lives, and that arms and nuclear proliferation naturally occurred, one can confidently conclude that avoiding a resurgence of Cold War rivalries and conflicts is one of the prime directives of our generation of scholars and practitioners.

As the Cold War ended in 1991 with the USSR's collapse, many scholars– such as Francis Fukuyama – thought that an era of perpetual peace might descend, while many others – such as Samuel Huntington – thought that, at the very least, ideological wars were over and, while conflicts would still occur, they would be along other modes of difference. In this atmosphere, the relations between the former Eastern and Western blocs improved, while the world moved towards a unipolar rather than a bipolar arrangement of powers, where the USA ruled supreme.

Nevertheless, China's meteoric rise vis-à-vis its economic prowess and its rapidly increasing population pushed it to the status of a Great Power. China projected this power by seeking to expand its territory, incorporating Tibet and actively engaging in disputes over islands and territories in the South China Sea. Indeed, these disputes have put China at odds with South Korea, Japan, and Vietnam, among others[274]. In the meantime, Russia felt ignored and trampled by the West and decided that it was time for Russia to re-assert – at the very least – its regional power and thus 'helped liberate' former USSR protectorates such as Abkhazia and South Ossetia (from Georgia), Nagorno-Karabakh (from Azerbaijan), Transnistira (from Moldova), and lastly Crimea (from Ukraine)[275]. Especially in regards to its actions in partitioning Crimea from Ukraine, Russia risked re-igniting the long-smoldering flames of the Cold War era, pitting itself directly against the former Western-Bloc and the European Union (EU). If this was not enough, both Russia and China have at least abetted and have at most directly carried out ethnic cleansing; i.e. population

[274] See http://www.foxnews.com/world/2015/07/21/chinese-not-backing-down-over-south-china-sea-dispute/ [retrieved 08/31/2015].

[275] See http://www.nytimes.com/2004/03/14/world/cia-says-russia-could-try-to-reassert-itself-after-a-putin-victory.html [retrieved 08/31/2015].

displacement, and population replacement, in order to further justify their actions and bring their newly acquired territories under their own jurisdiction and authority.

Both the actions of China and Russia constitute security threats at regional and global levels, especially as they could lead to open warfare with economic and socio-political repercussions, including loss of life and creation of refugees and IDPs, that would be both undesirable and unimaginable. Therefore, we must necessarily wonder how we can prevent further similar actions from both China and Russia as well as any other international actors, while also attempting to de-escalate this situation. For the purposes of understanding and intervening into the phenomenon of Sino-Russian forceful land acquisition and said territories' de facto incorporation through conquest and ethnic cleansing, many have sought to understand the motivations underlying said actions, as I will demonstrate in the following literature review. However, I have decided to deviate from this route and problematize the international context within which forceful land acquisition and population displacement can be executed without repercussions. Through my study, I will argue that the international community has been unable to assert a universally acceptable definition of sovereignty, which undermines the practice of this concept. Moreover, the international community has also failed to come up with a constructive strategy for addressing *de facto states* or *forceful acquisition of land*, instead following a *freezing and forgetting strategy,* which is ineffective at its best and destructive at its worst. Therefore, after underlining the shortcomings of this strategy and its role in the current Sino-Russian trends towards aggression, I will conclude this paper by discussing potential alternatives.

Literature Review: Understanding Elite Motivations?

For the purposes of this paper, I have reviewed works which have focused on analyzing the respective roles of Russia and China in the post-Cold War world. For reasons outlined in the introduction section of this paper, it should come as no surprise that the role and actions of both of these parties are of great concern to scholars and practitioners alike. Will the ex-foes of the Western Bloc re-emerge, threatening war and causing instability, especially with the Eurozone now much weaker and with the USA having burn out from wars in the Middle East? Or can these two rising powers be integrated with the West in an amiable, constructive fashion, thus ushering international cooperation? As the needles have staggeringly turned to point towards the former possibility being realized, many have attempted to understand the Russian and Chinese elites' rationale, while others have attempted to explain the behavior of Russia and China through historical and international contexts. While this paper will dispute such approaches and subsequently claim that they are unsuitable for the purposes of conflict prevention, management, and resolution, I believe that understanding the current lines of thinking will be essential to situate my arguments within the field.

Russia and China have risked war with the former Western Bloc and their allies, as well as tarnishing their reputation around the world especially vis-à-vis human rights, in order to accomplish their respective land gains. Indeed, Russia angered the West when it engaged in wars with Georgia – which has been getting close with the NATO for a long time – and then with Ukraine – which was being scouted by the EU. In the meantime, China – which forcefully incorporated Tibet into the People's Republic in the mid-20th century – utilized similar tactics in order to *de facto* end several maritime debates over the ownership of islands as well as the 'borders'

of its maritime sovereignty. In fact, China has gone as far as constructing artificial islands to solidify its maritime claims. Ever since 2009 where UNCLOS (United Nations Convention on the Law of the Sea) forced nations to claim ownership of maritime zones in order to extract hydrocarbons from the South China Sea, China engaged actively in conflicts with Vietnam, Philippines, and Malaysia, while also threatening war with Japan and South Korea. This not only strained Chinese relations with neighbors and the USA, but also damaged China's reputation – which has been especially hurtful as China attempts to rise as a Global Power[276].

Given that land gains are small and the risks as well as the damage consequently suffered are quite considerable, one necessarily must wonder why Russia and China have taken a more aggressively assertive approach in their international relations and foreign policy of late. This is especially true as the risks of war and lack of access to energy resources pose significant security threats to not only Russia and China's respective regions but also for the globe as a whole.

Russia and China have received a lot of backlash due to their actions: the former was hit with a multitude of sanctions from the West due to its actions in partitioning Crimea from Ukraine, whereas the latter caused threat perception in the staunch US ally, Japan, to rise and thus USA has become more engaged in this region, undermining Chinese interests. Many complicated answers have been sought, complicated due to the fact that these answers simply speculate on the value of unknowable quantities. Indeed, these attempts at explaining Russian and Chinese behavior – perceived to be irrational given their costs as compared to their gains – alternatively harken to the two parties' glorified histories and attempts at re-capturing them; identify a need to alleviate domestic pressures and scrutiny due to a decline in the economy; identify a surge in nationalism to allow for autocratic leadership; or point at ethnic kinships. Yet many others assume a lack of trust and persistent enmity between the West and these two Great Powers as based in history; indeed, Russia and China had stood together as staunch allies against the Western Bloc for many years. This theory of Great Power Games sometimes also includes modern tensions over Kosovo, Libya, and Iran, as well as Sudan[277]. Within this tradition, Russian and Chinese actions serve to perpetrate proxy wars in order to undermine other powers in their respective regions and, in turn, gain influence themselves.

While all of the factors identified above are important and probably contribute, one way or another, to the current conflicts perpetrated by the Sino-Russian allies of old, it is indeed hard to determine the policymaking elites' underlying motivations. Russian elites have claimed ethnic kinship with and a 'responsibility to protect' the ethnic Russians of Georgia and Ukraine. The Chinese have harkened to old historical claims, producing ancient texts and maps in order to demonstrate their claims to the maritime zones in South China Sea to be justified. However, the West does not seem to recognize these claims as valid and in fact approaches them with bags rather than pinches of salt. Nevertheless, sometimes, parsimony rules and the most direct, concise, and clear answer is the best answer.

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[276] See http://www.theguardian.com/commentisfree/2015/aug/29/china-may-fear-reputation-damage-more-than-military-threats-over-south-china-sea .

[277] See http://foreignpolicyblogs.com/2015/07/09/russia-west-tensions-play-out-over-srebrenica/ [retrieved 08/31/2015] and http://www.cfr.org/councilofcouncils/global_memos/p36607 [retrieved 08/31/2015], as well as http://venturesafrica.com/china-catches-the-wests-sickness-in-south-sudan/ [retrieved 08/31/2015].

Occam's Razor: Action as a Result of Capability and Lack of Standards

In the preceding section, this paper underlined the fact that the foreign policy, international relations, and security studies literature available have all approached the question of understanding the Russian and Chinese actions since the latter part of the 2000s in an unintuitive fashion. Indeed, attempting to understand elite motivations can only be based on dubious assumptions or the suspect words of the said elites. In addition, claims that historical rivalries or attempts to capture past greatness must necessarily influence elite behavior would also prove hard to verify. Subsequently, this paper – following in the footsteps of Coleman and Lederach – attempts to provide a parsimonious explanation that can account for the baffling and aggressively assertive behaviors of Russia and China.

So, the question is: what is the simplest answer to the question of why Russia and China have sought to assert their territorial claims through the forceful acquisition of lands despite the associated risks? Because they can and that they can afford to; in addition, the international community is 'weaponless' in the face of this type of tactic. There are three parts of reasoning for this claim, which I will elaborate on.

Firstly, both Russia and China have targeted much weaker adversaries against whom they could justify their actions – be it ethnically in the case of the former or historically in the case of the latter. Therefore, the military might of either Russia or China alone was enough to dwarf the power of their chosen adversaries. Not only this, but the general positions of Russia and China vis-à-vis the global balance of power were also much greater than their opponents', therefore it was and remains unlikely that – in most of these cases – the international community will choose to actively side against them. Here, Crimea has served as an exception due to its proximity with the EU. However, neither when Russia helped partition Abkhazia and South Ossetia from Georgia, nor when China decided to aggressively assert its hold over the South China Sea despite claims by Vietnam, Philippines, and Malaysia – among others – did the international community act against these two powers. In fact, at the most, the international community issued condemnations through the United Nations – which, as research has proven time and again, is quite an ineffective counter-measure. Nevertheless, as power discrepancies are natural and will therefore persist within the international system for the foreseeable future, there is not much the international community can do to prevent the gains made by the Great Powers at the expense of weaker countries. Therefore, we need to understand the other enablers of Russian and Chinese actions in order to prevent their recurrence.

Secondly, the international community facilitates the forceful acquisition of lands as it does not have either an appropriate response or an effective deterrence mechanism to prevent the utilization of this tactic. At best, the international community imposes sanctions on the 'perpetrators', which only works on those countries that can be alienated and cannot afford isolation from the international community. However, when it comes to both Russia and China, they can weather the storm due to the availability of natural resources and their general economic might. Furthermore, not all countries can afford to cut their relations with either Russia or China, which assures their global economic activity will still continue even if at a comparatively reduced level. For example, both Russia and China have depended on each other in order to break away from

the international isolation that they have perceived and distance themselves from the image of 'isolated castles' with which they have been branded.

In addition, while sanctions aim to cause internal strife between the citizens and the governments of the targeted countries, this seems to backfire more often than not. Indeed, as long as the targeted governments have acceptable excuses for their actions which begot the sanctions in the first place, they seem to succeed in framing the international community as unjust aggressors. Therefore, not only do the citizens feel persecuted by the international community – and, in fact, the perception of USA has hit an all-time low in Russia, even lower than during the Cold War[278] – but they also support their own government against the external aggressors regardless of whether the said government is democratic or authoritarian. Subsequently, the Russian and Chinese approval ratings rise after their aggressive and assertive actions, leading them to be capable of repeatedly using similar tactics. Clearly, then, sanctions do not provide for a viable method in dealing with land acquisitions through conquests. On this note, it appears that preventing the justification of such land acquisitions within the international realm through standardized laws might be the best tactic.

The third factor – and possibly the most important one – here is: how valid are forceful land acquisitions as conducted through conquest/military might? According to the Stimson Doctrine[279], which is a large part of modern international law, the international community calls for the non-recognition of governments established through the use of force. This doctrine was adopted as the Montevideo Convention's Article 11, which is the most widely accepted document for establishing sovereignty. However, herein lies the problem within the international system: Even legal scholars have yet to come to a consensus on when and why states should be recognized and how and why can an entity be sovereign over certain territories and under what conditions this sovereignty can be breached[280]. Moreover, these laws appear to be interpreted to suit the politics of the international community[281]. This politicization of law then allows for subjective judgements, which then allow for the calls of foul play – a deadly mixture.

Indeed, the non-Western Bloc countries have always perceived a biased implementation of the rules regarding sovereignty and the international acceptance or rejection of de facto forceful land acquisitions. For example, the international community has adopted *the Responsibility to Protect* (R2P) as a guideline for when interveners can eschew the sovereignty of a State for the purposes of conducting an intervention[282]. Since its adoption, R2P has been invoked twice – once in Kosovo and once again in Libya. In both cases, it was the former Western Bloc countries which spearheaded the interventions and, in the former case, the intervention involved the bombing of Belgrade, which appeared to many to be a case of using excessive force. Moreover, much like with the Russian interventions into Abkhazia and South Osetia, the Kosovan intervention led to the *de*

[278] See Gozman, L. (n.d.). Why Russians Liked Americans Better During the Cold War; http://www.politico.com/magazine/story/2015/04/russians-cold-war-116736 [retrieved 08/30/2015].
[279] This doctrine, much like the prevalent distinction between sovereign and puppet states, was widely adopted as a response to the Japanese invasion of Manchuria in China and their subsequent building of a dependent, 'marionette' state in this territory in 1931.
[280] See Grant's *The Recognition of States*.
[281] See Caspersen, 2011. See also Mulaj, p. 54. Lastly, see Closson 2011 (with emphasis).
[282] According to R2P, this is allowed when the State is the perpetrator of or otherwise complicit to human rights abuses, war crimes, and crimes against humanity – such as ethnic cleansing, genocide, etc.

facto partition of Kosovo from the former Serbia-Montenegro and current Serbia, which claimed the territories of Kosovo. In fact, many Serbs still feel that Kosovo is an integral part of and therefore should belong to Serbia. Despite such feelings, the international community has allowed for the independence of Kosovo. However, the claims of R2P were not validated for the Russian interventions in Abkhazia and South Osetia, whose sovereignty and independence has since been in dispute. Of course, these cases were not necessarily evaluated on a political basis; however, in the absence of internationally-accepted standards regarding forceful land acquisitions and *de facto* statehood, claiming discrimination is radically facilitated.

This takes us to the fourth point: Russia and China can get away with their actions as there are no internationally-accepted or internationally-executed standards for sovereignty. This is quite natural, for the phenomenon of what we will call *De Facto States*, *Unrecognized States*, *Quasi States*, or *Puppet States* or otherwise *Conquered Territories* is a recent one. Indeed, there is general agreement that these entities are a by-product of the evolving international system and the consequent conceptualization of sovereignty as an inviolable right of any State and as being affixed in territorial integrity.

Conquests in the Modern Era: A Recipe for Disasters

Contrarily, one of the main principles of modern international law is that of self-determination of minorities, which was revitalized at the end of World War I in response to the growing power of nationalism and the necessary downfall of empires. The principle of self-determination, which states that nations can rightfully pursue autonomy in the international realm yet fails to define what is to constitute a nation or what form autonomy should take, was adopted into the UN Charter in the 1940s and subsequently drove minorities to wage wars of independence in a world that disallowed territorial breakaways from States except in very exceptional circumstances. Subsequently, many of these movements for independence that survived military campaigns by States to quash them claimed the latter's territories and formed their own governments, only to be 'disowned' by the international community. Thus, these *contested states* continued to exist in a limbo sometimes for decades, until they were (more commonly) forcefully or (less commonly) peacefully reintegrated into their parent states[283], or until they won their independence. In fact, most of these contested states continue to exist around the world today, and experts expect that there might be many more of these entities in the making[284]. Likewise, *contested territories* which have been folded into the control of an existing state also can exist perpetually without a military defeat of the conquering state by another. There are two reasons for Russia and China's capability of forceful land acquisition: ambiguities regarding *de facto* entities, as well as the ineffectiveness of the *freezing and forgetting* approach aimed at dealing with them, the latter of which I will elaborate on shortly.

De Facto Statehood and the *Freezing and Forgetting* Tactic

According to Pegg, these *de facto* entities fulfill most or all of the criteria as set forth by the *Montevideo Convention on the Rights and Duties of States*; a treaty signed on December 26th, 1933. Subsequently, when territories are obtained in a de facto fashion, their existence can be perpetuated qua *de jure*

[283] A parent state is a reference to the state on whose territories a contested state is established and with whom the aspiring state contests its sovereignty.
[284] According to Ker Lindsay (2012), there are potentially 38 contested states lying dormant in Europe alone. He claims that, based on how the international community deals with existent cases, none or all could make attempts at independence. These might potentially include novel entities in Scotland and the Basque region of Spain.

acceptance. According to this treaty's first article, diplomatic recognition of statehood within the context of customary international law requires: a) a permanent population; b) a defined territory; c) a functioning government[285]; and ultimately d) the capacity to enter into relations with other States. This definition serves the *declaratory theory of statehood*, which claims that a state can exist in absentia of recognition from other states; that is, a state exists as long as it fulfills the above-mentioned criteria and has declared independence[286]. Likewise, territories 'liberated' in a *de facto* fashion can be ruled over by their liberator, such as in the case of China. On the basis of and through the use of the Montevideo criteria for and conceptualizations of statehood, Pegg demonstrates that the unrecognized entities in the international realm [such as Somaliland, Eritrea (pre-independence), North Cyprus, and Tamil Eelam (pre-destruction)] fit the criteria for statehood and thus must be dealt with accordingly. Therefore, according to Pegg, the unrecognized entities of the international realm should be defined as states without recognition that have been built in a recognized state's territories through the use of violent methods[287] and through unilateral measures. Given this, it becomes easy to see how partitioned states can survive and establish a legitimate existence as the requirements appear minimal. Subsequently, Russia and China have both been able to establish legitimacy for these new territories which function. Duly, the Montevideo Convention and subsequently Pegg's definition of *De Facto Statehood,* which is based on the former, are problematic.

First and foremost, the Montevideo Convention has come under criticism from many sovereign states, as they regard the criteria for statehood as set forth in the convention to be insufficient and too loose. The reason for this perception is that many unrecognized entities in the world, such as Taiwan (Republic of China) – and, as Pegg demonstrated, Somaliland, Eritrea, North Cyprus, and Tamil Eelam, – could claim statehood under the Convention. Given this, it is not surprising that Pegg assumes constancy as to the fulfillment of the Montevideo Convention and thus the attainment of statehood by unrecognized entities. However, even Pegg acknowledges that some unrecognized entities' territories change over time (e.g. unrecognized Eritrea and Somaliland, whose control of territory varies greatly; Tamil Eelam gained and lost much territory as well before it was ultimately destroyed by the Sri Lankan government forces) despite his argument of statehood. In fact, the support for the governments of unrecognized entities also wavers, as observed in Abkhazia in 2014, the TRNC in 2002-2004 and again in 2015, and in South Sudan – another fact missed in the assertion of *de facto statehood*. Ultimately, then, the Montevideo Convention-based definition of unrecognized entities as *De Facto States* asserts statehood in a loose yet static manner that fails to capture the dynamic nature of unrecognized entities.

Secondly, due to Pegg's dependence on the Montevideo Convention for his proposed definition, he also necessarily buys into the *declaratory theory of recognition*, which was described above. In fact, this interpretation of diplomatic recognition (i.e. the declaratory theory) was the one used in the case of Kosovo. However, using this definition ignores the fact that *constitutive theory*, which calls

[285] Although which type of government is necessary (e.g. authoritarian or democratic; republic or kingdom) or the criteria and/or methods regarding how the international community is to decide which governments are functioning and which are not, are not well-defined.
[286] This was set out in Article 3 of the Montevideo Convention.
[287] Pegg rightfully makes a distinction between peaceful secession (e.g. through the use of renerandi) as compared to armed secession.

for the recognition of an entity as a state by other peer States of the international community if it is to be treated as such in the eyes of international law, suggests another criteria (i.e. level of recognition) which goes ignored within Pegg's definition.

Clearly, there are no undisputed international standards for the establishment and absorption of independent territories, which allows for the creation of favorable *de facto* situations as a tool for the powerful nations to pursue their interests in any conflict. In fact, Indonesia utilized this lack of clarity in subsuming the territory which now belongs to East Timor. Given Indonesia's alliance with the global powerhouse USA and the regional powerhouse Australia, in addition to its relative power in the international realm, they got away with doing so for decades. The change in this relationship only came when Indonesia broke ties with its powerful allies, thus displacing their favor towards East Timor's independence[288]. Moreover, as sovereignty is assigned through certain criteria with objective definitions yet subjective fulfillers, any state can claim that another has lost the right to sovereignty over given territories due to a perceived lack of capacity to protect their citizens' lives or provide for their basic human rights. In fact, Russia claimed that the Ukrainian Government was threatening the lives and rights of ethnic Russians in the Crimean Region, thus losing its right to be sovereign over Crimea and prompting Russia to invoke R2P to firstly partition and then absorb this territory. Given this, it should come as no wonder that Russia and China are capable of employing this tactic.

Last but not least, the ineffectiveness of *freezing and forgetting* as an international policy for dealing with de facto acquisitions should be problematized. In the case of China, this tactic turns into 'feigning ignorance' as the Chinese actions have yet to lead to full-blown warfare and thus have yet to require freezing. In this tactic, the international community helps mediate a ceasefire and enforces it through peacekeeping or close monitoring of the conflicting parties. Through this, the *manifest violent conflict process* is dealt with; however, the structural, communal, psychological, cultural, etc. issues which led to the conflict in the first place are left to fester. Nevertheless, as the most harmful phase of the conflict has been frozen by this time, the international community forgets such conflicts until such time as either the conflicting parties resume with large-scale violence or the *de facto* territories are reintegrated to its parent willingly – or, for that matter, unwillingly. *Freezing and forgetting* is sustained through *peacekeeping* due to a lack of violence, which removes the immediacy for addressing these conflicts.

Moreover, due to the level of isolation-driven dependency[289] UBSs have on their sponsors (more on this shortly), the strength of the de facto territories' governments, which tend to outsource their administrative duties (and hence their autonomy and independence) to the more powerful sponsor state[290] and gain financial support in return, become quite strong to the point that their survival is guaranteed – all the while reducing their levels of democracy, as they do not depend on their citizens' support for maintaining their power[291]. Additionally, the fact that the sponsor state's support can virtually guarantee their continued existence causes UBSs to lose interest in international acceptance, which demotivates them from accomplishing democratizing reforms;

[288] See Cotton's *Against the Grain*, Martin's *Self-Determination in East Timor*, and Bacharuddin's *The Right for Self-Determination.*
[289] Closson, pp. 67-68; Mulaj, p.47.
[290] Harvey and Stansfield, p. 19.
[291] Ibid., p. 23.

this effect is further exacerbated as the elites of said territories surely realize that their citizens have no real alternatives[292]. Clearly, the international response to the creation of *de facto states* directly plays into the hands of the aggressor states, allowing for their hold in the newly acquired territories to solidify.

Of course, this process of solidifying 'sponsor state' authority on de facto states is aided by the actions of the aggressor states. Given that the international community willingly isolates the domestic happenings in these de facto states and thus also isolating them from international law, the sponsor states are unchained to use any means necessary to rule over these territories. For this purpose, there is only one effective tactic: ethnic cleansing. Indeed, through ethnic cleansing, a state can make sure that only the populations that identify with them, and would therefore be loyal, remain in a given land. This has occurred with impunity in the Falklands, North Cyprus and Nagorno-Karabakh, and Russia was well-aware of this fact. Therefore, Russia also utilized the same tactic in Abkhazia, South Ossetia, and Crimea[293]. China, in the meantime, has utilized a more novel and comparatively less controversial tactic for the same purposes. They created new territories from scratch (by building artificial islands) in the South China Sea and they 'replaced' the populations in the disputed maritime territories. Therefore, while they were not granted a *de juro* rule in this maritime zone, they were able to take *de facto* control – much like with Russia. Indeed, these actions constitute extra-legal conduct, especially as civilians hold rights to their property and therefore a right to be present in their now-occupied countries. Nevertheless, as they also have a right to refuse to pledge allegiance to the occupying powers, the occupying powers have an incentive to capitalize on the lack of scrutiny from and protection of such citizens' rights by the international community to change the *de facto* situation in their favor. Clearly, there is a link between *freezing and forgetting* and population displacement/replacement.

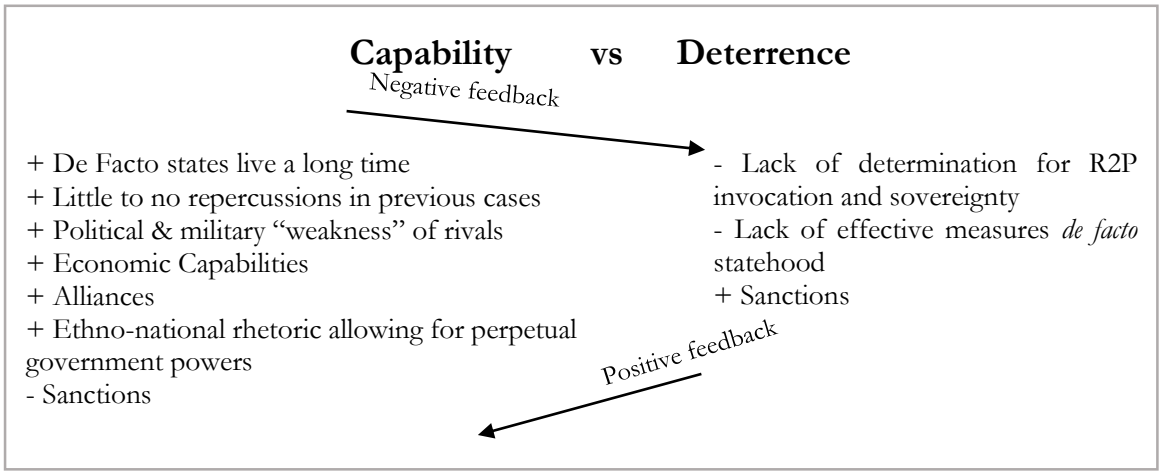
A Model for Understanding Russian Behavior:

In the previous sections, I have underlined the fact that rather than guessing at underlying motivations of the elites, it is more appropriate to simulate the cost-benefit analysis of an actor in determining their choice of tactics. In the case of Russian behavior in the Caucasus and Eastern Europe, we should therefore conduct a potential cost-benefit analysis for choosing an aggressively assertive approach. This analysis should be based on precedent and the perceived capabilities of Russia. One such simulation is provided below:

[292] Caspersen, pp. 86-87.

[293] Crimea is included in this context due to the initial tactics utilized in its partition from Ukraine, regardless of its annexation into Russia which differentiates it from the other cases.

Figure 1: Model simulation (Source: Author.)



In the above model for determining Russian preferences for utilizing an aggressive tactic, the + on each side 'adds up' to its own side and the – factors subtract from the side they are on or otherwise 'add up' to the opposing side. Clearly, the model demonstrates that Russia almost cannot help but utilize territorial aggression in order to resolve territorial disputes. Given this model, we can easily claim that any nation which is militarily strong, has established powerful alliances, and possesses a strong economy will be tempted to utilize this tactic unless more effective deterrents are erected. Therefore, China can more than easily follow in Russia's footsteps – which is disconcerting from an international security viewpoint.

Conclusions and Policy Suggestions:

In this paper, I have sought to diverge from the mainstream literature by not focusing on deciphering the unknowable motivations lying behind the assertive aggression displayed by Russia and China of late. Instead, I have chosen to focus on the enablers of and deterrents against the said acts. Through this study, I have demonstrated that there are many shortcomings in the international community's approach to cases of forceful land acquisition and the establishment of *de facto* sovereignty. In fact, my study identified and argued for there being two main problems in need of resolution vis-à-vis Russia and China (as well as for the rest who might take these two parties' actions to constitute precedent): a) a lack of clarity regarding who is qualified to hold sovereignty and under what conditions sovereignty can be considered forfeit; and b) a lack of constructively effective strategies of intervention in cases of forceful land acquisition. Dealing with both of these deficiencies in the international system, which facilitate and even promote land grabs through conquest, must be dealt with in order to prevent future occurrences of warfare for the purposes of establishing a favorable, *de facto* situation vis-à-vis their territorial interests.

For the purposes of dealing with the ambiguities regarding sovereignty, it appears that a UN Convention, at the least, is a necessity. In addition, this conversation must necessarily involve some non-state entities such as *De Facto States* which have a stake in this decision on how to award or take away sovereignty from entities. This is especially true as many existing legitimate states would not qualify as sovereigns under the current conceptualizations, and likewise many non-state entities would qualify as such. Moreover, which specific procedures can help an entity 'earn' or validate its

sovereignty and under which specific conditions the international community can intervene into the domestic affairs of existing, de juro States must necessarily be ascertained. Subsequently, actors seeking to pursue their interests will be unable to justify their actions through subjective interpretations of ambiguously-defined conditions, such as 'threats to minorities' human rights'.

Lastly, the *freezing and forgetting* policy must be re-examined and possibly replaced in its entirety. The isolationist tendencies of this policy, which distance de facto governed territories from the international community and pushes them straight into a relationship of dependence with their sponsor states, must clearly be re-examined. This holds especially true as the policy allows for ethnic cleansing and other forced changes of demographics, which have negative future implications with regards to territorial independence, democracy, and property rights. What is at stake here is the wider use of this tactic with impunity, which is especially disconcerting as the conflicts in South China Sea are heating up and might lead to open warfare, which would be sure to change the borders in this region. Moreover, any state with enough power to weather sanctions is encouraged – under the current international system – to pursue its territorial interests through force and against weaker targets. In addition, the use of sanctions does not appear to work against actors that are already powerful vis-a-vis their economics, so this also appears to be an exercise in futility. An approach where these conflicts are not pursued militarily but legally and economically where the de facto territories are given more options and therefore partitioning other countries becomes less viable an option for the perpetrators of such aggression might be considered. All in all, I believe that the international community can and should take measures to deal with the security threat as posed by the use of de facto states and forced demographic changes.

References

Negotiations

Amir, Y. (1994). The Contact Hypothesis in Intergroup Relations. In W. J. Lonner & R. S. Malpass, *Psychology and Culture*. Pearson.

Constructive Conflicts: From Escalation to Resolution. (2011) (Fourth Edition edition). Lanham, Md: Rowman & Littlefield Publishers.

Essentials of Negotiation. (2003) (3rd International student edition edition). Boston: McGraw Hill Higher Education.

Kriesberg, P. L. (1992). *International Conflict Resolution: The U.S.-USSR and Middle East Cases* (1St Edition edition). New Haven: Yale University Press.

Laue, J. H. (2014). Getting to the Table: Creating the Forum for Negotiations in Deep-Rooted Conflicts. *Sociological Practice*, *10*(1), 13.

Pruitt, D. G. (2009). Escalation and de-escalation in asymmetric conflict †. *Dynamics of Asymmetric Conflict*, *2*(1), 23–31. http://doi.org/10.1080/17467580903214501

Russia and China

Armed Clash in the South China Sea. (n.d.). Retrieved August 29, 2015, from http://www.cfr.org/world/armed-clash-south-china-sea/p27883

China and the New International Order. (2008) (1 edition). London; New York: Routledge.

China in the International Economic Order: New Directions and Changing Paradigms. (2015). New York: Cambridge University Press.

China may fear reputation damage more than military threats over South China Sea. (2015, August 28). *The Guardian*. Retrieved from http://www.theguardian.com/commentisfree/2015/aug/29/china-may-fear-reputation-damage-more-than-military-threats-over-south-china-sea

Cimbala, S. J. (2014). The Asian Attraction: Pivotal Priorities and Nuclear Dangers in U.S. Security Policy. *Comparative Strategy*, *33*(2), 177–188. http://doi.org/10.1080/01495933.2014.897140

Crisis in the Caucasus: Russia, Georgia and the West. (2009). London; New York: Routledge.

Dr. Walid Abdulrahim. (n.d.). State Territory and Territorial Sovereignty. Retrieved August 31, 2015, from https://sites.google.com/site/walidabdulrahim/home/my-studies-in-english/6-state-territory-and-territorial-sovereignty#_ftn32

Gozman, L. (n.d.). Why Russians Liked Americans Better During the Cold War. Retrieved August 29, 2015, from http://www.politico.com/magazine/story/2015/04/russians-cold-war-116736

International Committee of the Red Cross. (2002). *Belligerent Occupation*. Geneva, Switzerland.

Laqueur, W. (2015). *Putinism: Russia and Its Future with the West* (First Edition edition). New York: Thomas Dunne Books.

Light, M. (2010). The Russo-Georgian War of 2008: A Conflict Announced in Advance? *Europe-Asia Studies*, *62*(9), 1579–1582. http://doi.org/10.1080/09668136.2010.515799

McDougal, M. S. (1984). Law and Minimum World Public Order: Armed Conflict in Larger Context. *UCLA Pac. Basin LJ*, *3*, 21.

McDougal, M. S., & Feliciano, F. P. (1958). International Coercion and World Public Order: The General Principles of the Law of War. *Yale Law Journal*, 771–845.

Morris, J. (2013). Libya and Syria: R2P and the spectre of the swinging pendulum. *International Affairs*, *89*(5), 1265–1283.

Qc, M. N. S. M. N. S. (2012). *The International Law of Territory*. Oxford: Oxford Univ Pr.

Russian Foreign Policy: Interests, Vectors, and Sectors. (2013). Los Angeles: Cq Pr.

Sarotte, M. E. (2009). *1989: the struggle to create post-Cold War Europe*. Princeton, N.J: Princeton University Press.

Schneider, M. (2014). Minimum Deterrence and Russian and Chinese Threat Developments. *Comparative Strategy*, *33*(3), 193–204. http://doi.org/10.1080/01495933.2014.926715

Sussex, M. (Ed.). (2012). *Conflict in the Former USSR* (1 edition). Cambridge England ; New York: Cambridge University Press.

Turner, S. (2011). China and Russia After the Russian-Georgian War. *Comparative Strategy*, *30*(1), 50–59. http://doi.org/10.1080/01495933.2011.545687

Timor Leste

Bacharuddin, W. A. M. (2014). The Right for Self-Determination of East Timorese from Liberalist Perspective (thesis), Indonesia Universitas Jogyakarta.

Cotton, J (2007). Against the Grain: The East Timor Intervention. *Survival: Global Politics and Strategy* (n.), 127-142.

Martin, I. (2011). *Self-Determination in East Timor*. Boulder, CO: Lynne Rienner.

Other

Bakke, K. M., "After the war ends: violence and viability of post-Soviet unrecognized states" in *Unrecognized States in the International System*, edited by N. Caspersen and G. Stansfield, 2011, NY: Routledge Press, pp. 89-109.

Caspersen, N., 2011. "States without sovereignty: imitating democratic statehood" in *Unrecognized States in the International System*, edited by N. Caspersen and G. Stansfield, NY: Routledge Press, pp. 73-89.

_____, and G. Stansfield, 2011. "Introduction: unrecognized states in the international system" in *Unrecognized States in the International System*, edited by N. Caspersen and G. Stansfield, NY: Routledge Press, pp. 1-8.

_____, *and* _____ *(eds.),* 2011. *Unrecognized States in the International System. NY: Routledge Press.*

Chorev, M, 2011. "Complex trrains: unrecognized states and globalization" in *Unrecognized States in the International System*, edited by N. Caspersen and G. Stansfield. NY: Routledge Press, pp. 27-40.

Closson, S, 2011. "What do unrecognized states tell us about sovereignty?" in *Unrecognized States in the International System,* edited by N. Caspersen and G. Stansfield. NY: Routledge Press, pp. 58-69.

Coleman, P. T. (2011). *The Five Percent: Finding solutions to seemingly impossible conflicts*. NY: Public Affairs Publishers.

Grant, T. D., 1999. *The Recognition of States: Law and Practice in Debate and Evolution*, Westport: Praeger.

Harvey, J. and G. Stansfield, 2011. "Theorizing unrecognized states: sovereignty, secessionism, and political economy" in *Unrecognized States in the International System,* edited by N. Caspersen and G. Stansfield, NY: Routledge Press, pp. 11-26.

King, C., 2001. The Benefits of Ethnic War: Understanding Eurasia's Unrecognized States. *World Politics* 53: July 2001, pp. 524-552.

Kolsto, P. and H. Blakkisrud, 2011. "'Separatism is the mother of terrorism': internationalizing the security discourse on unrecognized states" in *Unrecognized States in the International System*, edited by N. Caspersen and G. Stansfield. NY: Routledge Press, pp. 110-127.

Pegg, S., 1999. *International Society and the De Facto State*. UK: Ashgate Pub Ltd.

Rutland, P., 2007. Frozen Conflicts, Frozen Analysis. [online], available at: http://prutland.web.wesleyan.edu/Documents/Frozen_conflicts.pdf

Wolff, S., 2011. "The limits of international conflict management in the case of Abkhazia and South Ossetia" in *Unrecognized States in the International System,* edited by N. Caspersen and G. Stansfield. NY: Routledge Press, pp. 147-164.

Brazil´s cyberspace politics: Combining emerging threats with old intentions

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Abstract

The rise of the Information Age, mainly in the post-Cold War period brought a new dimension or elements to the safety and security for nationals and global agendas. Nowadays, relevant Information Technology and Internet Companies such as Google, Facebook, and Microsoft apace with International Organizations like World Telecommunication Union are implementing policies for the diffusion of this technology. They justify their practices with the argument of enabling social development and emancipation through providing access to information. The States and other International Organizations such as The North Atlantic Treaty Organization (NATO) and some private companies have been concerned with security issues on this theme. In this context, Brazil has drawn attention by implementing some measures to improve the governance of cyberspace, by legislating a law known as Marco Civil da Internet (Brazilian Civil Rights Framework for Internet). It was regulated in 2014 and included some participation in international forums defending an international commitment on this theme. In order to further understand how Brazil is developing its role on these issues, the main argument of this paper is that Brazilian policy has at least two sides. From one side it covers a raising security necessity and in the other, the security of cyberspace and internet provides an important field in international agenda where Brazil traditionally tries to improve its participation and relevance.

Keywords

Brazil, Foreign Policy, Cyber security, International Security.

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Introduction

Nowadays, the Information Technologies has become a relevant part of daily life all over the world, mainly in the developed countries. From the early 90´s - with a new political background and a more open world economy - the Information Technologies became accessible by a large part of society. This facilitated the delivery and development of services in general, especially the technological and information based. These new tools and the spread of information contributed to the development of this same tools and, consequently, increased dependence among individuals, companies, governments, etc. From exchanging e-mails to rapid communication, from reading a newspaper to move large sums of money instantly around the globe, the Information Technologies (cellphones, pagers, computers, electronic devices in general) are not only present but essential. Connected and personified though the Internet, those technologies allowed a new virtual reality called cyberspace, which has the ability to define while is defined by the social reality, creating, as some authors argue, a new social paradigm based on the sharing information with no borders and no time limitations (Lévy, 2003; Castells, 2005).

Recently, big companies like Google have implemented measures to provide access to non-connected people, mainly from underdeveloped countries (Rushton, 2014), with the justification on the idea that providing access to cyberspace to these people is a tool for emancipation. On the other hand, countries and international organizations are worried about the security issues that cyberspace could provide. The North Atlantic Treaty Organization (NATO), for example, developed a National Cyber Security Framework Manual (NATO, 2012) and a Cooperative Cyber Defense Centre of Excellence, headquartered in Tallin, Estonia.

Among the discussions of providing access to Information Technologies, some episodes that concerned the world in terms of threats from the cyberspace, the security and defense measures to be taken, the cyberspace issues started an issue that gradually taken the center of the discussions on security worldwide. This is also an open opportunity for some countries to use the security discourse to claim better places or have their points discussed and drive multilateral decisions. This seems to be the case of Brazil in the recent initiative to advocating the creation of tools for the governance and security in cyberspace in international forums.

This papers aims to answer the question on what has led some countries, namely Brazil, to internationally defend the creation of measures for governance and security for cyberspace. The main argument is that the issue of cyberspace security is also an opportunity for Brazil to develop the traditional goals of its foreign policy. Apart from the security issue, driven by the episode involving the Brazil-US relations in a complaint of espionage, Brazil's role also serves its foreign policy issues that are also seen in other initiatives in leading discussions on emerging issues looking for a more relevant place in international community.

To develop this text, the first part discusses the theories of securitization in order to provide a theoretical framework to understand why and how the discourses are used in international forum to raise security worries and drive multilateral decisions. The second part is dedicated specifically to the Brazilian case in the cyberspace issue. It starts with a brief discussion of the principles and main aspects of the Brazilian foreign policy in the last decades. This summary is useful for to understand the Brazilian motivations in their multilateral actions. Following, there is an analysis of

the Brazilian conduct on the very specific action of governance of cyberspace addressing its domestic motivations and international actions pursuing specific goals.

Cyberspace and the securitization theory. A possible debate?

The Cyberspace as an emerging security issue

In the post-Cold War, a new perception was developed, and the security issues once limited to local levels became relevant in internationally. It is possible to note that the notions of globalization dynamics on several issues such as economics, environment, civil conflicts, the responsibility of protection became a new paradigm for international security discussions and interventions. Internal elements has exceeded the bounds of State borders. Such particularities became a central argument to political discussions and decisions at different levels of governance and in academic issues (Novaes, 1992; Berdal, 1996; Black et al. 2006; Spillmann, 2000; Liotta & Owen, 2006). These themes challenged international politics and the role of the State in international relations (Tutuiani, 2013) offering opportunities to improve the definitions of security, that has incorporated themes not necessarily linked to traditional territorial-military issues.

The last changes in economy and policy, allied to technological development, have led to a post-industrial era. This new social paradigm is focused on social and production aspects based on a growing dependence on specific expertise. This new dimension of social structures is widely identified as the Information Society or Age of Information among other similar terms (Barney, 2004; Castells & Cardoso, 2005). According to Bell, the main characteristic of this post-industrial society is that sources of innovation are derived from the accumulation and dissemination of technical and theoretical knowledge, which makes contemporary society a true information society (Bell: 1976). From the 1990s on, this post-industrial scenario is identified with global information production and sharing knowledge. Based on electronic and digital data transmission at high speed and efficiency and at no cost or insignificant costs, the Information Technologies (ITs) have gained global importance, while they have become crucial to some important social necessities. More than that, the dependence on these new technologies, due to their ability to penetrate social use and distribution, is a practice to be encouraged, as predicted by the International Union for Telecommunications (ITU) (2003) which has a political endeavor to disseminate the use of IT as a tool to promote economic development, etc.

The quick diffusion of IT and the growing capacity of connection and transmission of information, constituted what some authors identify as a network society (Barney, 2004; Castells, 2005). According to Castells, this society is characterized by specific culture, institutions and private and contextual. This society´s culture shares some basic settings that characterize the current social model as a distinct form of human organization (Castells, 2005).

This society, in general terms, has improved itself and constituted a paradigm shift that, according to Castells (2005), would be the Paradigm of Information Technology. The author defines three characteristics for this paradigm: 1) information is taken as raw material, 2) high capacity of penetration of the effects of these technologies, since information involves all human processes. Individual and collective spheres are directly shaped by technological processes and 3) adaptation of the increasing complex of the interactions made within virtual networks. Castells (1999: 24-26) believes that these interactions made through virtual networks, allowed by the access to computers

and the internet, created new forms and channels of communication in a mutual interaction. The author states that in a globally interdependent system, relations and exchanges are made and unmade according to goals processed in networks where strategic decisions are presented. In this context, the technological development, mainly in the Information Technologies, represents a major sector of the contemporary globalized and interdependent economy (Albert & Papp, 1997: ii)

Thus, it is seen that the evolution of IT enabled a new free from boundaries globalized public space, for now, without a complete control by any State or other entity. This space, in particular the internet and its tools is called cyberspace. This space has pervaded social relations allowing different actors to meet and develop their interests in a large and dynamic network of contacts and possibilities. According to Bells´ (2001) definition,

> Cyberspace is a term used to describe the space created through the confluence of electronic communications networks such as the Internet which enables computer mediated communication (CMC) between any number of people who may be geographically dispersed around the globe.

Among the challenges posed by the rising of cyberspace for International Relations lie the security issues in several areas: terrorism, theft of data, access control, and operation of infrastructure, hacking attacks, cyber warfare (Lewis, 2002). Evaluating such threats or challenges, States and multilateral organizations have taken certain measures or policies to promote cyber security threats as well as to prevent.

Just as it has brought benefits, the cyberspace and the development of the IT enabled the rising of new threats, from robbery to actions against critical infrastructures passing by the exploitation of internet by terrorist organizations. This perception put the cyberspace at the center of a debate about domestic and international security. The protection of cyberspace appears between the national security priorities in several countries and international institutions such United States and Australia, Atlantic Alliance and European Union (White House, 2013; Australian Government, 2009; European Commission, 2013; NATO, 2011).

Labeling security: a theoretical framework of securitization

The decision on what is a priority among the security issues is a complex process. This context involves a set of elements, evaluations, interests and choices that end up stablishing, by the proper actor, a determined policy or set of actions directed to a particular purpose. This goal is obviously linked to what was addressed understood as threat to a critical element for a determined society or country. This process of setting a priority in security issues for a determined is theoretically systematized as Securitization theories, by Copenhagen School and others that came after as critical and complementary.

As argues by scholars from Copenhagen School, before becoming a security priority, these initiatives or strategies passes through what Buzan et al. (1998: 25), call *securitizing move*: "a discourse that takes the form of presenting something as an existential threat to a referent object". That is the first step to a securitization process. It includes the conviction of determined audience about the necessity of implementing special ways to urgent situations (Taurec, 2006). In this case of cyberspace, the discourse has been made very often by public authorities and organizations in

general, U.S President, Barack Obama, (White House, 2009) and the Indian former minister of Communication, Kapil Sibal, for instance (India Times, 2013; DNA India, 2013; IBN Live, 2013).

In general, the discourses or speech acts made by these authorities try to address the justifications of the use or implement special measures. These measures point to the protection of critical infrastructures, that is, those essential to the functioning of a country or to the ones that allow the basic supply of the needs of a particular society, namely the energy network and facilities, water and gas sources, and services like transportation, health and financial. It is easy to address that the higher the dependence of the infrastructure of information technology in various sectors, the greater their vulnerability to threats from cyberspace.

Nevertheless, before being understood as a matter of security, threats from cyberspace are so identified by a speech act. Or as Buzan et al. (1998) points, before became a security issue, there is a speech act that drives a determined element as threatened and passive to be an object of special security measures. This movement is identified by the mentioned actor as a securitization process.

The idea of securitization is based in a broader view of emerging security concept from the 1980s and widely applied after the end of the Cold War. In this sense, international and domestic security is no longer seen as a subject of military field, it is, in turn, an open topic that can involve different aspects or sectors, as argued by Buzan (1998: 27). Thus, in the case of securitization theory, as the security issues are firstly addressed by a speech act (by a securitizing actor, the one who points out a theme as a matter of security) (Balzacq, 2005: 172) directed to a determined audience (that could be regular citizens or the international community, etc.) the security and threats are social constructions, and not a pre-determined item:

> "Security is thus a self-referential practice, because it is in this practice that the issue becomes a security issue – not necessarily a real existential threat exists but because the issue is presented as such threat"
>
> […]
>
> "when a securitizing actor uses a rethoric of existential threat and thereby takes an issue out of what under those conditions is "normal politics", we have a case of securitization". (Buzan et al. 1998: 24)

The securitizing process has three main aspects. The first is the referent object, or the element (that could be anything) whose defense of their existence is legitimate provide justification for taking exceptional measures. The second is the securitizing actor, as explained above, the one who declare the referent object as threatened. Finally, the functional actor, is the one who are able to affect or influence the normal settings of rules of the security into a special situation, out of the normal practices.

The speech act plays a very important role in the securitization process. As Weaver addresses,

> "a designation of the threat as existential justifies the use of extraordinary measures to handle it. The evocation of security opens the way of the state [or the actor who are able to set this special measures] to take special power […]. As a result, ´security´ is the result os a move that takes politics beyond the stablished rules of the games and frames the issue as above normal politics" (Weaver, 2012)

Beyond that, the process of securitization is the speech act when the label of security is printed on a determined object or situation. This process is opened to everyone and everything. Theoretically, everyone who possesses the means and a proper discourse can securitize any issue or object. Of

course, it depends on some important elements, such as a correct audience and the interests of those whose the discourse is directed and the entities or actors with the capacity to take the necessary measures.

Securitization as a theoretical framework for understanding the cyberspace as a raising security issue.

In this particular field of the securitization of cyberspace, Buzan et al. (1998), in "Security: a new Framework for Analysis", mention, in general terms, the raising of cyberspace as an future relevant issue to take into account to conflict analyses. Their references is limited to citations of Der Derian and Nierop works (apud. Buzan et al, 1998: 137; 163 - 164). Their ideas sustain the argument that despite the globalization processes that have eroded the state borders, there are dynamics still related and will continue linked to territorial and traditional security issues. However, the technological development and the growing dependence on these information technologies, by social sectors and infrastructures, constrained the legislation of security policies regarding cyberspace. These initiatives placed cyberspace on the focus decision and policymakers.

Buzan and Hensen (2009: 228) mention the cyberspace as a security element linking that to the international security context after the terrorist attacks of 9/11. The link terrorism-cyberspace became a security priority in many states. The authors state that the securitization of cyberspace happens through the perception of imminent threats and implies formulation of specific policies. Cyberspace is a securitized theme that permeates many security sectors and do not constitute a particular sector itself. Cyberspace presents elements that approximate to military worries and economic securities. There is a particular grammar used to identify the securitization of cyberspace.

This securitization aspect can be divided into three specific categories: 1) Hypersecuritization: the tendency to exaggerate the threats, beyond the hypothetic elements in any securitization process, which implies excessive measures; b) everyday security practices: identification of the risks or threats from cyberspace to everyday problems; c) technifications, basically the idea that the security might be a technical responsibility in charge of those who possess the knowledge. In other words, this sustains the idea that "if cyber security is so crucial it should not be left to amateurs" (Hensen & Nissembaum, 2009: 1167).

In that aspect, as pointed by Cavelty (2012), it is possible to verify a technic-military approach. The link between military issues and cyberspace security suggests a sense of urgency for security measures. At this point, the security of cyberspace is seen as a national security issue legitimating the development of measures different from the ones used to deal in economic and commercial fields (Cavelty, 2012: 142). This view is reinforced by the growing complexity of the hack attacks, for instance, a growing and sophisticated hacker activism or virtual espionage and specially the activities perpetrated by states, such as China. According to Ball (2011) China classifies cyberspace as a strategic domain and have made efforts to equate its cyberspace defense resources to United States ones.

Thus, the militarization of cyberspace is linked to securitization processes at least in two main ways: 1) The militarization comes with securitization processes: when there is a perception that the threats represent a national defense matter and 2) when the militarization of cyberspace means

a development of technical dimensions in Hensen and Nissembaum (2009) terms, for instance as happens with US Army Cyber Command.

Hare (2010) also takes the military dimension as a securitization aspect of cyberspace. He elaborates an analysis model conjugating military aspects and social-cultural cohesion in order to classify the disposition of a country to securitize cyberspace. According to Hare, weak states (in terms of military power) with few socio-cultural cohesion are more likely to securitize cyberspace than strong states, i. e., with considerable military power and social-cultural coherent. However, Hare does not apply his model to any specific case.

The securitization theories concerning cyberspace is an emerging issue among the academic and politics forums. The authors concerned with this subject through this theoretical lens apparently didn´t achieve any consensus or a clear idea on what or how the securitization contributions could explain issues based on the security of cyberspace. It seems that every case has to be analyzed on their particular characteristics in order to first establish the theoretical bases still under construction.

Despite this, the securitization theories are useful to offer a theoretical framework complete enough to understand the behavior of some actors. The securitization theory also offers tools useful to understand some actions taken in multilateral environment concerning the mobilization of tools or creation of governance of cyberspace among other issues.

This seems to be the Brazilian situation while raising and sponsoring initiatives to provide governance and security tools for cyberspace activities. Beyond that, the role Brazil is playing also reflects, naturally, the old foreign policy intentions by this country. This will be better analyzed on the following section.

The securitization processes may not be complete or successful, but, as Weaver (1995: 50) argues, by identifying something as a security issue, something is done. The word ´security´ linked to something implies some urgent and special measures. The final goal of the securitizing actor depends on its interests and contexts, as pointed by Balzacq (2005). Thus, the use of security word involving determined issue, could become a strategy to turn the political discussion to other (desired by the actor) direction. This notion is useful to understand the dynamic of the interactions of decision makers and political representatives pursuing their respective interests in international or domestic levels. This situation seems to be the case of Brazil concerning the current cybersecurity policies. This issues will be exposed on the following pages.

Brazil using cyberspace to get more space

A brief resume of Brazilian foreign policy standards

Brazilian foreign policy and its institutions have been marked, in a general overview, by a stable and coherent approach to international issues. In the last years, the country has been looking forward to have its voice heard and considered at international level. Considering the period after 1985, when the government passed from the military to civilians and mainly after the foundation of the State with the Constitution in 1988, the country experimented a change at the priorities on its foreign affairs.

In a more open and democratic environment, the Foreign Relations Office, known by Itamaraty, set new priorities on foreign affairs an attempt of trying to reinsert the country in a raising world order. The main strategies were directed to reinforce the country actions at international institutions and a support or even sponsoring, multilateral initiatives such as Mercosul (South Common Market, Mercosur). Besides that, the new foreign affair´s initiatives invested in recover a more assertive role in multilateral forums centered in global issues, like the environmental and ecological discussions. The most visible example of this tendency is the country´s hosting of the United Nations Conference on Environment and Development (ECO-92) (Senado Federal, 2011).

The following period is marked by a foreign policy more active in international politics. The mandate of the president Fernando Henrique Cardoso is characterized by an intensification of the presidential diplomacy. Fernando Henrique Cardoso´s (1994 – 2002) academic profile and political trajectory contributed to this disposition of the country to assume new goals concerned in building a more protagonist role in international relations, focusing, meanwhile, in the adoption of the international regimes, regional integration and strengthening the Mercosul. At the end of Cardoso´s mandate, the Brazilian foreign policy was showing a State with a consolidated democracy, concerned and involved in global issues and supporting international institutions, International Rights, and trying to consolidate itself among the key countries in the international system. (Lampreia, 1998; Vigevani et al, 2003).

The election of a leftist president Luis Inácio Lula da Silva in 2002, came with a promise of change at the political and economic directions in force until then. These promised changes were never implemented, at least in the foreign policy principles. Instead, Lula strengthened the presidential diplomacy, managed dialogues with seemingly opposing forces, such as the World Social Forum, for example, and a strong presence of social base and permanent dialogues with key sectors of the world economy as the G8.

Lula has deepened the opportunities provided by the policies initiated by his predecessor. He involved the country in increasingly international ties and played actively in forums and multilateral policies, from regional issues like the political crisis in Honduras, for instance, to the Israel-Palestine conflict. At the regional level, he contributed in the creation of the South American Union of Nations (UNASUL) and the establishment and leadership of MINUSTAH. Besides that, the Lula´s foreign policy gave a relevant emphasis on cooperation between the developing countries, called South-South cooperation. Lula´s mandates are marked by the participation in international organizations with a particular agenda and the diversifications of partners, the actions in groups like BRICS, and at the center of global most important security issues such as the attempts of agreement concerning Iran´s nuclear production (Vigevani, 2007; Fonseca, 2010). Resuming, the Lula´s foreign policy reinforced the traditional principles of Brazil foreign policy and, at the same time, provided a prouder and active foreign policy diversifying the partners and fronts always searching for a more prominent place in international community (Almeida, 2004).

Different from Lula and Cardoso, the current president, the leftist from Lula´s political party Dilma Rousseff, in charge since 2010, gave preferences to Brazil´s domestic issues. The political and economic dilemmas forced Rousseff's administrations to solve internal problems with the endemic corruption, the inflation and recession threats and an ideological agenda presented that

has been object of discussions. In spite of that, the president kept the international commitments and has been, in its way, active in international groups.

When the security of cyberspace meets Brazilian foreign actions

The Rousseff period, despite not being the most active period of Brazilian diplomacy, it at the center of discussions addressed in this paper. Cyberspace issues appear at this period with worries in two levels and Rousseff´s diplomacy saw an opportunity to raise the security and governance of cyberspace worldwide.

At the domestic level, some issues involving governing the cyberspace were already being discussed since 2009 with the Brazilian Civil Rights Framework for the Internet (in Portuguese, Marco Civil da Internet). This project, now approved by both Legislative Houses and sanctioned by Rousseff, established a legal framework, legal principles, guarantees and duties for individuals, companies and the State while using the digital network in Brazil. As the former ex-Minister of Justice classified: the ´Constitution of the Internet´. After many rounds and discussions at Parliament, the project became law in 2014.

This initiative has bases at the commitment signed in 2004 at the Organization of American States (OAS) when they established the Resolution AG/REG. 2004 (XXXIV-O704) titled "The-Inter-American Internal Strategy to Combat Treaties to Cyber Security" with the objective of create an Hemispheric warning and watch network concerning security in cyberspace (OAS, 2004). Its approval and sanction, however, was much more related to another international fact that pulled this project among the priorities of the government.

In 2013 some denounces involving espionage by United States, through its National Security Agency (NSA), reached the center of Brazilian government. According to the denounces brought to public by the former NSA employee, Edward Snowden, the agency spied on Rousseff and many other directors and executives from the high Brazilian bureaucracy causing serious diplomatic disagreements between both countries (Harding, 2014)[294]. The Brazilian press gave substantial emphasis to the case and pulled current discussions about the Civil Framework of the Internet favoring the approval, despite some objections from some civil sectors (Senado Federal, 2014).

Furthermore, it caused a diplomatic incident between United Stated and Brazil. Despite the diplomatic relations weren´t at its best moments, both countries kept very stable relations. However, in response President Rousseff canceled an official visit to Washington. In an official statement, the Itamaraty exposed that:

> "As práticas ilegais de interceptação das comunicações e dados de cidadãos, empresas e membros do governo brasileiro constituem fato grave, atentatório à soberania nacional e aos direitos individuais, e incompatível com a convivência democrática entre países amigos" (in Monteiro, 2013)[295]

[294] In fact, the acts of espionage wasn´t focused exclusively on Brazil, but had many countries targeted like France and Germany, for example.

[295] Illegal practices of interception of communications and data from citizens, companies and Brazilian government officials are serious issue and a threat to the national sovereignty and to individual rights, and inconsistent with the democratic coexistence between friendly countries. (Free translation)

This case also fueled Rousseff´s discourse at the 68th Section of General Assembly of United Nations. Pointing the severity of the acts of spying, Rousseff addressed that,

> "Estamos, senhor presidente, diante de um caso grave de violação dos direitos humanos e das liberdades civis; da invasão e captura de informações sigilosas relativas as atividades empresariais e, sobretudo, de desrespeito à soberania nacional do meu país.
>
> Fizemos saber ao governo norte-americano nosso protesto, exigindo explicações, desculpas e garantias de que tais procedimentos não se repetirão". (MRE, 2013)[296]

The denounces by Edward Snowden and the acts of spying by the US agency act ended up creating substances that served to promote and strengthen a speech anchored in the need to produce tools or policies to promote safety in cyberspace. This idea gained support form important leaders such as the German chancellor, Angela Merkel, who also had her electronic communications intercepted by NSA and the French president François Hollande (Matoso, 2014).

This discourse and initiatives seem to generate a result in favor of Brazil's performance. Following its foreign policy principles of developing tools at a multilateral level, Brazil - supported by Germany and other leaders - won the approval of the Resolution A/69/488 concerning the ´Right to Privacy in the digital age´. (AG, 2014).

Considering the acts and the discourses used by Brazilian decision-makers in international and multilateral forums, it seems that the country is taking every opportunity to reach a more protagonist role in international relations. In this issue of cyberspace and the raising an popularization of Information Technologies and despite the security measures that may drive the discussions, could be seen as a door for Brazil to get more involved in central discussions of international agenda, just like the other fronts Brazil is attempting a leadership, including the most important declared mains goal which is becoming a permanent member of United Nations Security Council in a possible reform of this organism.

Of course, there are more issues involved than a mere discourse in the case of promoting security of cyberspace. But even those questions reinforce the idea that the country is pursuing its old goal of becoming a relevant actor. To further clarify this argument, the former Ministry of Defense and former Ministry of Foreign Affairs, Celso Amorim, argued that despite the threats from cyberspace are something relatively new, it is becoming an important issue for the security of the States and, doing nothing is not an option because this can lead to a similar situation to what happened with the Non-Proliferation Treaty: "Se nada for feito, o risco que corremos, diante da escalada contínua de arsenais ofensivos [armamentos cibernéticos] é que, em algum momento, venha a ser proposto um tratado que congele as disparidades do poder militar cibernético"[297] (Amorim, 2013: 292).

This discourse reveals a double need and challenge for Brazilian foreign policy. Firstly, there is a will of becoming a world relevant country at the level of international institutions explored above. Also this leads to a security necessity dependent not only on the organization of the domestic

[296] "We are, Mr. President, faced with a serious case of violation of human rights and civil liberties; the invasion and capture sensitive information concerning the business activities and, above all, a disrespect for national sovereignty of my country. We made known our protest to US government, demanding explanations, apologies and assurances that such procedures will not be repeated. (Free Translation)

[297] If nothing is done, the risk we run, given the continued escalation of offensive arsenals [cyber weapons] is that, at some point, will be proposed a treaty to freeze disparities cyber military power. (Free translation)

security institutions but also on the performance of the Brazilian diplomacy. Both elements constitutes a challenge for Brazil for the next years. Resuming, new or possible security issues are important to Brazil not only because it may become a threat, but also because it can help the country to achieve the traditional goals of its foreign policy.

Final Words

The spread of Information Technologies and the easy access generated new worries on security and concerning about the core values of the democratic societies, such as freedom of speech and the right to privacy. Considering the positive effects and the permeation the Information Technologies achieved nowadays, it seems impossible to step backward. Turn off the networks or restrict the access is not an option, since some important sector of society, like economy, communication and finance and even military issues are now deeply dependents on the proper functioning of the technologies and networks for digital communication.

As the Information Technologies are becoming more important to society, actors in international system raise their concerns regarding the usage of these tools. This is the case of Brazil and other countries who found a good source to fuel the discourse concerning security in multilateral forum. However, security is not the only interest noted. The acts performed by Brasil, specifically, in the scope of international organizations are anchored in some traditional foreign policy goals.

A more active foreign policy is a Brazilian investment since the second half of 90´s and these practices become even more visible during the last decade. The discourse and the actions taken by Brazil at multilateral environments, are addressing cyberspace to a domestic demand, especially after the complaints of espionage by NSA. It also reflect a foreign policy position. In this particular case, by the way, the strategies of the country has achieved results, as it was possible to convince determined audience, namely some UN members, to approve official resolutions concerning policies for cyberspace.

Securitization theories are useful to understand the process by which countries could improve its discourse and achieve determined goals. These theories have been applied in many fields of security studies from the environmental issues to the spread of epidemic diseases. Every case has particularities and deserves to be taken separately and it seems to be the case of the cyberspace as well. Since cyberspace involve some new security issues that are taking an important place in the current discussions, the tendency of security studies must address the cyberspace as a new aspect bringing it to the center of theoretical studies in general.

This security issue of cyberspace constitutes a challenge to Brazil´s foreign policy. However, it seems difficult to assure this specific case it will be continued. Despite the fact that Itamaraty is a very independent foreign policy department concerned with State issues, in the last years, foreign policy has shown an increasing dependence on the presidential profile and action. The government has been sometimes more open to the international issues and occasionally focused on domestic issues. It seems that, if these new issues are dependent on a collaborative agenda, it also depends on the relations of the countries in a bilateral level. For example, it seems to be hard to build a cooperation network concerning the security of cyberspace without key actors like United States. In this case, espionage acts like the ones perpetrated by United States contribute to the spread of distrust among the nations making it difficult to reach any multilateral agreement.

It is also important to observe that the current domestic context in Brazil is very complicated. The president is facing an economic crisis which is causing the fall of the gross domestic product and the rise of an inflationary growth and unemployment rates. The president has also collected falls in her rates for approval before the population. Beyond that she has been politically isolated, which prevents her from taking effective measures to solve these internal problems. In short, Rousseff has been unable to provide efficient answers to the internal crises and this is the reason why the issues of foreign policy, including the ones related to cyberspace, tend to be deferred to a context where they can best address these issues.

References

Amorim, Celso (2013) "Segurança Internacional: Novos desafios para o Brasil". *Contexto Internacional.* 35(1) 287 – 311.

Almeida, Paulo Roberto (2004) "Uma política externa engajada: a diplomacia do governo Lula". *Revista Brasileira de Política Internacional*

AUSTRALIAN GOVERNMENT (2009) Cyber Security Strategy. Online. Disponível em: http://www.ag.gov.au/RightsAndProtections/CyberSecurity/Documents/AG%20Cyber%20Security%20Strategy%20-%20for%20website.pdf. Acesso em: 10 de janeiro de 2014.

Balzacq, Thierry (2005) "Three faces of securitization", European Journal of International Relations June 2005 11(2) 171-201

Barney, Darin (2004) The network society. Cambridge: Polity

Bell, Daniel (1976) The coming of post-industrial society. New York: Basic Books

Berdal, Mats (1996) "The security council, peacekeeping and the internal conflict after the cold war". *Duke Journal of comparative & International Law,* 7(71)*, 71 – 91.*

Black, David (2006) *A decade of Human Security: What prospects for global governance and new multilateralism?* In Black, David et al. (2006) A Decade of Human Security: Global Governance and New Multilateralism. Hampshire: Ashgate Publishing Limited

Buzan, Barry et al. (1998) Security: a New framework for Analysis. Boulder: Lynne Rienner

Buzan, Berry; Hensen, Lene (2009) The evolution of international security studies". Cambridge: University of Cambridge Press

Castells, M. (2005) A Sociedade em rede. Lisboa: Fundação Calouste Gulbenkian

Cardoso, G (1998) "Para uma sociologia do cyberespaço: comunidades virtuais em português". Oeiras: Celta Editora.

CAVELTY, M. The militarisation of cyber security as a source of global tension. In: MÖCKLI, D. Strategic trends 2012: key developments in global affairs. Zurich: 28 Center for Security Studies (CSS), 2012. Disponível em: . Acesso em: 12 ago. 2012.

DNAIndia (2013) "You are only secure till you are attacked, says Kapil Sibal at the Cyber Security conference. 14 de outubro. Acesso em 22 de março de 2014. < http://www.dnaindia.com/scitech/report-you-are-only-secure-till-you-are-attacked-says-kapil-sibal-at-the-cyber-security-conference-1903457>

EUROPEAN COMISSION (2013) Joint Communication to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. Cybersecurity Strategy of the European Union: An Open Safe and Secure Cyberspace.

Harding, Luke (2914) Os ficheiros Snowden. Porto: Porto Editora

Hansen, Lene; Nissenbaum, Helen (2009) Digital Disaster, Cyber Security, and the Copenhagen School. International Studies Quarterly, 53, 1155–1175

Hare, Forrest (2010) The Cyber threat to national security: why can´t we agree? Conference on cyber conflict proceedings, 2010

India Times (2013) "Some nations indulging in cyber crime, says Kapil Sibal". 11 de dezembro. Página consultada em 22 de março de 2014.<http://articles.economictimes.indiatimes.com/2013-12-11/news/45080625_1_cyber-crime-lawlessness-internet-freedom>

IBN Live (2013) "India will have cyber security policy soon: Kapil Sabal. 27 de fevereiro. Página consultada em 22 de março de 2014. < http://ibnlive.in.com/news/india-will-have-cyber-security-policy-soon-kapil-sibal/375470-11.html>

ITU (2003) "Declaration of Principles: Building Information Society: a global challenge in the New Millenium". Disponível em: <https://www.itu.int/wsis/docs/geneva/official/dop.html>. Acesso em: 12 de abril de 2014.

Lampreia, Luis Felipe (1998) "A política externa do governo FHC: continuidade e renovação" *Revista Brasileira de Política Internacional,* 41(2), Available at: http://www.scielo.br/scielo.php?script=sci_arttext&pid=S0034-73291998000200001. Access in 20 July 2015.

Lewis, James (2002) "Assessing the risk of cyber terrorism, cyber war and other cyber threats" Center for Strategic and International Studies. Disponível em: <http://www.steptoe.com/publications/231a.pdf> Acesso em: 12 de abril de 2014.

Liotta, P. H., & Owen, T. (2006). Why human security? *Whitehead Journal of Diplomacy & Internationall Relations*, 7(37).

Matoso, Filipe (2014) "Dilma e Merkel discutem segurança eletrônica em encontro no Alvorada". Available at: http://g1.globo.com/mundo/noticia/2014/06/dilma-e-merkel-discutem-seguranca-eletronica-em-encontro-no-alvorada.html. Access 15th July 2015.

Monteiro, Tânia (2013) "Dilma cancela viagem aos EUA" *O Estado de S. Paulo.* 17 de setembro de 2013. Availabe at: http://politica.estadao.com.br/noticias/geral,dilma-cancela-viagem-aos-eua,1075730. Access in 20th July 2015.

NATO (2011) Defending the networks: the NATO Policy on Cyberdefense. Online. Disponível em: http://www.nato.int/nato_static/assets/pdf/pdf_2011
_09/ 20111004_110914-policy-cyberdefence.pdf. Acesso em 10 de janeiro de 2014.

NATO (2012) National Cyber Security Framework Manual. Tallin: Nato Publications. Disponível em: < http://www.ccdcoe.org/publications/books/NationalCyberSecurityFrameworkManual.pdf> Acesso em 20 de janeiro de 2014.

Novaes, Washington (1992) "Eco-92: avanços e interrogações". *Estudos avançados. 6(15),* 79 – 93.

OAS (2004) "Adoption of a comprehensive Inter-American strategy to combat threats to cybersecurity: a multidimensional and multidisciplinary approach to creating culture of cybersecurity". AG/RES. 2004 (XXXIV-O/04). Available at: https://www.oas.org/en/sms/cicte/Documents/OAS_AG/AG-RES_2004_(XXXIV-O-04)_EN.pdf. Access in 15th July 2015.

Rushton, Katherine (2014) ´Google spending $1bn on internet in developing countries´. Finance. The Telegraph. Available at: http://www.telegraph.co.uk/finance/newsbysector/mediatechnologyandtelecoms/digital-media/10870369/Google-spending-1bn-on-internet-in-developing-world.html. Access in 21st July 2015.

Senado Federal (2011) ´Estocolmo´72, Rio de Janeiro´92 e Johannesburgo´02: as três grandes conferencias ambientais internacionais. Núcleo de Estudos Informativos, Boletim Informativo n. 6. Available at: http://www12.senado.gov.br/publicacoes/estudos-legislativos/tipos-de-estudos/boletins-

legislativos/boletim-no-6-de-2011-estocolmo72-rio-de-janeiro92-e-joanesburgo02-as-tres-grandes-conferencias-ambientais-internacionais. Access in 20th July 2015.

Senado Federal (2014) ´Aprovado no Senado, Marco Civil da Internet segue à sanção´. Available at: http://www12.senado.leg.br/noticias/materias/2014/04/22/aprovado-no-senado-marco-civil-da-internet-segue-a-sancao. Access in 20th July 2015.

Spillmann, Kurt; Wenger, Andreas (2000) Towards the 21st Century: Trends in Post-Cold War International Security Policy. Brussell: Peter Land Publishers

Taurec, Rita (2006) "Securitization theory and securitization studies". *Journal of International Relations and Development,* 9 (1), 53 – 61.

Tutuianu, Simona (2013) Redefining Sovereignity: From Post-Cold War to Post Westphalia. In Tutuianu, Simona (2013) Towards Global Justice: Sovereing in a Interdependent World. The Hague: Asser Press

Vigevani, Tullo; Cepaluni, Gabriel (2014) "A Política externa de Lula da Silva: A estratégia da autonomia pela diversificação". *Contexto Internacional.* 29(2), Available at: http://fes.org.br/brasilnomundo/wp-content/uploads/2014/06/pe-de-lula-da-silva-tullo.pdf. Access in 20th July 2015.

Vigevani, Tullo et al. (2003) "Política Externa no período FHC: a busca de autonomia pela integração". *Temopo Social,* 15(2), Available at: http://www.scielo.br/scielo.php?pid=S0103-20702003000200003&script=sci_arttext. Access 20th July 2015.

Weaver, Ole (2005) "Securitization and desecuritization". In Lipschutz, Ronnie (1995) On security. New York: Columbia

Weaver, Ole (2012) "Aberystwith, Paris and Copenhagen. "The Europeanness of new "schools" of security theory in an American Field". In Tickner, A & Blaney, D. (eds). Thinking International Relation Differently. New York: Routledge

White House (2009) Remarks by the President on securing our Nation´s Cyber Infrastructure. May, 2009. Online. Disponível em: http://www.whitehouse.gov/the-press-office/remarks-president-securing-our-nations-cyber-infrastructure. Acesso em: 22 de março de 2014.

White House (2013) Cyber Security. Online. Disponível em: www.whitehouse.gov/issues/foreign-policy/cybersecurity. Acesso em 10 de janeiro de 2014.

White House (2013) Cyberspace Policy Review. Online. Disponível em: www.whitehouse.gov/assets/documents/Cyberspace_Policy_Review_final.pdf. Acesso em: 10 de janeiro de 2014.

Methodological framework of the electoral integrity model

Research Note

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Abstract

This research note discusses the methodological framework of the electoral integrity model, specifically the weaknesses and strengths of the Perception of Electoral Integrity Index in its 2013 and 2014 versions. It explains the theoretical concept and the importance of measure both electoral integrity and electoral malpractices. Furthermore, emphasizes on some technical aspects related with the robustness of the ranking, the possible sources of bias in the expert surveys as well as the internal and external consistency of the findings. To give a suggestion for improving the model, it provides some adjustments. Finally, it gives a conclusion about the future of the project and the usefulness for the democratization of its knowledge built.

Keywords

democratization, electoral integrity, electoral malpractices, methodological framework, Perception of Electoral Integrity.

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Definition of electoral integrity and its importance

The liberal democracy recognizes a set of political rights to citizens, not only to vote to elect their representatives but also to participate in direct democracy actions. Since the beginning of the first decade of 21st century, the quality of elections has been an interest object of the electoral studies regardless of the countries' democratization degree. A recent example is the electoral integrity model, which has emerged with an innovative theoretical and methodological framework, developed by the *Electoral Integrity Project* (EIP), an academics group from universities of Sydney (Australia) and Harvard (United States), directed by Pippa Norris. Their work has been rapidly expanded for the purpose of define the concept of elections with integrity, to respond why is important measure its perception in a group of countries around the world and to publicize the results through an index.

According to Norris (2013), the electoral integrity refers to 'international conventions and global norms, applying universally to all countries worldwide throughout the electoral cycle, including during the pre-electoral period, the campaign, on polling day, and its aftermath'. On the contrary, the concept of electoral malpractice refers to 'first and second-order violations of these global norms' (3). Some of the global norms are resolutions about electoral assistance that have been made by the General Assembly of the United Nations since 1991. These stablish on detail the principles in which member states can give each other electoral assistance and promotion of democracy under the respect of the national sovereign.

To comprehend the model, its structure is composed by ten related hypotheses. The first is that the quality of elections influences in the citizens' perception about electoral integrity and malpractices. Then, this degree of perception influences at the same time in the voting participation, the violent protest or even in the political legitimacy. Subsequently, this political legitimacy influences in peaceful demonstrations, and also in voting participation or violent protest. Afterward, these three could influence in a response of the state, depending on the case, with reforms, status quo permanence or even the repression. At last, that this response makes a feedback through the media conditions to influence in the first hypothesis.

Applied research of the model

The main research work of the EIP is the *Perceptions of Electoral Integrity Index* (PEI Index), an international poll study which has been published in two versions, the 2013 and the 2014. In such study the model is applied empirically through a 100-point standardized index that evaluates how much perception of electoral integrity is perceived in the country elections. The survey consists of 49 indicators grouped in 11 stages of the electoral cycle which is applied to a group of experts on the field. The countries are selected by their membership to the United Nations Organization and they are excluded for being micro-states, not have direct popular elections or not have been held elections for their national legislature (2015: 32).

Both the 2013 and the 2014 indices the expert survey response rate was 29%. The overall of experts surveyed and their responses were 2901 with 855 in the 2013 version and 4970 with 1429 in the 2014 one. The 2013 was made based on a group of 77 legislative and presidential elections celebrated within 1 July 2012 and 31 December 2013 in 66 countries, the 2014 did based on 127 elections of 107 countries since the same date of the former from 31 December of 2014. It´s

important to emphasize in the last one, because only 54 elections organized during 2014 were added. 8 of 9 elections that belong to countries already evaluated in 2013 had a positive significant change, except United States in 2014 and Japan in 2013. The Table 1 shows the value of the PEI Index by country.

Table 1. PEI Index changes 2014 elections with respect to 2013-2012

Country	Office	Date	PEI Index 2013	Office	Date	PEI Index 2014
Mauritania	L	21/12/2013	54.1	P	21/06/2014	56.9
Romania	L	09/12/2012	58.6	P	16/11/2014	62.7
Bulgaria	L	12/05/2013	59.7	L	05/10/2014	67.3
Maldives	P	16/11/2013	61.3	L	22/03/2014	67.5
Ukraine	L	28/10/2012	63	P	26/10/2014	66.7
United States	P	06/11/2012	70.2	L	04/11/2014	69.3
Japan	L	21/07/2013	73.2	L	14/12/2014	76.5
	L	16/12/2012	73.8			
Lithuania	L	28/10/2012	77.9	P	25/05/2014	85.2
Slovenia	P	02/12/2012	79.5	L	13/07/2014	82.9

Abbreviations: L: legislative. P: presidential.

Source: Prepared by author based on Norris, Pippa; W. Frank, Richard & Martínez i Coma, Ferran. (2014: 15-17) and Norris, Pippa; Martínez i Coma, Ferran & Max Grömping (2015: 8-11).

The rest of countries with elections in 2012 y 2013 had not significant changes in such value because they didn´t organize any during 2014. More than a set of ranked values, the PEI Index 2014 also provides a map of the electoral integrity degree by categories; they are very high, high, low and very low (Norris, Martínez i Coma and Grömping 2014: 12).

Methodological weaknesses and strengths

Once the empirical part has been exposed, its main methodological weaknesses and strengths will be analyzed. About the first, the electoral integrity model's vision is emphatic in the representative democracy but reductionist in the liberal democracy. However, Norris (2014) has recognized that the democratisation is more than free and fair elections because in the extreme it would fall in a type of *fallacy of electoralism*. Another weakness is related to the theoretical model that the ten hypotheses compose it because it's not clear if there is a correlation or a cause-effect relationship between them. Throughout the book the author only gives empirical evidence about why it matters but doesn't test one by one.

Three possible resources of bias in the surveys of PEI Index are studied by Martínez and van Ham (2015). They conclude that the variance in the expert judgments could be explained by their multiple definition of the object of evaluation, their different level of expertise and knowledge about electoral cycle and the context of both election and country (317-321). Though in general all of them don't have a significant deviation, some variables in particular do have a high one. For example, respectively for the tree sources, the technical questions, the familiarity with the election and the degree of media freedom. The authors recognize that were needed more cases of national

elections to study. However, for inquire more on the internal consistency of the PEI Index data this analysis can solve any doubt.

Another weakness related to the two version of the PEI Index is about the unclear interest of the EIP in respond to why the elections fail and what can be done about it. Beyond a professional theory and method of the model, the usefulness of the knowledge built can improve those countries with low or very low electoral integrity. But this cause, despite being legitimate, needs to be separated from the strictly academic.

Now, concerning methodological strengths, Norris (2014) demonstrates that there is a strong external consistency among the PEI Index 2013 and other expert indices and mass surveys like the Quality of Elections Data, the Freedom House Liberal Democracy datasets or the World Values Survey. The PEI Index 2014 is more explanatory than the 2013 in providing a scale of how much perception of electoral integrity is in the countries because it is calculated based on standard deviations from the mean. That is better than limit the values to subjective categories like democracies, hybrid regimes or electoral autocracies, as could be classified by the author.

A last strength of the model is that the PEI Index has bridges the gap of external consistency between the electoral observation and monitoring informs. Although the Organization of American States has stablished a methodology for evaluate the electoral cycle stages, this effort is only at regional level and doesn't provide indicators to rank their measures. Even considering that the Global Network of Domestic Election Monitors promotes valuable guidelines for a professional monitoring, it lacks of a sophisticated method[298].

How to improve the EIP methodology?

First of all, to give a suggestion for improving the empirical part of the model, it would be convenient for its robustness a suggestion for the theoretical. The relation among the hypotheses could be more explained in terms of the variables and its testability. In this way it would be possible to bring a strong support for the technical aspects of the PEI Index.

Some adjustments in the PEI Index can be made to provide historical information about the changes and trends that each country has in the ranking. Sort the elections per year and office is a first step to avoid repeating in new version the values of the elections already evaluated in old ones. The annual periodicity enables to cover both the general and intermediate national elections over different terms among the countries. However it's necessary to make a brief case study by each election about the circumstances in which they occurred, to give them a contextualization of the statistical values in the ranking. Even though it doesn't measure the quality of the electoral system in the administrative and judiciary aspects nor its aim to translate votes into seats, highlight the most relevant cases of electoral integrity or electoral malpractices would help to understand why the countries are in their respective position.

Conclusions

The emergence of the electoral integrity as object of the electoral studies has a sophisticated theoretical and methodological framework. It improved the way in which the quality of elections

[298] These documents are '*Methods for Electoral Observation: A Manual for OAS Electoral Observation Missions*' and 'Declaration of Global Principles for Non-Partisan Election Observation and Monitoring by Citizen Organizations'.

had been measured and even observed and monitoring. This doesn't mean that the model can't evolve over time. Surely, the Electoral Integrity Project will continue to providing key findings about the integrity of elections through a historical and comparative approach. The knowledge built will be useful not only for the academics but also for the international organizations that apply it for promoting and strengthen the process of democratization in countries that need it.

References

Martínez i Coma, Ferran and Carolien Van Ham (2015): 'Can experts judge elections? Testing the validity of expert judgments for measuring election integrity', *European Journal of Political Research*, 54, pp. 305–325.

Norris, Pippa (2013): 'The new research agenda studying electoral integrity', *Electoral Studies*, 32 (4), pp. 563-575.

Norris, Pippa (2014): *Why electoral integrity matters*. New York: Cambridge University Press. [Kindle version].

Norris, Pippa; Martínez i Coma, Ferran and Max Grömping (2015): *The Year in Elections, 2014. The world's flawed and failed contests.* Sydney: Electoral Integrity Project.

Norris, Pippa; W. Frank, Richard and Martínez i Coma, Ferran (2014): *The Year in Elections, 2013. The world's flawed and failed contests.* Sydney: Electoral Integrity Project.

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Introduction

What is the research question and why should academics research it, scientific and societal relevance.

Literature review

What has previously been written on the topic, what conclusions others reached.

(Model construction) and Theoretical framework

What theoretical framework and approach is used and why. If applicable, causal model may be shown at this point, or later, after data investigation.

Conceptualization and operationalization

Definition of basic terms and their indicators, choice of variables and their validity testing. Formulation of hypotheses (explicit or implicit) based on the theory/theories. Elaboration of specific claim(s) in the investigated theory/theories. If applicable, description of the causal mechanism, i.e. the chain of events purported to link your explanatory variables to the specific outcome.

Methodology

Description of the specific research method used (i.e., process-tracing, discursive analysis, MLA, etc.), its advantages and weaknesses and why it is chosen.

Data

Description of the data used, number of cases, method of case-selection, source of data, method of data collection, sampling method.

Analysis and findings
What the data show in detail, general tendencies and interesting particularities.

(Model construction) and Conclusions

Causal models may be formulated and general conclusions reached. Conclusions may or may not specifically challenge or support findings in existing literature.

Future research

Possibilities of future research for the researcher or other scholars, promising directions, requirements for future research.

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Appendices

Every piece of data used to be shown so as to facilitate potential replications. If possible, data shared publicly and/or presented together with the manuscript.

Presentation of the author:

Please, include a short presentation of yourself (approx. 100 words) in the following style (3rd person singular): Name, age, (hometown), university, degree, focus of your studies/Master or Bachelor Thesis, current employment or study interests, e.g.:
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